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*Review*

## The United Nations Security Council Resolution 1373: An appraisal of lawfare in the fight against terrorism

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This article reflects on and appraises the recent preventive approach to terrorism which is of a varied nature and which has to do more particularly with the United Nations (UN) Security Council Resolution 1373. The resolution is relatively new, yet it shows the way forward in tackling the menace of terrorism. It clearly points out areas where efforts should be geared towards if the fight against terrorism would be won. This article appraises these areas of the Resolution with a degree of clarity to show the light in the dark tunnel of terror network so that there will be no hidden place for both terror and terrorists and this is done with the aim of calling the attention of the member states of the United Nations to the possibility of using the law to successfully curb or curtail international terrorism. Whereas in warfare force is matched against force, in lawfare law is matched against crimes (including terrorism). This is what lawfare, which is relatively a new concept of law, is all about. The methodology employed in this work relates to books, case laws and internet materials.

**Key words:** United Nations Security Council Resolution, lawfare, terrorism, warfare

### INTRODUCTION

The insurgence of a calculated and systematic campaign of terror mounted against governments and peoples of the world is gradually increasing to an alarming rate. Dissatisfaction of those behind the terror facade has led to the disaffection which gives birth to such violence as has shaken the pillars of modern civilization and casts reservation on the acclaimed civility of man. Suffice it to say at this earliest point in this article, according to a general anecdote, that necessity is the mother of invention. The veracity of this rational assertion is not in doubt. What is rather in doubt is whether the invention would readily be made available to meet with the challenges thrown by the necessity. The challenge of arresting the

international and local network of terror is a daunting one which requires proactive measures to curtail. Using the law as an instrument of restraint on terrorism or any other vice qualifies as lawfare. In other words, lawfare is an application of the law as a legal tool used in fighting against a vice made on illegal act by a legal system. Doing of an act in the absence of legal backing makes the act an illegal act. In other words, it would be very difficult, if not impossible, to fight terror in any part of the world without the support of the law.

It is to be noted that the concept of lawfare is a new concept in international law which highlights the important part law plays in the prevention of crimes both in national

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and in international criminal justice systems. For instance the United Nations Charter in order to discourage aggression of one sovereign state against the other made a provision banning the use of force by states. Article 2(4) forbids the use of force by states. The language of the text is said to be all-encompassing (D'Amato, 1995, p. 57). The relevance of this concept of lawfare in terms of legal development is mainly restricted to fashioning a new outlook about the nature of law in order to encourage its timely uses in arresting crimes both at national and international realms. Just as in warfare where force is matched against force until a weaker force bows to the superior firepower of the other force; so also in lawfare the force of the law is made to match the force of crimes of all kinds. In a situation where crimes prevail over the law, lawfare fails and to reverse this trend, more energy is to be dissipated in fashioning out laws that would be potent enough to arrest such crimes. It is important to note that the Crime of Aggression in the Rome Statute<sup>1</sup> has finally been defined yet the International Criminal Court has not been given the jurisdictional power to try offenders as it relates to the Crime. Lawfare could, therefore, be defined as the use of the law as a weapon of war. This is the approach taken in this article and it is related particularly to Resolution 1373 of the United Nations Security Council with regard to terrorism.

It takes lawfare to wage a legitimate warfare against terrorism or any other vice. It has been rightly observed that military alliances have political and economic consequences (Lasok and Bridge, 1976, p. 7) and these consequences may be overwhelmingly negative in the absence of legal backing. The fighting of terrorism requires budding alliances which would be predicated on a large variety of horizontal agreements (Goyder, 1992, p. 153) that would have an extra-territorial effect (North and Fawcett, 1987, p. 127). A prudent and skilful application of legal tools by multiplicity of nations in curbing the menace of terrorism reveals the comity approach in tackling the problem of terrorism. The comity theory (Morris, 1984, p. 504) suggests that there is power in a united effort. International law has, by virtue of the comity approach, provided a number of legal instruments designed to fight aspects of terrorism (Campbell Black, 1990, p. 143; Time Magazine, 2002, p. 33)<sup>2</sup> ranging from hijack of aircrafts to hostage taking, especially, of diplomats and other protected persons. Suicide bombing directed against locomotive machines<sup>3</sup> like cars, trains and

aircrafts plunged into standing buildings are of relatively recent origin. The havoc caused by this new dimension of terror is of a mammoth magnitude which causes a serial devastation and destruction of lives and properties. This in turn takes a ravaging toll on social, political and economic fortunes of a sovereign state and even on federating units in a federation. The fund used to procure the lethal instruments for bombing purposes and the value of properties damaged and the incalculable or unquantifiable loss of human lives when combined together could be invested to improve the quality of life and the standard of living in a state.

It is worthy of note that most of the legal instruments<sup>4</sup> employed to arrest the menace of terrorism are punitively structured. They make the commission of any act of terrorism a punishable offence and require states in which jurisdictions the perpetrators of terror are kept to ensure that they, through a local legislation, make the punishment for the act of terrorism to be of maximum degree. However, there is currently a palpable shift from this position of employing punitive measures to the application of preventive measures in order to effectively demobilize the terror network and efficiently ground its operations.

The above legal strategy is like that used in physical warfare, where commanding military officers employ effective means to demobilize the contingent of the energy forces in order to gain a military advantage over them. The demobilization related to cutting off the supplies of the enemies in order to render them weak or powerless thus forcing the belligerents to sue for peace and opt for an unconditional surrender. In the same vein, employing the law as a tool used in cutting off the financial supplies which are the bedrock of sponsorship to the terror network is aimed at weakening the terrorists or rendering them powerless. This assumption is predicated on the fact that guns, bullets and bombs are costly. Again, those that carry out the terror attack require money to ease their mobility and compensate their loved ones in the case of suicide bombing<sup>5</sup>. Therefore, funding is of paramount importance to both the planners and executors of terrorist acts. This article reflects on and appraises the recent preventive approach to terrorism which is of a varied nature and which has to do more particularly with the United Nations (UN) Security Council Resolution 1373.

<sup>1</sup> Articles 5, 6, 7 and 8.

<sup>2</sup> Terrorism involves a violent act or an act dangerous to human life that is a violation of the criminal law of any state or that would be a criminal violation if committed within the jurisdiction of any state and appears to be intended to intimidate the civilian population or influence the policy of a government by intimidation.

<sup>3</sup>The Madrid Train bombing of 2004 depicted the resolve of terrorists to hit at anything containing human beings whether locomotive or aircraft in nature.

<sup>4</sup> Such instruments include the Hague convention for the suppression of Unlawful Seizure of Aircrafts of 1970; the Montreal Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation of 1971; Convention on the Prevention and Punishment of crimes against Internationally Protected Persons Including Diplomatic Agents of 1973. These laws are employed as a tool for fighting various forms of terrorism. This is an example of what Lawfare is all about.

<sup>5</sup> Suicide bombing reveals the type of atrocities that could be caused to humanity when terrorists learn how to manufacture nuclear weapons or even atomic bomb. Stretching protests to self-destruction could easily lend itself to genocide, destruction of a race with ease or the destruction of the entire humanity.

## THE CONTENTS OF THE UN SECURITY COUNCIL RESOLUTION 1373

The text of Resolution 1373 reads, in the operative part, that the Security Council,

1. Decides that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance

in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multi-lateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious



challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.<sup>6</sup>

The adoption of the above Resolution (Murphey, 1995, p. 247)<sup>7</sup> on 28th September 2001, seventeen days after the September 11 2001 terrorist attack on the United States shows clearly the new global perception of terror as being such that threatens international peace and security. It is submitted that the said attack prompted the design of the preventive approach to terrorism as reflected glaringly in the text of Resolution 1373. The text reads, in part as follows:

That all member states prevent the financing of terrorism and deny safe haven to terrorists. States will need to review and strengthen their border security operations, banking practices, law enforcement and intelligence cooperation, and arms transfer controls. All states are called upon to increase cooperation and share pertinent information with respect to these efforts.

It is not a hidden fact that terrorism is the greatest security challenge of the twenty-first century. Law is employed in the tackling of this global menace just as the same legal instrument was employed in halting wars among sovereign states<sup>8</sup> to the extent that the power to declare war is largely curtailed by the law. In fact, in international relations, war is not allowed to be used to settle international disputes<sup>9</sup>. This is courtesy of international law which is becoming increasingly recognised globally as a valid law that should attract the same obedience that is attracted by municipal law within a municipal jurisdiction.

The contents of Resolution 1373 reveal laudable aspirations that all states should join hands to get accomplished. These aspirations are anchored on concerted efforts to cut off the financial tube supplying fund to sponsor terrorists' activities and stringent consular checks

<sup>6</sup> U.S. Department of State Archive, UN Security Council Resolution 1373 available @ <http://2001-2009.state.gov/p/io/rls/othr/2001/5108.htm> last accessed on 07/08/13.

<sup>7</sup> Resolutions are to the United Nations what case laws are to a judicial system. It is to be noted that it was the September 11 2001 terrorist attack on the United States that galvanized the Security Council into action in order to counter international terrorism. This is the foundation or historical basis of UNSC Resolution 1373.

<sup>8</sup> See the Briand – Kellogg Pact of 1928 which is on the renunciation of the war by states; Art.2(4) of the United Nations Charter; the Montevideo Convention on the Rights and Duties of States of 1933; Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique of 1977.

<sup>9</sup> Art. 2(4) of the United Nations Organization has foreclosed the issue of whether force could be used to settle International Disputes.

to ensure that terrorists do not receive visas in order to enhance their free domicile in states other than their own. These two main aspirations cannot be transformed into an objective reality or concretized without reviewing and strengthening immigration border checks, checking the activities and operations of financial institutions, beefing up the expertise and technology of the law enforcement agents; sharing of information on movements of terrorists and control of arms transfer through improved diplomatic channels. The above contents undoubtedly seek to provide an effective antidote to terrorism. They shall be reviewed in the subsequent paragraphs below.

### Cutting off the financial tube sponsoring terrorism

The cutting off of the financial tube which supplies terrorism the cash needed to execute the operations by the foot soldiers of the sponsors who sponsor terrorism is a relevant step in the bid to arrest terror acts. No act of terrorism is without the attachment of this financial string<sup>10</sup>. The assumption underlying this singular approach is that when terrorists are starved of fund with which to procure the lethal weapons employed in the prosecution of terrorist activities, their power to operate against humanity is greatly restrained, thereby rendering their nefarious designs inoperative. However, the act of cutting off the financial tube cannot be initiated in a democratic setting or jurisdiction without the force of a valid law which provides a legal template for the act. For instance, the Nigerian law, an Act of the National Assembly on money laundering<sup>11</sup> provides a possible legal template for the cutting off of the financial tube of any organisation that promotes illegal activities in Nigeria or elsewhere. In a similar fight against money laundering, British law on money laundering acts as a weapon for the severing of the financial tube that waters illegality including terrorism. The recent case of the conviction of Mr. James Ibori, an ex-Governor of Delta State of Nigeria in a London Court points to the fact that, without an existing law or legal template, it would be difficult to starve terrorists of fund.

An act of money laundering entails the transfer of money above certain amount specified in a legal document or document ancillary to it. The transfer may

<sup>10</sup> The cost of sponsoring terrorism is as significant as that of prosecuting a war. The way money is invested to buy weapons of war is the same way that money is invested to procure lethal weapons capable of causing a devastating effect as strong as that caused by an air raid or release of a missile in a single operation during an outright warfare or any other belligerent operation. Therefore, financial measures aimed at curtailing terrorism are steps in the right direction.

<sup>11</sup> The Nigerian Money Laundering Act prescribes how money transactions in banks are to be carried out without a veiled attempt to cover illegal transactions. Moreover, the Economic and Financial Crimes Commission Act (the EFCC Act), a Nigerian Legislation prohibits money laundering. In the same vein, the Independent Corrupt Practices Commission Act, another Nigerian Legislation provides against corrupt practices which include money laundering.

be done through the actual account of the transferor or may be done through a pseudo name account bearing a false name in order to deceive the public and the law enforcement agents who may raise an alarm against such transfer as to the true ownership of the account. The purpose of checking the act of money laundering is, first and foremost, to eschew corruption including all corrupt practices and secondly, to ensure that huge sum of money does not go into wrong hands that may use the opportunity to sponsor terrorism or to promote narcotic drugs related activities.

Money, indeed, "answers all things"<sup>12</sup>. In other words, money can be used to pursue ends both good and evil. This utilitarian (Okeke, 2010, p. 146)<sup>13</sup> quality is recognised by the UN Security Council Resolution 1373.

On the basis of this recognition, it enjoined states to prevent the utility of money to achieve a negative end particularly as it concerns terrorism. The September 11, 2001 attack<sup>14</sup> on the United States by the Al Qaeda terror network was a negative end achieved through co-ordination of the activities of the terrorists that hijacked the aircrafts that hit the twin towers of the World Trade Centre<sup>15</sup> in New York and the United States military headquarters, the Pentagon. Those that hijacked the aircrafts and used it for a suicide mission had before the fateful day of the incident undergone flying training where they paid great attention only to the taking off and flight of aircrafts but did not show a remarkable interest in landing aspect of the flying training. It is deducible from the foregoing, that money was invested in the training without which the training would be abortive.

The linking of a wealthy man of Afghanistan extraction, the late Osama Bin Laden to the terror attack on the United States speaks volume to support the position of Resolution 1373 on the prevention of financial support to terrorist as a legal means of fighting against terrorism. Recently, in Nigeria, a group known as Boko Haram has been using suicide bombing as a tool to destroy many lives and properties worth millions of Naira. The Group's leader, Late Yusuf was killed in an extra-judicial manner in the hands of the Nigerian security operatives thus prompting the group to be more aggressive in carrying out terror activities against security agents and other

Nigerians especially in the Northern part of Nigeria. It is generally believed that the sponsors of the group's activities have access to a fat financial treasure from which fund is secretly distributed for the procurement of arms and ammunitions on one hand and the secret recruitment of foot soldiers on the other hand. These foot soldiers swathe themselves with explosives and detonate the explosives once they are in contact with the target population. Moreover, they employ the use of cars packed with explosives to wreck havoc on lives and properties. The group's daring attacks have left devastating impact on places like churches, market places, public transport bus terminal and the Nigerian office of the United Nations in Abuja. Therefore, using the law as a weapon to control the disbursement of fund in order to check free access of fund by terrorist organizations, is part of lawfare.

### **Resort to strict consular restriction on grant of visa**

The granting of visa to immigrants in any state is done by its consular mission<sup>16</sup> which is established in the receiving state. A visa is a state's grant of authority to an applicant or applicants to enter into its territory and be domiciled for a specified period of time. It is an incontrovertible fact that the grant of visa to enter the territorial space of state goes with the duty of the state that granted such authority to protect legal immigrants in its territory. Terrorists could apply for visa to enter into a particular state with the latent intention of striking targets considered strategic by the sponsors of terrorism and wrecking havoc in such a domain. One of the plausible means of stopping the possibility of the occurrence of catastrophe is to tighten the noose in relation to issuing visas in such a way as to ensure that only personalities with unquestionable characters, links and background are issued with visas subject to their application for visas.

The tightening of the noose on matters connected with the issuing of visas cannot be legitimately done without resort to law. The law in question refers both to consular law and immigration laws. The consular law of a state is patterned after the Consular Convention while the immigration laws are based on states immigration policies. In this sense, generally, the law becomes an effective tool employed in the fight against international terrorism. The concept of lawfare (UNESCO, International Dimensions of Humanitarian Law, 1988, p. 73)<sup>17</sup> is, thus, reinforced as a relevant concept and a weighty creative output of

<sup>12</sup> See the Holy Bible, Ecclesiastes 10:19. In other words, money could be used to do both good and evil. It could be employed as a defensive shield. (Also see Ecclesiastes 7:12).

<sup>13</sup> Utilitarianism is one of Jeremy Bentham's postulations relating to the nature of law. He, Bentham posited that the society should seek the greatest pleasure for the greatest number of people.

<sup>14</sup> This attack was traced to the Al Qaeda terror group led by the late Osama Bin Laden, a wealthy man of the Afghanistan nationality. The hunt by the United States authorities for his head lasted for years before he was killed in his home base by a contingent of the United States soldiers.

<sup>15</sup> The attack was a new dimension in the operations of terrorists. Hitherto, terrorism had revolved around hijack of aircrafts and taking all or targeted passengers of certain nationalists hostage until a ransom is paid or a demand is met by the governments of those people.

<sup>16</sup> Consular relations is regulated by the Vienna Convention on Consular Relations of 1963. In addition to the granting of visas, the Consular Mission in a receiving state takes care of the commercial interests of their citizens abroad; while consular officers are allowed to visit their citizens in prison, in the event of any criminal charge in order to render state services to them, where necessary.

<sup>17</sup> Lawfare is a new concept in legal curriculum. The etymological structure of the word is simply derived from the observation and conclusion that the law as

the protagonists.

The relational basis of the consumer mission which encourages mutual benefits in consular relations could be used as an avenue of strengthening consular checks. For example, the Sending state's Foreign Affairs Ministry or any other relevant Ministry or Department of the state could be informed by its consular mission in the Receiving state of a terror baron on terrorist that is about to enter into its territory. This alert for surveillance on the person of the suspected terrorists may be based on the direct information accessible to the consular mission or based on the information received from an informant. In order to prevent an act of terror, the alert may not be about a suspected person but on a suspected lethal weapon like bomb.<sup>18</sup>

Justifying the above pronouncement becomes paramount to the acceleration of efforts geared towards freeing the world from the shackles of terrorism especially of such ones as can be cheaply carried out without any or much security counter measures. To buttress the point further, the recent prevention of an act of terrorism directed against the United States reveals the degree of mutual benefits that emanates from a thriving consular and diplomatic relations. The terror act was directed against a United States-bound aircraft which took off from Saudi Arabia. Before its arrival to United States, information<sup>19</sup> had filtered in from Saudi Arabia alerting authorities of the United States of a bomb parcel hidden in the aircraft with the aim of prosecuting a terrorist agenda. On receiving such alert, the United States did not handle the matter with levity but with a commendable degree of carefulness, seriousness and expertise – and this handsomely paid off. The subsequent search predicated on the received alert led to the discovery of the bomb which was packaged and hidden in such a

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a tool, when skilfully made and applied could bring an effective check on crimes, criminal activities and their negative effects on humanity and environmental well being. It has been observed in the light of buttressing the above assertion with particular reference to warfare control that the extensive codification of the law of war at the start of the 20<sup>th</sup> Century was the outcome of its approach to the central question of how to accommodate military needs to the dictates of humanity in the time of war. In some sense, that has been the perennial endeavour of those concerned with the progressive development of the law of war. Lying behind these ideas were fundamental questions about the proper treatment of man by man in warfare, maintenance of the standards of civilization, and the need to answer such questions by the use of reason.

<sup>18</sup> See the Moratorium on the importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa.

Though the aim of the Moratorium is to curtail the spread of arms in conflict zones in West Africa, it strengthens the case for an effective monitoring of movement of lethal weapons and raising an alert in time to enable states to prevent their use in advancing a terrorist cause.

<sup>19</sup> Freedom of information enhances both internal and external cooperation. The mutual benefits derivable from such cooperation are strong enough to canvas for a treaty on freedom of information just the same way a municipal jurisdiction dedicates on Act on freedom of information. The benefit of this legal instrument is to give protection to the source of an information considered to be against a state in the case of state sponsored terrorism. See Art. 2(7), the United Nations Charter.

manner as to beat easy and careless security checks.

It is evidently clear from the incident narrated above that the beneficial outcome of the prevention of the act of terrorism saved United States from monumental damages which proportion could be unfathomable in the conjecture of rational minds. It is also clear that this security exploit was done without any conduct of warfare but through the instrumentality of lawfare, that is, putting the legal strength to bear against the intended terrorist act without the release of a single bullet. Prevailing over crimes within or outside the jurisdiction of a state has, hitherto, been a thing that is strictly restricted to the traditional gun-and-bullet strategy, reminiscent of a combat raging in the theatre of warfare in the fight against criminality, terrorism being an aspect of criminality. It is to be noted that an escape route from consular checks is the existence of porous borders.

### Strengthening border security operations

Strengthening Border Security Operations are efforts by law enforcement agents at securing international borders in other to prevent the prevalence of illegal immigrants<sup>20</sup> into the territory of a state. Borders that are porous serve as routes through which lethal weapons can be shipped into a state for the purpose of utilizing those weapons to achieve a terrorist objective. Again, porous borders are exploited by the terror personnel to gain access to a target state in order to conduct terrorist activities in that state or in order to use that state as a launching pad for terror purposes.

It is submitted that the securing of international borders should not be the work of a single state alone. Rather, joint border patrol<sup>21</sup> involving the security personnel of the states sharing a common international border. For instance, Nigeria/Cameroun international border ought to be manned by the Nigerian and Cameroonian joint security operatives. While Mexico/United States of America international border should be manned by joint law enforcement personnel of both states.

It is to be noted that without the legal framework for carrying out the joint patrol, the exercise would emerge as a bloated futility and waste of scare on both human and material resources. The proper thing to do first

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<sup>20</sup> Illegal immigrants are those immigrants who fail to obtain the visa of the state into which they have immigrated. Immigration could be on the basis of looking for a greener pasture which is a survival instinct of man; it could as well be for the aim of taking vantage positions in a territory in other to carry out a terrorist attack – in the territory.

<sup>21</sup> The joint border patrol effectiveness depends on the commitment of the states entering into an agreement to set up the patrol. It is noted that in the event of national emergencies, international borders are closed until there is an abatement of the emergency situation. This reveals the importance of commitment on the part of the governments setting up a joint border patrol squad.

before floating the joint patrol would be the parties agreement to bind themselves to achieve the objective of using border security operatives to keep off or minimize the influx of terrorists into their territories. This agreement or treaty provides the nature of the joint patrol, a standing or ad hoc joint patrol, the command structure, the personnel contribution, funding, remuneration of personnel and provision of logistics – which includes the provision of surveillance vehicles, helicopters and speed boats, iron barbed wires and monitoring video cameras mounted at strategic locations around border areas.

The aspect of lawfare<sup>22</sup> in the above arrangement is made manifest in the fact that the instrument of law is used to fight porous borders which in turn confronts the influx of illegal immigrants into the territory of a state from another state. The concept of lawfare is, therefore, becoming increasingly concrete as a veritable tool within every municipal or international jurisdiction employed in the fight against criminality in general and organised crime in particular.

### A check on banking practices

Banks, no doubts, promote the economy of states when their activities and operations fall within laid down standard rules. The World Bank and the International Monetary Fund (IMF) have standard rules which regulate lending and other facilities of the bank so as to promote a growing world economy. The national banks of states, the Central Banks (*Trendtex Trading Corporation v. Central Bank of Nigeria*, 1977) regulate matters of fiscal nature<sup>23</sup> relating to deposits, interest rate, reserved fund and other banking transaction. This regulation is with the aim of making commercial banks in the territories of the states where they operate to comply with modern banking ethics which promote economic growth and development to a large extent.

Sometimes, commercial banks may be tempted to make quick gains and in doing so throw caution to the wind. The resultant effect of this practice is that nefarious people cash in on that to transfer huge sum of money to an account that could be used as a source of sponsoring terrorism. It becomes imperative, therefore, for states to strengthen banking practices by adopting proactive measures aimed at curtailing the volume of fund available to a person or an organisation at a particular point in time. This enhances the control of circulation of currency notes in a state. Moreover, the requirement of banks relating to the personal details of their customers

including the requirement for the inclusion of passports<sup>24</sup> in the applications to open accounts in the banks are efforts in the right direction as these requirements help to lift the veil off the faces of those with whom the banks transact business. It is even an act of double caution on the part of the banks when they require sureties to attest to the personality of those wishing to transact business with the banks.

However, there is need to review banking laws operating in every municipal setting in order to ascertain their utility level<sup>25</sup>. Obsolete banking standards contribute to the advancement of the menace of terrorism. For instance, receiving huge sums of money from depositors who may be customers to the banks without asking any question as to the source of the fund has been in accordance with the old banking standard. However, the recent disposition of banks towards the depositors of huge sums of money into their accounts is to ask questions with regard to the source of money. In addition to this, there is the need to alert relevant security operatives in a state domain, the moment a depositor deposits a huge amount of money that is beyond certain specified limit. This would enable a security watch to be placed on the owner of the account wherein the lodgement is made as to ascertain the use that the money would be put into – and to deliberately prevent money laundering acts.

Banking laws directed against money laundering is part of lawfare. Such laws also act as great instruments for the prevention of terrorism. However, banking laws that are not enforced are sterile and impotent. This fact is coupled with the fact that the absence of common intelligence network on the lodgement of funds and related issues equally negates even best banking practices.

### Law enforcement and information sharing

The legislators everywhere (Lowi et al., 2006, p. 165)<sup>26</sup> are specialists in law making. The best laws would be a mere mirage in a situation where they lack enforcement. Law enforcement is a duty of the executive arm of government which requires the operations of law enforcement agents. These agents are human and not divine. The implication of this is that they are not omniscient.

<sup>22</sup> Lawfare is an eclectic concept. Apart from its definition as the practice of using the law to arrest a crime or stop criminals from conducting criminal activities, it delves into the subjects of many substantive law relating to crime including international law.

<sup>23</sup> The Central Bank of Nigeria raises the reserved fund of every bank in Nigeria to twenty five billion Naira (₦25b) and this is the current position with respect to commercial banks reserved fund in Nigeria.

<sup>24</sup> Apart from the attachment of passports to applications relating to opening of accounts, it is a common banking practice to take a photograph image of a person to whom a huge amount of money is paid.

<sup>25</sup> Utility level refers to the degree of usefulness such laws maintain. In other words, where the laws do not meet up with current banking challenges or help to resolve current banking issues, they are adjudged obsolete and an amendment or amendments sought for.

<sup>26</sup> Legislators generally vary in the weight given to personal priorities and the things desired by campaign contributions and past supporters. Some see themselves as delegates elected to do the bidding of those that elected them, others see themselves as trustees selected by their fellow citizens to do what the legislator thinks is right; while others mix the two types above.

Therefore, they need information sharing to succeed in their task of law enforcement. The recent prevention of terror strike directed against a United States registered aircraft which left Saudi Arabia for the United States was based on information sharing. This prompted the United States law enforcement agents to intercept the parcel suspected to be a lethal weapon and apparently aimed at advancing a terrorist cause. Information sharing also helped Nigeria to check the menace of terrorism for a relative long time. The feat was achieved based on a security alert that Nigeria was in the terror list of the Al Qaeda terrorist group. Though in recent times, in Nigeria, a successful terror strike was carried out in the United Nations building in the Federal Capital Territory, Abuja<sup>27</sup> which caused a great damage to the building and led to the loss of lives of scores of people. The attack was more or less an unfathomable act judging the way and manner in which the suicide bomber gained access into the UN building. The bomber cruised into the compound housing the building, knocked open the gate and crashed into the building. This suggests a possible crack in the wall of the law enforcement operations within and around the UN building. The suspicion that trailed the terrorist act hinged on the premise that there must be an act of complicity on the part of the security operatives who were supposed to provide maximum security for the United Nations presence in Nigeria. In a relevant development, the President of the Federal Republic of Nigeria made an open statement to the effect that some members of his cabinet were sympathetic to Boko Haram group, a group that is daubed a terrorist group because of its antecedents<sup>28</sup>.

In a situation where there exists an act of complicity on the part of the security agents or anybody that is in a position to access classified information on security, it is submitted that the existing laws' provisions in relation to such an act should be made operative in order to discourage such betrayal of trust and confidence. Where there is paucity of legal framework for the arresting of such act of complicity, efforts should be made to create enabling legal framework to act as a legal basis for prevention of the ugly trend or act. Lawfare showcases its essence and relevance by forbidding every thread of criminality in the fabrics of organised crimes.

### Control of arms transfer

The use of arms to prosecute torture, terrorism and other

<sup>27</sup> Attacking anything associated with the United Nation (UN) is tantamount to attacking the General Assembly, the Security Council or any of the principal organs of the UN. Therefore, the Abuja attack on the United Nation building is a serious challenge to the comity of Nations to take stiffer legal measures aimed at tackling frontally the menace of international terrorism.

<sup>28</sup> Terrorist infiltration into a target state and terrorist sympathisers infiltration into government is a technical strategy of first class order. This revealed strategy has not been explored in the fight against terrorism. It is, therefore, a fertile ground for surveillance aimed at prevention of terrorism.

cruel, inhuman or degrading treatment is undoubtedly the most subsisting challenge in the fight against crimes generally. The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment of 1984 is desirous of making more effective the struggles against such crimes (Wallace, 1997). It is pertinent to note at this point that arms of different nature and sizes are employed by terrorists to conduct their strikes at targets. It is a very crucial thing to seek to get to the root of the solution to the problem. The Morinatum against light weapons transfer is a great regional device to control arms dealing and arms transfer. Until the sale of arms is brought under effective control by means of legal intervention or lawfare (Convention on the Prohibition of the Development, Production, Stockpiling Bacteriological and Toxin Weapons and their Destruction of 1972; Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1972), the continuation of terrorism on a global scale would increase.

Arms are made by persons both natural and corporate. Natural and corporate persons who are in the arms business could be made to keep a catalogue of arms manufactured in a given period; state the movements of arms and the purpose and address of the buyers. These data when properly kept and verified would enhance a definite degree of reduction in arms supplies to terrorist groups and other belligerent groups that commit similar crimes like genocide. In the *Advisory Opinion on Reservation to the Genocide Convention* (ICJ Reports, 1951, pp. 15, 23, 1993, pp. 3, 16) *genocide was defined as a crime which shocks the conscience of mankind, results in great losses to humanity ...and it is contrary to moral law and the spirit and aims of the United Nations.*

### CONCLUSION

Resolution 1373 serves both as an international legal template for an effective combating of terrorism and a stimulating prompt to all states' legal jurisdiction to diversify their efforts in the fight against terrorism. The resolution not only advocates the means for curing the ailment of terrorism but also laid down the steps to preventive terrorism. It is therefore the position of this article that states should incorporate the resolution into their legal systems and embrace preventive approach to terrorism which the strict enforcement of the law would promote. Over the years laws have been used to control behaviour. It provides rewards for good behaviours and prescribes punishment for wrong behaviours. Indeed the law is an armament and a careful application of this armament in the conduct of warfare against terrorism would greatly pay off if the standards embodied in Resolution 1373 are promoted and maintained across national borders. Terror network could be significantly

curtailed or totally eliminated by resort to the above approach.

### Conflict of Interests

The author have not declared any conflict of interests.

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*Full Length Research Paper*

# Factors leading to squatter problem in Rift Valley Province in Kenya

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The land problem in Kenya has many faces, one of which is the Squatter Problem. Kenya is primarily an agricultural economy. Approximately 75% of Kenya's population is employed in the agriculture sector, hence the issue of land becomes core and delicate. The objective of the study was to investigate the factors leading to landlessness in Kenya and it paid special attention to the Rift Valley Province. Specifically, it sought to establish if landlessness in Kenya is due to outdated land laws which stem from the private land tenure, which was crafted by R. J. M. Swynerton through the Swynerton plan of 1954. A target population of 20,000 households was used for the study. Assuming a target population of 20,000 households, the study assumed a homogenous demography among all squatters. As such a sample size of 1% is deemed to be adequately representative. This gives a sample size of 200 respondents to be interviewed for response. Four districts in the rift valley with prevalent squatter problems or settlement schemes were purposively targeted for response. A uniform number of 50 respondents from each district were interviewed. These were Nakuru, Molo, Naivasha and Trans-Nzoia districts. Both secondary and primary data were reviewed for the purpose of this study. The study concluded that private land tenure is a major factor causing landlessness in Kenya. This is the bedrock on which land laws and policy are based. This is because the implementation of the plan produced claim as the principle of individual property ownership on land which became institutionalized. Based on findings, the study recommended a re-engineering of higher breed of the old African customary land law where land was owned communally and the current statutory law on land where there is individual ownership should be adopted as a way of obtaining a check on landlessness in Kenya.

**Key words:** Squatter, land, land tenure, colonial period, human settlement, Swynerton plan.

## INTRODUCTION

Kenya is primarily an agricultural economy. Approximately 75% of Kenya's population is employed in the agriculture sector (Todaro, 2005). This leaves land as the greatest resource any producer in the economy can have. From inception Kenyans have used land as a basic resource. This value for land spans many historical periods. Every period spanning from the pre-colonial, colonial, post colonial has made its contribution to both the problems

and the solutions forming the complex phenomenon hereafter referred to as the "Land Problem".

The land problem in Kenya has many faces, one of which is the "Squatter Problem". Many scholars have defined squatters differently. Kivutha Kibwana defines squatters "as persons that assert land rights or occupy for exploitation but not registered in their names, on government land or land legally "owned" by others"

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(Kivutha, 2000). Legally, a squatter is a person who occupies land or a building that legally belongs to another person or institution without the owner's consent (Kenya Land Policy, 2009).

In the pre-colonial period, diverse tribes co-existed in Kenya, each governed by different chiefs or councils. At times smaller tribes were conquered and ruled by bigger tribes and tributes would be paid by the ruled to the rulers. Nevertheless rarely did the question of land annexation occur.

For most of these communities land use was dictated by the social formations of people and the philosophy as determined by the historical stages of development (that is from hunting and gathering to herding and settled farming).

Kenya's land tenure before the advent of colonialism was fundamentally different from that in feudal England from which alien law was imported (Smokin, 2000). Land tenure in the pre-colonial period was what may be referred to as "communal tenure", where land belonged to no particular individual but to the community (clan, ethnic group) as a whole.

Private land tenure on the other hand is a system of ownership where an individual gets title to land thus secluding all and sundry from access and use of the same land. The private ownership of land as it is in Kenya today was crafted in the Swynerton plan of 1954 (Sorrenson, 1967). This plan sought to change the system of land tenure through land consolidation and registration of individual's freeholds and improve on commodity production in the reserves.

The squatter problem began in 1915 when the colonialists introduced Crown Lands Ordinance. This made them acquire legal security over land. As a result there developed unrest from the Africans and to solve the problem the colonial office appointed the Carter Land Commission, which in its recommendations provided that native reserves be established which were to remain exclusively Africans and that there were going to be no further encroachments. The Africans were to be also granted leasehold. This developments meant that a people that ones had ownership in land had been translated in to mere possessors. The squatter problem has affected the human resource in separate ways. For example the state of hopelessness that hovers among squatters, does not allow them to get good education, good housing and the returns of their labor are too poor. This is due to the uncertainty of their title to land.

The aim of this plan was to secure the lands held by the white settlers firmly in their hands, leaving the natives with limited rights to commodity production within the precincts reserved to them. These reserves provided very limited land to the natives who were the majority.

The conflicts that ensued therefrom as the Africans sought to secure titles to land, left a big majority landless. Only a few conspirators, servants and rich natives were able to secure title to land. The majority of the landless

were therefore forced to seek refuge for livelihood in land and space not legally theirs. These were thereafter referred to as squatters.

This study seeks to throw light to the effects of this Swynerton Plan and resultant system of private land tenure on land ownership and/ or otherwise landlessness in Kenya. The study also recognizes that landlessness is caused by a mosaic of factors. They include wife inheritance, maternal parenting, displacement through tribal clashes, due legal process and willful sale. To separate between landlessness as caused by private land tenure, or otherwise as caused by other parameters, shall be the principle objective of this study. This shall help in formulating recommendations tailored to solve the malady of landlessness as caused specifically by private land tenure.

Squatters represent an un-utilized human capital in our country. Past studies have not focused on the negative impact of squatters in as far as human resource is concerned. The Rift Valley Province has 8,418,100 of Kenya's population is 33,000,000 (Kenya National Bureau of Statistics, 2006). About 3.9% of this population is squatters. Considering that the country's direction in its objective towards the Millennium Development Goals (MDGs) and The 2030 Vision is to eradicate poverty, it is important to understand that the squatter problem is a symbol of prevalence poverty in the country and must therefore be addressed deliberately.

This research sought to suggest measures that can be taken to mitigate conflicts over land and reduce/ minimize the squatter problem and its resultant effects on the human resource in Kenya.

## **Objectives of the study**

### ***General objective***

The general objective of this study was to establish the role played by private land tenure in the creation of the squatter problem in Kenya.

### ***Specific objective***

Other than the general objective stated above, the study also embodies the following secondary objectives:

- i) To establish the factors that cause landlessness in Kenya
- ii) To establish the effects of landlessness on the well being of the affected populace of Kenya
- iii) To suggest the means to mitigate or otherwise reduce/ minimize the squatter problem in Kenya.

## **Hypothesis**

H<sub>0</sub>: Private land tenure is a major factor causing



landlessness in Kenya.

H<sub>1</sub>: Private land tenure does not contribute to landlessness in Kenya.

### Scope of the study

The study was carried out in the Rift-Valley province of Kenya where the squatter problem is more prevalent. Four districts with prevalent squatter problems or squatter resettlement schemes were covered. These include: Nakuru, Naivasha Trans-Nzoia and Molo districts. Residents of these areas spanning to the 3rd generation were interviewed. We sought to establish from the respondent the circumstances that led either them, their parents or grandparents to be squatters. Also we sought to understand the extent to which the squatter problems affect the human resource issues like housing, labor, productivity and employment.

## THEORETICAL LITERATURE

### Introduction to the Kenyan land pattern

In order to comprehend the genealogy of the Kenyan land problem and its effects on the Nations Labor issues (Labor issues means - labor trains, employment, unemployment, wage rates, industrial relations among others.), this study spans a long period (between 100 and 150 years). This period shall further be subdivided into four main parts. These include the pre-colonial, colonial, post colonial and the current or multiparty period.

Each of the periods referred to above had its unique land issues. The legal framework available in each period or as changed from time to time provided different solutions and posed diverse complications to the work force available at each point in time. As time changed so did the need for regulatory framework. A mosaic of interest, personal, racial or otherwise national as shall be discovered later in the study, motivated the various actors. In most cases these seldom represented those of the majority (ruled) but rather those of the minority (the rulers).

The periods are discussed below, with an attempt taken to analyze the legal positions available or taken and their effects on the majority of Kenyans who form the labor force from period to period. Each period shall therefore be discussed as a separate chapter showing the various labor effects of each land situation.

In conclusion, recommendations and remarks shall be volunteered as has always been done in an attempt to chalk a way forward to resolve the Kenyan land problem and try to alleviate the various negative labor issues.

### Land problem in the pre-colonial period

The pre-colonial period expands from the early days of

the East African migration to the colonial invasion. The colonial invasion can be said to have occurred in the year 1886 when the Anglo German agreement was signed and Kenya was born as a country.

Before that, diverse tribes co-existed in Kenya, each governed by different chiefs of councils, At times smaller tribes were conquered and ruled by bigger tribes and tributes would be paid by the ruled to the rulers. Nevertheless, rarely did the question of land annexation occur.

Some of the main tribes, who were known to have their rulers were Maasai (Laibon), the Nabongo of the Wanga people in Western Kenya, the Olkoivot of the Nandi people, and chief Kivoi of the Akamba, others were ruled by a Council of Elders e.g. Njuri Ncheke of the Ameru. These, in most cases could not be said to have authority over the entire tribe, but sections of the tribe.

For most of these communities, land use was dictated by the social formations of people and their philosophy as determined by the historical stages of development (that is, from hunting and gathering to herding and settled farming).

Kenya's land tenure before the advent of colonialism was fundamentally different from that in feudal England from which alien law was imported. Land tenure in the pre-colonial period was what may be referred to as "communal tenure" where land belonged to no particular individual but to the community (clan, ethnic group) as a whole.

Each person had right of access to land, which depended on time and needs, right of accesses were granted by the political authority of the time. The structural framework was necessary for equitable balance between the availability of land and needs of individual member of the community.

### The colonial misunderstanding

Ours was a socialistic ownership and as such ownership was not understood as it was in the English law. This misunderstanding cannot be explained in better words than it is in the words of the English law offices when they were asked by the foreign office for an opinion on crown rights to "waste lands" in the interior of the East Africa protectorate – 1899.

"Sovereignty, if it can be said to exist at all in regard to territory is held by many small chiefs or elders who are practically savages and who exercise a precanons tribes which have not as yet developed either an administrative or a legislative system; ever the idea of tribal ownership in land is unknown, except in so far as certain tribes usually live in a particular region and resist intrusion of weaker tribes, especially if the intruders belong to another race. The occupation of ground which a seasons crop have been sown, or where cattle are for the moment grazing, furnishes the nearest to private ownership in land; but in this case, the idea of ownership is probably

connected rather with the crops and the cattle than with the land temporarily occupied by them" (Sorenson, 1968).

It was this misunderstanding that led the colonialists to believe that Kenya was unoccupied and its land un-owned.

### Failures of the pre-colonial land tenure

The following factors contribute to the difficulty of giving a squarely identified system of land tenure that prevailed in traditional Kenyan society, before the advent of colonial masters:

- i) Lack of authentic literature on the subject (issue).
- ii) Existence of faulty anthropological ethnographic and historical accounts on traditional land tenure by western researchers.
- iii) The diversity and complexity of traditional society.

Compared to the Zanzibar state, where there was a formal system of land ownership in place, the pre-communal land tenure in the interior offered many porous points which the colonial masters exploited to strip off land from the natives as the Law officers affirmatively stated – 1899:

"We are of the opinion that in such regions the rights of dealing with waste and unoccupied land accrues to her majesty by virtue of then right to the protectorate. These protectorates over territories occupied by savage tribes have little in common with protectorates over state such as Zanzibar, which enjoy some form of settled government and in which the land has been appropriated either to the sovereign or to individuals. Protectorates such as those now under consideration really involve the assumption of control over all lands inappropriate. Her majesty might if she pleases, declare them to be Crown lands or make grants of them to individuals in fee simple or for any term. The question of the system to be pursued is really one of policy....." (Sorenson, 1968).

### Pre-colonial labor issues

The communal land ownership allowed accesses to land depending on the individual ability to till if they were farmers.

For pastoralists, all land was held communally, and hence the cattle grazed freely, without regard to the numbers held by any particular member of the community.

The above system allowed for free movement of labor. All people with ability to work had access to land which was normally proportionate to their tilling or herding ability. Likewise, hunters and gatherers had unlimited access to the land resource and its produce.

With the introduction of the colonial system, which

perpetuated a system of private land ownership, most natives were stripped off chunks of land, which they previously tilled and free movement was curtailed. This resulted in landlessness, limited arable land and distortion in labor distribution.

One cannot say more but agree with Wanjala who holds that colonialism was an agent of disruption in that the chain of history with regard to the development of tenure systems in Kenya was abruptly interrupted as these system were forced to respond to the needs of colonizing power (Wanjala, 2000).

### EMPIRICAL LITERATURE REVIEW

Landlessness is an ever-increasing problem in Kenya. This is because those that are landless become a social, political economic and a major human resource burden to the country. Because of this reason, of all the issues that have been subject to analytical examination in Kenya, none has attracted as much attention as the land tenure problem. The discussion has ranged from the now sterile analysis which seek to identify types of land tenure existing in different sometimes through anthropological tools to the more ideological tools to the more ideologically inclined inquiry as to what is most development related type of land tenure that the country should adopt. Yet at the core of the terminal problem is not so much the issue of existing forms of paradigms of development as it is the search for a type of tenure arrangement that places the people at the heart of its institutional and normative formation.

A recent study on individual land tenure by Wanjala (2000) notes that when the colonial government had accomplished the task of acquiring land from the Kenya people, it aggressively set out to destroy African customary land from the Kenyan people because the latter was viewed as inhibiting the main goal of economically exploiting all the natural resources found in the colony. When R. J. Swynnerton, the main ideological architect of what is now individual tenure (private land tenure) in Kenya produced a report in 1954 in which the diligently argued against customary land tenure, he had set the stage for an unending debate on land tenure. Swynnerton argued in characteristic fashion to the effect that the African farmer had to be tied to his land to be exclusive of all other as incentive for him to pay more productive attention to this important resource. Such security of tenure he argued would enable the landowner to pledge his land as collateral for development capital. When legal enactments were put in place to secure this position, the crystallization of what is known as the land problem in Kenya was no longer in doubt.

The Kenya government in the belief that it will act as a catalyst for intensified and productive agricultural activity given the agrarian nature of the Kenyan economy have vigorously pursued the process of privatization of land

ownership. But imagined economic development that ignores the centrality of people must certainly spell disaster for a society.

In this study, Smokin shows a positive relationship between landlessness and privatization of land and the squatter problem but he fails to separate landlessness as caused by private land tenure, or otherwise as caused by other parameters. In addition he does not relate the effects of landlessness like lack of education, good housing, poor labor conditions and other related human resource issues among the squatters with the private land tenure.

Another recent study by Kivutha (2000) in his paper "Efficacy of state intervention in curbing the ills of individualization of land ownership in Kenya" explains the manner in which the Kenyan state intervened during and after individualization in order to meteorite the ills attending individualization. He finds a positive relationship between landlessness and privatization of land. This study shows the state's recognition that individualization brings in its wake many undesired and negative consequences. But the study does not show that there are many parameters causing landlessness in Kenya. The study also does not isolate the effects of private land tenure on over all land administration and also its resultant effects on the human resource on Kenya.

It is therefore necessary to review the land problem in Kenya and especially the squatter problem. The researcher will further demonstrate that the system of Private Land Tenure on land ownerships the major cause of landlessness. Also separate the secondary causes from principle causes of landlessness like wife inheritance, legal process and sale without consultation of spouse. Finally, through research the researcher shall be able to show the resultant effects of privatization of land, on the human resource in Kenya.

## METHODOLOGY

### Population

Available statistics reveal that there are about eight million people living in the Rift Valley province (Kenya National Bureau of Statistics, 2006). Only about Four million of this population is above eighteen years. Figures available from Central Bureau of Statistics reveal that about two percent of the population in the province is landless. This translates to more than eighty thousand people being landless. Assuming a family unit of 5 persons, the real target population would be the landless estimate of 100,000 divided by 5 giving a target population of 20,000 households.

### Sample size

Assuming a target population of 20,000 households, the study further assumes a homogenous demography among all squatters. As such a sample size of 1% is deemed to be adequately representative. This gives a sample size of 200 respondents to be

interviewed for response.

### Sampling procedure

Four districts in the Rift Valley with prevalent squatter problems or settlement schemes shall purposively be targeted for response. A uniform number of 50 respondents from each district shall be interviewed.

Quota sampling procedure shall be applied on persons within the districts from selected areas where squatters are known to live or within settlement schemes. Five such areas shall be purposively sampled from each district, where 10 people per area shall be interviewed.

### Data collection

Both secondary and primary data was reviewed for the purpose of this study. Secondary data was collected from the office of the Registrar of Persons, Central Bureau of Statistics and from advocacy groups working within the affected areas. Primary data was collected by use of personally administered questionnaires from private respondents as stated above in the sampling procedure.

### Data analysis procedure

Data collected from the questionnaires was ranked, sorted and coded, and analyzed using the descriptive statistics. Simple regression and correlation coefficients was used to explain the relationship between the various variable means and fixed parameters

## RESEARCH FINDINGS AND DISCUSSION

The objective of the study was to investigate the factors leading to landlessness in Kenya and it paid special attention to the Rift Valley Province.

Given the extent of landlessness, this study paid attention on the factors that lead to the creation of squatters in Kenya. Wife inheritance, maternal parenting, displacement by tribal clashes, due legal process and willful sale were found to be significantly associated to out dated land laws.

As hypothesized, private land tenure is a major factor causing landlessness in Kenya. This is the bedrock on which land laws and policy are based. This is because the implementation of the plan produced claim as the principle of individual property ownership on land which became institutionalized.

Sale of family land by the head of the house without due consultation within the family, was also found to highly contribute to landlessness in Kenya. The study showed that most people had become landless because land was sold without consultation within the family. This relates to out dated land laws because at the initialization of private land tenure, land was turned into property, which gives the holder of the title all rights to do whatever he wills with it.

Demise of a father and property taken by relatives was

also an important cause of landlessness. The current Succession Law that is crowded by customary laws, which creates loop holes in law, where rightful successor's fraudulently loose right of estate administration to other perceived administrators who disinherit them and render them landless.

The study also showed that land sold to pay due legal debts had also made so many landless. This is where land was sold as the only family property to meet family bills like hospital bills and school fees.

Maternal parenting was another cause of landlessness as was indicated by the study. Most people were because they came from single parent families headed by a mother. The issue of tying land to a patriarchal hereditary hierarchy leaves persons from other forms of families highly susceptible to being landless.

The study also revealed that people also lost their land due to intertribal land clashes. Unresolved issues have sedimented hostilities which often burst out into tribal land and resources clashes. These leaves many land owners completely disinherited and landless, thus squatting in other peoples land.

## Conclusion

The research established that landlessness had several effects on the squatter which include the following: lack of food and substance, social insecurity including violence against women, poor health and other social amenities, lack of access to good education, lack of financial insecurities and lack of land to cultivate and hence low or no development in the squatter prone places.

## RECOMMENDATIONS

### Recommendation for policy makers

The squatter problem is real, it is powerful, and to simply wish it away, to condemn it without understanding its roots only serves to widen the chasm of misunderstanding that exists between the land owners, the squatters and government.

When R. J. M. Swynerton, the main ideological architect of what is now called individual land tenure in Kenya produced a paper in 1954 (Kenya Government Printer, 1954), where he argued in characteristic fashion to the effect that the African farmer had to be tied to his land to the exclusion of all others, as an incentive for him to pay more productive attention to this important resource he had set an unending debate on land tenure. When legal enactments were put in place to secure this position, the crystallization of what is known as the land problem in Kenya was no longer in doubt.

There is need for action from three main actors; legislators, who should provide judicially, sound laws;

administrators should implement the laws skillfully and competitively and finally land owners should always cooperate with the administrators as they effect the laws.

It is impossible to talk of the sanctity of the Kenyan land title deeds, without addressing the impurity of the bedrock of ordinances, acts and basic laws from which these titles stem. To address land problems of which the squatter problem is one, requires that the genesis be approached and discussed with enormous integrity. It should be a deliberate and conscious decision so as not to take advantage of legal loopholes that tend to justify the situation leaving many hearts bitter, and a section of this nation legally marginalized through lack of land. No amount of words can explain the reason for the human resource and capital that lies wasted over the generations due to these ordinances, Acts and basic laws that were promulgated by a people that had selfish defined interests and legalized them to acquire land in Kenya. This can be achieved by the current government developing an administrative or a legislative system that respects the fact that land is a different form of property say chattel and appreciate our diversity as the people of Kenya.

Understanding this reality requires a reminder of how as a country we arrived at this point. "The past is not past." The history of colonial injustice in this country need not be explained. But there is need to remember that so many of the disparities that exist in the Kenyan communities today, especially on matters touching land, can be directly traced to inequalities passed on from an earlier generation that suffered under brutal legacy of colonialism and out dated land laws.

The legacy of squatters is real and must be addressed, by investing in schools, communities; by enforcing our constitutional laws and ensuring equity in our land laws and a just system, by providing the squatters with ladders of opportunity that have not been availed for previous generations. Investing in the squatters and their children will ultimately contribute greatly to all Kenya, especially in the achievement of the vision 2030 and the Millennium Development Goals (MDGS).

Legalized landlessness, where squatters are prevented often through law, from owning property, access to loans and mortgages, means that squatters cannot amass any meaningful wealth to bequeath to future generations. History explains the wealth and income gap between the landless and those with land and the concentrated pockets of poverty that persists in many of today's rural communities, where the squatters belong.

The path to solving their problem means embracing the burdens of the past without becoming victims of the same past. Laws, policies and programmes must be put in place that continues to insist on a full measure of justice in every aspect of Kenyans life. It means binding the squatters' particular grievances that is; being settled, better health care and social amenities, better education and better jobs – to the squatters.

Out dated land laws and policies must be reviewed. A re-engineered high breed of the old African customary land law where land was owned communally and the current statutory law on land where there is individual ownership should be adopted as a way of obtaining a check on landlessness in Kenya. According to the new constitution, land in Kenya is supposed to be held, used and managed in a manner that is equitable, efficient, productive and sustainable through equitable access to land, security of land rights, elimination of gender discrimination and encouragement of communities to settle land disputes (The Constitution of Kenya, 2010). This would give an individual owner, title to ownership and make him economically productive and profitable, from the farming and other uses that he may engage on that piece of land. It would also restrain him from trading off that piece of land because he would be barred through communal accountability.

Land law has been one of the most complex branches of law in Kenya. As of now there are about 40 statutes that deal with land administration, ownership and use (Ndung'u Report, 2004). This makes it difficult for many Kenyans to understand the substantive land law. A need to review and critically look into loopholes in the country's already existing laws that relate to rights, property and inheritance or bequeathing for example the land laws, in some sense relate to the Succession Law. There is need to remove the grey areas that exists in these laws. Lack of clarity in those laws has rendered many individuals legally landless. Harmonizing Kenya's land laws as provided in the Kenya's new Constitution (The Constitution of Kenya, 2010).

Enactment of a squatter settlement law would also provide a way forward in the squatter problem. The squatter bill of 2007 should be enacted. However, it should clarify the wider social and economic objectives of a squatter, with an aim to redress the injustices of colonial forced removals and subsequent historical process of disinheritance or historical denial of access to land or to eradicate poverty and spur economic growth and development.

### ***Introduction of a land division of the high court***

To prevent double issuance of land title and other abuse, this is also practiced by some of the squatters after being settled. The government through legislation and policy should establish a land division of the high court. The creation of such a court will help in providing exclusive dealing with land cases of which landlessness is a part of it.

### **Recommendation for programs**

The Ministry of Lands and Settlement should adopt

Information Technology programs. Technology development and keeping data programs on land matters, for example in the area of settlement, adjudication, licensing and title holding should be introduced. This would accelerate and enhance land distribution by Information Technology (IT) in particular internet. Programs like Transaction Processing System (TPS), Management Information System (MIS) and Inter-organizational System (IOS) can contribute greatly in alleviating land problems like double issuance of titles.

### ***Settlement complex programs***

These are housing and settlement programs that would help settle the squatters. Instead of giving them titles like it has been the practice, as provided in the squatter settlement schemes Act of 1965. Settlement complexes programs should be designed to provide social amenities like good housing, proper sanitation, schools, police services, hospitals and grave yards which are major social amenities that the squatters lack. Besides the settlement complexes land should be annexed where individual families are allocated land but under licenses and not titles. This would have two positive effects:

- i) Check settled squatters from trading their allocated pieces of land within the settlement complexes and
- ii) It would contribute to the development of the squatters' lives that now live in deplorable conditions.

All these are in line with the Millennium Development Goals (MDGs) and Kenya's "Vision 2030." Funds programmes should also be designed to alleviate the squatter problem. This can be achieved through affirmative action because as a country we must appreciate that squatters are a marginalized population. Availing of funds by the state to the landless through youth and women programmes some of which the state has already launched. Introducing a squatter fund program along with those already existing would greatly alleviate poverty which is an objective within the country's vision 2030. It would also make this population a productive resource, thus addressing the human resource and capital problem to a great margin.

Psycho-social programmes should also be brought into being by implementing mass education on landlessness. It is important to recognize that over four decades "squattersdom" has been with us. This explains the psycho-social behavior that is seen among squatters; a sense of lack of permanency and insecurity, trials through the squatters population. The struggle to break the poverty ceiling, and feed a family by the squatter family means taking full responsibility for their own lives. Teaching and educating the squatter that while they may face challenges and discrimination in their own lives, they must never succumb to despair or cynicism but they must

always believe that they can write their own destiny must be given paramount importance in dealing with the squatter programmes aimed at developing and enhancing the human resource and capital that lays waste among the squatters should be embarked upon. For many years it has been said that capital is the bottleneck for developing industrialization. While this is true, the human resource development must deliberately and consciously be granted importance to achieve ultimate industrialization in a country. Industrialization can be hampered because of under-developed human resource. A human resource program that will advocate for equal employment and literacy training techniques to provide basic reading should be introduced among the squatters. Writing and arithmetic are some of the ways of developing human resource among the squatters.

### ***Implementation of truth, justice and reconciliation program on issues of land***

Land disputes in some parts of the country have also created landlessness. In fact 5% of the respondents were landless due to tribal clashes and eviction. This leaves the affected persons insecure and bitter. Through such a program this problem would be redressed.

### **Recommendations for further research**

The study suggests that the increase of squatters in the country should be investigated further to separate the genuine squatters from the self imposed squatters as a step to arrest the situation. The squatters are not a problem in the Rift Valley only but a nationwide problem. A nationwide study to find out whether the findings can be replicated would be necessary.

The possible effects of landlessness on the general human capital could also be investigated further. Given the peculiarity of land and its overwhelming significance as a national resource there have developed different notions concerning it. These notions have led to varying political theories revolving around land. Land law in total reflects a socio-economic and political system of a given nation or community. That is why in "politicalism" of the like of capitalism, communism and socialism the policy towards land occupies more than half the controversy. It follows therefore, that a research of land law is a major study of a political system.

Land remains a thorny issue in our nation. The post election violence experienced in 2008 and the impending referendum touches on land issue hence a study on the implication of the proposed constitution *vis-a-vis* the land chapter to the economy will be of great significance.

### **Conflict of Interests**

The author(s) have not declared any conflict of interests.

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Full Length Research Paper

# Terrorism, the subaltern, and the politics of recognition: Rethinking Hegel and Honneth<sup>1</sup>

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**This essay begins by analyzing how Hegel and Honneth's theory of recognition would seem to lend support to insurgent terrorists' struggle for the right to self-determination. Insurgent terrorism looks like a concretization of what Honneth calls the moral protest of the oppressed against the powerful. Insurgent terrorism also resembles the politics of recognition in that it challenges the legitimacy of the forces owned by the state, seeking public *recognition* instead for the legitimacy of their own cause. Precisely because what matters uppermost to terrorists is public recognition for their cause, terrorists are eager to seize the mass media to champion their ideas. This essay will end, however, by pointing out major differences between insurgent terrorism on the one hand, and Hegel and Honneth on the other.**

**Key words:** Colonialism, Hegel, Georg Wilhelm Fredrich, Honneth, Axel, imagined community, (insurgent) terrorism.

## INTRODUCTION

Before proceeding, it will be right to clarify that it is not the intention of this paper to argue for or against terrorism. Rather, this paper aim is to analyze what motivates insurgent terrorism from the viewpoint of the politics of recognition. The expression "politics of recognition" is adopted from Charles Taylor's essay of the same name and Axel Honneth's *Struggle for Recognition*. Both Taylor and Honneth believe that "our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves" (Taylor, 1994, pp. 25). When talking about misrecognition, Taylor and Honneth have foremost in their minds the injustices faced by subaltern groups. For both of them, it is a moral necessity

for subaltern groups to protest against misrecognition or humiliation. In the interest of space, this paper can only focus on one of these two thinkers, and have chosen to concentrate on Honneth's theory - especially as it is influenced by Hegel's master/slave dialectic. This paper will begin by analyzing how Hegel and Honneth's theory of recognition would seem to lend support to insurgent terrorists' struggle for the right to self-determination. However, it will conclude by pointing out major differences between insurgent terrorism on the one hand, and Hegel and Honneth on the other.

Axel Honneth's most important contribution to social theory is perhaps his interpretation of the demands of new social movements in terms of a moral claim rather than as an interest claim for any particular group. Honneth shifts the basis for revolt and resistance from the material to the

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moral, hence the subtitle of his book: "The Moral Grammar of Social Conflicts." In his "Reply to Andreas Kalyvas," Honneth further explains the significance of his transformation of Marxism in discussing social struggle: "it is in general more meaningful to assume the experience of disrespect or humiliation as motivational cause for protest and resistance instead of presupposing, as was common in Marxist theory for a long time, the (utilitarian) dynamic of injured interests" (1995, p. 250). Honneth argues that subaltern groups ought to protest against unfair treatment, not so much in response to their injured interests as in response to the violation of their moral expectations - expectations which are based on a tacit understanding of the respect an individual or a group deserves as part of the human community. Honneth derives his idea from the young Hegel, for whom social conflicts are animated by moral impulses rather than mere instincts for self-preservation, by intersubjective dynamics rather than individual subjects' raw biology. According to Honneth, such struggle for mutual recognition "generate[s] inner-societal pressure toward the practical, political establishment of institutions that would guarantee freedom" (1995, p. 5).

### "STRUGGLE FOR RECOGNITION ACCORDING TO HONNETH"

For Honneth, human beings' self-worth and self-realization are dependent on recognition from others. He differentiates among three kinds of recognition: recognition through love, through rights or law, and through solidarity. Recognition from loved ones gives one self-confidence. Through rights, one is recognized as possessing equal dignity and worth as other human beings before the law. Last but not least, communities with shared values provide frameworks within which particular individuals can gain social esteem. Social conflicts arise when individuals are denied any one of these recognitions. As Joel Anderson (1995 pp 12) points out, "The 'grammar' of such struggles is 'moral' in the sense that the feelings of outrage and indignation driving them are generated by the rejection of claims to recognition and thus imply normative judgements about the legitimacy of social arrangements".

### INSURGENT TERRORISTS' STRUGGLE FOR RECOGNITION

The two kinds of recognition most relevant for the study of insurgent terrorism are recognition through rights and solidarity- but particularly recognition through rights. Since legal recognition is a much more complicated issue, this paper will begin with the issue of solidarity and then work its argument back to the topic of legal recognition.

### A. Solidarity

Terrorists usually belong to some kind of organization and derive their identity from being part of that group.

There exists among members of the same organization a fraternal spirit which binds together group members who are united in their commitment to the same ideal and their similar predicament of confronting life in its most extreme and intimate relations to death. It is thus not surprising that groups associated with terrorism either by choice or by unfortunate accident often call themselves "brotherhoods" or "solidarity movements." Typical examples are the Fenian Brotherhood, the Muslim Brotherhood, and the International Solidarity Movement. The sense of brotherhood and solidarity is even more intense among hard-core terrorists who tend to be absolutists and see the world in black and white, us versus them.

Of particular interest in understanding recognition through solidarity among terrorists is that they are driven by a sense of solidarity not only with their own immediate group but also with an *imagined community*. Benedict Anderson's theory can well be used to theorize the following characterization of terrorists by Albert Bandura (1990) "Some terrorist violence is carried out by self-appointed crusaders who act on behalf of (an imagined) oppressed people with whom they identify. They are motivated . . . by ideological imperatives and mutual reward of their efforts by fellow members" (178) as well as by recognition from an imagined community of brothers whom they do not know in person. The Symbionese Liberation Army, for example, defined its identity in the following terms: "The name 'symbionese' is taken from the word 'symbiosis' and we define its meaning as a body of dissimilar bodies and organisms living in deep and loving harmony and partnership in the best interest of all within the body." Its leaders declared their group to be "a united and federated grouping of members of different races and people and socialistic political parties of the oppressed people of The Fascist United States of America, who have under black and minority leadership formed and joined The Symbionese Federated Republic and have agreed to struggle together on behalf of all their people and races and political parties' interest in the gaining of Freedom and Self Determination and Independence for all their people and races":

The Symbionese Federation is not a government, but rather it is a united and federated formation of members of different races and people and political parties who have agreed to struggle in a united front for the independence and self determination of each of their races and people and The Liquidation of the Common Enemy [ . . . ]

The Symbionese Federation is not a party, but rather it is a Federation, for its members are made up of members of all political parties and organizations and races of all the most



oppressed people of this fascist nation, thereby forming unity and the full representation of the interests of all the people (DeFreeze 1973).

Terrorists typically mobilize the media and launch propagandistic wars to explain to the public their activities and their cause. Such practice is based on the assumption and imagination of the existence of a community of fellow sympathizers--a community which they also seek to expand through their propaganda and acts of terrorism. Patty Hearst, for example, told her lawyer to publicize the following message when she was being processed for prison: "Tell everybody that I'm smiling, that I feel free and strong and I send my greetings and love to all the sisters and brothers out there" ("Radicals 1975").

### **B. Terrorists' struggle for recognition of their rights**

Being accorded rights is crucial to self-respect. Honneth highlights this point by making use of Joel Feinberg's (1980) argument that "what is called 'human dignity' may simply be the recognizable capacity to assert claims" (1995, p. 151). Terrorist groups often perceive themselves as the "oppressed group" - that is, a group deprived of their rights and human dignity. Being deprived of legal recognition, they attack the state and sabotage institutions associated with the legal establishment - thereby making a symbolic declaration of the invalidity and illegitimacy of existing laws.

#### **The struggle for rights according to insurgent terrorists and Axel Honneth: Some continuity**

At first sight, it seems as if terrorist activities concretized Honneth's theory about the struggle for recognition. Honneth focuses on the moral dimension in social conflict. Joel Anderson (1995, pp 19). highlights that for Honneth, "'moral' motives for revolt and resistance . . . do not emerge only in the defences of traditional ways of life . . . but also in situations where those ways of life have become intolerable":

Because key forms of exclusion, insult, and degradation can be seen as violating self-confidence, self-respect, or self-esteem, the negative emotional reactions generated by these experiences of disrespect provide a pretheoretical basis for social critique. . . the potential emerges for collective action aimed at actually expanding social patterns of recognition Terrorists can be interpreted as Honneth's "victims of disrespect," who, by engaging in political action, tear themselves "out of the crippling situation of passively endured humiliation and [help] them, in turn, on their way to a new, positive relation-to-self" (1995, p. 164). Terrorist activities, in other words, can be understood as an attempt to overcome "the diminished

self-respect typically accompanying the passive endurance of humiliation and degradation." Through their act of "collective resistance, individuals uncover a form of expression with which they can indirectly convince themselves of their moral or social worth" (1995, p. 164). Insurgent groups resorting to terrorism in their struggle for decolonization or for liberation from oppression have justified their actions in these terms. Appeals of this sort have been made by the FLN during the Algerian Revolution, and have also been used to justify acts of terror carried out by the Irish Republican Brotherhood, the Lehi, and the Popular Front for the Liberation of Palestine.

Above all, it is Honneth's debt to Hegel's Master/Slave dialectic in formulating his struggle for recognition that brings him close to the terrorists' position. Honneth is inspired by Hegel who locates the hallmark of humanity in human beings' willingness to sacrifice their lives and to give up on self-preservation for the sake of recognition. The struggle for recognition is for Honneth a moral struggle, because it raises a human being above his/her instinct for self-preservation - and only with such areadiness to give up life for dignity do human beings differentiate themselves from other animals. What is at issue in the struggle for recognition is one's honor and humanity rather than "mere life." Self-realization through mutual recognition, rather than self-preservation, is what is at issue for Honneth in theorizing subaltern struggles. Despite Honneth's attempt to read Hegel's life-and-death struggle "in a metaphorical sense" - in that "a subject is forced to realize that a meaningful life is only possible in the context of the recognition of rights and duties" (1995, p. 45) - his prioritization of dignity above mere self-interest (which necessarily includes the interest of self-preservation) makes it tempting to imagine Honneth as at least theoretically endorsing suicidal bombers who place their honor and the honor of their people above mere life.<sup>2</sup> Interestingly enough, death is a means for terrorists to assert their rights and their equal dignity with their enemies. Death wipes out the humiliating inequality that exists between the dominating and the dominated. While alive, the powerful and the powerless are unequal. But in death, this humiliating structure of misrecognition is eliminated.

Honneth's theory seems to make intelligible not just the terrorists' suicidal behavior but also their killing of others. On this latter subject, Honneth's source of inspiration is again Hegel - this time Hegel's theorization of crime. Honneth explains how, for Hegel, crime differs from exigency (1995, p. 53) in that it is motivated by the desire for recognition:

Built into the structure of human interaction there is a normative expectation that one will meet with the recognition of others, or at least an implicit assumption that one will be given positive consideration in the plans of others. . . . The reason why the socially ignored individuals

attempt, in response, to damage the others' possessions is not because they want to satisfy their passions, but rather in order to make the others take notice of them. Hegel interprets the destructive reaction of the excluded party as an act whose real aim is to win back the attention of the other (Honneth 44; my italics)

Honneth's "compatibility" with the terrorists' position seems to be more solidly confirmed by his reference to Sartre (1963) as one of his theoretical predecessors. Honneth even cites Sartre's championing of decolonization as an explication of what he means by the struggle for recognition. And, when one thinks of Sartre as a spokesman for decolonization, one cannot possibly overlook his endorsement of violence as a means for liberating the colonized, especially in the context of Algeria.

Honneth speaks approvingly of Sartre's later work where "the struggle for recognition . . . came to be interpreted as a phenomenon that is caused by an asymmetrical relationship between social groups . . . and is, in principle, open to being overcome":

This historically relativized model of conflict came to dominate the essays Sartre (1964) composed on the anti-colonialist movement of *négritude* in particular (*Situations V*). There, colonialism is understood as a social site that distorts intersubjective relationships of reciprocal recognition in such a way that the participant groups are pressed into a quasi-neurotic scheme of behaviour. The only way that the colonizers can work through the self-contempt that they feel for themselves as a result of systematically denigrating the native people is through cynicism or heightened aggression, and the only way the colonized are able to endure the "common degradation" is by splitting their conduct into the two parts of ritual transgression and habitual over-accommodation ("Introduction to Fanon," 16 f.) (1995, p. 157).

Honneth further follows Sartre's argument about how the asymmetrical relationship between the colonizer and the colonized makes necessary a simultaneous denial and maintenance of relationships of mutual recognition, the result of which is a psychopathology called "neurosis":

[F]or Sartre, the asymmetrical patterns of communication between the settler and the native that are found in the colonial system represent interactive relations that demand from both sides the simultaneous denial and maintenance of relationships of mutual recognition. In order for interaction to be possible at all, the colonial master has to both recognize and disrespect the native as a human person in just the way that the latter is forced into "laying claims to and denying the human condition at the same time" ("Introduction" to Fanon, 17). As a label for the type of social relationship that must result from this

reciprocal denial of claims to recognition . . . , Sartre introduced the concept of "neurosis" at this point. . . . "neurotic" is meant to designate not an individual behavioural disorder with a psychological aetiology but rather a pathological distortion of relations of interaction stemming from the reciprocal denial of relationships of recognition that are still effective below the surface ("Introduction to Fanon," 18, 19) (1995, p. 157).

The asymmetrical relationship between the colonizer and the colonized, in other words, prevents a healthy kind of intersubjective mutual recognition from coming into being. It would seem natural, in other words, for the politics of recognition to endorse the project of decolonization-including the violent kind Sartre sometimes approves of. And if the logic of Honneth obliges him to fully approve of Sartre's position on decolonization, he would have to endorse terrorism in the late twentieth- and early twenty-first-centuries also.

The logic of Honneth's argument, in other words, seems to oblige him to endorse terrorism, if terrorism is to be seen as a legitimate means for bringing about decolonization. Terrorism seems all the more continuous with the project of decolonization, when we keep in mind Kofi Annan's description of one of the major faultlines in today's world being the division between the "privileged and humiliated" - those who have all the glorious recognition, and those on whom is imposed the most degrading forms of misrecognition. The following is the Nobel Prize speech Kofi Annan gave in Oslo on December 10, 2001:

Today's real borders are not between nations, but between powerful and powerless, free and fettered, privileged and humiliated. Today, no walls can separate humanitarian or human rights crises in one part of the world from national security crises in another.

Indeed, 20th-century and especially 21st-century terrorism seem to be triggered by the great asymmetry among different social and political entities and the great imbalance of power which makes impossible a healthy intersubjective mutual recognition between different nations, different races, or different social classes. The discrepancy becomes so intense that terrorist outbreaks seem to be a concretization of what Honneth calls the moral protest of the oppressed launched against the dominating powers.

So far, the logic of Honneth's argument seems to bind him to endorse terrorism. However, this would be the case only if it could fulfill Honneth's requirement of *legitimacy* for any struggle for recognition. However, precisely in terrorists' disregard for legitimacy and normativity, terrorism turns out to be a perversion rather than an exemplification of Honneth's theory concerning the struggle for recognition. Mainly, Honneth insists on the respect for the criterion of legitimacy as the *absolute*

foundation on which any struggle for recognition is to be carried out. As he puts it, [*R*]ights and social esteem... represent a moral context for societal conflict, if only because they rely on socially generalized criteria in order to function. In light of norms of the sort constituted by the principle of moral responsibility or the values of society, personal experience of disrespect can be interpreted and represented as something that can potentially affect other subjects. (1995, p. 162; my italics)

Expressions such as "rights" and "socially generalized criteria" highlight Honneth's concern for legitimacy and normativity. It is not surprising that in his explication of Honneth's theory, Joel Anderson also foregrounds the sense of indignation provoked by social injustice as made possible by some kind of "normative judgements about the legitimacy of social arrangements":

the grammar of [the subalterns'] struggles is 'moral' in the sense that the feelings of outrage and indignation driving them are generated by the rejection of claims to recognition and thus imply normative judgements about the legitimacy of social arrangements (1995).

Given that for Honneth, legitimacy and normativity are the framework for allowing the moral grammar of social struggles to unfold, terrorism cannot possibly qualify as a struggle for recognition in Honneth's sense. Terrorists do not recognize state law or international law, nor do they respect the conventions of war which require discrimination between combatants and civilians. If the state is understood in Max Weber's sense as the entity that has "a monopoly on the legitimate use of force," this legitimacy is precisely what terrorism tries to undermine rather than to uphold.<sup>3</sup> In fact, the real target of terrorist attack against the state seems to be precisely this *idea* that the state has a monopoly on the *legitimate* use of violence. Since terrorism is usually employed by a weak party against a strong one, what terrorists seek to undermine in their attack is not so much the might, but the *right* of a state.<sup>4</sup> Terrorists deliberately violate the principle that "the state has a monopoly on the legitimate use of violence" because, in their eyes, the state itself is not a legitimate body in the first place. And it is their outrage at the state's various "illegitimate" and "unjust" practices that the terrorists seek to shock the public into listening. The terrorism [singular] launched by the anarchists in the late nineteenth-century, early twentieth-century Russia and subsequently in the 1920s America provide good examples. The terrorisms rampant in the West in the 1960s-70s were by and large motivated by similiar spirit.

While terrorists are by and large regarded by outsiders as an illegitimate group,<sup>5</sup> terrorists themselves often see their acts as perfectly legitimate, as the protector of Justice. Terrorists openly challenge the legitimacy and authority of the forces owned by the state, seeking to gain public *recognition* instead for the legitimacy of their own cause

and their own use of violence to topple what they perceive to be a corrupt regime. However, their notion of legitimacy is messianic, in contrast to Honneth's idea of legitimacy which is grounded in normativity. Terrorists often sacrifice themselves in the *name* of a grand Cause, and it is in that name that they seek to be recognized.

In Lacanian language, insurgent terrorists typically dedicate themselves to a big Other which is an emblem of political virtues (for example, Justice and Equality). Often-times, terrorist violence is carried out by self-appointed champions of justice who act on behalf of oppressed people with whom they identify. They are motivated, in large part, by ideological imperatives and the reward and approval of their efforts by fellow members. For this reason, terrorists believe that legitimacy is on their side. Terrorists appoint themselves to be the rightful guardians of Justice, in contrast to the state which the terrorists perceive to be a mere corrupt enterprise. In attacking the existing legal and political structure, the terrorists see themselves as serving a higher law and a big Other that has real legitimacy. Leila Khaled, for example, claimed that their terrorist movements were "fighting for humanity--all those who are oppressed and tortured."<sup>6</sup>

In other words, insurgent terrorists' struggle is for recognition, rather than for immediate military success. Their immediate goal is public support. They think that if they can undermine the state on the issue of "right," the destruction of its might will follow by the time they have the public on their side. Since the terrorists' immediate goal is to win over public opinion, the "wars" they carry out are generally symbolic wars. In other words, it is the messages being conveyed by the attack rather than their practical destructiveness that is uppermost in the terrorists' minds. Terrorists typically destroy symbolic targets to demonstrate their stand against what those targets represent. Their targets are often highly symbolic of the established authority, or of organizations associated with various normative structures, such as government offices, national airlines, banks, and multinational corporations deemed by the terrorists to be complicitous with the established order. Well-known examples include the attacks on the World Trade Center in New York and the Pentagon in Washington, D.C., the Taj Mahal Hotel in Mumbai, the London Underground, and the explosion at Moscow's Domodedovo Airport. The 9/11 terrorists struck at the most eye-catching symbols of American financial and military power. As D. Steven Nouriani (2011) points out, the Twin Towers "dominated the New York City skyline, making their loss, and the symbolic destruction of American commerce and power, all the more visible." Martin Gus, on the other hand, observes that "The Pentagon was a strategic target because of its symbolism as the branch of the American government which protects the country." Terrorist attacks can also be carried out against representative individuals whom the terrorists associate with political repression, economic exploitation, or social

injustice ("Terrorism Research 2012"). The Symbionese Liberation Army's kidnapping of Patricia Campbell Hearst, the granddaughter of the publishing magnate William Randolph Hearst and great-granddaughter of the millionaire George Hearst, was an act of this kind. Another favorite tactic of terrorists is to time their attacks to coincide with significant dates or anniversaries, thereby exploiting their symbolism. In the early months of 2011, for example, the U.S. intelligence received warnings that a major terrorist strike would be made on the 10th anniversary of the 9/11 attacks.

Not unlike Lacan's notion of demand, terrorist activities carry with them a demand for recognition - a demand to have their agent's voice heard or read - and this demand certainly exceeds the need for inflicting significant physical damages on the enemy. To further drive home how terrorist war is at its core a war for recognition, let me draw attention to how terrorists often begin their careers by making speeches and distributing pamphlets. Failing to catch public attention, they then try to bomb the public into listening (Rubenstein1987).<sup>7</sup> As much as the terrorists are driven by idea(l)s, it is ultimately the attempt to gain public recognition for their political idea or message, rather than the material consequences of killing, that they are concerned with in their activities.<sup>8</sup> This is why violence committed by insurgent terrorists is usually "signed" (Pasquino, 1996, p. 872). After the 1993 bombing of the WTC, for instance, a letter was sent by the terrorists to the *New York Times*: "We declare our responsibility for the explosion on the mentioned building. This action was done in response for the American political, economical, and military support to Israel the state of terrorism and to the rest of the dictator countries in the region."

Politically motivated terrorism carried out against a state in the name of liberation movements is designed to awaken the broader population to an injustice that the terrorists feel only they are sufficiently aware of. Terrorists therefore actively seek publicity for their cause in the effort to enlist popular support for the social or political changes they desire. Terrorists often "perform" for the television to gain sympathy and support for their plight. This generally takes the form of a narrative that presents the terrorists as risking their lives for the well-being of a victimized constituency whose legitimate grievances have been ignored. They often attempt to minimize, or deflect attention from, the harm inflicted through their terrorist acts by centering attention on the injustices perpetrated by the state or the states they are combating. Since the terrorists' challenge to the state is on the level of ideas and recognition rather than a serious exercise of military force, it is not surprising that terrorism and counter-terrorism always go hand-in-hand with propaganda wars - most notably in the form of media wars.<sup>9</sup> In the aftermath of 9/11, for instance, various news media reported the "propaganda battle" on both sides, sometimes using that very term. Anup Shah (2002) notes that in the UK,

*Channel 4* news mentioned "propaganda war" at least once on October 8, 2001 in their 7 p.m. broadcast, while *Sky News* deployed similar terms on October 9, 2001 in their 10:30 p.m. broadcast. Public messages issued by bin Laden after September 11, 2001 repeatedly urged all Muslims to continue the battle. A videotaped interview with the Al Jazeera journalist Tayseer Allouni broadcasted on CNN shows Bin Laden commenting on 9/11 as follows:

If inciting people to do that is terrorism, and if killing those who kill our sons is terrorism, then let history be witness that we are terrorists [ . . . ] We will work to continue this battle, God permitting, until victory or until we meet God before that occurs.

On the American side, the Bush administration hurried to revitalize its propaganda activities in the Middle East (see Battle). According to the *New York Times* on February 19, 2002, the Pentagon proposed the establishment of an Office of Strategic Influence to "[develop] plans to provide news items, possibly even false ones, to foreign media organizations as part of a new effort to influence public sentiment and policy makers in both friendly and unfriendly countries" (Dao and Schmitt 2012). Despite the fact that the office was declared closed by the Secretary of Defense Donald Rumsfeld soon after its existence became publicly known, the actual operations of the OSI seem to have continued unabated. On December 14, 2005, *USA Today* quoted an unnamed military official remarking on "a \$300 million Pentagon psychological warfare operation" which included "plans for placing pro-American messages in foreign media outlets without disclosing the U.S. government as the source" (Kelley 2005). The Canadian economist Michel Chossudovsky (2009) points out further that "The US intelligence apparatus has created its own terrorist organizations. And at the same time, it creates its own terrorist warnings concerning the terrorist organizations which it has itself created. In turn, it has developed a cohesive multibillion dollar counterterrorism program 'to go after' these terrorist organizations."

Precisely because what matters uppermost to terrorists is the gaining of recognition for their cause as just, terrorists are eager to seize the mass media as a means of spreading their ideas. Media publicity is "the oxygen of terrorism," as Margaret Thatcher is frequently quoted for her observation during her term as British Prime Minister (Muller et al., 2003, 65; Vieira, 1991, 73-85). Acts of terrorism become almost pointless unless they are reported by the media. Brigitte Nacos observes: "Without massive news coverage the terrorist act would resemble the proverbial tree falling in the forest: if no one learned of an incident, it would be as if it had not occurred" (Nacos, 2000, 175). In the same vein, Bruce Hoffman writes: "without the media's coverage the act's impact is arguably wasted, remaining narrowly confined to the immediate victim(s) of the attack, rather than reaching the wider

'target audience' at whom the terrorists' violence is actually aimed" (Hoffman 2006, 174). The terrorist attack in Munich in 1972, for instance, achieved its global impact because large numbers of newspaper and broadcast journalists had gathered in Munich for the Olympic Games, and the terrorists were able to "monopolize the attention of a global television audience who had tuned in expecting to watch the Games" (Nacos, 2007,179).

The reliance of terrorism on mass media is one reason why terrorist acts usually target icons that would generate maximum media attention. Terrorist acts are designed to teach and "educate" the populace through a form of real-life political theatre. The key point here is that terrorists generally do not maintain a distinction between ideas and actions. Their teachings are not articulated in abstract expressions, but are dramatized vividly for their students through concrete examples of terrorist activities in real life. Terrorism itself is theatre (Jenkins 1986, Combs, 1997, Tugwell, 1987). As the nineteenth-century anarchists claimed, terrorism is "demonstration by example" and "propaganda by deed." One can even say that, for the terrorists, it is more important to win the media war than the military campaign. The reason is, so long as the terrorists succeed in hijacking the legitimacy of the state, even if the immediate terrorists get eliminated, other people dissatisfied with the state will look upon them as martyrs and perhaps even turn terrorists themselves. By contrast, if the terrorists lose their moral authority and popular support, they will easily disintegrate.

## **Law, the moral grammar of political struggle, and toward a peaceful struggle for recognition**

### ***A. Why Terrorism is Not a Viable Means for the Struggle for Recognition***

As often as terrorists like to insist on the legitimacy of their own operations as sanctioned by a "higher law," their self-bestowed legitimacy does not really hold, in that law is both based on, and enforces, mutual recognition between equal parties. As Hegel points out,

Law . . . is the *relation* of persons, in their conduct, to others, the universal element of their free being or the determination, the limitation of their empty freedom. It is not up to me to think up or bring about this relation or limitation for myself; rather, the subject-matter [*Gegenstand*] is itself this creation of law in general, that is, the recognizing relation. (1983, p. 111; trans. modified by J. Anderson, 1995, p. 42)

Terrorism is based on anything but mutual recognition and respect. It is an absolutely unilateral violent imposition of one side's will on the other. This is precisely why terrorists can never gain the recognition of legitimacy in Honneth's sense. Not unlike its counterpart state terror, insurgent

terrorism is also based on unilateral decisions. Neither insurgent terrorism nor state terror is conducive to peace precisely because both are devoid of legitimacy, and they both lack legitimacy because unilateral decision short-circuits the necessity to respect and recognize the other party's position. It is possible for terrorists to cower their opponent into submission, but such victory by force does not mean that the terrorists can gain the recognition of legitimacy in the world's eyes, less to mention in the eyes of their opponents. It is important to defer conflicts to the law because law is, in Lacanian terms, the third party or the Big Other which breaks up the aggressivity characterizing the two-party imaginary register, and it does so by giving parties of conflicts *equal recognition* through granting them *equal rights*. That way, the "losing" side will not feel that it loses because it is being "taken for granted" or casually bullied by its opponent. By contrast, short-circuiting the law reduces the injured to mere victims who feel that their autonomous will has not been consulted: whoever is attacked feels themselves objectified and their dignity compromised.

By privatizing violence, by making unilateral claims about one's own legitimacy, terrorists proceed not on the basis of mutual recognition. Where there is no mutual recognition, one's own claim about one's legitimacy remains an empty claim, since there is no legitimacy unless it is intersubjectively recognized. If terrorists' goal is to win on the level of "right" rather than "might," if they want to win public support for their position as the injured party making rightful demands, then terrorists' struggle for recognition of its legitimate grievances through violent acts is self-defeating: the means of terrorism compromises its end.

In short, there is no real legitimacy without a party and its practice first being recognized by what Lacan calls the big Other. This is why in the end, insurgent terrorism is incompatible with the philosophy of recognition because law is the foundation for the struggle for recognition. As Honneth points out,

[A]ll human coexistence presupposes a kind of basic mutual affirmation between subjects, since otherwise no form of being-together whatsoever could ever come into existence. Insofar as this mutual affirmation always already entails a certain degree of individual self-restraint, there is here a preliminary, still implicit form of legal consciousness. But then the transition to the social contract is to be understood as something that subjects accomplish in practice, at the moment in which they become conscious of their prior relationship of recognition and elevate it to an intersubjectively shared legal relation (1995, p. 43).

"Intersubjectivity" is a key word Honneth emphasizes in his discussion of the philosophy of recognition. And intersubjectivity is precisely what terrorism brackets in its unilateral action against its opponent. Honneth's emphasis

on law and legitimacy resonates with Hegel's own position. Hegel thinks that "international law should preserve the possibility of peace - for example, ambassadors should be respected and "war be not waged against domestic institutions, against the peace of family and private life, or against persons in their private capacity" (1958, §338 and 339). Although Hegel in this context is condemning war of aggressions, his disapproval of attacking private citizens would entail that terrorism cannot be legitimized as well. From Hegel's viewpoint, states are represented by armies, which are the proper entities to conduct war. Moreover, war is to be guided by principles derived from the modern idea of right including respect for the property and life of non-combatants. Terrorists violate these ideas of right and are not representatives of legitimate institutional bodies.

Honneth asserts that there is a moral grammar to social struggle. Likewise, we can also say that there is a moral grammar to political struggle, insurgent terrorism being a good case in point. However, it is important to note that for Honneth, law provides the deep structure for that moral grammar. As such, in the end, insurgent terrorism turns out to be a perversion of Hegel and Honneth's philosophy of recognition, and it is a perversion in the Kantian sense of the perversion of the will discussed in *Religion within the Limits of Reason Alone*.

### **B. The root-cause of insurgent terrorism and the importance of recognizing the grievances of the other**

While insurgent terrorists fall short of gaining legitimacy through recognizing the law, the law also risks losing its own legitimacy if it fails to recognize solidarity as one important basis for self-esteem and self-realization. An abstract system of legal codes by itself cannot guarantee equity and as such does not carry enough authority to enjoin a non-violent struggle for recognition. This is why Honneth (1995, p. 57) insists on "context-sensitive forms of the application of law". As he puts it, "the concretization of legal relations . . . [need to] take the particular situation of individuals better into account". In this regard, Honneth is again indebted to Hegel who, along with Guizot, were aware of the need to create institutions that reflected people's passions, interests, and values. Without this sensitivity to will, law could become unjust and even tyrannical.

Careless induction of all people into the same set of legal relations with no sensitivity to particular cultural contexts can be experienced by subaltern groups as a form of imposition and disrespect. Transgression of this legal relation and a deliberate strike at the legal system (such as those launched by the terrorists) maybe motivated by particular groups' will to assert their identity and to force the legal establishment to recognize their particularities. Punishment of such transgressions would

only intensify the transgressor's feeling of being disrespected and imposed upon. Hegel develops a theory to this effect. His analysis of the desire for recognition as the driving force behind crimes committed by individuals can be adapted to understand the factor motivating terrorist groups and their activities:

The inner source of crime is the coercive source of the law; exigency and so forth are external causes, belonging to animal need, but crime is directed against the person as such and his knowledge of it, for the criminal is intelligent. His inner justification is coercion, the opposition to his individual will to power, to counting as something, to be recognized. Like Herostratus, he wants to be something, not exactly famous, but that he exercises his will in defiance of the universal will (Hegel, 1983, p. 130 ff.; 1969, p. 224; trans. corrected by Anderson, 1995, p. 53).

Honneth's explication of this paragraph is most relevant for understanding insurgent terrorists' readiness to stake out their lives for recognition - that is, for the dignity of their community. Drawing attention to Hegel's saying "Crime represents the deliberate injury of "universal recognition [Anerkanntsein]" [ "Jena Lectures on the Philosophy of Spirit 131, 224], Honneth explains that "The motivational cause of such an act lies in the feeling of not having the particularity of one's `own will' recognized in the application of legal coercion." Honneth goes on to compare this defiance of the legal establishment to the human willingness to give up one's life for honor in the Master/Slave dialectic: "In this sense, what occurs ...in the case of crime is the same as what occurred (as part of the conditions for the individual formative process) in the case of the struggle for life and death" (Honneth, 1995, p. 53).

Sensitivity to cultural contexts when deciding legitimacy issues is of paramount importance to make possible a non-violent form of struggle for recognition. It is precisely this need to give due recognition to subaltern groups that animates the ending of Seyla Benhabib's essay "Unholy War." "Unholy War" is primarily a critique of terrorism. Nonetheless, toward the end of the essay, Benhabib indirectly faults the West for being partly responsible for radicalizing the Muslims by denying them proper recognition and treating them with contempt:

given the global entertainment industry's profound assault on their [the Muslims'] identity as Muslims, and given the profound discrimination and contempt which they experience in their host societies as new immigrants who are perceived to have "backward" morals and ways of life, many young Muslims today turn to Islamism and fundamentalism. Commenting on l'affair folard (the headscarf affair) in France, in which some female students took to wearing traditional headscarfs less as a sign of submission to religious patriarchy than as an emblem of difference and defiance against homogenizing French republican traditions (Benhabib, 2002, p. 44).

The true answer to insurgent terrorism, in other words, is not by force, but to try to understand the terrorists' grievances and their particular contexts, and to, as Honneth (1995, p. 58) suggests, "conceptualize the ethical sphere of the State as an intersubjective relationship in which members of society could know themselves to be reconciled with each other precisely to the degree to which their uniqueness would be reciprocally recognized".

### Conflict of Interests

The author(s) have not declared any conflict of interests.

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## NOTES

<sup>1</sup> An early draft of this paper was first given as an invited presentation on September 28, 2002 at "The Internationalization of Critical Theory" Conference, co-sponsored by the DAAD and the Institute of German Cultural Studies, Cornell University.

<sup>2</sup> A Taliban spokesman, for example, openly declared that his people love death as much as the Americans love life. See Benhabib 2002, 38.

<sup>3</sup> This is why terrorism often pays no regard to any norms or rules associated with "legitimacy." As Robert A. Friedlander observes, "terrorism involves the deliberate disruption of norms" (1981, p. 286).

Interestingly enough, while terrorism is being faulted by ruling parties for not recognizing the legitimacy of the state, the same criticism is much less often launched by them against global capital, which in many ways also demonstrate a lack of respect for the state. In fact, both terrorism and global capital seek to establish themselves over and above the state.

More interestingly still, despite first-world governments' tendency to criminalize terrorism while fawning on global capital, supranational terrorism and global capital are often implicated in each other.

<sup>4</sup> Terrorists have to focus on legitimacy issues both for moral and for strategic reasons. As Wilkins explains, "only by appealing to the court of public opinion can terrorists hope to achieve their goals" (1992, p. 4).

<sup>5</sup> The dilemma of the terrorists is that their legitimacy is in many cases being refused recognition not just by the government but also by society at large. This is especially the case when their claim of fighting for human justice is seen by the general populace as being contradicted by their killing of the innocent.

<sup>6</sup> Interview, BBC "Man Alive" programme on terrorism 12 June 1975. Leila Khaled is a member of the Popular Front for the Liberation of Palestine. She became known to the world public when she involved herself in the hijacking of an Israeli airliner over Britain on 6 September, 1970. She was overpowered. According to Khaled, although she was carrying two hand grenades at the time, she had received very strict instructions not to threaten passengers on the civilian flight. She was held for twenty-three days at Ealing police station, and was released afterwards as part of a prisoners' exchange ([http://en.wikipedia.org/wiki/Leila\\_Khaled](http://en.wikipedia.org/wiki/Leila_Khaled)).

<sup>7</sup> The Symbionese Liberation Army, for example, sent its manifesto to the Press in August of 1973, a couple of months before the organization carried out its first murder. The manifesto, entitled "The Symbionese Federation and the Symbionese Liberation Army Declaration of Revolutionary War and the Symbionese Program," was widely believed to have been written by Donald DeFreeze (aka Cinque).

<sup>8</sup> The struggle for recognition is so crucial to terrorist activities that one thinker even defines terrorism as "a strategy, a method by which an organized group or party tries to *get attention for its aims*, or force concessions toward its goals, through the systematic use of deliberated violence" (my italics):

Typical terrorists are individuals trained and disciplined to carry out the violence decided upon by their organizations. And, if caught, true terrorists can be expected to speak and act during their trials not primarily to win personal freedom, but to try to spread their organization's political ideas. (1976, p. 1) [definition based on *Encyclopedia of the Social Sciences*, 1934.]

<sup>9</sup> The fact that it is the "right" (legitimacy)--and not the "might" (power)--of the terrorists and their opponent that is at issue for the success or failure of a terrorist act explains the two sides' scramble to be the "authoritative interpreter" of the symbolic meaning of the terrorist acts. For example, in the 9/11 attack, the terrorists intended an iconic assault on the United States' military and financial power--and the overbearing, domineering manner in which it was wielded. The Bush administration, however, insisted on reading the act as a declaration of war on civilians and the innocent.

Insurgent terrorists challenge the governing power symbolically by seeking to undermine the public's recognition for the state. Terrorists emerge victorious, not when they succeed in destroying certain targets, but when their intended message—that is, their interpretation of their acts and their idea/ideology--win public *recognition*.

In other words, the propagandistic wars between the terrorists and their opponents over the correct interpretation of the symbolic significance of particular terrorist acts amount to no less than their relentless struggle against each other for legitimacy.

<sup>4</sup> Terrorists have to focus on legitimacy issues both for moral and for strategic reasons. As Wilkins explains, "only by appealing to the court of public opinion can terrorists hope to achieve their goals" (1992, p. 4).

<sup>5</sup> The dilemma of the terrorists is that their legitimacy is in many cases being refused recognition not just by the government but also by society at large. This is especially the case when their claim of fighting for human justice is seen by the general populace as being contradicted by their killing of the innocent.

<sup>6</sup> Interview, BBC "Man Alive" programme on terrorism 12 June 1975. Leila Khaled is a member of the Popular Front for the Liberation of Palestine. She became known to the world public when she involved herself in the hijacking of an Israeli airliner over Britain on 6 September, 1970. She was overpowered. According to Khaled, although she was carrying two hand grenades at the time, she had received very strict instructions not to threaten passengers on the civilian flight. She was held for twenty-three days at Ealing police station, and was released afterwards as part of a prisoners' exchange ([http://en.wikipedia.org/wiki/Leila\\_Khaled](http://en.wikipedia.org/wiki/Leila_Khaled)).

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