



## **The Nature of Terrorism**

Defining terrorism within the EU

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## **1. INTRODUCTION**

Terrorism has plagued Europe for decades, with few countries being spared the wrath of terrorist activities. For a period of time these terrorist activities were mainly committed by groups with separatist motivations, and thus were handled by national governments. Dealings with groups such as the Basque National Separatist Organization (ETA) in Spain and the Irish Republican Army (IRA) and its splinter groups in the United Kingdom, have varied greatly. As such, these national experiences did not automatically contribute to the establishment of a general European policy, due first and foremost to the absence of a precise and comprehensive definition of 'terrorism' that could be implemented across Europe and within the Member States. In practice, the politically charged term is often used to describe a variety of acts and methods of violence but has evaded both an internationally recognized classification and a coherent legal definition. Given the rising necessity to differentiate terrorism from other forms of political violence in the interest of protecting vital international community interests and values, a coherent definition of terrorism is needed more than ever before in order to harmonize efforts and ensure closer cooperation in combating terrorist activities at the level of the European Union and abroad.

This paper thus aims to provide an overview of the development and evolution of a definition for terrorism within the European Union. Following a brief synopsis of reasons for defining terrorism, including the effects on human rights and potential jeopardy to the state and deliberative politics, the paper will assess the European Union's efforts in defining terrorism through the proposal and adoption of a Framework Decision, Council Common Position and Council Regulation established by the different organs of the European Union. Bearing in mind the assets and drawbacks of the Framework Decision as it applies to the recognition and implementation of its content by the Member States, a review of the basic elements of the definition for terrorism will be explored in their application and contribution to a wide-ranging definition at the international level. From this analysis we deduct six elements that are especially important in dealing with legal definitions of terrorism. Finally, the selected definitions from the various EU measures will be scrutinized on the way they deal with these elements.

## **2. REASONS FOR DEFINING TERRORISM**

Terrorism's threat to democracy, human rights and general social development has been reverberated in numerous conventions and official government documents, including the Commission of the European Communities in their proposal for a Council Framework Decision on Combating Terrorism of September 2001. Citing resolutions of the UN General Assembly and the Commission on Human Rights, the prevailing literature and reports from NGOs point to the potential disintegration effects of terrorism on the freedoms, rights and liberties that also serve as the basis of the Charter of Fundamental Rights of the European Union. (Den Boer, 2003; Van Boven, 2005; Bulterman, 2006; Boyle, 2004; Cameron, 2004; Cameron, 2004A; Clapham, 2004; Condorelli, 2004; Dinh, 2004; Van Ginkel, 2003A; Van Ginkel & Wessel, 2004; Van Ginkel, 2006; Goldstone, 2005; Gross, 2004; Olivier, 2004; Paust, 2003; Paust, 2006; Reinisch, 2006; *i.a.* Human Rights Watch, 2002).

Furthermore, terrorism can have a destabilizing affect on civil society and poses an eminent threat to democracy or 'legitimately constituted governments,' thus differentiating the offence from other criminal acts whether politically motivated or otherwise (Saul, 2006: 4). By replacing politics with violence and interrupting individuals' freedom to choose governmental, societal and national policies, and supplanting them with the assertion of frightening messages backed by violence, terrorism has a chilling effect on the institutions which constitutionally protect human rights, thereby disrupting society's essential elements for democracy.

Thus, a proper definition of terrorism is essential in bridging the gap in different legal treatments of terrorists between countries and invaluable for harmonization in combating terrorist offences. Bearing in mind this necessity, the European Union has had a long-standing history of attempts to develop and refine a wide-ranging definition at the international level.

Throughout the years, numerous international legal attempts dealing with terrorism mostly avoided the difficulty of drafting a general definition. The chosen path in the multilateral arena was to tackle issue-specific aspects of terrorism. At the regional level in some cases consensus was reached on a general definition (see *i.a.* SAARC Regional Convention on the Suppression of Terrorism, Arab Convention on the Suppression of Terrorism, Convention of the

Organization of the Islamic Conference on Combating International Terrorism, OAU Convention on the Prevention and Combating of Terrorism).

Apart from the obvious reason that drafting a general definition would contribute in harmonizing national criminal laws, there are some additional benefits that flow from a general legal definition (Saul, 2006: 12). One could think of fulfilling the double criminality requirement in extradition treaties, as well as guaranteeing the fulfillment of the *aut dedere aut iudicare* regime (either prosecute or extradite regime) for terrorist offences as laid down in many treaties. Also with regard to extradition, a definition of terrorism can put an end to the confusion between political offences – offering an exemption to the requirement of extradition – and terrorism – for which no exemption on extradition is allowed in most treaties.

The ease of executing international obligations based on the Convention relating to the Status of Refugees, is yet another advantage. The Convention obliges states to grant refugee status to asylum-seekers, except for cases where serious reasons are present for considering an individual's involvement with terrorism (article 1 F of the Convention relating to the Status of Refugees). Finally, a general definition will open up the possibility of drafting an international comprehensive convention on combating terrorism, which will obviously have a wider scope of applicability than the sum of all the sectoral conventions that deal predominantly with issue-specific aspects of terrorism, such as hijacking, terrorist bombings, taking of hostages, etcetera.

### **3. EUROPEAN TERRORISM DEFINITIONS**

Progressively, terrorism – as it is perceived by the public – has assumed different forms ranging from mass murder and threats to people’s lives, to the destruction of property and damage to public or private facilities, making it even more difficult to establish a comprehensive definition for criminalization. In Europe, the first and most significant efforts in the fight against terrorism were rooted in the European Convention on the Suppression of Terrorism, adopted in 1977 under the mandate of the Council of Europe.

In an attempt to separate political offences from other violent acts inspired by political motives, the 1977 Convention draws up a list of acts that could be considered terrorist offences (see Article 1 of the European Convention in Table 1 of the appendix). Procedural in nature, the convention also sets forth guidelines for States in dealing with terrorism, especially highlighting the States’ responsibility for not regarding the acts as political offences. Additionally, for purposes of extradition, terrorism is considered to be exempt from the exception of an individual being extradited, which in contrast is applicable for political offences.

Considered the ‘sole common denominator in the field of terrorism,’ (Dumitriu, 2004: 587) the European Convention addressed a wide spectrum of terrorist acts, thereby prohibiting it from instituting a precise definition of terrorism. The inherent inability of the Convention to oblige States to implement the definition and criminalize such acts domestically, and compounded by the events of the 2001 attacks on the U.S., promulgated its revision by the Council of Europe vis-à-vis the 2003 Protocol Amending the European Convention on Suppression of Terrorism. The Protocol subsequently extended the number of ‘depoliticized’ actions as they relate to a definition of terrorism (see Table 2 of the Appendix). The Council of Europe Convention on the Prevention of Terrorism, adopted in Warsaw in 2005, although more elaborate on different forms of terrorist acts – such as recruitment, public provocation and training of terrorism – still fails to properly define terrorism, and settles instead for the old trick; namely referring to a list of conventions in which issue-specific acts of terrorism have been criminalized (see Table 3 of the Appendix).

Following the events of September 11, 2001 in the U.S., within the EU an extraordinary session of the European Council took place with the aim of analyzing the international situation and setting the fight against terrorism as a priority objective of the European Union. Yet while the terrorist attacks of 2001 undoubtedly served as an immediate impetus for establishing a Europe-wide policy for combating terrorism, the approach and a plan for policy action was already discussed at the 1999 European Council meeting in Tampere. As evidenced in the Presidency Conclusions of the Tampere meeting (15 and 16 October 1999), the European Council called for "joint investigative teams ... to be set up without delay ... to combat trafficking in drugs and human beings as well as terrorism." While no specific consideration of a definition for terrorism was addressed, the European Council cited the need for maximization of benefits derived from cooperation between Member States as it applies to cross-border crime.

With an emphasis on rejecting any equation of groups of fanatical terrorists with the Arab and Muslim world, the European Council at the extraordinary session of 2001 called for an Action Plan with 'the broadest possible coalition against terrorism' which, *inter alia*, included enhancing police and judicial cooperation and development of international legal instruments. As one of the stated objectives in the Action Plan, the Council called for a new arrest warrant altering the extradition policies between Member States. As the Action Plan is continuously revised and updated, the proposed measures were eventually incorporated into the Council Framework Decision on a European Arrest Warrant.

In the same year, the European Council and the Commission of the European Communities issued a proposal for a Council Framework Decision on combating terrorism with the aim of approximating the laws of the Member States regarding terrorist offences and in accordance with the Treaty on European Union.

Incorporating elements of other international conventions, the proposal for the Framework Decision outlined a number of terrorist offences and laid the legal groundwork for a common definition at the European Union level. The introduction of a key concept of what constitutes a terrorist offence, the legal implication of such offences as distinguished from other forms of violence, as well as the penalties associated with such offences are among the elements that

set the proposal apart from other conventions (see Proposal for Council Framework Decision in Table 4 of the appendix). Additional distinguishing factors include explicit verbiage used in the Commission's proposal and disputed by the Council. For example, where the proposal states that a terrorist offence should include actions seeking to 'seriously altering or destroying the political, economic or social structures of a country,' the Council revises this definition to include actions 'with the aim of seriously ... affecting or destroying the political, economic or social structures of a country or of an international organization.' As such, the Council highlights the importance of including the intentional aspect of the act.

Credence must be paid, however, to the fact that while motivation is an essential element in evaluating a terrorist offence, a lacuna exists with respect to the specific identification of such motivation including religious, political, et-cetera. Similarly, the perpetrators of terrorist acts are not clearly distinguished in the proposal which mentions that offences committed by an individual or group are different than those perpetrated by a computer or electronic devices. Such activities are incorporated into the same broad heading of "terrorist offences" in Article 3 of the proposal (Table 5 of the Appendix; Council of the European Union. October 10, 2001. Interinstitutional File (2001/0217)).

Further revisions by the Council include broadening of the definition to include 'threatening to commit any of the offences' (see Article 1 of the Framework Decision in Table 4 of the appendix). Serving as the cornerstone for the European Union in the fight against terrorism, the Framework Decision attempts to institute a common definition and explicitly highlights a new category of terrorist activities, namely offences 'relating to a terrorist group' not observed in other international conventions (see Article 2 of the Framework Decision in Table 4 of the appendix) (Dumitriu, 2004: 590). The document distinguishes three types of offences: 1) terrorist offences (Article 1), 2) offences relating to a terrorist group (Article 2), and 3) offences linked to terrorist activities (Article 3). With a broad list, Article 1 characterizes terrorist offences by two objective elements - incrimination under national law and effective or potential consequences, and a subjective aspect which includes the aim of 'seriously intimidating a population,' 'unduly compelling a Government or international organization to perform or abstain from performing any act,' or 'seriously

destabilizing or destroying the fundamental ... structures of a country or an international organization.’ (Dumitriu, 2004: 592-598)

The Commission was widely criticized for including acts of urban violence as part of the explanation of terrorist offences in the initial explanatory memo of the proposal. Additional modifications to the initial proposal therefore included the omission of ‘acts of urban violence’ as an association with a terrorist act. The distinction emphasized the delicate issue of encompassing such activities within the definition of terrorism, in light of the possibility that utilizing such a broad concept could have a chilling effect on other scopes of political action. Bearing in mind the potential for Member States to limit the scope of political action by encapsulating other politically motivated activities, such as political protests and the right to self-determination under the terrorism label, further necessitate a harmonized definition at the European Union level. The Council Framework Decision remedies such inconsistencies by providing a non-binding Declaration which clearly distinguishes between acts of terrorism and those which do not fall within the frames of the definition outlined in the Framework. Specifically, the non-binding clause reads that the definition ‘cannot be construed so as to argue that the conduct of those who have acted in the interest of preserving or restoring these democratic values ... could now be considered ‘terrorist’ acts.’ (Van Ginkel, 2003: 224)

The wide scope of the list set forth in the final Council Framework Decision as compared to the initial proposal from the Commission and other international conventions, provides Member States with the structure necessary for criminalization of the offences under their national laws. While definitions of terrorism vary widely throughout international organizations, many European countries simply include terrorism clauses under their respective Criminal Codes, thus leaving it to the judicial system to decide the scope and intensity of the offence. France, for example created a specific terrorist charge in their Nouveau Code Pénal which constitutes acts of terrorism as those ‘aiming to seriously disturb the peace through intimidation or terror’ (Cettina, 2003: 86), (see Article 421-1 in Table 7 of the appendix). Similarly, the Spanish Código Penal states that terrorist acts are those aimed ‘to subvert the constitutional order or seriously alter public peace’ (see Article 571 in Table 8 of the appendix). In addition to providing a definition for terrorism, the aforementioned countries also provide specific penalties for terrorist offences, which differ in severity from other

ordinary offences. Yet as the broad reaching national definitions are acceptable for country-specific offences, their scope is not conducive to a uniform system of punishment, including extradition of the perpetrators.

It is worth mentioning that the United Kingdom produced the largest piece of terrorist legislation of the EU Member States through the Terrorism Act of 2000, where a list of terrorist offences are similar to that offered by the Framework Decision on Combating Terrorism. The legislation characterizes terrorism where 'the use or threat is designed to influence the government or to intimidate the public or section of the public' (see Terrorism Act 2000 in Table 6 of the appendix). The offences, however, are exceptionally broad in scope and can be misinterpreted as 'blur[ing] the lines between protest and terrorist groups.' (Cohn, 2004)

At the EU level, terrorism is dealt with under all three institutional pillars with exceptional attention concentrated in the second and third pillars following the events of September 11 and the issuance of two Council Common Positions of 27 December 2001 on combating terrorism and on the application of specific measures to combat terrorism (see Table 9) (Council Common Positions of 27 December 2001 respectively 2001/930/CFSP and 2001/931/CFSP), based largely on the UN Security Council Resolution 1373. A measure of pillar two – the Common Foreign and Security Policy, the Council Common Positions are defined approaches of the EU toward particular issues where the individual Member States are required to implement national policies that comply with the position defined by the Union on a given issue. A definition of terrorism is only given in the Common Position on the application of specific measures to combat terrorism. The other Common Position depends for the interpretation of the obligations on the member states therefore on that definition.

Three documents are of particular interest in terms of their use of a definition of terrorism: the Common Position on the application of specific measures to combat terrorism, EC Council Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (see Table 10) and the Council Framework Decision on Combating Terrorism of 13 June 2002 (2002/475/JHA) (see Table 4).

The Council Common Position, adopted for purposes of addressing specific measures to combat terrorism, sets forth a definition which characterizes terrorist acts as 'intentional acts, which, given its nature or its context, may

seriously damage a country or an international organization' (see Council Common Position in Table 9 of the appendix). The definition provided in this Council Common Position is strikingly similar to that eventually utilized in the Framework Decision. For example, both documents mention serious intimidation of the population, destruction to a Government or public facility, the threat of committing any terrorist acts and participation in activities of a terrorist group. Apparent differences are observed in the treatment of offences that are linked to a terrorist group. Whereas the Framework Decision distinguishes and highlights 'offences linked to a terrorist group' including acts of aggravated theft and extortion, the Common Position draws no such distinctions.

Similarly, Council Regulation (EC) no 2580/2001 issued in 2001 (see Table 10) for purposes of streamlining procedures regarding terrorist organizations in the EU and third countries, outlines specific restrictive measures directed to combat terrorism. The Regulation provides a definition and distinguishes the term 'terrorist acts' in the same vein as Article 1(3) of the Council's Common Position (see Council Common Position in Table 9 of the appendix). In fact, the Regulation refers to the Council Common Position for the definition of terrorist acts as used in that document. In contrast to the Common Position, the Council Regulation places greater emphasis on defining the financing aspect of measures outlined to combat terrorism. In addition to providing a definition for 'funds' and 'other financial assets,' the Regulation clarifies the concept of 'freezing of funds' and draws out an in-depth list of institutions (including insurance and banking services) that qualify as 'financial services.'

In taking a closer look at the references to terrorism in the aforementioned documents, a pattern emerges in the Union's position to cooperate and further harmonize efforts in combating terrorist offences. The final Framework Decision, which has been adopted by the Member States in 2002, offers a firm foundation for an internationally accepted definition of terrorism encompassing elements of other international conventions and keeping it broad enough to 'reflect the normative consensus that terrorism undermines the State and the political process' (Saul, 2006: 4-6). It remains to be seen how the Member States will implement the Framework Decision in their domestic laws, but the identification of the fundamental wrongfulness of terrorism certainly offers a distinct manner in reserving the label for the most serious acts of political violence.

Further analysis of the definitions calls for a closer examination of some basic elements often found in other definitions based on international conventions (see below).

#### **4. DEFINITIONAL ELEMENTS**

In spite of all the attempts to draft a general definition on a universal level, various political reasons have precluded any successful efforts. However, all these different attempts as well as the definitions used by various institutions and academics provide us with information on the elements that, in most cases have been included in a definition, and further help us determine which elements are especially of interest for a legal definition.

A major study into the elements in academic definitions has been performed by Schmid and Jongman in 1983, and updated in 1988. In this study, 109 definitions were used to count the frequency of 22 different definitional elements, which were identified by closely studying the definitions in order to determine relevant word categories (Schmid & Jongman, 1988: 5). The underlying perception of the wrongfulness of terrorism is echoed throughout the definitional elements. Ranking from high to low frequency, the elements mentioned include: violence, force; political; fear, terror emphasized; threat; (psych.) effects and (anticipated) reactions; victim-target differentiation; purposive, planned, systematic, organized action; method of combat, strategy, tactic; extra normality, in breach of accepted rules, without humanitarian constraints; coercion, extortion, induction of compliance; publicity aspect; arbitrariness, impersonal, random character, indiscrimination; civilians, non-combatants, neutrals, outsiders as victims; intimidation; innocence of victims emphasized, group, movement, organization as perpetrator; symbolic aspect, demonstration to others; incalculability, unpredictability, unexpectedness of occurrence of violence; clandestine, covert nature; repetitiveness, serial or campaign character of violence; criminal; demands made on third parties.

Although very useful for analysis and drafting of a definition, a direct copy of these elements into a definition is no guarantee for a sound legal definition. For a definition to fulfill the quality standards required for use as a criminal definition, certain aspects have to be taken into account. Legal certainty demands that criminal offences are defined and prescribed in law. It is therefore essential that individuals can ascertain the content of the laws (Smith, 2003: 252). Such a definition should thus be precise, objective and certain in order to meet the principles on good legislation. Emotive terms should therefore be avoided, as should ambiguous and subjective terms which are incompatible with the principle

of retroactivity (Saul, 2006: 20). At the same time, it should be remembered that legislation and criminalization also function as a powerful symbolic mechanism. This is where the knowledge on the definitional elements of Schmid and Jongman comes in handy. Ben Saul in his Working Paper for FRIDE, after studying several (mostly policy) definitions, and taking into account the quality standards set for legal definitions, proposed the following definition:

1. Any serious, violent, criminal act intended to cause death or serious bodily injury, or to endanger life including by acts against property;
2. where committed outside an armed conflict;
3. for a political, ideological, religious or ethnic purpose; and
4. where intended to:
  - a. create extreme fear in a person, group or the general public; and
  - b. seriously intimidate a population or part of a population; or
  - c. unduly compel a government or an international organization to do or to abstain from doing any act.
5. Advocacy, protest, dissent or industrial action which is not intended to cause death, serious bodily harm or serious risk to public health or safety does not constitute a terrorist act.

This proposed definition includes most of the characteristics of the study by Schmid and Jongman, namely the political motivation, the creation of fear, the use of violence, the criminal aspect, the goal of coercion, the intent, and the target group. It also is a sound attempt to be precise, objective and certain. Nevertheless, this proposal also leaves room for interpretation. What for example qualifies as a 'serious' criminal act? Moreover, this definition does not deal with the threat of committing terrorism, an aspect that has been included in several other policy documents, nor does it define who could be the perpetrators of the act. This shows, once more, how delicate defining terrorism for legal purposes is.

In an attempt to provide a concise definition of terrorism that could be utilized as a foundation for further academic research, Boaz Ganor of the International Institute for Counter-Terrorism, has proposed that 'terrorism is the intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims' (Ganor, 2005: 6). The broad scope of the definition is based on three elements that Ganor considers of utmost

importance in establishing an agreed-upon legal definition: 1) use or threat to use violence, 2) aim of the activity is always political, and 3) targets are civilians. Interestingly, Ganor contends that the motivation of the act – be it ideological, religious, etcetera – is not relevant for defining terrorism. Furthermore, Ganor maintains that an internationally accepted definition of terrorism should be broad, especially when considering how state-sponsored terrorism may fit into the category.

Ganor's definition, however, would for the reason that state-sponsored terrorism can be included, never qualify as a sound legal definition installing individual criminal responsibility. Moreover, as far as individuals can according to international law be held individually responsible for crimes committed by the state, these acts would fall under the scope of a different legal regime.

For purposes of further analysis and comparison of terrorism definitions as used in EU measures, which is the main focus of this paper, abstract elements are needed. In another study by Susan Tiefenbrun, using a semiotic approach, five abstract elements were proposed. These are:

1. The perpetration of violence by whatever means;
2. The targeting of innocent civilians;
3. With the intent to cause violence or with wanton disregard for its consequences;
4. For the purpose of causing fear, coercing or intimidating an enemy;
5. In order to achieve some political, military, ethnic, ideological, or religious goal. (Tiefenbrun, 2003: 362)

In this analysis, however, we will use six categories of legal elements of a definition of terrorism. Most of the elements are in a sense abstracted from Saul's proposal for a legal definition, and also cover Tiefenbrun's elements. In order to further focus the scope of the definition compared to Tiefenbrun's categories, a category of perpetrators as well as an exclusion category have been added.

Each different legal definition most likely deals with each of these categories of definitional elements in a slightly different way. Assessing the various definitions used by the EU along the lines of these categories will give us valuable information for comparing these definitions.

The elements that are identified partly follow the path of a logical construction of a description of a criminal offence, and thus comprise the elements of *mens rea* (criminal consciousness) and *actus reus* (the description of the criminal act). The description of the *actus reus* should in the case of terrorism make clear in what sense the offence is different from other criminal acts, such as for example murder or assault. Furthermore, the selected elements are in one way or the other dealt with in most policy definitions.

The categories of elements are:

1. *Mens rea* aspect: the intentional character of the acts committed.
2. Purpose of the act: Intimidate a civilian population, or compel a government or other formal institutions in doing or abstaining from doing something, or another purpose.
3. Qualification of the acts itself: Criminal; the use of some form of violence irrespective of the result, or the result of the act is prescriptive (bodily injury or material damage/economic loss)
4. Target: civilian, public or military?
5. Perpetrators: individuals, groups, non-state actors, state actors?
6. Scope: exceptions form the scope; justification or not for certain acts?

Next, the definitions as used in the Council Framework Definition on Combating Terrorism, and the Council Common Position on the Application of Specific Measures to Combat Terrorism will be scored on how they deal with these elements. In order to be able to compare the European definitions to some other internationally used definitions, Tables 11, 12, 13, 14 and 15 of the Appendix respectively include the definitions used in the International Convention for the Suppression of the Financing of Terrorism, United Nations Security Council 1566 (2004), the proposal for a definition made by the High Level Panel in its Report on Threats, Challenge and Change, the draft Comprehensive Convention on International Terrorism, and the Convention of the Organisation of the Islamic Conference on Combating International Terrorism. Put in a chart, this will make it possible to compare the different definitions (Table 16 in the Appendix).

When comparing the different definitions it becomes clear that all fulfill the definitional element with regard to the *mens rea* aspect. Most definitions use

words as 'intent', intentionally or willfully. One definition refers to a criminal plan that has to lay on the basis of the actions, which also suggest that there was a prior intention to commit a certain act.

With regard to the definitional element of 'purpose' clearly most definitions use terms as 'intimidating population' or 'provoking a state of terror', 'compelling a government or an international organization in doing or abstaining from doing an act'. The two European definitions also mention the destabilization of political, constitutional, economic or social structures. With regard to the motivation behind the attacks, only the Security Council resolution and the Convention of the OIC on Combating International Terrorism stress that any motivation for whatever reason can never justify the attacks.

In the qualification of the attacks, the terms used in the different definitions, vary from 'criminal', to 'offences under national law', or 'unlawful'.

Only the proposal for a definition by the High Level Panel makes no reference of such a sort to qualify the acts. All but one (Convention of the OIC on Combating International Terrorism) refer to death or serious bodily injury or attacks on physical integrity, as the main outing of the attack. Material damage is only covered by the European definitions, and the *draft* Comprehensive Convention. Moreover, the 'threat' to commit certain acts is also only mentioned in the European definitions, as well as in the Convention of the OIC on Combating International Terrorism.

On the element of the target group, it should be mentioned that only two definitions give a clear description of the target group, being defined as civilians and non-combatants, namely the International Convention for the Suppression of the Financing of Terrorism, and the proposal of the High Level Panel. In the other definitions targets such as persons, governments, public facilities, or international organizations are casually mentioned. The Security Council resolution even states that acts (in general), *including against civilians*, can be terrorist. With this phrasing the suggestion is raised that also acts against states or other organizations can be the target.

Most diversities between the definitions can be found with regard to the way they address the definitional element of the perpetrators. Three definitions make no reference to the perpetrators of the acts whatsoever. Two definitions state that any person who commits the specified acts fall under the scope of the definition. The two European definitions are most precise in the sense that

reference is made to persons, groups or entities as the possible perpetrators of the attacks. From that specification one can conclude that state actors are implicitly excluded.

Finally, in the category that deals with the delimitations and the exclusions from the scope of the definition several aspects are brought forward. One aspect relates to the delimitation between terrorism and forceful resistance against foreign occupation, hegemony etcetera, as well as with the use of force in the exercise of the right to self-determination. The Council Framework Decision on Combating Terrorism very carefully and in a non-binding declaration annexed to the Decision touches upon this aspect. The Convention of the OIC on the Combating of International Terrorism is far more straight forward on this topic, and explicitly excludes these aspects from the scope of the Convention. Very subtle reference is made to these aspects in the International Convention for the Suppression of the Financing of Terrorism as well as in the Security Council Resolution by a general preambular remark on the obligation to respect human rights. Other exclusions from the scope of the definitions are the political offences (mentioned in the International Convention for the Suppression of the Financing of Terrorism), the use of force against civilians by states (High Level Report), and the acts committed within the territory of one state, or where the perpetrator is a national of the state in which he has committed the act (Draft Comprehensive Convention).

## **5. CONCLUSION**

In this paper, an overview has been given of the developments on defining terrorism within Europe. Special focus was paid to the EU documents in which definitions of terrorism were incorporated. A model of six definitional elements was presented, making it possible to compare the different definitions. In comparison with other policy definitions, the aforementioned analysis of the various elements of different definitions illustrate that the formulation of the EU definitions have not taken place in isolation from the developments on this topic within the international community.

In sum, the two European definitions are very elaborate in describing the purpose of the acts, however neither seize the opportunity to symbolically state that there is no justification for terrorism whatsoever. Furthermore, by including material damage and the threat to commit terrorist acts, the European definitions are among the most elaborate in their description and qualification of such acts. Less so, the European definitions do not give a clear description of the target group. On the other hand, these definitions are the most precise in defining the perpetrators.

The delimitation question in the category that deals with the scope of the definition, is the most political one. The path chosen, namely to add a non-binding declaration, is a clear compromise. Balance was struck between the fear that any reference to underlying reasons for being violent might suggest a justification for terrorism and the sense for political reality on the other hand. After all, against the background of the resistance and protests during the Second World War, one did not want the definition of terrorism to be interpreted in a sense that any political resistance would be criminalized.

In conclusion, it can be stated that the EU definitions are in line with other internationally used definitions, notwithstanding some differences in formulation.

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## APPENDIX

**Table 1 European Convention on Suppression of Terrorism**

Year	Document Title	Institution /Actor	Definition
1977	European Convention on Suppression of Terrorism, adopted 27 January 1977	Council of Europe	<p><b>Article 1</b></p> <p>(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;</p> <p>(b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;</p> <p>(c) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;</p> <p>(d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention;</p> <p>(e) an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;</p> <p>(f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.</p> <p><b>Article 2</b></p> <p>(1) For the purpose of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.</p> <p>(2) The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.</p> <p>(3) The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.</p>

**Table 2 Protocol Amending the European Convention on Suppression of Terrorism**

Year	Document Title	Institution/ Actor	Definition
2003	Protocol Amending the European Convention on Suppression of Terrorism, adopted 15 May 2003	Council of the European Union	<p><b>Article 1</b></p> <p>Introductory paragraph to Art. 1 of the Convention shall become paragraph 1 of this article. In sub-paragraph b of this paragraph, the term "signed" shall be replaced by the term "concluded" and sub-paragraphs c, d, e and f of this paragraph shall be replaced by the following sub-paragraphs:</p> <ul style="list-style-type: none"> <li>- "c an offence within the scope of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted at New York on 14 December 1973;</li> <li>- d an offence within the scope of the International Convention Against the Taking of Hostages, adopted at New York on 17 December 1979;</li> <li>- e an offence within the scope of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna 3 March 1980;</li> <li>- f an offence within the scope of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;"</li> </ul> <p>Paragraph 1 of Art. 1 of the Convention shall be supplemented by the following four sub-paragraphs:</p> <ul style="list-style-type: none"> <li>- "g an offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;</li> <li>- h an offence within the scope of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;</li> <li>- i an offence within the scope of the International Convention for the Suppression of Terrorist Bombings, adopted at New York on 15 December 1997;</li> <li>- j an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on 9 December 1999."</li> </ul>

			<p>The Text of Art. 1 of the Convention shall be supplemented by the following paragraph:</p> <ul style="list-style-type: none"><li>- "2 Insofar as they are not covered by the conventions listed under paragraph 1**, the same shall apply, for the purpose of extradition between Contracting States, not only to the commission of the principal offences as a perpetrator but also to:<ul style="list-style-type: none"><li>(a) the attempt to commit any of these principal offences;</li><li>(b) he participation as an accomplice in the perpetration of any of these principal offences or in an attempt to commit any of them;</li><li>(c) organizing the perpetration of, or directing others to commit or attempt to commit, any of these principal offences."</li></ul></li></ul> <p><b>Article 2</b></p> <p>Paragraph 3 of Art. 2 of the Convention shall be amended to read as follows:</p> <p>"3 The same shall apply to:</p> <ul style="list-style-type: none"><li>(a) the attempt to commit any of the foregoing offences;</li><li>(b) the participation as an accomplice in any of the foregoing offences or in an attempt to commit any such offence;</li><li>(c) organizing the perpetration of, or directing others to commit or attempt to commit, any of the foregoing offences."</li></ul>
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**Table 3 Council of the Europe Convention on the Prevention of Terrorism**

Year	Document Title	Institution /Actor	Definition
2005	Council of Europe Convention on the Prevention of Terrorism, adopted 16 May 2005	Council of Europe	<b>Article 1</b> (1) For the purpose of this Convention, 'terrorist offence' means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix

**Table 4 Council of the European Union Framework Decision on Combating Terrorism**

Year	Document Title	Institution /Actor	Definition
2002	Framework Decision on Combating Terrorism, 13 June 2002 (2002/475/JHA )	Council of the European Union	<b>Article 1 (Terrorist offences and fundamental rights and principles)</b> 1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organization where committed with the aim of: <ul style="list-style-type: none"> <li>- seriously intimidating a population, or</li> <li>- unduly compelling a Government or international organization to perform or abstain from performing any act, or</li> <li>- seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization,</li> </ul> shall be deemed to be terrorist offences:  (a) attacks upon a person's life which may cause death; (b) attacks upon the physical integrity of a person;

		<p>(c) kidnapping or hostage taking;</p> <p>(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;</p> <p>(e) seizure of aircraft, ships or other means of public or goods transport;</p> <p>(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;</p> <p>(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;</p> <p>(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;</p> <p>(i) threatening to commit any of the acts listed in (a) to (h)</p> <p><b>Article 2 (Offences relating to a terrorist group)</b></p> <p>1. For the purposes of this Framework Decision, "terrorist group" shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined role for its members, continuity of its membership or a developed structure.</p> <p>2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:</p> <p>(a) directing a terrorist group;</p> <p>(b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.</p> <p><b>Article 3 (Offences linked to terrorist activities)</b></p> <p>Each Member State shall take the necessary measures to ensure that terrorist-linked offences include the following acts:</p> <p>(a) aggravated theft with a view to committing one of the acts listed in Article 1(1);</p>
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			<p>(b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);  (c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b)</p> <p><b>Article 5 (Penalties)</b></p> <ol style="list-style-type: none"> <li>1. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.</li> <li>2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 1(1) and offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposed under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposed are already the maximum possible sentences under national law.</li> <li>3. Each Member State shall take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Article 2(2)(b) a maximum sentence of not less than eight years. In so far as the offence referred to in Article 2(2)(a) refers only to the act in Article 1(1)(i), the maximum sentence shall not be less than eight years.</li> </ol>
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**Table 5 Commission of the EC Proposal for a Council Framework Decision on Combating Terrorism**

<b>Year</b>	<b>Document Title</b>	<b>Institution/ Actor</b>	<b>Definition</b>
2001	Commission Proposal for Framework Decision, 27 November 2001 (2001/C 322 E/17; COM (2001) 521 final –	European Commission	<p><b>Article 3 (Terrorist Offences)</b></p> <ol style="list-style-type: none"> <li>1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of a country, will be punishable as terrorist offences: <ol style="list-style-type: none"> <li>(a) Murder;</li> <li>(b) Bodily injuries;</li> </ol> </li> </ol>

	2001/0217 (CNS))		<ul style="list-style-type: none"> <li>(c) Kidnapping or hostage taking;</li> <li>(d) Extortion;</li> <li>(e) Theft or robbery;</li> <li>(f) Unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property;</li> <li>(g) Fabrication, possession, acquisition, transport or supply of weapons or explosives;</li> <li>(h) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment;</li> <li>(i) Interfering with or disrupting the supply of water, power, or other fundamental resources;</li> <li>(j) Attacks through interference with an information system;</li> <li>(k) Threatening to commit any of the offences listed above;</li> <li>(l) Directing a terrorist group;</li> <li>(m) Promoting of, supporting of or participating in a terrorist group.</li> </ul> <p>2. For the purpose of this Framework Decision, terrorist group shall mean a structured organization established over a period of time, of more than two persons, acting in concert to commit terrorist offences referred to in paragraph (1)(a) to (1)(k).</p>
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**Table 6 Terrorism Act 2000 (United Kingdom)**

Year	Document Title	Institution/ Actor	Definition
2000	Terrorism Act 2000 (Available through the Stationery Office Limited as the	United Kingdom	<p><b>1</b> (1) In this Act "terrorism" means the use or threat of action where –</p> <ul style="list-style-type: none"> <li>(a) the action falls within subsection (2),</li> <li>(b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and</li> <li>(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.</li> </ul>

	<p>'Terrorism Act 2000', ISBN 0 10 541100 0)</p>		<p>(2) Action falls within this subsection if it –</p> <ul style="list-style-type: none"> <li>(a) involves serious violence against a person,</li> <li>(b) involves serious damage to property,</li> <li>(c) endangers a person's life, other than that of the person committing the action,</li> <li>(d) creates a serious risk to the health or safety of the public or a section of the public, or</li> <li>(e) is designed seriously to interfere with or seriously to disrupt an electronic system.</li> </ul> <p>(3) The use or threat of action falling within subsection (2) which involves the use or firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.</p> <p>(4) In this section –</p> <ul style="list-style-type: none"> <li>(a) "action" includes action outside the United Kingdom,</li> <li>(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,</li> <li>(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and</li> <li>(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.</li> </ul> <p>(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.</p>
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**Table 7 Nouveau Code Pénal (France)**

Year	Document Title	Institution/ Actor	Definition
1996	Nouveau Code Pénal	France	<p><b>Article 421-1 of the <i>Nouveau Code Pénal</i> sets out that :</b></p> <p>The following acts constitute acts of terrorism, when they are “intentionally” in connection with a one-man or collective undertaking, aiming to seriously disturb the peace through intimidation or terror (Law 96-647 of 22 July 1996):</p> <ol style="list-style-type: none"> <li>1. Any deliberate attacks on the life or integrity of a person, kidnapping and illegal confinement, the hijacking of aircraft, ships or any other method of transport, defined in book II of the current code;</li> <li>2. Theft, extortion, destruction, damage and deterioration, as well as offences regarding information technology, defined in book II of the current code;</li> <li>3. Offences regarding combat groups and disbanded movements as defined in Articles 431-13 to 431-17, as well as offences defined in Articles 434-6 and 441-5 (Law 96-647 of 22 July 1996);</li> <li>4. The manufacture or possession of machines or devices designed to kill or to explode, defined in Article 3 of the law of 19 June 1871, repealing the decree of 4 September 1870 concerning the manufacture of weapons of war; the production, sale, import or export of explosive substances, defined in Article 6 of Law 70-575 of 3 July 1970, reforming laws regarding gunpowders and explosive substances; the purchase, possession, transportation or illegitimate carrying of explosive substances or devices made with the help of those substances, defined in Article 38 of the decree-law of 18 April 1939 determining the regime with regard to materials of war, weapons and munitions; the possession, carriage or transportation of weapons and munitions of the first and fourth categories, defined in Articles 24, 28, 31 and 32 of the decree-law of 18 April 1939 (Law 96-647 of 22 July 1996); the offences defined in Articles 1 and 4 of Law 72-467 of 9 June 1972 prohibiting the perfecting, manufacturing, possession, storage, purchase and transfer of biological weapons or weapons based on toxins; and the offences foreseen by Articles 58 to 63 of Law 98-467 of 17 June 1998 relating to the application of the Convention of 13 January 1993 on the prohibition of the perfecting, manufacture, storing and use of chemical weapons and on their destruction (Law 98-467 of 17 June 1998);</li> <li>5. The receipt of the product of any of the offences listed in points 1 to 4 (Law 96-647 of 22 July 1996).</li> </ol>

**Table 8 Código Penal (Spain)**

Year	Document Title	Institution/ Actor	Definition
1995	Código Penal (Official State Gazette No. 281 of 24 November 1995)	Spain	<b>Article 571 of the <i>Código Penal</i></b> defines terrorists as “those who belonging, acting in the service of or collaborating with armed groups, organizations or groups whose objective is to subvert the constitutional order or seriously alter public peace” commit the attacks described in Article 346 (attacks on buildings or transportation or communications infrastructure with the use of explosive devices) and Article 351 (arson causing risk of injury or death).

**Table 9 Council Common Position on the application of specific measures to combat terrorism**

Year	Document Title	Institution /Actor	Definition
2001	Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP)	Council of the European Union	<b>Article 1</b> 1. This Common Position applies in accordance with the provisions of the following Articles to persons, groups and entities involved in terrorist acts and listed in the Annex. 2. For the purposes of this Common Position, “persons, groups and entities involved in terrorist acts” shall mean: <ul style="list-style-type: none"> <li>– persons who commit, or attempt to commit, terrorist acts or who participate in, or facilitate, the commission of terrorist acts,</li> <li>– groups and entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or under the direction of, such persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and</li> </ul>

			<p>associated persons, groups or entities.</p> <p>3. For the purposes of this Common Position, "terrorist act" shall mean one of the following intentional acts, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:</p> <ul style="list-style-type: none"> <li>(i) seriously intimidating a population, or</li> <li>(ii) unduly compelling a Government or an international organisation to perform or abstain from performing any act, or</li> <li>(iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation: <ul style="list-style-type: none"> <li>(a) attacks upon a person's life which may cause death;</li> <li>(b) attacks upon the physical integrity of a person;</li> <li>(c) kidnapping or hostage taking;</li> <li>(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;</li> <li>(e) seizure of aircraft, ships or other means of public or goods transport;</li> <li>(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;</li> <li>(g) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;</li> <li>(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;</li> <li>(i) threatening to commit any of the acts listed under (a) to (h);</li> <li>(j) directing a terrorist group;</li> <li>(k) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.</li> </ul> </li> </ul>
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**Table 10 EC Council Regulation 2580/2001**

<b>Year</b>	<b>Document Title</b>	<b>Institution /Actor</b>	<b>Definition</b>
2001	EC Council Regulation 2580/2001 of 27 December 2001 (L 344/70 Official Journal of the European Communities )	European Council	Article 1, par. 4 For the purposes of this Regulation, the definition of "terrorist act" shall be the one contained in Article 1 (3) of Common Position 2001/931/CFSP.

**Table 11 International Convention for the Suppression of the Financing of Terrorism**

<b>Year</b>	<b>Document Title</b>	<b>Institution /Actor</b>	<b>Definition</b>
1999	International Convention for the Suppression of the Financing of Terrorism, adopted 9 December 1999 (A/RES/54/109)	Multilateral Treaty	Article 2 1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:  (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed

			<p>conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.</p> <p>Article 14 None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.</p> <p>Article 21 Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.</p>
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**Table 12 United Nations Security Council Resolution 1566 (2004)**

<b>Year</b>	<b>Document Title</b>	<b>Institution /Actor</b>	<b>Definition</b>
2004	United Nations Security Council Resolution 1566 (2004), 8 October 2004	UN Security Council	Operative paragraph 3: " ...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties

			<p>consistent with their grave nature.”</p> <p>Preambulair paragraph:  Reminding States that they must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.</p>
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**Table 13 High Level Panel’s Report on Threats, Challenges and Change**

<b>Year</b>	<b>Document Title</b>	<b>Institution /Actor</b>	<b>Definition</b>
2004	High Level Panel’s Report on Threats, Challenges and Change, ‘A more secure world: Our shared responsibility’, 2 December 2004 (Doc. A/59/565)	UN Secretary General’s High Level Panel	<p>Par. 146:</p> <p>“ (a) Recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;</p> <p>(b) Restatement that acts under the 12 preceding anti -terrorism conventions are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;</p> <p>(c) Reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004);</p> <p>(d) Description of terrorism as “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act”.</p>

**Table 14 Draft Comprehensive Convention on Combating Terrorism**

<b>Year</b>	<b>Document Title</b>	<b>Institution/ Actor</b>	<b>Definition</b>
First proposal in 1996	<i>Draft Comprehensive Convention on Combating Terrorism (Document A/C.6/55/L.2)</i>	United Nations Sixth Committee	<p>Article 2 (1) Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, does an act intended to cause:</p> <p>(a) Death or serious bodily injury to any person; or (b) Serious damage to a State or government facility, a public transportation system, communication system or infrastructure facility with the intent to cause extensive destruction of such a place, facility or system, or where such destruction results or is likely to result in major economic loss;</p> <p>when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.</p> <p>Article 3 of the draft Convention states that the Convention is not applicable when an offence is committed within a single state, and when the offender is a national of that state and is present in the territory of that state.</p>

**Table 15 Convention of the OIC on Combating International Terrorism**

<b>Year</b>	<b>Document Title</b>	<b>Institution/ Actor</b>	<b>Definition</b>
1999	Convention of the OIC on Combating International Terrorism, adopted on 1 July 1999	Organisation of the Islamic Conference	<p>Article 1 (2): " [T]errorism means any act of violence or threat thereof notwithstanding its motives or intentions, perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty or independent States.</p>

			<p>Terrorist crime means any crime executed, started or participated in to realize a terrorist objective in any of the contracting States or against its nations, assets or interests of foreign facilities and national residing in its territory punishable by its internal law.</p> <p>Article 2 (a): Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.</p>
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**Table 16 Legal elements in European and other international definitions**

<b>Document title</b>	<b>Mens Rea</b>	<b>Purpose</b>	<b>Qualification of the act</b>	<b>Target</b>	<b>Perpetrator</b>	<b>Scope</b>
Council Framework Decision on Combating Terrorism	Article 1 refers to the 'intentional' character of the acts	Article 1 refers to the aims of the acts, namely: seriously intimidating a population, compelling a government of international organisation, destabilizing or destroying the fundamental political, constitutional, economic or social structures.  However, no mention is made	Article 1 refers to the fact that the acts should be offences under national law; they can be causing death or be attacks on the physical integrity of a person, and can cause serious material destruction; and article 1 also lists several specific outings of terrorist acts. Special mention is made of the threat of	No specific mention is made of a delimited target group such as civil population or non-combatants. . Article 1 refers to acts against persons, Government or public facilities.	Although no specific perpetrators are appointed, a definition is given of a 'terrorist group' in article 2.	A non-binding declaration distinguishes acts of terrorism from political protests and the peaceful exercise of the right to self-determination.

		of the motivation behind the acts.	committing these acts  Article 2 adds that also directing a terrorist group, as well as participating in, or funding is also considered to be a terrorist offence.			
Council Common Position on the application of specific measures to combat terrorism	Article 1 (3) refers to the intentional character of the acts.	Article 1 (3) points to the aim of the acts, namely the intimidation of a population, compelling a Government or an international organisation, destabilising or destroying a political, constitutional, economic or social structure.  The motivation behind the acts is not mentioned.	Article 1 (3) demands that acts should be offences under national law. Moreover, reference is made to specific acts, such as attacks upon a person's life, attacks upon the physical integrity of a person, kidnapping and hostage taking, extensive destruction of a Government of public facility. Furthermore, threats are included as terrorist acts, as well as activities such as directing a terrorist group	No specific mention is made of a delimited target group such as civil population or non-combatants. Article 1 does mention however that individuals, as well as Government or public facilities could be the target.	Article 1 (1 and 2) refers to and defines persons, groups and entities as the perpetrators of terrorist acts.  Clearly, state entities are not included in these categories.	No exceptions are made to the scope.

			and participating in activities of a terrorist group.			
International Convention for the Suppression of the Financing of Terrorism	The intentional character of the act is emphasized in Article 2 by referring to the term 'wilfully' and the <i>intension</i> to cause death and serious bodily injury.	The purpose of the act should be to intimidate a population or to compel a government or an intentional organisation to do or to abstain from doing any act.  No mention is made of the further motivation behind the attacks.	The acts committed must be unlawful. The definition further refers to causing death and serious bodily injury	Targets can be civilians or non-combatants.	Any person can be the perpetrator.	Political offences are excluded from the scope of the definition. The lawful exercise of other rights, obligations and responsibilities of States are moreover not affected by the scope of the definition. This means that the rightful exercise of for example the right to self-determination is preserved.
UN Security Council Resolution 1566 (2004)	The intentional character is stressed.	The purpose of the act should be to <i>provoke</i> a state of terror in the general public or in a group of persons or particular persons or compel a government or an international organisation to do or to abstain from doing any act.	The acts are characterized as criminal. Furthermore acts that cause death or serious bodily injury, as well as taking of hostages fall under the scope of the definition.	The resolutions only mentions that criminal acts, <i>including against civilians</i> , fall under the scope of the definition. This suggests that also states or other organisations can be the target.	No mention is made of the perpetrators of the act.	Although no exclusion of the scope is included in the definition, the preambular paragraph does refer to the obligations under international law that should be adhered while combating terrorism. These rules include

		The resolution stresses that under no circumstances as consideration of a political, philosophical, ideological, racial, ethnic, religious or other similar nature can be justifiable.				human rights, and the for example the rightful exercise of the right to self-determination.
High Level Panel's Report on Threats, Challenges and Change	Acts should have an intention to cause the specified effects.	The purpose of the act should be to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any act.	Any action that causes death or serious bodily harm with the specified purposes falls under the scope of the definition.	The target group consist of civilians or non-combatants.	No perpetrators are specified.	Excepted from the scope of the definition is the use of force against civilians by states, since these crimes would fall under the scope of the Geneva Conventions and other instruments.
<i>Draft</i> Comprehensive Convention on Combating Terrorism	The intentional character of the act is stressed by reference to the words 'intentionally', 'intended', and the 'intent' to cause extensive destruction.	The purpose of the act should be, by its nature or context, to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.	The acts should be unlawful. Any means can be used to perpetrate the act. Death or serious bodily injury and serious damage to a State or public or governmental facility, a communication	The target group can be any person, the State or government facility.	Any person can be the perpetrator.	Excepted from the scope of the Convention are acts committed within a single state, or when the offender is a national of that state and is present in the territory of that state.

			system or infrastructure facility.			
Convention of the OIC on Combating International Terrorism	The intentional character of the act follows from the reference to the fact that a criminal plan is being carried out.	The motives or intentions of the perpetrators do not have any influence on the terrorist character of the acts when the aim is to terrorize people or threatening to harm them or imperil their lives, honour, freedoms, security or rights or expose the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty or independent States.	Acts of violence or threats that follow from a criminal plan.	No specific delimitations as to the target group are given. Reference is made however to people, governments, and international facilities.	No specifics are given in reference to the perpetrators.	Excepted from the scope of the definition is the struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination, as long as these acts are in accordance with the principles of international law.