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Rethinking Terrorist Designation amidst Emerging Issues on Accountability under International Criminal Law

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Abstract

In combating terrorism globally, affected States have adopted various mechanisms, including the use of proscription orders or terrorists designation, to curb terrorist activities and promote accountability under International Criminal Law. However, the persistent absence of a universally acceptable definition of terrorism continues to undermine these efforts. Consequently, while many countries and international institutions have designated certain organisations and individuals as terrorists, inconsistencies in recognition and enforcement persist across jurisdictions. A major concern arises when designated terrorist groups or individuals successfully seize and exercise control over state apparatus, as such situations often confer de facto legitimacy on them, thereby frustrating mechanisms of accountability and justice. This paper rethinks terrorists designation as a mechanism for combating terrorism amidst these emerging challenges to accountability under international law. Using a doctrinal methodology, it finds that the lack of a universal definition of terrorism has led to fragmented responses and selective treatment of terrorist actors. It further observes that validation of terrorist entities following their takeover of state power entrenches impunity and weakens international criminal accountability. The paper recommends cautious application of proscription orders, enhanced interstate cooperation, and collective denial of legitimacy or recognition to terrorist groups that usurp lawful governments.

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1. Introduction

Terrorism is one of the world's most challenging phenomenon that continues to wreck havoc in different countries, causing indiscriminate destruction of lives and property as well as threatening global security and world order.¹ Many countries of the world including, Nigeria, Chad, Somalia, US, France, Israel, Afghanistan, Syria, Iraq, India, Yemen and Lebanon have been grappling with terrorism. These countries have responded to it using different mechanism including the legislative, judicial, military, political and socio-economic and diplomatic mechanisms.² The designation/ proscription order is an example of the legislative mechanism used by many of these countries and organisations in combating terrorism.³ It has been shown to be one of the most important tools of counterterrorism in the world.⁴ With this mechanism, many individuals or groups have been designated as terrorists and proscribed as such by various governments and organisations.⁵ Groups such as, Hamas, ISIS, al-Shabaab, al-Qaeda, Indian Mujahedeen (IM), Boko Haram, Islamic Movement of Nigeria (IMN), Islamic State of West Africa Province (ISWAP)

¹ Shreya Goswami and Kriti Bhatia, 'International Terrorism: The Conceptual Dimension' (2020) *The Journal of International Issues* (24) (3) 110.

² Seth Loertscher and others, 'Terrorists List: An Examination of the U.S Government's Counter terrorism Designation Efforts' (2020) *Combating Terrorism Center* 70. Also available at www.ctc.usma.edu

³ See for instance the Antiterrorism and Effective Death Penalty Act of 1996, which gives the US Secretary of State authority to designate foreign terrorist organizations whose terrorist activity threatens the security of United States nationals or the national defense, foreign relations or economic interests of the United States. Pub. L. 104-132, § 302, 110 Stat. 1214, 1248; Section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189).

⁴ Keenan, Patrick J. 'The Changing Face of Terrorism and the Designation of Foreign Terrorist Organizations' (2020) *Indiana Law Journal* (95) (3) (4) 791.

⁵ Hyeran Jo, Brian J. Phillips and Joshua Alley, 'Can Blacklisting Reduce Terrorist Attacks? The Case of the US Foreign Terrorist Organization (FTO) List from Part III - Beyond and Within State. (Judith G. Kelley and Beth A. Simmons edn. Cambridge University Press, 2020).

and Hezbollah as well as particular individuals associated with them have been designated as terrorists.⁶

Terrorist designation mechanism has been used in combating terrorism, notwithstanding the continuous absence of a universally acceptable definition of terrorism. Accordingly, many countries of the world and international institutions have designated certain organisations and individuals as terrorists in order to, amongst others, curtail their activities and ensure accountability. Sadly, many designated organisations or individuals that have taken over the instrument of force of the State, through their terrorist acts, have remain in power in those States and such governance has been validated or legitimised by other countries of the world including the world community. Humanitarian assistance has also been given to these states while people and countries are undertaking unhindered political and economic transactions with them. Example of such states include Afghanistan and Syria.⁷ In Afghanistan, the Talibans were designated as terrorist organisations by United States of America (US), Russia, New Zealand and other countries of the world as well as international organisations such as the United Nation (UN).⁸ Sadly, when they took over the control of instrument of force of the state and govern Afghanistan, their governance became validated, with co-operations and collaborations with other countries including Pakistan and Russia, while they govern Afghanistan till date.⁹ Also, in Syria, Hayat Tahrir al-Sham (HTS), a terrorist organisation designated as such by the US in 2018, formerly known as Jabhat al-Nusra or the al-Nusra Front, which was al-Qaeda's official wing in Syria until breaking ties in 2016, fought and obtain

⁶ US Department of States, Foreign Terrorists Organisations, Bureau of Counterterrorism < <https://www.state.gov/foreign-terrorist-organizations> > accessed 20 October 2025.

⁷ US Department of the Treasury, Office of Foreign Asset Control, 'Do U.S. sanctions on the Taliban and the Haqqani Network prohibit the provision of humanitarian assistance to Afghanistan?'

⁸ See List of US Specially Designated Global Terrorist (SDGT) under Order 13224; Terrorism Suppression Act 2002 of New Zealand; United Nation Security Council Resolution (UNSCR) 1267/1989/2253 and 1988.

⁹ The ministry of Foreign Affairs of the Russian Federation, 'Press release on suspending the terrorist status of the Taliban movement', 17 April 2025 < https://mid.ru/en/foreign_policy/news/2009744/ > accessed 20 October, 2025.

a transition from a terrorist organisation to a governing body.¹⁰ This occurs after the organisation, headed by its leader Ahmed al-Sharaa, led a coalition that successfully ousted the Syrian government of President Bashar al-Assad on 8 December 2024.¹¹ This organisation has now received international recognition and cooperation from the UN, US, Saudi Arabia, Qatar, Lebanon, United Arab Emirate, Turkiye and other countries some of whom have sent delegations to Syria, opened consulates in Damascus and reinstated diplomatic missions to Syria.¹² The leader of this organisation who is now the President of Syria attended the 80th UN General Assembly meeting held in New York, US in September 2025 and addressed the world community.¹³ Thus when an organisation designated as a terrorist group overthrows a nation's government and assumes control, it presents a challenge to the international community as a consequent of legitimisation of such regime by the international community and other countries of the world. This constitutes serious emerging issues under international criminal law bothering on accountability and calls for concerns on rethinking the use of proscription orders in dealing with terrorism.

This paper analyses the validity given to designated terrorists organisations or individuals after they have successfully taken over control of state apparatus through their acts of terrorism, which frustrates their accountability. The paper is divided into five parts. Part one is the

¹⁰ Vision of Humanity, 'What happens next when a terrorist group overthrows a government'? February 11, 2025 < <https://www.visionofhumanity.org/what-happens-next-when-a-terrorist-group-overthrows-a-government> > accessed 29 June, 2025; Maziar Motamedi, 'Syrian President al-Sharaa sits down with US general who arrested him' <<https://www.aljazeera.com/news/2025/9/23/syrian-president-al-sharaa-sits-down-with-us-general-who-arrested-him>> accessed 28 September, 2025.

¹¹ Sinem Adar and others, 'The Political Transition in Syria: Regional and International Interests' Stiftung Wissenschaft und Politik Publikationen <<https://www.swp-berlin.org/publikation/the-political-transition-in-syria-regional-and-international-interests>> accessed 28 September 2025.

¹² Sam Heller, 'Why Amed al-Sharaa's U.N Debut Matters' Time (Beirut, 23 September 2025) < <https://time.com/7319571/syria-sharaa-united-nations/>> accessed 23 October 2025.

¹³ Faisal Ali, 'President al-Sharaa is first Syrian leader to visit UNGA in six decades' <<https://www.aljazeera.com/news/2025/9/22/president-al-sharaa-is-first-syrian-leader-to-visit-unga-in-six-decades>> accessed 28 September, 2025.

introduction and part two concerns itself with understanding terrorism. Part three undertakes an analysis of terrorist designation as a mechanism for combating terrorism and its implications on designated terrorist organisations. Part four deals with the emerging issues of concern on terrorist designation and accountability when a designated terrorist organisation takes over the control of government of a state through acts of terrorism while part five is the conclusion and recommendation.

2. Perspectives on the Definition of Terrorism

In spite of a long historical origin of terrorism, which is traceable to the Romans Sacarii men in the 12th century, what constitutes terrorism today, still remains contestable.¹⁴ This is so because, as shown elsewhere, the old adage 'One man's terrorist is another man's freedom fighter' is very much alive and well till today.¹⁵ The word, 'terrorism,' has been shown to come from the word 'terror', which is shown by Habibu Rahman to have been derived from the Latin word '*terrere*,' which means 'to frighten'.¹⁶ It is a complex term with a long history and has been revealed as having different meanings, depending on the context and the user.¹⁷ Consequently, there has been proliferation of what terrorism means. Thus, many scholars, organisations as well as states have engaged themselves in providing a definition of what constitutes terrorism.¹⁸ B. Ganer, defines terrorism as the use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct.¹⁹ Brigitte Nacos, defines it as a political violence or the threat of violence by groups or individuals who deliberately

¹⁴ Keenan, Patrick J. (2020) 'The Changing Face of Terrorism and the Designation of Foreign Terrorist

Organizations," (2020) 95 (3) (4) Indiana Law Journal, 817.

¹⁵ Michael Hanson, 'The Crime of Terrorism in Nigeria: Questioning the Constitutionality of Amnesty for Boko Haram Terrorists' (2015) *Juris in Sight. Journal of the Department of Jurisprudence & International Law, Faculty of Law University of Uyo* (2) 109.

¹⁶ H ur. Rahman, 'Rising Trends of Terrorism: Causes, Dynamics and Remedies' (2009 *The Dialogue*) (4)(3) 410.

¹⁷ M. K. Afridi, 'Military Operation as a Response to Terrorism: A Case Study of Malakand Division Pakistan' (2014) *Mediterranean Journal of Social Sciences* (5) 2002.

¹⁸ A Schmid and A Jongman, 'Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature' (1988) *N.J. Transaction* 1-38.

¹⁹ B Garner, *Black's Law Dictionary*, (9th edn. St. Paul, MN; West) 1611.

target civilians or non-combatants in order to influence the behaviour and actions of targeted publics and governments. Bruce Hoffman, holds the position that terrorism is an act of violence for the achievement of political interests, which has sweeping psychological implications and is committed mostly by non-state entities as well as revolutionary groups.²⁰ Boaz Ganor defines terrorism as the intentional use of, or threat to use, violence against civilians or against civilian targets, in order to attain political aims.²¹ To A. A. Akani, terrorism is a deliberate and systematic use of violence designed to destroy, kill, maim and intimidate the innocent, in order to achieve a goal or draw national/international attention to demands, which ordinarily may be impossible or difficult to achieve under normal political negotiation.²² O'Neil, defines terrorism as the use of violence by non-state actors against civilians in orders to achieve a political goal.²³ According to Manzoor, terrorism is the methodical and systematic use of terror, particularly as a means of compulsion or force.²⁴

Apart from individual scholars, states and international institutions have also provided wide-ranging definitions of terrorism. According to the United State Department of Defence, terrorism is defined as the calculated use of unlawful violence or threat of violence to inculcate fear; intended to coerce or to intimidate government or societies in the pursuit of goals that are political, religious, or ideological.²⁵ Also in Title 22 of the United States Code, terrorism is defined to mean premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.²⁶ Similarly, Title 18 of the United States Code has

²⁰ B Hoffman, 'The logic of suicide terrorism' (2003) *The Atlantic Monthly* (291) (5)1-10.

²¹ B Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' (2002) *Police Practice and Research* (3) (4) 294.

²² A Akanni, 'History of Terrorism, Youth Psychology and Unemployment in Nigeria' (2014) *The Journal of Pan African Studies* (7) (3) 66.

²³ P. H. O'Neil, *Essentials of Comparative Politics*, (New York: W. W. Norton & Company, 2007).

²⁴ M. K. Afridi (n 17).

²⁵ U.S. Department of Defence, *Terrorism: Defining "Terrorism"* (2015, September 03) < <http://www.jewishvirtuallibrary.org/jsource/Terrorism/terrordef.html> > accessed 15 August 2018. For more on the definition of terrorism see A. P. Schmid and A. J. Jongman (n 18)1-38.

²⁶ 22 U.S.C. § 2656f.

also provided a definition for international terrorism.²⁷ These definitions of terrorism in US as well as others, do not represent the definition in Britain and Russia because of the variations associated with it.²⁸ Similar situation is obtainable with regards to the definition within existing legal regimes of international organisations. Thus the UNSCR 1566 (2004), defines terrorism as 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. The European Union defines terrorism for legal/official purposes as follows: Terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which: given their nature or context, may seriously damage a country or an international organisation where committed with the aim of: seriously intimidating a population; or unduly compelling a government or international organisation to perform or abstain from performing any act; or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.²⁹ The UN General Assembly Resolution 49/60, adopted on December 9, 1994 and titled 'Measures to Eliminate International Terrorism,' defines terrorism as criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes, which are in any circumstance unjustifiable, whatever the considerations of a political,

²⁷ 18 U.S.C. § 2331(1).

²⁸ U. S. Department of Defence Terrorism, Defining "Terrorism" <<http://www.jewishvirtuallibrary.org/jsource/Terrorism/terrordef.html>> assessed 10th March, 2016); British Prevention of Terrorism Act (BPTA) 2000 s 20; See Federal Law No. 36-FZ 2006 < <https://english.garant.ru/2006/03/13/>> accessed 19 December 2017.

²⁹ UNSCR 15566 of 2004 < <https://www.refworld.org/legal/resolution/unsc/2004/en/35952>> accessed 31st August, 2025; Art. 1 of the Framework Decision on Combating Terrorism (2002).

philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.³⁰

The above disparity in the definition of terrorism shows that in the world community there is no universally acceptable legally binding criminal law definition of terrorism. However, in general, specific acts have been identified as constituting terrorism when committed by non-state actors with particular intent and/or purposes. These acts are those violent and brutal acts which are proposed to create fear or terror, for a religious, political, economic, social or, ideological objective, and deliberately target or ignore the safety of non-combatants.³¹ This has influenced the world community in working out treaties on specific acts constituting terrorism to enable state parties corporate in dealing with terrorism wherever perpetrators are found. Some of these treaties, which have been adopted, signed, ratified and re-enacted into domestic laws by some States include: 1963 Convention on Offenses and Certain Other Acts Committed On Board Aircraft; 1970 Convention for the Suppression of Unlawful Seizure of Aircraft; 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; 1979 Convention on the Physical Protection of Nuclear Material; 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; 1991 Convention on the Marking of Plastic Explosives for the Purpose of Identification; 1997 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention for the Suppression of the Financing of Terrorism and; 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

In spite of clear identification of acts constituting terrorism in these treaties together with obligations of states to ensure the prosecution of perpetrators of terrorism, the identification has not still cured the problem of what constitutes terrorism, which is universally acceptable for use in dealing with terrorism. Thus, whereas people who disagree with the course

³⁰ UN General Assembly Resolution 49/60
<https://www.refworld.org/legal/resolution/unga/2006/en/69545> accessed 31st August 2025.

³¹ M Hanson, 'An Examination of the Security Sector Response to Combating Terrorism in Nigeria' (2019) *Uyo Bar Journal* (6) 17-31.

of those who commit political violence against civilians or non-combatants with identified acts, condemn them as terrorists, those who share or sympathise with the grievances of the perpetrators with same acts condemned by others, consider them as freedom fighters, militants, revolutionaries, rebels, warriors, and the likes.³² This is why in some countries they are considered terrorists while in others they are freedom fighter'.³³ Accordingly, many individuals and states who are sympathetic towards their course or interested in such course for political, religious or economic gains provide them with support having not consider them as terrorists. The idea also emboldens many individuals and groups to go under the guise of self-determination agitation to carry out acts of violence involving wanton destruction of lives and property including kidnappings, hostage taking and certain other crimes against humanity. With these supports, they remain in incessant perpetration of terrorism until they bring down the government, take over the control of such state and secure validation of their governance thereafter. It is this situation that frustrates international efforts in combating terrorism till today.

3. Terrorists Designation and the Implications

The Global War on Terror has witnessed an increasing use of designation of terrorist organisations, as well as militants, rebel movements and non-state armed groups as a viable mechanism for combating terrorism. Terrorist designation has been shown to consist in the act of listing an armed group as a designated terrorist organisation.³⁴ Designation is not limited to armed groups but individuals, organisations and institutions who are associated with the acts of such groups by way of taking part in their activities or providing support of any kind to such groups. It involves the identification of an organisation, which is involved in or associated with terrorism and the labeling or designation or listing of such organisation as a terrorist organisation with attendant

³² B Nacos, *Terrorism and Counterterrorism* (4th ed., Pearson Education, London, Inc: 2012)11.

³³ W Laqueur, *The Age of Terrorism* (Little, Brown and Company: 1987) 302. See also B. Ganor (n 21) 287.

³⁴ S. Haspeslagh, "Listing terrorists": The impact of proscription on third-party efforts to engage armed groups in peace processes – A practitioner's perspective' (2013) *Critical Studies on Terrorism* (6) (1)189.

consequences.³⁵ It has been shown that the process of designation of an organisation as a terrorist organisation varies from country to country.³⁶ And that such designation has implications. These implications constitute the legal consequences of designation and have huge applicability.³⁷ Thus, once an organisation is designated as terrorist organisation, the implications are enormous.

The first implication of terrorist designation is that it operates to criminalise the existence of the organisation, membership, activities as well as other persons, groups or institutions dealing with it. It makes it a criminal offence for anybody to belong, or profess to belong, to the proscribed organisation; solicit, invite or render support for the organisation; harbour or hinder the arrest of the members; provide training or instruction to the organisation; conceal information about acts of terrorism of the organisation; incite or promote membership into such organisation or solicits property for the benefit of the organisation; provide devices to them; recruit persons to be members or take part in their activities; and to finance them.³⁸ Thus once designated, the operation of such organisation or individual is completely proscribed by law with accompanying punishment. In view of this, International Organisations and states have been identified to have developed lists of proscribed organisations that are designated as 'Foreign Terrorist Organisations' and deals with them accordingly.³⁹ It is in this list that are usually found names of persons and organisations designated as terrorists. Some of such named individuals and leaders of such organisations are sometimes declared wanted and ransom placed on their head for their arrest. This was the case with many terrorists and leaders of designated terrorist organisations such as Ahmed al- Sharaa, the current President of Syria, who was the leader of the Hayat Tahrir al-Sham (HTS), a terrorist group designated as such by the

³⁵ Michael D. Hanson, 'Examining the Effectiveness of the Use of Proscription Orders in Combating Terrorism in Nigeria' (2020) *African Journal for the Prevention and Combating of Terrorism* (10) (2) 121-134.

³⁶ For a brief comparative analysis of the designation process in the US, Britain and Nigeria, see Michael D. Hanson, *ibid.*

³⁷ Patrick J. Keenan 'The Changing Face of Terrorism and the Designation of Foreign Terrorist Organizations' (2020) *Indiana Law Journal* (95) (3) (4) 807, where he identified three principal consequences of designation of terrorist organisations.

³⁸ See for instance, the Nigerian Terrorism (Prevention and Prohibition) Act, 2022.

³⁹ S. Haspeslagh (n 34).

US, who was declared wanted by the US government with a ransom of \$10m on his head, which has now been dropped.⁴⁰

Secondly, terrorist designation makes it possible for the identification and prosecution of individual members of the organisation who continue with the activities of the group after designation as well as those who provide material support to such designated organisation.⁴¹ The hallmark of international criminal law is to ensure accountability for perpetrators of international crimes. This is usually achieved where such perpetrators as well as those providing support for them are arrested, prosecuted, convicted and punished. As long as people, organisations and institutions are not allowed to continue doing business with terrorist groups, such groups would not be able to continue to perpetrate terrorism without the requisite resources. This has remained one of the cornerstones of counterterrorism policies of many countries, particularly the US, which has been shown to be - to deny terrorists the resources they need to plan and carry out attacks.⁴² Thus, prosecution for material support for terrorism has been shown to become one of the US government's most potent mechanism in its counterterrorism strategy.⁴³ Thus using the material support statute, prosecutors may charge any individual, group and institution with providing support for terrorism for virtually any assistance to a designated terrorist organisation. Accordingly, individuals who translate documents, engage in social media campaigns, or otherwise help any designated terrorist organisation are therefore open to prosecution.⁴⁴ However, for any person to be held guilty of providing material support to a terrorist organisation, it must be shown that such

⁴⁰ Aref Tammawi, US drops \$10m reward for arrest of Syria's new leader after Damascus talks' Aljazeera <<https://www.aljazeera.com/news/2024/12/20/us-officials-on-first-diplomatic-trip-to-syria-since-al-assads-removal>> accessed 25 November, 2025.

⁴¹ Patrick J. Keenan (n 37).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ See, e.g., United States. v. Mehanna, 735 F.3d 32, 47-49 (1st Cir. 2013) (describing defendant's role in translating materials and posting the translations online); Matt Zapotosky, Northern Virginia Teen Sentenced to 11 Years for Aiding Islamic State, WASH. POST (Aug. 30, 2015), https://www.washingtonpost.com/local/crime/a-sophisticated-terrorist-supporter-or-atrouted-teen/2015/08/27/9138cb6e-4c1e-11e5-bfb9-9736d04fc8e4_story.html

person had the knowledge that the organisation is a designated terrorist organisation.⁴⁵ This also, is what makes terrorist designation significant.

The third implication of terrorist designation is that the government would freeze such organisation's assets and its financial transactions from the time of such designation. This action operates to frustrate, if not halt, transactions hitherto undertaken without hitches and makes it illegal for anyone to continue to undertake any further transactions with the designated organisation or help them in doing so. In the US, upon such designation, the Secretary of the Treasury may freeze the designated organisation's assets and block its financial transactions.⁴⁶ Such measure has been shown to essentially close the US financial system to the designated organisation and makes it illegal for individuals to conduct transactions with the organisation. Thus once an organisation is designated as a terrorist organisation, all rights and benefits hitherto accruable to it or to others doing business with it become barred from the time of such proscription.

The fourth implication of designation is that the leaders of designated organisation as well as individuals associated with such organisations face travel bans and other restrictions within and outside their states.⁴⁷ Thus designation operates to prevent members of such organisation from travelling across national and international borders. This is so because such travel ban operates to confine affected individuals to a particular geographical limits where their arrest could be easy and also opens the floodgate to extradition or prosecution of such individuals in cases where they are found outside the country where the offence was committed.⁴⁸ This is more so when such individuals have been declared wanted for prosecution. Where such designation is made by the US, such persons are barred from entering the US and non-citizens face removal if they are in the United States.⁴⁹

⁴⁵ See for instance, 18 U.S.C. § 2339B (a)(1) (2012).

⁴⁶ See Department of the Treasury-Office of Foreign Assets Control, Sanctions Programs and Country Information, < <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> > accessed 23 July 2021.

⁴⁷ Patrick J. Keenan (n 37).

⁴⁸ Michael Hanson and Amanim Akpabio, 'Extradition and State Responsibilities on the Protection of Rights of Requested Persons' (2023) *International Journal of Research and Innovation in Social Science (IJRISS)* (7) (6) 356.

⁴⁹ Patrick J. Keenan (n 37).

Finally, designation of a terrorist organisation communicate government's political stance of condemnation of the activities of such organisation to other countries of the world. It is such action of government that strengthens global efforts to annihilate common threats presented by the designated organisations by activating the laws of the country in that regard against them. It also operates to activate policing powers, which targets the proscribed organisations, active sympathisers, sponsors and supporters; and to augment government's diplomatic relationship with other states of the world.⁵⁰

4. Emerging Issues on Terrorists' Accountability and the Concerns

Terrorist organisations' designation has been shown to have numerous implications, one of which is to criminalised their activities, membership, subjects them to condemnation and expose them to be arrested, prosecuted and punished in accordance with the law, wherever they are found. These highlight the essence of accountability, which is the hallmark of international criminal law. There is however serious concerns when a particular organisation is designated as a terrorist organisation by one country yet the same organisation is not considered by other countries or institutions as a terrorist organisation. This stems from the absence of a universally acceptable definition of terrorism, which opens the floodgate to variations of what constitutes terrorism in one country as it is considered differently in another country. This makes the implications of the designation ineffective in achieving the purpose of such designation. For instance, in countries where such organisations are not considered as terrorist organisation, they are not criminalised, the presence of their members, movement and financial transactions are not restricted, supporters and financiers not disturbed and they are not arrested, extradited or prosecuted in accordance with the law. This is contrary to existing international legal regimes on terrorism which have robust provisions on accountability of perpetrators of terrorism. These legal regimes condemn terrorism and places obligations on states to arrest, extradite or prosecute and punish terrorists where ever they are found and to freeze their funds. For instance, the 1999 International Convention for

⁵⁰ L. Jarvis and T. Legrand. "The proscription or listing of terrorist organisations: understanding, assessment, and international comparisons (2018) *Terrorism and Political Violence* (30) (2) 204.

the Suppression of the Financing of Terrorism commits states to hold those who finance terrorism criminally, civilly or administratively liable for such acts and to identify, freeze and seize funds allocated for terrorist activities.⁵¹ Also, in the 1979 International Convention against the Taking of Hostages, member states agreed to prohibit and punish hostage-taking.⁵² The 1997 International Convention for the Suppression of Terrorists Bombings detects the prosecution of terrorists by relevant authorities. Article 33 of Geneva Convention (GC) IV provides that all measures of intimidation or of terrorism are prohibited. The 1977 Additional Protocols both explicitly prohibit terrorism. In the conduct of hostilities, the provision in Article 51(2) of Additional Protocol I (AP I) and Article 13(2) of Additional Protocol II (AP II) is identical. Here, acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Resolutions used by the UN, which insist that terrorists be punished, include Resolutions 1267 of 1999 and 1333 of 2000, used against Osama Bin Laden, Al-Qaeda and the Taliban, which affected Iran, Iraq and Afghanistan⁵³ and Resolutions 1368 and 1377 all of 2001.⁵⁴

Notably, in all existing conventions on terrorism, states are obliged to either prosecute an offender or send the individual to another state that requests their extradition for prosecution and punishment.⁵⁵ But the contrary has been the case because of the absent of a universal acceptable definition of terrorism. The case of Hamas is in point here. It is no news that Hamas has long been designated as a terrorists organisation by many countries including the US, UK, Australia, Canada, Japan, and New Zealand.⁵⁶ Accordingly, their officials are wanted and could be arrested, extradited and prosecuted for terrorism perpetrated by the organisation by any of these states. Sadly, countries such as Iran, Turkey, Lebanon and

⁵¹ (2178 U.N.T.S. 197)

⁵² T.I.A.S. No. 11081, 1316 U.N.T.S. 205.

⁵³ S/RES/1333/2000.

⁵⁴ S/RES/1368/ 2001.

⁵⁵ Michael D. Hanson, 'Ditching The Laws And Freeing Terrorists: An Unsafe Approach In Combating Terrorism in Nigeria' (2023) *African Journal for the Prevention and Combating of Terrorism* (13) (1)122.

⁵⁶ Maya Lester KC and Michael O'Kane, 'Hamas and PIJ sanction Regime', *Global Sanctions, Law, Practice and Guidance* < <https://globalsanctions.com/region/hamas-pij/>> accessed 10 July, 2025.

Qatar do not consider them as such.⁵⁷ Thus, Qatar has provided safe haven for the officials of Hamas for decades where they stay and enjoy a life of luxury and privilege while coordinating numerous acts of terrorism activities against Israel, such as the October 7, 2025 attack.⁵⁸ This explained why Israel conducted a strike in Qatar on 9th September 2025 to kill Hamas Officials.⁵⁹ Thus, this absent of a universally accepted definition of what constitutes terrorism has made a designated terrorist organisation in one country, a freedom fighter in another country, thereby frustrating meaningful efforts in combatting their acts of terrorism in the world. This is more so where such terrorist organisation takes over the government of the state and begins to use state powers, such as we have today in Afghanistan and Syria today.

The validity or legitimisation given to designated terrorists organisations or individuals after successful take-over of the government of the state, which keeps them in power constitutes an emerging issue of serious legal concern under international criminal law. When a terrorist organisation takes over a state, such event, usually leads to multiple crisis within the state, particularly human rights abuses. Internationally, such takeovers is usually expected to trigger diplomatic isolation, economic sanctions and none international cooperation or collaborations. This is so because such organisation having been designated a terrorist organisation before taking over government, remains clothed with the implications of such designation and should be treated accordingly. But the events in recent times such as the cases of the Taliban in Afghanistan and HTS in Syria, as shown earlier in this work, have presented themselves as 'new normal' in the world community in relation to how to combat terrorism when a terror group takes over the government of the state through their act of terrorism. Thus, instead of demanding for arrest, prosecution or extradition for prosecution and accountability as well as increased sanctions and isolation of such terrorist government, the world community is pushing for validation of the government, removal of ransom placed on the heads of the terrorists, delisting the terrorist organisation from the list

⁵⁷ Seth J. Frantzam, Thirty years of Hamas privilege ends in Doha – analysis. The Jerusalem Post< <https://www.jpost.com/middle-east/article-866913>> accessed 10 July, 2025

⁵⁸ Ibid.

⁵⁹ Ibid.

of Foreign Terrorists Organisation and accommodating such organisation within its fold.⁶⁰ In Syria, when the HTS took over government the leader Ahmed al-Sharaa sought international recognition from all states of the world and international organisations, many of whom have designated it as terrorist and demanded for his arrest and prosecution. Sadly, during his first few weeks in power, it has been shown that 'the new Syrian government' welcomed delegations from Jordan, Turkiye, Qatar, Saudi Arabia, France, Germany, United Kingdom, US, and EU.⁶¹ These countries immediately commenced diplomatic relations with his government. The US lifted sanctions hitherto placed on Syria to enable the terrorist government to function well.⁶² The ransom placed on the head of the terrorist leader, now, the President, was lifted by the US and his terrorist organisation delisted from the lists of Terrorists Organisation by Russia. His request for economic support to the UN met no resistance as he was warmly received and allowed to address the UN General Assembly with ease.⁶³ Also, some of these countries, including Turkiye, Egypt, Saudi Arabia, Jordan, Lebanon as well as some EU Member States, the Arab League, UN bodies, human rights and humanitarian organisations called for the lifting of sanctions on Syria in order to support the country's economic recovery and facilitate the delivery of humanitarian aid and the return of refugees.⁶⁴ Sadly too, their

⁶⁰ Aref Tammawi, 'US drops \$10m reward for arrest of Syria's new leader after Damascus talks' Aljazeera <<https://www.aljazeera.com/news/2024/12/20/us-officials-on-first-diplomatic-trip-to-syria-since-al-assads-removal>> accessed 25 November, 2025.

⁶¹ Carmen-Cristina Cirlig, 'Upheaval in Syria: The Emerging Order Post-Assad' (2025) European Parliamentary Research Service, 2.

⁶² Patricia Karam, 'Lifting of US Sanctions on Syria: A New Chapter for Damascus and Beirut?' July 18, 2025 < <https://arabcenterdc.org/resource/lifting-us-sanctions-on-syria-a-new-chapter-for-damascus-and-beirut/>>accessed 10 August, 2025.

⁶³ Joseph Stepansky and Alastair McCready, 'UN General Assembly updates: Syria's al-Sharaa urges end to all sanctions' (24 September 2025: Aljazeera News)< <https://www.aljazeera.com/news/liveblog/2025/9/24/un-general-assembly-2025-live-zelenskyy-pezeshekian-al-sharaa-to-address>> accessed 28 September 2025.

⁶⁴ IOM UN Immigration, 'IOM Welcomes EU and US Decision to Lift Sanctions on Syria' 27 May 2025 < <https://www.iom.int/news/iom-welcomes-eu-and-us-decisions-lift-sanctions-syria>>accessed 20 July 2025; Khaled Yacoub Oweis, 'Saudi Arabia calls for lifting of sanctions on Syria in boost for post-Assad order' (MENA NEWS: 12 January, 2025)< <https://www.thenationalnews.com/news/mena/2025/01/12/arab-and-western-powers-discuss-syrias-future-post-assad-in-riyadh/>>accessed 10 July, 2025.

efforts to ease sanctions have been shown to be driven by economic and strategic reasons, as they hope to enhance their own investment in post-Assad Syria.⁶⁵ With these drive, the pursuit of accountability for acts of terrorism committed by the HTS terrorist organisation, led by Ahmed al-Sharaa who is now the President of Syria, is waived into oblivion.

Another concern, which calls for consideration is the question of accountability of terrorists who have seize state power and remain in control of the government of the state. The Rome Statute has clearly provided for crimes that are classified and proscribed as international crimes, which are the concerns of international criminal law, with International Criminal Court (ICC) having the complimentary jurisdiction to prosecute.⁶⁶ These crimes include the crime of genocide, crime against humanity, war crimes and the crime of aggression.⁶⁷ Terrorism is not specifically listed in this Statute as one of the international crimes. This is what usually opens the floodgate of arguments on whether terrorism is an international crime or not. Thus, it has been stated that the questions whether terrorism is recognised as an offence during armed conflict and whether it constitutes an offence in customary international law that may be criminally enforced against individuals remain unsettled.⁶⁸ Notwithstanding this position, there is no doubt that several acts, which constitutes terrorism and expressly prohibited and specifically listed in many national legislation, are also the acts expressly identified and listed in the Rome Statute as acts constituting war crimes or crimes against humanity.⁶⁹ Also, it has been shown that the list of war crimes for the putative jurisdiction of the International Criminal Tribunal for Rwanda (ICTR), drawn up by the UN Secretariat included 'acts of terrorism' in Article 4(d) of the [ICTR Statute](#), as well as threats to commit terrorism in Article 4(h).⁷⁰ It has similarly been shown that under the Special Court for Sierra Leone (SCSL), the authorities successfully prosecuted several

⁶⁵ Ibid, 8.

⁶⁶ Rome Statute, art. 5.

⁶⁷ Ibid, arts. 6, 7, 8 and 8 bis.

⁶⁸ Stuart Casey-Maslen, 'The Prosecution of Terrorism as a War Crime' (2025) Lieber Institute, West Point <https://lieber.westpoint.edu/prosecution-terrorism-war-crime/> accessed 13 October 2025.

⁶⁹ Michael D. Hanson, 'Accountability for War Crimes and the Question of Immunity Under International Criminal Law' (2025) AEFULJ (2) 54-56.

⁷⁰ Stuart Casey-Maslen, (n. 65).

accused for acts of terrorism because the [SCSL Statute](#), adopted in 2002 as an annex to an agreement between the UN and the Government of Sierra Leone, similarly provided the hybrid court with material jurisdiction over the war crimes of acts of terrorism and threats to commit terrorism, under Article 3(d) and Article 3(h) respectively.

Notably, designated terrorist organisations are non-state actors usually involved in a non-international armed conflict. The killing tactics usually adopted by these designated terrorist organisations during armed conflicts are without doubt accommodated by the Geneva Conventions of 1949 and its additional Protocols of 1977 together with other international legal instruments. These instruments limit parties in armed conflict to the means and methods employed in the prosecution of armed conflict and also place obligations on state parties to ensure that perpetrators are held accountable. Notably, Article 3 in all four Geneva Conventions prohibits the inhumane treatment of civilians and prohibits violence to life and persons, in particular murder of all, kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; sentencing and executions without judgment pronounced by a regularly constituted Court. It provides for universal jurisdiction for the trial of perpetrators of these crimes. All these crimes are usually the crimes committed by designated terrorist organisations. Under Articles 49 and 50 of Geneva Conventions I and II, Articles 129 and 146 of Geneva Conventions III and IV, and Additional Protocol I, Article 85, every state that is bound by the Conventions is legally obligated to enact laws, arrest, prosecute and punish those in its territory who are suspected of committing these crimes that are accommodated in the Conventions, regardless of the nationality of the suspect or victim, or the place where the act was allegedly committed. Such State is also required to extradite the suspect to another State or surrender to an international tribunal for trial if it fails to prosecute. Additionally, the crime of terrorism have also been expressly domesticated in the *corpus juris* of many countries of the world where punishment of perpetrators after prosecution remains the basis. Therefore, the failure or inability of the state in holding perpetrators accountable ought to ignite the complementary jurisdiction of ICC to do so as accommodated by law.⁷¹ Not doing so, has

⁷¹ Rome Statute, art. 17.

established the 'new normal' and this jettisons the rationale for designation of organisations as terrorists, which calls for a rethink in that regard.

5. Conclusion and Recommendations

Different mechanisms in combatting terrorism, including terrorist designation, has been shown to be adopted by many states affected by terrorism. In adopting this mechanism, terrorist organisations are listed and proscribed by many countries of the world, who are not in agreement over what constitutes terrorism. This absence of a universally acceptable definition of terrorism has made many countries and international institutions, which have designated certain organisations and individuals as terrorists in order to curtail their activities and ensure accountability, fail to achieve such aim. Thus, when such designated organisations or individuals take over the instrument of force of the State, their stay in power becomes validated while accountability becomes frustrated, in spite of existing implications of terrorist designation. Accordingly, the co-operation and collaboration of the world community and countries all over the world with a designated terrorist organisation that has usurp state powers have now constituted serious issues of concern, which frustrated accountability of the designated terrorist organisations. This therefore provides a rethinking of terrorist designation as a mechanism for combating terrorism amidst the emerging issues affecting accountability under International Criminal Law.

One of the problems identified in this work is that the absent of a universally acceptable definition of terrorism has caused some designated terrorist individuals or organisations not to be treated as terrorists by some countries of the world, which ultimately affects the war on terrorism. In order to deal with this problem, this work recommends that existing laws on terrorism in national states should be employed in dealing with terrorist designated organisations, its membership and dealings. Interstate cooperation should be strengthened to enable states ensure that designated terrorist organisations are treated as such through mutual legal assistance in prosecution or extradition where such state fails to prosecute. Also, it is time that the definition of what terrorism mean should no longer be allowed to operate as a barrier to the prosecution of perpetrators of terrorism by the ICC. This is so because there is no argument that specific acts committed by terrorists are those acts that are also accommodated in the Rome Statute as constituting war crimes and crimes against

humanity.⁷² As such, whenever national states genuinely fail or are unwilling to prosecute perpetrators of such acts, the international community should do so through the ICC in accordance with the principle of complementarity and state cooperation as accommodated in the Rome Statute.⁷³ Notwithstanding this, the absent of a universally acceptable definition of terrorism should not be ignored as it seriously affects the global fight against terrorism. Accordingly, it is time that great effort should be made by the world community in addressing this concern if global fight against terrorism must attain any success. While this is yet not done, there should be a restraint in designation of individuals and organisations as terrorists, particularly, where they are not involved in perpetration of terrorism and the designation is a mere decoration to stifle their demands.

The validity usually given to designated terrorists organisations or individuals after successful take-over of control of state apparatus helps keep them in power and frustrates accountability of the terrorists. It is recommended that there should be improved interstate as well as international cooperation and collaborations against designated terrorist organisations to deny them access to state power. Thus, once a designated organisation usurps state powers such organisation should be pressurized by the international community and countries world over to surrender such power to a legitimate government and not to validate such government. This could be done by severance of relationships with international community through sanctions, assets freezing, travel bans and continuous demand for arrest and prosecution of the members wherever they are found. Delisting of such designated terrorist organisations from FTO lists, lifting of existing sanctions and validation of the government of such organisation should not be an option. Total denial of cooperation and clampdown on such organisation and holding them accountable for terrorism and other identified crimes under international criminal law, where states fail or are unable to do so, would help deter other similar designated organisations from continuing to wage the war of terror targeted at usurping state power and remaining not accountable in that regard. The continuous validation of the government of such organisation is sending a wrong signal as 'the new normal' and this would

⁷² Ibid, art 7 and 8.

⁷³ Rome Statute, art 17.

encourage similar organisations instead of deterring them. This has been witnessed in the incident of Syria now that follows that of Afghanistan.