

FOR A NEW CONCEPT OF TERRORISM

POR UM NOVO CONCEITO DE TERRORISMO

POR UM NUEVO CONCEPTO DE TERRORISMO

POUR UN NOUVEAU CONCEPT DE TERRORISME

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RESUMO

Este artigo discute os conceitos de terrorismo e terrorista, relativizando a estratégia intelectual dos usos do termo no mundo ocidental. A teorização de “terrorista” é construída, em primeiro lugar, embora não exclusivamente, para aquele que sustenta guerras de agressão, usando armas de destruição de massa e massacres de forma inevitável, aterrorizando a população civil e devastando países inteiros.

Palavras-chave: terrorismo contemporâneo, terrorista, guerras humanitárias.

RESUMEN

Este artículo aborda los conceptos de terrorismo y terrorista, relativizando la estrategia intelectual de los usos del término en el mundo occidental. La teorización de “terrorista” se construye, en primer lugar, aunque no exclusivamente, para aquel que defiende guerras de agresión, usando armas de destrucción en masa y masacres de forma inevitable, aterrorizando a la población civil y devastando países enteros.

Palabras-clave: terrorismo contemporáneo, terrorista, guerras humanitarias.

ABSTRACT

This paper discusses the concepts of terrorism and terrorist to relativize the intellectual strategy of the uses of these terms in the Western world. The theorization of “terrorist” is first constructed, although not exclusively, by those who support aggression wars using mass destruction arms and massacres as an inevitable way, terrorizing civil populations and devastating whole countries.

Keywords: Contemporary terrorism, terrorist, humanitarian wars.

RÉSUMÉ

Cet article discute les concepts de terrorisme et de terroriste pour relativiser la stratégie intellectuelle des usages de ces termes dans le monde occidental. La théorisation du « terroriste » est d'abord construite, quoique pas exclusivement, par ceux qui mènent des guerres d'agression utilisant des armes de destruction en masse et des massacres de manière inévitable, terrorisant la population civile et dévastant des pays entiers.

Mots-clefs : terrorisme contemporain, terroriste, guerres humanitaires.

My intention is to propose here a notion of “terrorism” which goes beyond the stereotypes that are currently in use in the western world. The notion I propose should counter the intellectual strategy of those who apply the term “terrorist” just to the enemies of the western world. In my theoretical lexicon “terrorism” assumes a meaning that is under various aspects different and broader, as I will try to make clear later. I anticipate here that from my point of view “terrorist” is in the first place, although not solely, one who triggers wars of aggression using weapons of mass destruction and massacres in an inevitable way, hence consciously and often intentionally, terrorizing thousands of innocent people and devastating entire countries. In this sense contemporary terrorism, with its main traits, developed under the umbrella of humanitarian wars desired by the United States and by their allies starting from the Gulf War in 1991 and from the Balkan wars in Bosnia-Herzegovina and Serbia.

This terrorist strategy is reaching its apex due to the huge military operation “Strike of the Sword”, which is deploying 4,000 marines in the deep South-West of Afghanistan with the aim to annihilate the Taliban movement. The operation, which integrated the recent dispatch of more than 10,000 U.S. soldiers, was decided and accomplished with incredible promptness at the beginning of July 2009 by the new U.S. president, Barack Obama. His foreign policy line doesn't seem to have deviated from that of his predecessor, George Bush. Notwithstanding his new communicative style and the many expectations that his overtures towards Islam have aroused, it remains a fact that Barack Obama declares himself persuaded that the power of arms will restore peace in Afghanistan and in the whole Middle Eastern area. Perhaps it is more realistic to think that this is the path

which leads to new conflicts of wide proportions, destined to drag in the merging regional powers in the Asiatic world.

Islamic terrorism has ferociously and tragically replied to “humanitarian wars” with the nihilist and desperate weapon of suicidal and homicidal martyrdom, so that it is possible to maintain that today terrorism is in fact the new model of war. It is the heart of the “global war” which has been triggered by the western world and has provoked the reply of the Islamic militants. Moreover; eastern terrorism is one of the central causes of the spread of insecurity and fear within the western world, while a drift to frustration and solitude fosters an increasing demand for protection and individual security, with political consequences which are anything but positive.

Beginning from the final decade of the last century a process of normalization of the new wars consolidated in the West. Industry of collective death has been booming and is now more profitable than ever. Production and trafficking of assault weapons is completely out of the control of the so-called “international community”. The use of weapons depends more and more on the decisions which the superpowers take *ad libitum*, according to their strategic requirements. Collective death sentences are passed in a context of utmost impunity against thousands of people liable neither for criminal acts nor for moral guilt. In the market of death, the exchange rate of a human life is becoming more and more diversified between rich and civilized, therefore mostly western people, and poor and uncivilized people who live in the underground world.

In recent years slaughters hit mainly unarmed and defenceless civilians, as this is by now a characteristic of new wars, but have also extinguished the lives of thousands of youths in uniforms, engaged in defending their own country from foreign aggression. Those were “unequal” aggression wars, to use the expression proposed by Alessandro Colombo, in which the use of weapons of mass destruction of more and more sophistication and power have made the power of the aggressors overwhelming and left the targeted without hope for defence. Aggression implies terrorist devastation of life, goods and environment for entire countries, while aggressors have suffered a very limited number of victims, sometimes none. This happened in the space of twenty years in countries such as Iraq (1991), Serbia, Afghanistan, Iraq again (2003), Lebanon, the Palestinian Territories, just to mention the most relevant acts of aggression. During these wars, conducted in the name of universal values, no “humanitarian” restraint on warfare instruments was enforced. The opposite is true: “humanitarian wars” were useful, mainly for the United States, to test new weapons that are more sophisticated and devastating.

In all these cases, aggressors' terrorism was self justified – and in fact justified – in the name of global peace, of the fight against global terrorism and most of all of the fight for human rights. War has been exalted as the exploit of humanitarian benefactors engaged in protecting and promoting the fundamental rights of people worldwide. In reality, human rights defence - theoretically a remarkable achievement- was mystified and betrayed by homicidal violence.

The aggressors have acted with utmost impunity. This applies as well to aggressions, slaughters, and “targeted homicides” realised by the Israeli state against the Palestinian people, particularly against the Gaza population and the Hamas movement, blamed to be the cradle of global terrorism. In Palestine, aggressions and devastations have been supported by the United States, together with the political complicity of European countries. Despite the humanitarian recognition of the right of the Palestinians to an independent State, declared by the Road Map, the ethnocide of the Palestinians continues. A Palestinian state will never exist, because Palestine is by now an obvious Israeli colony. The same could be said about the aggressions of the Israeli state against Lebanon, especially for the war launched in summer 2006.

By "war of aggression" I mean here, in general terms, a military unilateral attack decided by a state (or an alliance of states) against the sovereignty, the territorial integrity or the political independence of another state or a nation which legitimately aspires to become a state. The use of military force not consented to by a formal decision of the Security Council, and not subject to its overriding control, sets up what the Nuremberg Tribunal defined and sanctioned as the “supreme international crime”. It is the crime against peace that superpowers have until now avoided to define in rigorous terms. Be it an international crime conducted by the states, or a crime to ascribe to individual citizens within the context of international criminal law, the notion of “aggression” is still *sub judice*. This is proved in definitive terms by the circumstance that the 120 states which in 1998 signed and ratified the Statute of the International Criminal Court, excluded the crime of aggression from the jurisdiction of the court, waiting to reach an agreement in the far future. This is a crime that has never been sanctioned anymore since the conclusion of the Nuremberg Trials.

As we shall see, something similar happened for the notion of “terrorism”, itself excluded from the Statute of the International Criminal Court. “Terrorism” is still a legally uncertain semanteme, in spite of the immense literature which tried to give a definition to it. At the same time the term is widely used on a political level, both to justify wars of aggression, and legitimize terror methods in the repression of Islamic militants:

Guantanamo *docet*. Furthermore, superpowers have succeeded in neutralising the notion of “aggression” through *ad hoc* interpretative rephrasing, based on a deliberate alteration of the notion of “defence” as provided for in Art.51 of the United Nations Charter. For the most part the concept of aggression has been contorted and converted into the opposite idea of a war conducted in defence of humanity against the threat of “*global terrorism*”.

On these empirical premises I intend to support, as mentioned before, the urgency to attribute to the term “terrorism” a semantic value rather different from the one attributed to it by the political and legal western literature, this with reference both to international relations and, as we shall see, to the domestic rules and judicial procedures of each country. Then, it is necessary for me to try to demonstrate the semantic inadequacy of the terms “terrorism” and “terrorist” when used in the prevalent western sense. And it is equally necessary for me to move towards an alternative which might take into account the point of views of cultures others than the western one, particularly the Islamic culture, and to show above all the substantive theoretical and political implications of the use of the term not merely in a non-conformist way, but also in a less confused and generic, hence less controversial way.

In my opinion these implications are what make the semantic issue related to the term “terrorism” a topical theoretical theme of dramatic political interest, not only a formal or linguistic one. By now it is possible to maintain that there is not, on a global scale, a concept more burdened with strategic significance, especially after the attack of September 11, 2001. A very concrete confirmation comes from the statements of the new United States President, Barack Obama, who has declared as central to his international ambitions the military defeat of the Taliban movement, operating in the Afghan-Pakistani area, a movement which he considers to be the cradle of “Islamic” terrorism hence of the most ferocious and dangerous enemy of the United States of America.

I believe that a different notion of terrorism may allow an investigation of the true “causes” of the spread -in the Islamic world too- of this grave phenomenon and perhaps show ways to try to defeat it without turning to the performance of thousands of marines. This is not about trying to minimize Islamic terrorism. September 11 cannot be forgotten but to defeat terrorism we should first investigate the “good reasons” that in the 1980’s were the generating core of suicidal terrorism in countries such as Lebanon and Palestine, then fomented its rapid proliferation in a large part of the Islamic world, including Afghanistan and Iraq, where suicidal terrorism was unknown before the western armies’ intervention at the beginning of the 2000s.

In the western political culture the idea took hold that “Islamic” terrorism represents the will to annihilate western civilization together with its fundamental principles: freedom, democracy, rule of law and the market economy. The figure of the suicidal terrorist that consolidated mainly in Palestine, would be the emblematic expression of irrationality, of fanaticism and terrorist nihilism. At the bottom of “Islamic” terrorism there would just lie *mujahidin’s* theological hatred for the West, spread in Qur’anic schools. These are controversial theses though, as it turns out from a rigorous analysis of the Qur’anic tradition and in general of the Arab-Islamic culture. These analyses have demonstrated that martyrdom in the form of suicidal attack, *istishhad*, does not belong to the Qur’anic tradition of *jihad*, or “legal war”. *Jihad* bans any sacrificial vocation and considers life as a value which does not have to be unnecessarily or imprudently exposed to risks. *Istishhad* is a very recent phenomenon, as is the drift of political-religious fundamentalism and the birth of “Islamist” movements.

The phenomenon is bound to *nakbah*, the Islamic world catastrophe, due to the Israeli conquest of Palestine and to the following Middle Eastern wars which have proven the power of the western world and the weakness of the Arab-Islamic one.

As ascertained by Robert Pape’s empirical research, terrorism is a phenomenon far less irrational than we think or we are persuaded to believe. The determining variable in the genesis of terrorism, in the first place the suicidal one, is not religious fundamentalism: it is in fact, in the majority of cases, a collective reaction to what is perceived as a state of military occupation of one’s own country. For “military occupation” it is meant not only and not solely the conquest of territory by the enemy troops, but the invasive presence and the ideological pressure of a foreign power which aims to radically transform the social, economic and political structures of the occupied country¹.

The western notion of terrorism, as circulating in universities, embassies, criminal courts, police stations, and western jails, including Guantanamo, is influenced by an anti-Islamic prejudice and as such it is blindly repeated by the majority of European jurists, judges and politicians. This standard notion has been more than once resumed and reformulated by Antonio Cassese, one of the most influential international law experts and amongst those most frequently employed as international judge by the United Nations. According to Antonio Cassese today a precise notion of “terrorism” is available in the context of international law and this notion could and should be universally accepted even if it has not been enacted in rigorous laws, which might provide –amongst the others– specific sanctions for the states as such or for criminally liable terrorists as individuals.

¹ See Pape, R. (2005). *Dying to Win: The Strategic Logic of Suicide Terrorism*, New York: Random House.

Cassese claims that the notion of “terrorism” encompasses three main factors, which according to him are shared by the “international community” as proven by laws passed by many western states besides a number of treaties and international resolutions. The defining factors are as follows:

1. Acts perpetrated must be criminally relevant for the majority of the national juridical systems (homicide, kidnapping, extortion, torture, etc.);
2. Criminal acts must be aimed to coerce a government, an international organization, or a private organization such as an international corporation. Coercion might take place through spreading panic in the general public, or through the use or threat of violent actions directed against a state or an international organization or a corporation (i.e. threatening to cause the explosion of a ministerial building, a national bank, an embassy, or kidnapping the head of government or the president of a corporation);
3. Criminal acts must be perpetrated for a political, religious or ideological reason, nor for profit or for private interests².

As a result it is possible to maintain that according to this standard notion, a terrorist organization can be described as such if inspired by ideological, religious or political ideologies, and if it is defined by indiscriminate use of violence against civilians with the aim to spread panic and coerce a government or an international political authority. In my opinion, this standard notion, summarized by Cassese, might be accepted only by western powers, engaged together with the United States in the war against terrorism. Moreover it is hard to consider it as being universally applicable, for some remarkable reasons.

It is necessary to underline, first of all, that this notion cannot be shared in the Arab-Islamic world, as is evident from the Euro-Mediterranean Conference of Heads of State and Governments held in Barcelona on 27 November 2005. The Conference adopted the “Code of Conduct Countering Terrorism”, after high pitched discussions between the European and Arabic delegations on the notion of terrorism itself. The definition proposed by the Europeans reproduced the standard notion, while according to the Arabic delegations it was necessary to consider the situation of those populations oppressed by military powers which aggressed and unlawfully occupied their territories. Resistance fighters, fighting for the liberation of their own country – the allusion to the Palestinian, Afghan and Iraqi situation was implicit- should in no way be considered terrorists. Then the

² See Cassese, A. (2005). *Lineamenti di diritto internazionale penale*, Bologna: il Mulino, p. 162-75, p. 167; Cassese, A. (2008). *Il sogno dei diritti umani*, Milano: Feltrinelli, p. 177-84, p. 179.

generic political-ideological motivation adopted by the western definition was rejected (the third “defining factor” for Cassese).

This position is shared by many Islamic authors, amongst others the Tunisian internationalist Yadh Ben Achour³. They claim that the freedom fighters fighting for their own liberation and self determination against a colonial regime, an occupation regime, or against a racist regime, do not commit terrorist acts, whatever the military operation they carry out. In these cases even the bloodshed of non combat civilians, though heavy and rightly prohibited by international law as war crimes- - in particular by the Geneva Conventions of 1949- cannot be qualified as terrorist act. Suicidal attack is the “last resource” for extremely poor and weak actors who operate in conditions of complete asymmetry compared to the forces deployed on the battlefield. It is a necessary response to the terrorism of the aggressors and of the occupants who, thanks to their overwhelming political and military power, are saved from any international intervention or sanction, as is the case for The United States, Great Britain and Israel. Yadh Ben Achour writes with incredible clarity of thought:

La dichotomie civilisationnelle structure encore le relations internationales. Il est donc erroné de juger le terrorisme comme l'expression du mal, d'une méchanceté cynique, abstraite et arbitraire. Le terrorisme a ses raisons et nous pouvons même aller jusqu'à dire, sans le justifier, que certaines sont bonnes. Pour aller jusqu'à l'extrémité du sacrifice pour la gloire d'une communauté de civilisation, on n'est pas forcément une âme perverse, mais une âme désespérée de la justice, qui, par ce geste sacrificiel, hautement symbolique, croit pouvoir redresser la balance.⁴

In 1998 and 1999 The International Conventions of the League of Arab States strongly reinforced this position, excluding from the concept of terrorism any act perpetrated in the framework of military operations inspired by the principle of people's self determination. The Organization of African Unity gave its opinion in this sense too.

It is necessary to underline that this is not only a formal issue, since the qualification of an organization as terrorist – see the lists arbitrarily prepared by the U.S. Department of State and by the European Union – has criminal consequences relevant for domestic juridical systems. This is the case of the specific laws against terrorism passed in Great Britain by the Blair Government and in Italy by the Berlusconi Government, not to mention the Patriot Act and the spread in the United States of illegal intelligence which the Executive has until now justified as part of the fight against terrorism and that the new President has just in part banned. In Italy, where Article 11 of the Constitution - which

³ See Ben Achour, Y. (2008). *Aux fondements de l'orthodoxie sunnite*, Paris : Puf, p. 159-64 (La violence terroriste).

⁴ See Ben Achour, Y. (2003). *Le rôle des civilisations dans le relations internationales*, Bruxelles : Bruylant, p. 237-41.

prohibits resorting to a war of aggression - has been clearly violated for many years now, Art. 270bis of the Criminal Code has introduced the crime of “international terrorism” assuming as dogmatic premise the standard western notion, irrespective of wars of aggression and focused on “Islamic” terrorist organizations⁵.

From this point of view, terrorists are always exclusively members of organizations that operate secretly, not soldiers in national armies nor their superiors. States and their bodies are never made equal to terrorist organizations.

Another crucial issue is the lack of conventions or international treaties, which might rigorously define the notion of terrorist crime and provide sanctions against it. The first attempt to sign a global treaty on the repression of terrorism can be attributed to the League of Nations which worked out two projects, consequently adopted by the Geneva Intergovernmental Conference in 1937. One of the projects concerned the prevention and repression of terrorism, the other concerned the creation of an International Criminal Court to judge terrorist acts. The two projects were never implemented and the debate on the punishability of acts of terrorism continued for years with no remarkable results. References to terrorism included in many international treaties – for example The Fourth Geneva Convention of 1949 and the second additional Protocol of 1977- cut down on prohibiting it without providing any definition. For these reasons, a big part of the internationalist doctrine maintains today that the perpetration of terrorist acts might be considered an international crime only if the former (acts) are amongst those prohibited and sanctioned by a few international treaties, such as the hijack of a plane or the sabotage of maritime navigation.

Equally suspicious is the possibility to consider terrorism as an autonomous crime provided and sanctioned by international customary law. Given the strong disagreement of the Arab and African States it is surely not possible to consider the United Nations General Assembly Resolution of 9 December 1994 to be proof of a universal consensus, as maintained by Antonio Cassese. Besides the non-legally binding nature of the decisions of the General Assembly, that resolution vaguely affirms that

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 are in any

⁵ Italian academic doctrine and jurisprudence identify terrorism as any behaviour directed against life or security of civilians, or in the context of warfare, against those who do not take action into warfare, with the aim to spread terror in the general public or to coerce a State or an International organization to commit or omit an act. To qualify as terroristic the behaviour must encompass, on a psychological level, the additional feature of political, religious or ideological motivation. However it is implicit that the subject of criminal repression is here essentially “Islamic” terrorism; see Petti, G. (2009). “La guerra al terrorismo globale nelle pratiche giudiziarie”. In Palidda, S.(edited by). (2009). *Razzismo democratico*. In *Conflitti globali*, p. 214-30.

circumstances unjustified, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.

It is but a vague reiteration of the never ratified 1937 Convention, in which it was stated that terrorism encompasses “*all criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public*”⁶.

The decisive argument to sustain the lack in the international customary law of a consensus on the definition of terrorism is the circumstance, mentioned before, that the hundreds of states that in 1998 signed the Statute of the International Criminal Court, after many years spent on preparatory drafts and a big debate at the summit of Rome, decided to exclude the crime of terrorism from the current jurisdiction of the court. The decision was due to the impossibility to define terrorism in such a way as to be accepted by all of the states adhering to the Statute of the Court. It is surely not a coincidence that in the UN reform project – elaborated with no success in 2004 by the High Level Panel appointed by the General Secretary Kofi Annan- the need for a rigorous definition of terrorism was one of the crucial points⁷.

Finally there is a third, decisive difficulty which hits the standard notion of terrorism today, making it unacceptable for non-western countries, particularly if they have been the subject of aggression and are still under military occupation. It concerns the typical features of wars of aggression, as I have tried to prove here. The terrorist nature of such wars, as we have seen, is given by the evident asymmetry of the warfare potential between aggressors and aggressed, and by the use of weapons of mass destruction which spread terror in the population aggressed massacring civilians and, on a minor scale, soldiers.

The clause, repeated very often by Cassese, according to which there is a crime of terrorism only if terrorist violence is perpetrated against civilians⁸, seems a trace from the past. The classical distinction between combatants and non combatants, dates back to the medieval doctrine of *bellum justum*, today completely unusable. Moreover the principle of “proportionality” between legitimate military targets and wrongful destruction of human lives, goods, civil buildings and environment is by now out of any possible evaluation.

⁶ No remarkable progress has been made by the International Convention for the Suppression of the Financing of Terrorism, adopted by the UN General Assembly on the 8th of December 1999, according to which terrorism is any act aimed to provoke the death of one or more civilians when the purpose is to intimidate a population coercing a government or an International organization to commit certain acts.

⁷ See High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*. In <<http://www.un.org/reform/dossier.html>>.

⁸ See Cassese, A. (2005). Op. cit, p. 169-72.

Today, not only can we not locate and save the civilian population, but the homicidal violence and the destructive force of the weapons at the disposal of superpowers are such that wars of aggression are simply and merely the denial of life. The gallows is crowded with civilians – women, children, elderly persons – and a minority of soldiers. But just to recall a very tragic example, there is no reason why thousands of Iraqi youths in uniform, slaughtered due to the will of the United States and Great Britain during the first days of the invasion of Iraq in 2003, while desperately attempting to defend Baghdad, should not be considered victims of terrorist ferocity (as yet unpunished).

If these critical points might be considered reasonable, then one might sketch a first, simple definition of terrorism, alternative to the one which is currently predominant in the West. For example it would be possible to maintain that the crime of terrorism occurs when the political and military authorities of a state, using weapons of mass destruction, profit from their military supremacy to attack another state or nation, to spread terror and massacre civilians and soldiers. Moreover it is possible to claim that are equally liable of crime of terrorism those members of a movement fighting for political, religious or ideological reasons, spreading terror and massacring civilians and soldiers through the use of those weapons which, for their destructive and homicidal potential are equal to weapons of mass destructions, as happened on 11 September 2001. Furthermore it must be said that the members of movements fighting for the defence of their own country against terrorist aggression and/or the occupation by an aggressor state are not terrorists. They are liable for war crimes or crimes against humanity if they use weapons capable of massacring innocent civilians in the population that they regard as the enemy, as happened to Israeli citizens, Jewish and Arab, due to Palestinian suicidal attackers. In this specific circumstance, prospective sanctions should keep into account, as relevant extenuating circumstance, their substantial attribute of freedom fighters.

A theoretical-political thesis of this kind might be listened to by African and Arab States. In any case it might suggest a reflection upon the reasons for international terrorism, including the Islamist one, and on the responsibilities of the West which in the last decade was overwhelmed by the delirium for power of political leaders engaged in the war of Good vs. "Evil". In the West no one can deny that killing an incalculable number of civilians and militaries, carpet bombing entire cities, imprisoning, torturing and murdering hundreds charged with no evidence to be terrorist militants, devastating the lives of millions of harmless citizens is something much more cruel and terrifying than what

international terrorism did and might ever do in the near future. “*Le terroriste est en fait un terrorisé*”, as Yadh Ben Achour⁹ wrote.

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⁹ See Ben Achour, Y. (2003). Op. cit, p. 240.