Terrorism and the International Counter-Terrorism Regime in Africa: A Comparative Analysis of Kenya and Tanzania

By

Rui Antonio Tyitende

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Supervisor: Dr G Lamb
Co-supervisor: Ms C Struckmann

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DECLARATION

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ABSTRACT

The 9/11 terrorist attacks on the United States fundamentally altered the degree and scope of transnational security cooperation and collaboration, more specifically, counter-terrorism cooperation. Within 24 hours of this historic occurrence, the United Nations Security Council unanimously passed Resolution 1368, which resulted in far-reaching consequences for its 194 member states. The adoption of Resolution 1373 followed three weeks later, and this compelled all member states to domesticate specific counter-terrorism legislation that criminalised terrorist activities and the financing thereof. This thesis argues that from a regime-theory perspective, the United States acts as the global enforcer of the international counter-terrorism regime by inducing cooperation and collaboration with other weaker states in the international system to ensure compliance. The study adopted four political factors that explain the varying degrees of compliance with the counter-terrorism regime demonstrated by Kenya and Tanzania. The study argues that Kenya is a more willing partner in the global fight against terrorism because of its perceived perception of the threat it faces. Unlike Kenya, Tanzania has been a reluctant participant and has suffered the hegemonic wrath of the United States when its nationals were barred from travelling to the United States on 31 January 2020 due to the country not sharing terrorism-related information with the United States. Although Tanzania passed its Prevention of Terrorism Act, 2002 with minimum obstruction, this has not been sufficient for the country to be portrayed as a supportive state on the 'Global War on Terrorism' since it is yet to designate the Islamic State and Al-Shabaab as terrorist organisations. Furthermore, the study provided a comprehensive overview of the terrorism landscapes of Kenya and Tanzania and concluded that the former faces a significant threat from terrorism because of its geographical proximity to the threat, its porous borders and its decision to be an active participant in the African Union Mission in Somalia to dismantle and obliterate Al-Shabaab.

OPSOMMING

Die 9/11 terroriste aanvalle op die Verenigde State van Amerika (VSA) het die wese en draagwydte van internasionale samewerking op sekuriteitsgebied in die algemeen, en teen-terroristiese optrede in die besonder, grondig verander. In die bestek van 24 uur na dié historiese gebeurtenis, het die Veiligheidsraad van die Verenigde Nasies, eenparig Resolusie 1358 aangeneem, met wydreikende gevolge vir die 194 lidstate. Voorts het Resolusie 1373, wat 'n skamele drie weke daarna aangeneem is dit verpligtend gemaak vir alle lidstate om spesifieke teen-terrorisme wetgewing in hulle eie domein te promulgeer wat terrorisitiese aktiwiteite, sowel as die finansiering daarvan, gekriminaliseer het. Hierdie tesis postuleer, dat gesien vanuit 'n regime teoretiese perspektief, die Verneigdie State van Amerika (VSA), optree as a globale afdwinger van 'n teen-terrorisme regime deur gedwonge samewerking met ander swakker en kleiner state in die internasionale sisteem, om nakoming te verseker. Die studie maak gebruik van vier politieke veranderlikes word om die wisselende mate van nakoming van die teen-terrorisme regime deur Kenia en Tanzanië te ontleed. Die studie voer aan dat Kenia 'n meer inskiklike vennoot is as gevolg van dié land se bedreigingspersepsie. In teenstelling met Kenia is Tanzanië 'n minder gewillige vennoot van die Verenigde State van Amerika. Dié land se burgers is gevolglik op 31 Januarie 2020 deur die VSA geweier om die land binne te kom op grond daarvan dat Tanzanië onwillig is om terrorisme-verwante inligting met die VSA uit te ruil. Nieteenstaande Tanzanië se aanname van dié land se *Prevention of Terrorism Act* van 2002 (Wet op die Voorkoming van Terrorisme), was dit nie voldoende om Tanzanië as voldoende ondersteunend van die VSA se '*Global War on Terror'* (Globale Oorlog teen Terrorisme) te beskou nie, veral omdat dié land nog nie die *Islamitiese Staat (ISIS)* en *Al-Shabaab* as terroriste organisasies verklaar het nie. Verder bied die studie 'n omvangryke en diepgaande oorsig van die terrorisme landskappe in Kenia en Tanzanië. Teen die agtergrond van die oorsig, kom die studie tot die gevolgtrekking dat Kenia 'n veel meer beduidende terroristiese bedreiging as Tanzanië ervaar as gevolg van verskeie faktore, waaronder: dié land se deelname aan die *African Mission in Somalia* (AMISOM) wat ten doel het om *Al-Shabaab* te vernietig.

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AMISOM	African Union Mission in Somalia
ANC	African National Congress
APSA	Africa Peace and Security Architecture
AQIM	Al-Qaeda in the Islamic Maghreb
AU	African Union
CTC	Counter-Terrorism Committee
CTED	Counter-Terrorism Executive Directorate
EU	European Union
HRW	Human Rights Watch
IR	International Relations
KNCHR	Kenya National Commission on Human Rights
NCTC	National Counter-Terrorism Centre
OAU	Organisation of African Unity
PLO	Palestine Liberation Organisation
PREACT	Partnership for Regional East African Counterterrorism
UCRT	U.S. Country Report on Terrorism
UN	United Nations

CHAPTER 1: INTRODUCTION

1.1 Introduction and background to the study

Over the last four decades, the geography and nature of terrorism has undergone significant alterations as the actors involved, the methods and the response continue to evolve. On one end of the spectrum, authors such as Steven Pinker (2012), in his seminal book, *The Better Angels of Our Nature: Why Violence has Declined,* contends that the world is a much safer place today than it was in the 20th century due to diminished open warfare. At the other end of the scale, the events of 9/11 created a heightened sense of vulnerability and insecurity, and nations around the globe have introduced a plethora of security strategies to offset the dangers posed by terrorism. The 'Global War on Terrorism' championed by the United States has not spared countries in the developing world when promulgating, formulating and implementing laws and policies to deal with the threat of terrorism. Of late, the states of Kenya and Tanzania continue to face the threat of terrorism as a consequence of domestic and foreign policy decisions. Since 9/11, the threat of terrorist violence and terrorist attacks have galvanised nations around the world to mobilise and collectively combat the scourge of terrorism.

In addition, the United States and Western nations have since pursued an aggressive campaign to invent and impose counter-terrorist legal instruments and governance systems on less developed nations that are to be implemented in the respective countries even though the threat of terrorism is minimal in some of these nations. The 'Global War on Terrorism' launched by the Bush Administration in 2001 has witnessed a proliferation of counter-terrorism measures employed by the United Nations (UN) and international organisations. These initiatives seek to cut off sources of finance for terrorist groups and impede their ability to manipulate and use the international financial system to launder money, raise funds and spread their terrorist ideology. Before the 9/11 attacks, both Kenya and Tanzania were at the receiving end of the fanatical ideologues of international terrorism when the international terrorist group, Al-Qaeda, bombed the U.S. embassies in Nairobi and Dar es Salaam in 1998. Muhula (2007:43) asserts that although the two countries had a friendly relationship with the United States, the bombings of the embassies could have been caused by issues of

a political nature (exclusion of the Muslim population in economic and political activities). Mills (2004:17) observes that the terrorist attack "cost the lives of 224 people (including 12 Americans) and injured 4,574 more". Consequently, the United States has been assisting Kenya and Tanzania in combating violent extremism and implementing other measures pertaining to anti-money laundering and terrorism financing. Similarly, Whitaker (2010:639) argues that:

> Through a range of international agreements, governments were pressed to join the 'War on Terror' by adopting domestic legislation, sharing intelligence, and cracking down on target groups. Despite heavy pressure, most obviously from the US, levels of compliance with the regime have varied. Some countries have jumped on board and seized the anti-terrorism rhetoric, others have been reluctant partners, and several have resisted the imposition of the regime.

Existing literature on regime theory is more extensive in the areas of environmental and economic cooperation and governance.

From an international security perspective, current international agreements are dominated by regimes, "which prohibit, both in international law and in the domestic criminal law of states, the involvement of state and non-state actors in particular activities" (Nadelmann, 1990:479). This is often seen to be the case in specific issue areas such as the non-proliferation and bilateral regimes concerning nuclear and conventional weapons, especially amongst strong states. Similarly, Anagnostakis (2012:1) argues that from a regime-theory perspective, "an overarching, all-encompassing counter-terrorism regime does not exist and a piece-meal approach is followed where patterns of cooperation emerge only in specific sectors". However, the events of 9/11 catapulted the emergence of regional and international counter-terrorism cooperation, which led to the creation of the UN Counter-Terrorism Committee (CTC) that is tasked with ensuring that all member states promulgate laws and policies that "criminalize, prevent, and punish terrorism-related activities" (Whitaker, 2010:641). Ultimately, the objective is to develop an international legal framework against terrorism (Whitaker, 2010:641). Turning to Africa, through the transformation of the Organisation of African Unity (OAU) (established in 1963) into the African Union (AU) (1999), the continent embarked on an agenda of creating new institutions and norms that regulate the affairs of its members. Amongst these pivotal

institutions and norms was the establishment of the Africa Peace and Security Architecture (APSA) to deal with conflict prevention and conflict reconstruction on the continent (Engel & Porto, 2014:190). The key structures and operational mandates of the APSA are discussed in detail in Chapter 4.

1.2   Problem statement and focus

Recent attacks in Kenya such as the Dusit Hotel attack on 15 January 2019 by the Al-Shabaab terrorist group that killed 26 people and the low-level sporadic attacks in Tanzania linked with terrorists underscore the existing and future threat of terrorism. The ability of these states to have complete monopoly on violence has been severely challenged by non-state actors such as Al-Shabaab who seek to instil fear and terror amongst the general populace. Their security apparatus is on constant and heightened alert to detect, disrupt and dismantle terror groups that continue to inflict destruction and mass casualties with their reign of terror. The security threat posed by Al-Shabaab in the region undermines the rule of law, compromises public safety and staves off potential investors and tourists who contribute immensely towards the national development agenda of these states. Despite Kenya and Tanzania complying with their international commitments (enacting counter-terrorism legislation) towards combating terrorism, both countries have been found wanting in other aspects (Whitaker, 2010:640) such as information sharing pertaining to terrorism and the designation of international terrorist networks such as the Islamic State.

The international counter-terrorism regime comprises a host of statutes, conventions and other agreements that have been formed by the United Nations Security Council (UN Security Council) through the adoption of Resolution 1373 that criminalises terrorism and the financing thereof. However, as the subsequent chapters demonstrate, the UN acts as a 'global legislator' and its role is limited to capacitating member states in the formulation of specific counter-terrorism laws. In contrast, the United States acts as a 'global enforcer' by engaging in bilateral relations on the hard-core aspects (intelligence sharing, establishment of ant-terrorism police units, training in prosecuting terrorist suspects, etc.). This study argues that the United States, as the victim of the most significant terror attack in the 21st century and the dominant actor in the international system, is the key proponent and champion of the

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international counter-terrorism regime. However, the country has imposed such a regime on less powerful states such as Kenya and Tanzania that are outside the UN counter-terrorism framework. Based on the above problem statement, this study provides an analysis of the international counter-terrorism regime by employing 'regime theory' as the theoretical anchor to explain the formation and maintenance of the counter-terrorism regime and the various political factors that influence the compliance of the case studies under discussion.

1.3   Research questions

The main research question that the study aimed to address is as follows:

How do political factors explain the degree of variance in compliance with the international counter-terrorism regime by Kenya and Tanzania?

The following sub-questions provided guidance in answering the main research question:

1. *What is the nature and extent of terrorism threats in Kenya and Tanzania?*
2. *How does regime theory explain the emergence of the international counter-terrorism regime, particularly with respect to Kenya and Tanzania?*

In order to answer the first research sub-question, chapters 1 and 2 provide a broad overview of the nature and extent of the threat confronting Kenya and Tanzania. In addition, Chapter 2 covers the wider key themes of terrorism/counter-terrorism scholarship (why terrorism happens at the levels that it does, what it achieves, and the non-state actors involved). Chapter 4 presents additional detail by highlighting specific terrorist incidents experienced by Kenya and Tanzania. Furthermore, Chapter 4 aims to provide the answers to the main research question and the secondary research questions of the study by dissecting and analysing the various counter-terrorism measures adopted by Kenya and Tanzania and applying the theoretical framework to explain the degree of compliance with the international counter-terrorism regime.

1.4 Goal of the study

The goal of this study is to generate knowledge and a better understanding of the level of compliance demonstrated by Kenya and Tanzania in adopting and implementing international counter-terrorism measures in their respective jurisdictions. An overview of the general threat of terrorism in these states is provided as a background and their degree of compliance is analysed by examining specific political factors. Furthermore, the study assesses the influence of regime theory in the establishment of the international counter-terrorism regime by delving into the two dominant theories (realism and liberalism) of international relations (IR).

1.5 Theoretical framework

The theoretical point of departure for this study is derived from Beth Whitaker's (2010:639) journal article titled, 'Compliance among Weak States: Africa and the Counter-Terrorism Regime' in which she contends that conformity with the international counter-terrorism regime has been met with reluctance by some states in Africa. This research study uses Whitaker's (2010) argument that for various reasons, a significant number of countries in the developing world have joined the anti-terrorism rhetoric while others have stalled and are not cooperating with a range of international legal instruments and agreements. The above scholarly work and regime theory are useful tools of analysis because they attempt to explain the process behind the establishment of international institutions and the various interests that shape and influence their operations.

In addition, the current study invoked a number of scholarly works on regimes and the rationale behind their establishment in the international system. Considering all the above, the regime-theory perspective was the primary theoretical frame of analysis for this study. The study consulted the relevant literature on regime theory by engaging the two dominant IR theories on regimes, namely liberal institutionalism and realism. Despite the diverging ideological inclinations, "both acknowledge that although the international system is anarchic (without a ruler) in structure, it has never been anomic (without rules)" (Little, 2014:218). However, the current study highlights the main contentious issues of the two schools of thought from a theoretical perspective

regarding the institutionalisation of counter-terrorism measures and cooperation in the international system. As Robert Cox (1981:28) remarkably maintains, "Theory is always for someone and for some purpose."

1.6   Research design and methods

This study is mainly explanatory but at the same time is a descriptive type of a comparative case study. The study focuses on the compliance levels with the international counter-terrorism regime of two specific countries, namely Kenya and Tanzania, the extent of terrorism in these countries and their respective state institutions tasked with dealing with counter-terrorism. The comparative case study approach was useful in unravelling the similarities and differences (Bukhari, 2011:2) with reference to the specific political factors used to measure compliance with the international counter-terrorism regime. The descriptive part of the research narrated in detail the terrorism landscapes of the two cases and the various laws, institutions and practices of their governmental agencies tasked with dealing with terrorism. The explanatory elements of the study unpacked the facts that are already known and described and prompted the question regarding why things are the way they are (De Vos, Delport, Fouché & Strydom, 2011:96).

This study adopted content analysis because it enables the researcher "to organize and elicit meaning from the data collected and to draw realistic conclusions from it'" (Bengsston, 2016:1). This is possible since data are arranged into themes, categories and sub-headings to ensure that information that directly answers the main research question, aims and objectives is presented in a coherent manner. Chapters 3 and 4 of this study present a systematic organisation of the central issues under examination. More specifically, the political factors determining compliance with the international counter-terrorism regime are discussed in Chapter 3 and thereafter analysed in Chapter 4.

In order to make sense of the collected data, constant analyses of the data occurred in line with "regularity and variability of the preliminary findings throughout the study" (De Vos *et al.*, 2011:403). This study relied entirely on secondary data sources such as journal articles, newspaper reports and other forms of secondary information. The

literature on terrorism and counter-terrorism in general is voluminous and new information is constantly being released, which had a significant impact on the overall findings. The process of constant review and analysis was crucial towards realising the goals of the study. The research instrument that the researcher employed during the study was desk research, that is, a literature survey. The most recent and relevant books, journals and newspaper articles were surveyed, which provided critical insight into the topic that the researcher undertook.

1.7   Ethical considerations

De Vos *et al.* (2011:114) define ethics as follows:

> [A] set of moral principles which is suggested by an individual or group, is subsequently widely accepted, and which offers rules and behavioural expectations about the most correct conduct towards experimental subjects and respondents, employers, sponsors, other researchers, assistants and students.

As stated in the previous section, this study did not engage with primary sources (interviews) as a form of data collection; hence, no one was harmed or negatively affected in any way during the study. Furthermore, all sources of information are duly acknowledged and referenced where appropriate.

1.8   Limitations of the study

This study would have benefitted tremendously from structured in-depth interviews with people who are employed in the national security apparatus of Kenya and Tanzania in order to gauge their views on the pertinent issues pertaining to security policies, programmes and other counter-terrorism measures that are not classified. Primary research on terrorism poses a potentially dangerous endeavour since terrorist groups are known to decapitate or execute their victims (including journalists) to perpetuate their reign of terror and punish the 'infidels' or non-believers. However, for the current study, the existing literature on counter-terrorism cooperation for the two case studies together with the significant theoretical scholarship on regime theory is more than sufficient to remedy this limitation.

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1.9   Outline of the study

This study consists of five chapters.

Chapter 1: Introduction

This chapter introduces the reader to the subject under investigation by providing a substantive but brief overview of the historical context of the research topic and its significance. Furthermore, Chapter 1 clearly outlines the research objectives and the research questions of the study in sections 1.2 and 1.3.

Chapter 2: Understanding terrorism: A conceptual review

This chapter provides a comprehensive conceptual overview of terrorism as a highly complex phenomenon and presents the actors and the major causes of terrorism. A critique of the existing literature is offered. The chapter provides the overall foundation by identifying key published literature relevant to this study.

Chapter 3: The international counter-terrorism regime: A regime-theory perspective

This chapter focuses on the international counter-terrorism regime from a 'regime theory' perspective and highlights the origin and rationale behind the establishment of regimes. Furthermore, the chapter serves as the theoretical anchor and provides an overview of regimes as conceptualised by the IR strands of liberal institutionalism and realism.

Chapter 4: The counter-terrorism regime in Africa: A case study of Kenya and Tanzania

This chapter presents the various counter-terrorism tools and instruments promulgated by Kenya and Tanzania to comply with the global counter-terrorism regime. Furthermore, Chapter 4 discusses the patterns and depth of cooperation with regional and international institutions in the fight against terrorism. With reference to the theoretical framework adopted in Chapter 3, this chapter provides a comparative analysis regarding the level of compliance with the global counter-terrorism regime of

the two case studies and critically discusses the findings of the specific areas in which there is convergence and divergence with the counter-terrorism regime.

Chapter 5: Conclusion and recommendations

The final chapter draws conclusions and determines whether the research questions of this study have been answered. In addition, recommendations for possible future research in the field of counter-terrorism cooperation are provided.

CHAPTER 2: UNDERSTANDING TERRORISM: A CONCEPTUAL REVIEW

"We love death. The U.S. loves life. That is the difference between us two."
Osama bin Laden

2.1   Introduction

In order to achieve the secondary objective of this study, which is to offer an overview of the nature and extent of the terrorism threats that confront Kenya and Tanzania, this chapter delves into the causes of terrorism and specifically highlights the threats faced by the countries under investigation. In addition, this chapter provides the overall conceptual framework that encompasses the research questions and the problem statement of the current study. The genesis of security regimes and counter-terrorism cannot be understood without an in-depth discussion and analysis of terrorism. This chapter attempts to unpack the theoretical fundamentals of terrorism by investigating its various motivations and purposes and provides the overall foundation by identifying the key published literature that is relevant to the study. In doing so, the study is able to identify existing gaps in the field of terrorism and discuss the shortcomings and strengths in the literature. Chapter 2 commences by providing an overview towards understanding terrorism and defines the concept of terrorism according to various scholars. Furthermore, the chapter discusses and interprets the moral constructions of the concept and the various actors involved. In addition, it will seek to explain the causes and psychology of terrorism on a global level. A historical chronology of terrorism has been explored in various scholarly work and does not need to be reiterated in depth.

This chapter provides an in-depth overview of terrorism as an academic field of inquiry and narrates how terrorism is a highly complex phenomenon that has been vigorously debated for several decades without a definitive definition. A recent survey of the academic material on this topic by the Global Terrorism Index (2018:2) found that although the vigour of terrorism has been significantly reduced, 103 countries around the world suffered at least one terrorist incident in 2018, and 71 countries recorded one casualty over the same period. As the following chapter illustrates, both Kenya and Tanzania have experienced the scourge of terrorism in one way or another, with Kenya witnessing more death and destruction. The chapter concludes by providing a

short description on the terrorism landscape on the African continent, including the states of Kenya and Tanzania. Furthermore, the subsequent chapters provides a detailed description and analysis of the factors that explain the varying degree in compliance with the counter-terrorism regime.

2.2   Key concepts

2.2.1 *Terrorism*

For a concept and phenomenon that has gained increasing prominence as an academic field of study since the 1970s, scholars around the world still cannot agree on a definition for terrorism. This definitional paralysis has led to a plethora of conceptualisations that present different ideas about the same concept. Even though several researchers and practitioners contest the conceptualisation of terrorism, the indiscriminate use of violence on civilians is paramount. Baylis, Wirtz and Gray (2010:269) argue that terrorism is underpinned by the following elements: "it is intended to influence an audience beyond its immediate victims; and it violates the standards of discretion and proportionality for the use of force under the customary Law of Armed Conflict". However, there is no ambiguity regarding the contextualisation of the concept in terms of framing it within the broader research question and problem statement presented in Chapter 1. This is as a result of the consensus arrived at by various scholars which is dissected further in subsequent sections of this chapter.

2.2.2 *Terrorist*

Aligned with the definition of terrorism above, a terrorist today refers to a non-state/state actor who commits an act of terrorism such as bombing, assassination, hijacking and shooting with a clear political or ideological inclination to influence government policy or to achieve a particular goal. The common adage of 'one man's terrorist is another man's freedom fighter' resonates more with former liberation movements / revolutionary terrorists/terrorism, with some currently being in government (e.g. the African National Congress [ANC] in South Africa and the South West Africa's People's Organisation in Namibia). As a matter of interest and clarity,

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Schmid (2011:692) observes that individuals carrying out acts of terrorism are reluctant to be referred to as terrorists and prefer to be labelled with more liberating titles such as "freedom fighter", "resistance fighter", "urban guerrilla" and "*mudjahedeen*". A detailed description of how terrorists identify themselves is presented further in this chapter.

2.2.3 *Counter-terrorism*

The term of counter-terrorism is perhaps the most important term in this study because it highlights and unpacks the various pertinent issues relating to the international counter-terrorism regime that address the research questions for the two case studies under interrogation. The United Nations (UN) Global Counter-Terrorism Strategy (2006) is used as a guide for the international community to have a common and strategic operational approach in the fight against terrorism and states that nations should send an unequivocal message that terrorism is unacceptable and inhumane (United Nations, 2006). Baylis *et al.* (2010:269) define counter-terrorism as "practices, strategies, and policies that governments employ to fight terrorism". Stated differently, counter-terrorism comprises all the resources (physical, human and financial) that are required to thwart the lethal threat these groups pose to humankind. Since this is central to this study, a detailed discussion is undertaken in Chapter 3.

2.2.4 *Regime*

Ward (2016:1) conceptualises a regime as "an institution with clear substantive and geographical limits, bound by explicit rules, and agreed on by governments". Another definition of regime is given by Schmid (2004:681) who defines a regime as a "form of rule" that can be a "democratic regime"," totalitarian regime" or a "communist regime". To achieve the objectives of this study, the definition outlined by Ward (2016:1) was employed to refer to the various legal instruments and agreements enforced by the two nations, and the 'regime theory' was applied as a frame of analysis to answer the main research question.

2.2.5   *Al-Shabaab* (*Harakaat al-shabaab al-Mujaahidiin*)

The Islamic insurgent group based in Somalia is deemed by the State Department of the U.S. as a terrorist organisation since February 2008, and has pledged allegiance to Al-Qaeda, the international terrorist network, in 2012 (Felter, Masters & Sergie, 2020). This organisation is responsible for a significant number of terrorist attacks carried in East Africa and continues to target the nations of Kenya, Uganda and has on numerous occasions attempted to attack Ethiopia for their involvement in a regional military operation to remove the group from controlling swathes of territory in Somalia. The terrorist group remains committed towards removing the Somali government and imposing a strict version of Sharia law.

2.3   Understanding terrorism

It is extremely difficult to study and understand contemporary global security issues without a discussion of terrorism and the impact it has on human security and development around the globe. The terrorism threat faced by Kenya and Tanzania has negatively affected their tourism sectors and has diverted much-needed resources to combating terrorism. For these reasons, it is crucial to provide a background to the issues and trends regarding the conceptual issues around terrorism and how its background relates to the research questions and problem statement outlined in Chapter 1. This increasing global phenomenon has led to a proliferation of scholarly inquiry, with academic think tanks on security and political violence and states around the globe formulating and implementing laws and policies to combat the threat and spread of terrorism. However, the response and attitude towards terrorism has varied significantly from country to country since the end of the Cold War. The actors, causes, methods and geography of terrorism have evolved tremendously over time. As a result, there remains an ideological divide between states that fought for self-determination and those that pursued an imperial agenda. Former 'terrorists' were now government leaders tasked with representing their states on international platforms such as the United Nations to debate issues of terrorism and state sponsors of terrorism. Put differently, any discussion or debate on defining and understanding terrorism should be analysed from the lexicon of the beholder. Similarly, Ramsbotham, Woodhouse and Miall (2017:103) postulate that "individuals, groups, movements and

governments may all adopt terrorist tactics at various times in order to further their political or economic purposes and then abandon them while still pursuing those purposes".

It is important to note, however, that there is much disagreement about what constitutes terrorism in terms of the threat and actual perpetration of violence towards non-combatants, government personnel or installations and the objective to instil fear beyond the targeted victims in order to communicate a certain message with the aim of undermining the authority and legitimacy of a given state. Laqueur and Wall (2018:28-29), as authorities on terrorism, affirm that understanding terrorism remains a complex endeavour because of its nature. Firstly, the character and purpose of terrorism itself has changed drastically. This refers to the actors, the means they employ and the ends they strive to achieve. Secondly, the authors contend that another significant challenge to understanding terrorism is structural and assert that terrorism is not an ideology but an instrument of the insurrectionist and the politician alike that is used by both individuals or groups and the state (Laqueur & Wall, 2018:28). Finally, since "terrorism and the decision to employ it can be conducted by anyone, its attraction supersedes the capacity of foreign states to regulate thought, and thus transverses the borders of physical and political doctrines" (Laqueur & Wall, 2018:29).

2.4   Radicalisation: A prelude to terrorism?

Although there has been a proliferation of attempts and initiatives to prevent the spread of terrorism and 'radicalisation', renowned terrorism scholar, Schmid (2013:10), contends that the concept 'radicalisation' is problematic because it is a new phenomenon that means different things to different people. Similarly, Horgan (2011) observes that there is a tendency to confuse terrorism with radicalisation even though the two concepts are different: "not every radical becomes a terrorist, and not every terrorist holds radical views". As a research topic that only emerged in 2004/2005 to understand the sources of terrorism (Schmid, 2013:2), the concept of radicalisation, like terrorism, remains a matter of debate amongst scholars and has been predominantly studied within the Muslim community, especially in the Middle East after the invasion of Iraq by the U.S.-led coalition in 2003. Despite this degree of ambiguity

regarding the concept, the *International Journal of Conflict and Violence* (2011) provided a plethora of definitions of the concept in their introduction titled, 'Processes of Radicalisation and De-Radicalisation' (Schmid 2013:6). One of the several attempts to define 'radicalisation' is as follows:

> Many researchers conceptualize radicalization as a process characterized by increased commitment to and use of violent means and strategies in political conflicts. Radicalization from this point of view entails a change in perceptions towards polarizing and absolute definitions of a given situation, and the articulation of increasingly 'radical' aims and objectives. It may evolve from enmity towards certain social groups, or societal institutions and structure. It may also entail the increasing use of violent means. (Schmid, 2013:6)

The above categorisation of the term has taken on a new dimension, with U.S. President Donald Trump labelling terrorism committed by Muslims as 'Radical Islamic Terrorism' and promising to "eradicate radical Islamic terrorism from the face of the earth" (Ramakrishna, 2017:2). As the following section illustrates, 'radicalisation' is only one of the causes of terrorism.

As with all social phenomenon, a historical context is crucial in order to understand how terrorism has evolved over time and the political dynamics that shaped it.

2.5   Historical perspectives on terrorism

Terrorism is not a new phenomenon. It has been evolving over the last decades from the most profound democracies to autocratic regimes and from organised terrorist groups to 'lone wolf' actors who conduct terror activities without any direct link to or support from established and organised terrorist organisations. Hoffman (2017:3) opines that the concept 'terrorism' was originally popularised during the French Revolution when it had a positive connotation. British philosopher, Edmund Burke, introduced the term 'terrorism' in its contemporary context. The *régime de la Terreur,* commonly known in English as the Reign of Terror of June 1793 to July 1794, was used to establish law and order during the transient anarchical period of chaos and the political uprisings of 1789 and to address other challenges to state authority. During this period, political opponents and other individuals were confronted by a state

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that brutally suppressed and intimidated its citizens using its monopoly of violence and labelled 'counterrevolutionaries' as 'enemies of the people'. (Hoffman, 2017). To be able to understand the systematic use of terror during this period, Martin (2019:25) explains:

> The ferocity of the Reign of Terror is reflected in the number of victims. Between 17,000 and 40,000 persons were executed, and perhaps 200,000 political prisoners died in prisons from disease and starvation. Two incidents illustrate the communal nature of this violence. In Lyon, 700 people were massacred by cannon fire in the town square. In Nantes, thousands were drowned in the Loire River when the boats they were detained in were sunk.

Garrison (2003:44) affirms that the state used terrorism as a tool to achieve government objectives and systematically to suppress opposition to the state. At the level of non-state actors, Russia had its fair share of terror activities perpetrated by a group called *Narodnaya Volya* (The People's Will / The People's Freedom) that emerged in 1879. The movement's grievance was a direct result of students' discontent with the czarist regime in the late 19th century. A significant number of the students who had studied abroad were influenced by Marxism and Anarchism and embraced these ideologies, which they used to challenge the state to embark on reforms that promoted human rights, particularly for the peasants (Martin, 2019:26). In fact, the first person who was recognised as a terrorist during this period was Vera Zasulich, a 26-year-old social revolutionary "who shot the Governor of St Petersburg in 1878 to protest the Russian state's repression of domestic political protest" (Fridlund, 2019:1).

Fridlund (2019:1) notes that the terror activities and struggle of the *Narodnaya Volya* against the Russian state was praised and welcomed by Western observers to such an extent that Mark Twain remarked "that if the Russian government cannot be overthrown otherwise than by dynamite, then thank God for dynamite!" The above sentiment was expressed after the assassination of Tsar Alexander II in 1881 by *Narodnaya Volya* with a dynamite bomb. The operational capability of the group demonstrates the fervour of the group to influence a change that would accommodate their interests even if it caused their own death. The violence committed by terrorist groups seriously undermines a state's ability and capacity to have a monopoly on

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violence, and it gives credence to Thomas Hobbes' analogy that a government can only be legitimate if it offers safety and security to its people. Similarly, Laqueur and Wall (2018:88) argue:

> [T]errorists challenge this relationship by making the state seem weak, impotent, and unable to respond to the seemingly randomness of terrorist-driven chaos. The breakdown of this relationship is what creates mass discontent, political uprisings, revolutions, and, at its worst, civil wars.

History demonstrates that contemporary terrorism has evolved as a direct consequence of the availability of weapons and the role of the media in bringing terrorism to the public's attention, thus feeding one's imagination. In setting up his main argument, Rapoport (2004:47), in his academic piece titled 'The Four Waves of Modern Terrorism' posits that "modern terrorism has progressed through four waves that lasted for roughly 40 years each and that we now live in a fourth wave" (Rapoport, 2004 . He describes the phases of terrorism as: "(1)The anarchist wave: 1880s to the end of World War 1; (2) The anti-colonial wave: End of World War 1 until the late 1960s; (3) The New Left wave: Late 1960s to the near present; and (4) The religious wave: Approximately 1980 to the present" (Rapoport, 2004:47).

It is pivotal to understand that contemporary terrorists (as part of the fourth wave), have fundamentally changed in terms of character as they attempt to inflict mass casualties and achieve the ultimate destruction of infidels (non-believers). International terrorist organisations such as Al-Qaeda and the Islamic State that commit terror acts in the name of Islam can challenge the very concept of the nation-state as they seek to erase the borders of Muslim nations and establish a caliphate governed by Sharia law (Laqueur & Wall, 2018:2). Since the ascendance of the Islamic State in 2014, the group has overpowered the Iraqi and the Syrian military by seizing large swathes of territories and has brought certain political regions in Iraq and Syria under its direct control. The fanatical ideologues of the 21st century have a strong propensity not to negotiate as they seek to establish a new political order in the Middle East, committing horrific acts of violence such as crucifixions, decapitations and massacres and transmitting this via social media (Laqueur & Wall, 2018:93).

Unlike the previous 'waves of terrorism', the religious wave targets their victims indiscriminately and pursues a more global agenda. As alluded to earlier, these

fanatics do not always have direct links and control over the terror groups or individuals that carry out violence in their name. The phenomenon of the 'lone wolf' terrorist inspired by mass communications via various media platforms continues to pose a security challenge to the security of states around the world. Any policy response to the threat posed by terrorism needs to consider and comprehend the historical context that inspires modern day terrorism.

2.6 Deconstructing terrorism

Despite the absence of a global consensus on the definition of terrorism, a plethora of legal instruments, conventions and institutions are dedicated to combat and prevent the spread of terrorism. The extensive literature published in the past decades by various scholars and independent researchers about terrorism has not addressed the definitional paralysis that continues unabated. For these reasons, Schmid (2004:384) contends that the term terrorism is a man-made construct that reflects the interests of those defining it. Nonetheless, other experts on terrorism such as Hoffman (2017:43-44) opine that it is pivotal to distinguish terrorists from other forms political violence perpetuated other criminals. Hoffman (2017:43-44) summarises terrorism as follows: "ineluctably political in aims and motives; violent or equally important, threatening violence; designed to have far-reaching psychological repercussions beyond the immediate victim or target; conducted by an organisation with an identifiable chain of command or a conspiratorial cell structure (members wear no uniform or identifying insignia) or by individuals or a small collection of individuals who are influenced, motivated or inspired by the ideological aims or example of some existent terrorist movement or its leaders or both; and perpetrated by a subnational group or non-state entity".

It can be seen from the above conceptualisations that terrorism is inherently violent in nature and is dominantly perpetrated by non-state actors. Expanding on this idea, Crenshaw (2011:4) differs from Hoffman (2017) as she argues that one should not invoke a state versus non-state actor analogy as states employ a plethora of methods to carry out violence. Put differently, states equally have the capacity and motive to carry out terror activities in the same fashion as 'terrorists' by employing the same methods to achieve their goals. If both are capable of committing terrorism, who should

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have the moral ground in defining terrorism? Should it be the state that is engulfed in a protracted conflict with a separatist movement or the ethnic community that is constantly attacking the state due to discrimination? Notwithstanding these limitations, the various definitions applied by international organisations such as the UN, regional bodies such as the European Union (EU) and the AU, experts, and governments and their respective institutions have provided the impetus to frame terrorism within a specific context, leading to the development of various laws and policies to deal with the threat and spread of contemporary terrorism. In the African context, which is the primary focus of this study, the AU (previously the OAU) in its convention titled, *OAU Convention on the Prevention and Combating of Terrorism* defined a terrorist act as follows:

a)   "Any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury death to, any person, any number or group of persons; or cause or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

  i.   intimidate, put fear into, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do, or abstain from doing, any act; or to adopt or abandon a particular standpoint; or to act according to certain principles; or

  ii.   disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

  iii.   create general insurrection in a State.

b)   Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii)". (OAU, 1999:3-4)

The second point is problematic since citizens in Africa and around the globe protest for a variety of reasons such as free speech, employment conditions, service delivery and other human rights issues that may lead to a disruption of government services. Should these be construed as terrorism? Will these protesters be treated the same as terrorist organisations? Kiras (2011:366) suggests that the "purpose for which violence

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is used, and its root causes, is where most of the disagreements about terrorism begin". The point that Kiras (2011:366) makes is paramount since the various forms of violence that are carried out by various actors with different objectives should be analysed and treated differently. Like terrorists, bank robbers, car thieves and other criminals use violence as a means to achieve a specific end (Hoffman, 2017:38). However, even if the nature of the violence is similar (kidnapping, shooting or arson), the motivation is different and for terrorists, is usually political.

On the global level, the UN is still struggling to advance a comprehensive term for terrorism since global powers such as the United States have previously labelled states such as the Republic of Iran as part of the 'Axis of Evil' and continue to regard them as state sponsors of terrorism. Nonetheless, the UN's *1999 International Convention for the Suppression of the Financing of Terrorism and Security Council Resolution 1566 (2004)* provided a potential breakthrough in search of a working definition by providing a non-exhaustive definition of 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, 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 consistent with their grave nature … (United Nations, 2004)

As with the AU, the UN definition is not concise or comprehensive. The above description makes it possible to include criminal networks such as the drug cartels in Mexico who indiscriminately kill civilians and government officials and continue to instil fear in the general populace. The rationale behind their brutal onslaught is to prevent state institutions such as the police from interfering in their drug trafficking operations. Should they be prosecuted under terrorism laws? Should not all deliberate targeting of individuals and government officials for assassination be considered terrorism?

Notwithstanding the multifaceted nature of the term 'terrorism', a common thread is the threat of violence that seeks to cause psychological fear beyond its immediate victims. Although the concept is not exhaustive, it is crucial to narrate the various conceptualisations of the term by experts in the field, and how it has been operationalised by practitioners of counter-terrorism.

2.7   Towards a comprehensive conceptualisation of terrorism

Kiras (2013:175) defines terrorism as "the sustained use of violence against symbolic or civilian targets by small groups for political purposes, such as inspiring fear, drawing widespread attention to a political grievance, and/or provoking a draconian or unsustainable response".

During the 1980s, renowned scholar on terrorism studies, Alex Schmid, attempted to arrive at an "Academic Consensus Definition" on terrorism by circulating questionnaires to various scholars. Collectively, 16 core elements were identified:

> Terrorism is an [1] anxiety-inspiring method of repeated [2] violent action, employed by (semi-) [3] clandestine individual, group, or state actors, for [4] idiosyncratic, criminal, or political reasons, whereby in contrast to assassination-direct targets of violence are not the main targets. The [5] immediate human victims of violence are generally chosen [6] randomly (targets of opportunity) or [7] selectively (representative or symbolic targets) from a target population and serve as message generators. [8] Threat-and violence-based [9] communication processes between terrorist (organization), (imperilled) victims, and main targets are used to [10] manipulate the main target (audience (s)), turning it into a [11] *target of terror*, a [12] *target of demands,* or a [13] *target of attention,* depending on whether [14] intimidation, [15] coercion, or [16] propaganda is primarily sought. (Schmid, 2004:382)

It is evident that the above definition has inflicts violence indiscriminately with the intent of communicating with a third party that is not directly affected by the violence. As with other definitions, this definition involves the objectives, the methods, the actors who carry out this act the general populace who are at the receiving end of this violence (Becker, 2006:85). The well-known narration of American scholar, Brian Jenkins, in

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1974 indicated that "terrorism is theatre" (1974:4) and terrorist organisations such as the Islamic State have employed various media forms to display their acts of horror in an unprecedented manner.

Screenshot of a video depicting the beheading of American-Israeli journalist, Steven Sotloff, by an Islamic State executioner 'Jihadi John' on 2 September 2014.

Source: CNN, 2018

The ultimate objective of such abhorrent executions is to engender fear and coerce a specific audience (usually states) to respond in a certain way. As political science academic, Akil Awan notes:

> Terrorists naturally benefit from media that inspires fear in a much larger target audience; they use it to turn a local event that affects a limited number of immediate victims into a global issue. And, unsavoury as it sounds, the media benefits from terrorist outrages too, most obviously by selling papers and winning audiences. (Awan, 2014:1)

Although controversy remains, most states currently agree that the scourge and the fanatical ideologues of terrorism need to be overcome; this alone demonstrates that

there is more convergence than divergence on the matter. The definition of terrorism, therefore, becomes a matter of semantics for states that have formerly been oppressed and colonised by Western powers. States tend to comply with international conventions and initiatives that strive to detect, disrupt and dismantle terrorist activities wherever they may occur. In fact, for the first time, on 8 September 2006, all members of the UN concurred during the General Assembly with the strategic operational tenets in the adoption of the Global Counter-Terrorism Strategy. If there is a global counter-terrorism strategy to combat terrorism, does this not imply that a consensus has been reached on what constitutes 'terrorism'? Perhaps the debate on the conceptualisation of terrorism is more prevalent amongst scholars than amongst politicians and government bureaucrats.

Having considered the various definitions of anti-terrorism proponents, it is also reasonable to investigate how 'terrorists' and their organisations perceive themselves. Do they consider themselves terrorists or victims of injustice? The following section provides a brief synopsis of the key utterances by terrorists on behalf of their organisations.

2.8   A terrorist's perspective on terrorism: Terrorist or freedom fighter?

Undoubtedly, acts of terrorism such as beheading, assassination, mutilation and other brutal acts are unacceptable and abnormal and tend to create a heightened sense of (psychological) insecurity within the societies in which they occur (Crenshaw, 2011:23). Is there justification for actions that cause panic, insecurity, disorientation and fear? Should a society affected by terrorism sympathise with the cause of the ideologue or condemn it? As presented by Hoffman (2017), the late Al-Qaeda leader, Osama bin Laden, explained the rationale behind their deeds during an interview in 2002:

> America has made many accusations against us and many other Muslims around the world. Its change charge that we are carrying out acts of terrorism is an unwanted description …. [We act in] self-defense, in defense of our brothers and sons in Palestine, and to liberate our sacred religious sites. If inciting people

to do that is terrorism, then let history be witness that we are terrorists. (Hoffman, 2017:22)

Hoffman (2017:23) also notes that a terrorist "will *never* acknowledge that he is a terrorist, and moreover will go to great lengths to evade and obscure any such inference or connection". In addition, terrorists opt for names that do not denote 'terrorism' because of the negativity associated with it. On the contrary, they prefer to be portrayed as:

- "Freedom and liberation (e.g. the National Liberation Front, the Popular Front for the Liberation of Palestine, Freedom for the Basque Homeland);
- Armies or other military organisational structures (e.g. the National Military Organization, the Popular Liberation Army, the Liberation Army Fifth Battalion);
- Actual self-defence movements (e.g. the Afrikaner Resistance Movement, the Shankhill Defence Association, the Organization for the Defence of the Free People, the Jewish Defense Organization); and
- Righteous vengeance (e.g. the Organization of the Oppressed on Earth, the Justice Commandos of the Armenian Genocide, the Palestinian Revenge Organization)" (Hoffman, 2017:22).

It can be seen from the above self-descriptions that terrorists intrinsically disagree with the negative connotations that are generally applied to them. In fact, in his book, *Invisible Armies,* Sheikh Muhammad Hussein Faddalah, spiritual leader of a Lebanese terrorist group, argues, "We don't see ourselves as terrorists because we don't believe in terrorism. We don't see resisting the occupier as a terrorist action. We see ourselves as *mujihadeen* [holy warriors] who fight a Holy War for the people" (Hoffman, 2017:23-24).

What about the victims of their political violence? It is highly unlikely that they will sympathise with the perpetrators, regardless of their motives. As Martin (2019:15) observes, terrorists are well aware that they do not have the support of their victims but the "propaganda arising from the deed can help educate them". For terrorists, the violence they inflict on innocent civilians is merely 'collateral damage' and a justifiable act of war against a powerful state and opponent (Martin, 2019:15).Therefore, it is

crucial to understand that the ultimate aim is not to defeat the opponent but to seek maximum publicity for their actions, thus prompting the state to respond or behave in a particular manner.

In summary, it is critical to note that any attempt towards defining terrorism should consider the underlying causes of terrorism. Terrorism does not occur in a vacuum and nor should its actors be labelled 'crazy'. The following section considers the causes of terrorism as discussed and analysed by various scholars.

2.9   Causes of terrorist violence

It is crucial to understand why a terrorist group's ideology resonates with certain segments of society. As highlighted in the previous section, the deceased leader of Al-Qaeda, Osama bin Laden, was adamant that members of his organisation were countering a form of injustice being inflicted upon them. This perceived injustice concerns the Western alliance involvement in protracted conflicts in predominantly Muslim nations such as Iraq, Somalia, Afghanistan and other nations in the Middle East. The existing literature on terrorism provides a plethora of motivations and justifications as to why terrorism occurs. For instance, Bjørgo (2005:3), an expert on terrorism, states that that there are four major causes of terrorism:

1. *"Structural causes* (demographic imbalances, globalisation, rapid modernisation, transitional societies, increasing individualism with rootlessness and atomisation, relative deprivation, class structure, etc.) are causes that affect people's lives in ways that they may or may not comprehend at an abstract macro level.

2. *Facilitator (or accelerator) causes* make terrorism possible or attractive without being prime movers. Examples include the evolution of modern news media, transportation, weapons technology and weak state control of territory. Proponents of the so-called 'ecology of terrorism thesis' even claim that international terrorism occurs mainly because modern circumstances have made it exceptionally easy to employ terrorist methods.

3. *Motivational causes* are the actual grievances that people experience at a personal level, motivating them to act. Ideologues and political leaders are

sometimes able to translate causes from a structural level up to a motivational level, thereby moving people to act. The role of ideology and rhetoric is to explain how things really are and to persuade individuals and groups to take action. Motivational causes may also be seen as concrete 'symptoms' of more fundamental structural causes.

4. *Triggering causes* are the direct precipitators of terrorist acts. They may be momentous or provocative events, a political calamity, an outrageous act committed by the enemy or some other event that calls for revenge or action. Even peace talks may trigger opponents of political compromise to carry out terrorist actions in order to undermine negotiations and discredit moderates" (Bjørgo, 2005:3).

In view of the above, Crenshaw (2011:34) postulates that there are no universal triggers of terrorism and that "one does not find a general theoretical analysis of the causes of terrorism". However, her analysis outlines four direct causes of terrorism in response to perceived injustice: (1) the existence of perceived injustice being committed against a minority group; (2) the absence of political freedom; (3) simmering tensions on an underlying issue; and (4) an event that catapults opposition forces to lose patience with the government of the day (Crenshaw, 2011:37-39). Similarly, Martin (2019:47) asserts that there is much disagreement amongst scholars of Political Science and Sociology about the socio-economic factors that may cause political violence. He draws attention to two sociological concepts (theories), that denote social conditions such as access to basic services, equal rights, freedom and other human developmental fundamentals that have the potential to improve an individual's quality of life and immediate living environment. A society that is deprived of the above creates a breeding ground for terrorism to flourish (Martin, 2019:47). Both these theories have a striking similarity on the causes of terrorism as highlighted by Bjørgo (2005:3).

What about the psychological explanations of terrorism? Are the assumptions posited by the victims of terrorism, experts and policymakers true that people who carry out acts of terrorism are mentally unstable, and that terrorism is associated with mental? (Martin, 2019:48). It is easy to arrive at such conclusions considering the violence committed by terrorists is inhumane and indiscriminate and is meant to cause fear within the targeted community. The dominant literature provides a compelling account

on the rationality of terrorist violence. Consider the argument proffered by Crenshaw (2011:38):

> [M]any terrorists are young, well educated, and middle class in background. Such students or young professionals, with prior political experience, are disillusioned with the prospects of changing society and see little chance of access to the system despite their privileged status.

Similarly, Martin (2019:49) outlines four general psychological explanations for terrorist violence:

1. "Terrorism is simply a choice between violent and less violent alternatives. It is a rational selection of one methodology.
2. Terrorism is a technique for maintaining group cohesion and focus. Group solidarity overcomes individualism.
3. Terrorism is a necessary process to build the esteem of an oppressed people. Through terrorism, power is established over others, and the weak become strong. Attention itself becomes self-gratifying.
4. Terrorists consider themselves an elite vanguard. They are not content to debate the issues because they have found a truth that needs no explanation. Action is superior to debate". Martin (2019:49)

Terrorism is seen as a last resort in an asymmetrical conflict where the perpetrators target buildings and civilians who are symbols of the system they attempt to annihilate, or reform. In most cases, the indiscriminate application of this violence is choreographed to communicate their grievances to government authorities in order to achieve a particular political objective.

In short, psychological explanations provide the impetus for individuals or groups to join terrorist groups and carry out horrendous atrocities, labelling themselves 'freedom fighters' fighting against a system that is unjust and that discriminates against a certain segment of society. An equally significant aspect is that various terrorist groups have different motivations, and these depend on the type of terrorist organisation. As discussed previously, Rapoport's (2004) 'Four Waves of Terrorism' led to different types of terrorist organisations throughout the decades, each usually lasting a generation. Additionally, African scholars' conceptualisation of terrorist movements 'tilt

the balance' of literature and analysis in favour of Western scholars who tend to be completely isolated from actual terrorist events and to observe events from a different lexicon. English (2016:11) observes the following:

> [T]he vast majority of researchers working on terrorism live and work in places where there exists comparatively little terrorism, while those places where terrorism tends to be most concentrated are ones from which very little terrorism scholarship is drawn.

It is for these reasons that the following section invokes African scholar, Gani Yoroms (2007), who provide a synopsis of the typologies of terrorism.

2.10   Typologies of terrorism

Yoroms (2007:5) reinforces the 'Four Waves of Terrorism' presented by Rapoport (2004) on the categorisation of terrorism. Yoroms (2007:5) outlines the three typologies as follows:

1. *"Revolutionary Terrorism:* Seeks to abolish an existing political system and replace it with a new system of political governance.
2. *Sub-Revolutionary Terrorism:* Involves a group of terrorists that has been marginalised and seeks the reform of an existing structure to accommodate its interests. The ANC in South Africa was once said to be in this category.
3. *State Terrorism:* Consists of states that sponsor terror against their citizens or against foreign governments when their national interests are under threat. The purpose is to defend and protect the values or interests that the state cherishes. These values can include the defence of a regime that is currently in power or protection of the corporate existence of the state as an entity".

It becomes evident from the above typologies how modern terrorism can be conceptualised. Although there is an overlap with the 'Four Waves of Terrorism', the analysis of Yoroms (2007:5) excludes the 'religious wave' that began in 1979 and was inspired by the Islamic Revolution of 1979. This wave spawned terrorist groups fighting in the name of Islam such as Al-Qaeda and the Islamic State in Iraq and Syria, now simply known as the Islamic State, as a consequence of its goals of establishing a

caliphate in the Muslim world. In contemporary Africa, the spread and influence of radical Islam has seen the emergence of terrorist groups such as Boko Haram that has pledged allegiance to the Islamic State and Al-Shabaab that has pledged allegiance to Al-Qaeda and has caused havoc and mayhem in countries such as Nigeria, Somalia, Kenya and Uganda. This transnational political violence has created a serious human and national security challenge for African states dealing with the scourge of terrorism because terrorist groups have complete disregard for borders and issues of sovereignty.

As previously mentioned, the current systematic campaign of violence is rooted in the 'fourth wave', which is dominated by groups that are inspired or influenced by radical Islam. Terrorist organisations such as Al-Shabaab have murdered hundreds of innocent civilians in Kenya, Somalia and Uganda as they seek to abolish the current Western political system in Africa with their own ideological and religious system that is governed by Sharia law. The following section provides a brief overview of terrorism in Africa in general and discusses the terrorism landscape of Kenya and Tanzania, which are the focus of this study.

2.11   Conceptual issues: Defining international regimes

Similar to most concepts in the field of social science, the term 'regime' has not escaped the debate constellation and continues to be a concept under construction. As with most contentious terms such as terrorism, a somewhat common ground is established, and the term is applied in government policies, think tanks and institutions of higher learning. Strange (1982:479), one of the most vocal and critical scholars on the subject, expanded on this idea and narrated that the term 'regime' is "imprecise and woolly'". Strange (1982:485) observes that the ambiguous nature of such concepts tends to be a double-edged sword in the sense that "where they do not actually mislead and misrepresent, they often serve to confuse and disorient us". Susan Strange is not the only scholar in this academic onslaught of regimes. Young (1989:9) as cited in Hasenclever, Mayer and Rittberger (2004:8) contends that the concept is used promiscuously to a point where it may lead to confusion rather than illumination due to its shaky foundation.

Despite these criticisms, various authors have provided operational definitions for 'regime'. Krasner (1982:2) defines regimes as:

> "Implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standard of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice".

Although the above definition may appear to be comprehensive, Young (1986:106) critiqued that:

- "The problem with Krasner's (1982) definition is that it does not allow us to identify regimes easily from IR;
- Scholars have to cope with another set of ambiguous terms in the form of beliefs, standards, prescriptions and practices in addition to the original set consisting of principles, norms, rules and procedures; and
- The concept inhibits a disconcerting elasticity when applied to the real world of IR".

The above challenges in regard to conceptualising 'regime' led scholars such as Keohane (1993:28) as cited in Hasenclever *et al.* (2004:20) to amend his original definition of regime:

> *[A]greements* in purely formal terms (explicit rules agreed upon by more than one state) and … [considering] *regimes* as rising when states recognize these agreements as having continuing validity …. [A] set of rules need not be 'effective' to qualify as a regime, but it must be recognised as continuing to exist. Using this definition, regimes can be identified by the existence of explicit rules that are referred to in an affirmative manner by governments, even if they are necessarily scrupulously observed.

It becomes evident that the above definition does not correspond with contemporary international regimes pertaining to global counter-terrorism and gives more credence to the realists' interpretations of regimes as discussed earlier. Furthermore, Strange (1982:487) postulates that international regimes can be altered the moment that

national security or the balance of power changes amongst the states that are involved in these international arrangements. As the following section demonstrates, great power interests played a crucial part in the formation of the international counter-terrorism regime. Since the concept of a regime forms a central part of this study, it is elaborated on in Chapter 3.

2.12   Counter-terrorism: The genesis of a regime

The preceding section provided the theoretical grounding of regimes as defined by various scholars and how the formation of international regimes may be understood. It is imperative to note that the theoretical framework of this study, the regime theory, has its roots in the neo-liberal theory of IR; "that is, its root assumptions is [*sic*] that states-and, for that matter firms, are rational egoists operating in an anarchical system" (Brown & Ainley, 2009:142). The preceding introductory chapter narrated that there is currently no full-scale counter-terrorism regime in the international system that states can adopt and implement in their respective sovereign jurisdictions. However, the 9/11 attacks precipitated the emergence of a global counter-terrorism architecture negotiated amongst states through the UN and spearheaded by the United States as a global hegemon because of security threats posed to its homeland (Whitaker, 2010:640). However, it is prudent to acknowledge that the global community of states has always converged on issues that pose an existential threat and have the potential to erode its legitimacy. Hence, the political appetite to cooperate with international treaties, conventions and agreements serves their respective interests in regard to political violence. From a regime theory-perspective, chapters 3 and 4 provide an in-depth analysis of the underlying rationale as to why states join regimes and the reasons why some comply, and others do not. This is the central thrust in answering the research questions and addressing the problem statement of this study. The following section provides an description of the terrorism landscape of the African continent with a focus on the major terrorist organisations. Furthermore, a general security situation of the continent and its genesis with the Global War on Terrorism is briefly discussed.

2.13   The context of terrorism in Africa

In May 2000, *The Economist* ran a front cover entitled, **'**The Hopeless Continent**',** narrating Africa's perpetual problems with systemic corruption, insecurity caused by rebels, unending cases of Malaria and HIV/AIDS, grinding poverty, poor education and unremitting unemployment. By this time, Africa had already experienced two major terror attacks in August 1998 in Kenya and Tanzania, the simultaneous bombing of the United States Embassies in Nairobi and Dar es Salaam that killed more than 224 people and injured more than 4574 (CNN, 2018). In addition, the security and political vacuum in countries such as Somalia and other ungoverned spaces on the continent and the ongoing presence of rebels in the Democratic Republic of Congo continues to provide a negative outlook from a security perspective for Africa.

The African continent has not escaped the wrath of international terrorism. In fact, countries such as Sudan have hosted international terrorist organisations such as Al-Qaeda and their leader, Osama bin Laden, and provided a safe haven to set up training camps. Today, the threat of terrorism is more pervasive than ever as "attacks are occurring not just in the older centres of activity such as Somalia, northern Nigeria and northern Mali, but in emerging hotspots like northern Mozambique and Burkina Faso as well" (Mahmood, 2019:1).

As the literature reviewed in this chapter pointed out, the target of terrorists goes beyond the immediate victims and is usually directed at state actors in order to communicate a message and ultimately influence government policy. The bombings in Kenya and Tanzania were not directed at these specific countries or their citizens but at the United States government and its interests within the diaspora. In addition, Al-Qaeda's declaration of war on the United States transcended the group's reach to new heights. The 1998 major attacks on African soil, a prelude to the September 11 attacks, catapulted the organisation's global outreach and appealed to like-minded extremist organisations. Consequently, the 'Global War on Terrorism' compelled African states to formulate a plethora of legal instruments to combat terrorism, terrorism financing and money laundering. Although the continent had its share of protracted conflicts, the prevalence of religious terrorism and casualties of terrorist violence was minimal and was restricted to a pocket of African states. Today, terrorist

organisations such as Boko Haram in Nigeria and Al-Shabaab in Somalia have spread their reign of terror to neighbouring states such as Kenya, Chad, Uganda and Cameroon. Ankomah (2014:1) attests:

> From the east, in Somalia, where al-Shabaab has been laying waste to human life and property all the way into Kenya, Uganda and Ethiopia, to Nigeria where Boko Haram thinks boarding school children are legitimate targets of attack in addition to the indiscriminate murder of civilians, to the Maghreb and Sahel countries where Al-Qaeda in the Islamic Maghreb (AQIM) and its affiliates and competitors have gone as far as launching a full-scale hot war in Mali after years of attacks in Algeria, Mauritania, Niger and Chad, the definition of a 'terrorist' on the continent has changed dramatically from how Mrs Thatcher and Mr Reagan saw it in their day, to a dangerous extremist prepared to kill, maim and destroy.

Unlike the African continent's rebel movements of the 1980s and 1990s that were preoccupied with occupying and controlling territory, contemporary terrorist organisations do not exist on a map; they have no known physical headquarters and more dangerously, they easily blend into societies. The kidnapping of more than 200 girls by Boko Haram in the northern town of Chibok in April 2014 received international attention and condemnation and prompted viral social media demands such as 'Bring Back Our Girls'. The vulnerability of African states to terrorism is attributed to a multiplicity of factors. According to Solomon (2015:7), a key factor is Africa's "ungoverned spaces" where the state's sphere of physical governance does not extend to rural and rough terrains. The concerns highlighted previously by *The Economist* provides a synopsis of the various challenges facing Africa and the role they play in fuelling the scourge of contemporary terrorism. Yoroms (2007:13) expounds that identity politics plays a crucial role towards understanding the dynamics of terrorism and terrorism activism because of the fear and hate it triggers, the support it receives and the desperation with which it is carried out in Africa. Yoroms (2007:12) adds that "most African states are poor at managing differences, because the managers themselves live in fear of the people and tend to build up regime security rather than human security".

To conclude this segment, it is crucial to recall that terrorism in Africa has always been equated with national liberation movements fighting against foreign occupation during

the Cold War, and the ideological leanings of most African states were in support of the Soviet Union and any other nation that supported their anti-colonial stance regarding minority regimes. The advent of colonialism and apartheid in Africa witnessed the emergence of organised political formations that were determined diplomatically and militarily to liberate themselves from the yoke of foreign occupation. To quell resistance, occupying forces resorted to labelling liberation movements as 'terrorists', often confronting them with brutal force backed by counter-terrorism legislation during the colonial period. The subsequent section delves into the terrorism landscape of the selected case studies, highlighting the nature of the terrorism threat faced by these states.

2.14   Kenya, Tanzania and the Global War on Terrorism

The existing literature on terrorist attacks in. Africa evokes Rapoport's (2011) categorisation of the 'four waves' phenomenon that was referred to on earlier in this chapter. In contemporary usage, the 'religious wave' refers to terrorism influenced or conducted on the premise of religious beliefs or ideologies. The dominant scholarship on contemporary terrorism studies on the African continent starts with the bombings of the U.S. embassies in the capital cities of Kenya and Tanzania in 1998. As previously mentioned in Chapter 1, these terror attacks culminated in the killing of 224 people and the injuring of 4 574 people. Nonetheless, the terrorist landscapes of the two case studies were fundamentally different although both were victims of a terrorist onslaught by the same terrorist organisation, Al-Qaeda. As narrated in Chapter 4, both states have been plagued by inter-community political violence, which often has nothing to do with elements of contemporary terrorism but rather perceived marginalisation and socio-economic issues that have fuelled the level of discontent amongst affected communities. A review of the existing literature indicates that Al-Shabaab poses the greatest threat to internal security and stability for Kenya and Tanzania because of its regional ambitions and links to international terrorist networks such as Al-Qaeda. It is for the above reasons that Bryden and Bahra (2019:1) posit:

> "Historically, the threat of terrorism in the region has been at its most acute when three main strands of jihadism—Somali, East African, and global—have intertwined in a kind of 'triple helix': Somalia serves as the geographic and

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organizational host; East African extremists provide the foot soldiers who can operate most effectively across the wider region; and al-Qaeda provides the ideological legitimacy and global appeal. The 1998 suicide bombings of the U.S. embassies in Kenya and Tanzania, killing over 220 people and wounding thousands more, were the work of just such a triad: al-Qaeda, the Somali jihadi group al-Ittihad al-Islami, and a network of Kenyan extremists that later came to be known as al-Hijra. So, too, were the bombing of a tourist resort near Mombasa and attempted shooting down of an Israeli passenger jet in 2002". Bryden and Bahra (2019:1)

Based on the above contextualisation of the terrorism threat faced by Kenya and Tanzania, Chapter 4 of this study provides a detailed overview of the terrorism landscape of these states and the policy responses undertaken to thwart and manage the threat. The following section provides an analysis of the theoretical debate around terrorism by delving into the existing gaps and providing a positive and a negative critique on the key issues.

2.15   Analysis of literature

This section provides a synopsis of the main ideas, arguments, findings and conclusions regarding terrorism research. As mentioned previously, the literature on terrorism is extensive and draws authors from a variety of academic disciplines, including Psychology, History, Economics, Politics, Sociology and Linguistics. A common theme in the literature is that most scholars, regardless of their academic orientation or leanings, concur on the salient issues such as definition of terrorism and its main attributes; there is no divergence of opinion that terrorism as a form of protest and political violence is abhorrent and unjust. The positive aspect of this convergence of opinion is that it provides a departure point for conceptualising terrorism and demonstrating how terrorism has evolved over time. In addition, some scholars have conducted extensive research that guides governments and policymakers in their decision-making on matters pertaining to human and national security. Since the attacks on 11 September 2001, more scholars have entered the field of terrorism, which can only broaden and enrich terrorism research and perhaps provide answers to the difficult and unanswered questions regarding the phenomenon.

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The definitional contestation of 'terrorism' has led some to suggest that terrorism should be considered a matter of perception since the actors and methods tend to be constructed in a pejorative manner. Notwithstanding the above debate, the positive aspect of the literature is the chronology of how terrorism and its types have evolved over time. The historiography provides a background on the methods, ideologies and tactics employed by terrorists and how they have influenced contemporary terrorist groups such as Al-Qaeda and Al-Shabaab. The definitional debate regarding regimes and their formation is that it hardly originates from small states. The literature on regimes denote an international system in which great powers impose their hegemony on less powerful states to participate in conventions, treaties and agreements that tend to have minimal impact on the states' ability to govern their territories (Smith, Hadfield & Dunne, 2016:41). The various norms and principles underpinning these regimes, no matter how well intended, may be altered if they no longer serve the purpose of the hegemon.

From a critical point of view, one cannot ignore the hard-hitting criticism in the field of terrorism research by Sageman (2014:576) when he asserted, "[W]e have a system of terrorism research in which intelligence analysts know everything but understand nothing, while academics understand everything but know nothing". The above description of terrorism research refers to the existing gap that experts in the field such as Sageman and others experience. They may have access to primary data on terrorism (e.g. interviewing terror suspects in government facilities) but may not use the data for ethical concerns since the data are classified and non-disclosure agreements may have been signed.

Another shortcoming of the literature is that it seldom accounts for the views of the victims of terrorism or of the general public. How do they fit into the equation of political violence? Are they mere victims whose opinion on the matter should be dismissed? This failure of imagination by scholars creates a deficit in terms of widening the anti-terrorism network and provides a monopoly of counter-terrorism policies and strategies by scholars and government bureaucrats. In any democracy, consultation on issues that affect people's wellbeing is important and hence, the involvement of the general populace in counter-terrorism measures is paramount. The main gap in terrorism literature is the causes of terrorism. The scholarship provides a plethora of generalisations on the causes of terrorism without empirical data to validate them. The

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previous chapter of this study highlighted the potential dangers of interviewing terrorists and the ethical constraints placed on scholars commissioned to engage with terrorists. Nonetheless, many gaps in terrorism research may be uncovered if some of these interviews were declassified.

The above dilemma points to Sageman's (2014:576) analogy on the practitioner / academic divide and how it inhibits terrorism research. For these and other reasons, future research on terrorism, especially the empirical causes thereof, is crucial towards contributing towards the existing body of knowledge. Governments should share more with academia without compromising national security, and academia should avail their methodological rigour to practitioners in the field for better and sound analysis.

2.16   Concluding remarks

The conceptual review in this chapter introduced various salient issues regarding the study of terrorism by providing a general overview of the history, understanding and definition of the concept. In addition, it provided a brief synopsis of the terrorism landscapes of Kenya and Tanzania and the genesis of the counter-terrorism regime that this study sought to investigate. Furthermore, the chapter examined the existing literature and key debates of experts in the field regarding the causes of terrorism and the key issues underpinning its development in Africa. The preceding section provided the positive aspects and the shortcomings of the existing literature on terrorism research and how these may be overcome. The application of 'one man's terrorist is another man's freedom fighter' has somewhat dissipated within the African context since the anti-colonial struggle ended during the early 1990s for the majority of African states. Although the debate still lingers, a general consensus on the key elements or attributes pertaining to what constitutes 'terrorism' and how to combat it provides the impetus for a legal framework and a counter-terrorism strategy for the international community of states.

Chapter 3 provides the theoretical framework for the international counter-terrorism regime from a 'regime theory' perspective and highlights the origin and rationale behind the establishment of regimes. Through the application of regime theory, this

study aimed to contribute to the existing literature on the formation of security regimes and to provide explanations why certain countries may comply or not comply with the principles and norms of a regime. Furthermore, the chapter provides an overview of regimes as conceptualised by the IR strands of liberal institutionalism and realism.

CHAPTER 3: THE INTERNATIONAL COUNTER-TERRORISM REGIME: A REGIME-THEORY PERSPECTIVE

3.1   Introduction

Chapter 1 provided a conceptualisation of 'regimes' and a brief background on how international counter-terrorism regime has evolved. Chapter 2 provided a conceptual grounding on the salient issues pertaining to terrorism by covering the fierce academic discussion on deconstructing 'terrorism', the historiography, the causes of terrorist violence, and the modus operandi and accompanying ideological inclinations of terrorists. Furthermore, the literature review indicated a robust debate amongst scholars in the field of terrorism regarding whether states can commit acts of terrorism and if yes, under which conditions. Nonetheless, the various theoretical interpretations of the concept of terrorism provided a consensus amongst scholars and government policymakers that terrorism is committed by individuals, and groups with specific political objectives in mind. The chapter highlighted that the individuals and groups that carry out political violence tend to be highly rational actors and are not 'mad men'. Additionally, the literature provided a dichotomy between criminal groups and terrorist organisations in terms of their purpose and motivations. More importantly, Chapter 2 provided a critique in terms of the gaps in terrorism research and how they may be resolved.

This chapter provides the central theoretical tenets underpinning regime theory and indicates the key assumptions developed by the major strands of IR, namely liberal institutionalism and realism. The academic discipline of IR has a plethora of theories that attempt to explain, predict and understand global political dynamics and events. Regime theory aims to explain the conditions under which states in the international system tend to cooperate or deviate from norms set by international institutions or great powers. Chapter 3 theoretically unpacks the context and functions of international regimes and provides a critique of its effectiveness as argued by various scholars emanating from the above-mentioned schools of thought. The key theoretical issues pertaining to compliance with international obligations such as the international counter-terrorism regime are unpacked and examined. An overview of the

international and the African counter-terrorism regimes and how compliance of its members was shaped and influenced is provided.

Moreover, the theoretical framework (regime theory) served as the broad analytical anchor for the development of the counter-terrorism regime. The specific political factors mentioned in the article by Whitaker (2010) upon which the two case studies were analysed are examined in Chapter 4.

3.2   Competing theories of regime formations

Chapter 2 provided the conceptual framing of regimes as postulated by various scholars in the field and demonstrated how the discipline has evolved over time. It is crucial to note that neo-liberal theories of regimes dominate the analysis of regimes (Hasenclever *et al.*, 2004:4). In order to achieve the objectives of this study, regime theory provided the fundamental theoretical tenets around the formation of regimes and was crucial in explaining how institutions are formed around a specific issue area such as the counter-terrorism regime and its implication for the countries under investigation.

Hence, this section commences by dissecting the key assumptions regarding regimes as analysed by two schools of thought "within the study of international regimes: realists who focus on power relationships; and neoliberals, who base their analyses on constellations of interests" (Hasenclever *et al.*, 2004:1-2). Little (2014:224) observes that liberal institutionalists and realists agree that regimes are necessary within the international system because of the anarchical structure of the international system. Therefore, states will find common ground to form regimes to confront various challenges in global matters that may affect global stability. Although this may be true, the above-mentioned theories have constructed "very different theoretical assessments of regimes" (Little, 2014:224).

3.3   The liberal institutionalist approach

For neo-liberals, international regimes are crucial in achieving common interests. A liberal institutionalist, Robert Keohane, asserts that "institutions and rules can facilitate

mutually beneficial cooperation-within and amongst states" (Keohane, 2012:126). In addition, such cooperation provides the impetus for a world that is more peaceful and promotes human security and human welfare (Keohane, 2012:126). More simply, individual states are perceived as rational egoists who care only for their own (absolute) gains (Hasenclever *et al.*, 2004:3). Brown and Ainley (2009:142) contend that because of these gains, "it is not too difficult to see why states (and firms) would want to co-operate: there are absolute gains to be had from co-operation-, that is, from mutual adjustments; and on neo-liberal assumptions, states are concerned to make absolute gains".

More importantly, the neo-liberal school of thought on regimes posits that cooperation is determined by power relationships amongst states (Hasenclever *et al*, 2004:26). At the same time, the 'hegemonic stability theory' holds that powerful actors in the international system tend to seek dominance over global affairs by establishing some form of international order within an international society that is primarily anarchic (Smith *et al.*, 2016:41). Furthermore, the theory "seeks to explain how cooperation can emerge among major powers and how international orders, comprising rules, norms, and institutions, emerge and are sustained" (Smith *et al.*, 2016:41).

It, therefore, becomes evident that the theory of hegemonic stability attempts to explain why regimes persist to the extent that they do. The United States as a benign actor in the international system is able to use its preponderance of power for the formation and maintenance of and compliance with international regimes. As was noted in Chapter 2, the emergence of the international counter-terrorism regime was driven by the United States and operationalised through a global institution (the UN). It is important to note that both realists and liberals consider regimes to be the "product of rational self-interested actors" (Little, 2014:220). Despite these similarities in worldviews of regimes, liberals differ from realists regarding the global significance of institutions. For liberals, institutions are crucial in two respects. Firstly, they may be more or less *effective* and secondly, they may be more or less *robust* (or resilient) (Hasenclever *et al*, 2004:2). Put differently, liberals assess the effectiveness of a regime by measuring the extent to which states comply with the key norms and provisions of the regime and the extent to which these norms and rules can achieve the objectives for which the regime was developed (Hasenclever *et al,* 2004:2).

Key in liberal thought is the ability of regimes to address failures in world politics in a variety of issue areas (Keohane, 1982:335). Since states are interest driven, they will seek cooperation and coordination on issues where there are relative gains to be made since they do not perceive the realm of international politics to be a zero-sum game. Predictably, realist thinkers contest the liberal institutionalist approach in respect to regimes because of their fundamental divergence on global issues generally. Little (2014:219) argues that: "Realists are often sceptical of or uninterested in international law, and yet they have developed an important position on regimes". As the following section demonstrates, realist thought is more concerned with the distribution of power within the international system and the dominance of a hegemon in global regimes.

3.4   The realist approach

Contrary to the liberal approach to regimes, realists have a rather pessimistic outlook on international institutions and their accompanying agreements, rules and regulations. As a research programme in IR, realism is anchored on the assumption that the international system within which states operate is highly anarchic as there is no global government and that there is no higher authority than the state. In other words, the state is the dominant actor in global affairs. (Jackson & Sørensen, 2016:63). More importantly, the authors describe the realist's stance as follows:

> All international agreements are provisional and conditional on the willingness of states to observe them. All states must be prepared to sacrifice their international obligations on the altar of their own self-interest if the two come into conflict. That makes treaties and all other agreements, conventions, customs, rules, laws and so on between states merely expedient arrangements which can and will be set aside if they conflict with the vital interests of states. There are no international obligations in the moral sense of the world- i.e., bonds of mutual duty-between independent states. (Jackson & Sørensen, 2016:63)

As it was mentioned previously, realist thought perceives international institutions as a mere reflection of the distribution of power in the international system. Furthermore, states join international institutions or regimes that will primarily not affect their own

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behaviour and interests, having conducted a cost-benefit analysis. Hence, realists conclude that institutions are not instruments of peace in an international society that is anarchic (Mearsheimer, 1994:7). In his critique of liberal institutionalism, Mearsheimer (1994:12) opines that cooperation on the international stage is hindered by two factors, namely relative-gains considerations and the possibility of cheating by states. Since realist thinking is primary concerned with the distribution of power, states must be motivated primarily by relative gains concerns, which denotes a scenario where each side is not only concerned about individual gain but also how well it does compared with the other side when considering cooperation (Mearsheimer, 1994:12). Within the study of regimes, Waltz (1988:621) asserts that in alliances amongst unequals, partnership pioneers have little concern for the dedication of their adherents who ordinarily have minimal choice with regard to cooperating and complying on specific issue areas. Again, the formation and maintenance of regimes is highly dependent on powerful states that seek to project power, expand their sphere of influence and promote their interests.

The above section provided an overview of the two main schools of thought that underpin regime theory, more specifically, the rationale behind their establishment and the conditions under which they are maintained by a hegemon. The following section delves into the process, functions, stages and various types of regimes, which serve as the analytical tool discussed in Chapter 4.

3.5   Classifying regimes

The previous sections provided an overview of the diverging ideological inclinations of the two dominant strands of IR on regimes and how they are formed in the international system. Levy, Young and Zürn (1995:268) assert that the primary analytical concern of regime analysis is to demonstrate to the neorealist school of thought that institutions and their accompanying agreements matter in the theory of international politics. In other words, the departing premise that institutions can promote peace in an international anarchic system is the preoccupation of regime analysis. However, certain conditions or provisions must be in place before any deliberations on the existence of international regimes can occur (Levy *et al.*, 1995:271-272). Furthermore, the authors contend that there needs to be a degree of formality in the rules and an

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assessment of the degree to which the expectations of actors converge (Levy *et al.*, 1995:272). Similarly, Little (2014:222) observes that a regime may come into existence either with or without a formalised agreement. It is for the above reasons that Levy *et al.* (1995:272) constructed a matrix on the typologies of regimes:

- *"Dead letter regimes:* Existence of explicit rules including both substantive and procedural prescriptions articulated in written form; may or may not be legally binding.

- *Tacit regimes:* Cases in which regular but implicit reference to informal rules are common together with behaviour that is consistent with certain independently inferred rules.

- *Classic regimes:* Exist in issue areas where in addition to explicit rules and regular reference to them, rule-consistent behaviour is widespread. Rule-consistent behaviour is inferred when (1) clear violations remain the exception; (2) parties harmed by violations protest against them by implicitly or explicitly referring to the agreed-upon rules; and (3) violators do not deny the rules and norms referred to in these protests" (Levy *et al.*, 1995:272).

Table 3.1: Convergence of expectations

Formality	Low	High
Low	No regimes	Tacit regimes
High	Dead letter regimes	Classic regimes

Source: Levy *et al.* (1995)

3.6   The context and functions of regimes

Chapter 2 provided a brief theoretical overview of the classification of regimes in world politics, which covers a host of global concerns in specific issue areas such as security, economics and the environment. This section delves into the critical topic of regime analysis, namely the functions of regimes and the factors influencing compliance, which is the focus of this study. As suggested at some length in this chapter, regime formation does not evolve in isolation but has its genesis in the interests of the great powers within the international system. Keohane (1982:352) postulates that theorists

on international politics have always considered major regimes control-orientated yet there are only a few cases of mutual-control regimes. Furthermore, Keohane (1982:352) observes that

> "two features of the international context are particularly important: world politics lacks authoritative governmental institutions and is characterised by pervasive uncertainty. Within this setting, a major function of international regimes is to facilitate the making of mutually beneficial agreements amongst governments, so that the structural condition of anarchy does not lead to complete 'war of all against all'. (Keohane, 1982:352)

Regarding the realists' claim that regimes are primarily concerned with power, Strange (1982:495) observes that "asking what are the key bargains that have been made or could conceivably be made in the future-and how they have affected outcomes will reveal rather more about the real levers of power in the system than attention to regimes". Put differently, issues pertaining to compliance and regime maintenance cannot be analysed without the involvement of the dominant actor or hegemon in the regime, or as Keohane (1982:330) declares, an "imposed regime agreed upon within constraints that are mandated by powerful actors".

However, a further point needs to be considered. The nature of global insecurity stemming from international terrorism, money laundering, human and drug trafficking may lure states to demand regimes even though they are not the driving force behind them. Weak and developing states have the impetus to join and cooperate with regimes because the benefits of joining may outweigh the costs of not doing so. Furthermore, the states may not need to be burdened with the transactional costs of the regime since this may be covered by the hegemon or other strong states. Knowing this as a possible reason as to why states demand regimes, outlining the functions of regimes as articulated by Keohane (1982:333) becomes crucial.

Firstly, regimes pave the way for the establishment of negotiated norms on a specific international issue (the environment or nuclear weapons). For example, the criminalisation of terrorist activities and the financing thereof by the CTC of the UN created in 2001 compels member states to enact domestic legislation to combat terrorism. Secondly, "international regimes help to make governments expectations consistent with one another" (Keohane, 1982:333). In other words, states develop

regimes so that they may benefit from agreements that would have been impossible to negotiate outside the context of the regime. An equally significant aspect of regime analysis is the stages of regime formation, which Levy *et al.* (1995:282) observe should be "best thought of as analytic rather than concrete in character". That is, not all regimes will constitute all the elements of formation but may comprise one or two on a case-to-case basis.

3.7   The stages of regime formation

As instruments of cooperative behaviour that facilitate cooperation (Haggard & Simmons, 1987:495), regime scholars have developed six major analytical issues in the study of regime formation: "behaviour of the actors in regime formation; process of regime formation; stages of regime formation; driving social forces; cross-cutting factors; and multivariate models" (Levy *et al.*, 1995:280). To achieve the objectives of this study, the stages of regime formation were crucial towards understanding the development of the international counter-terrorism regime because they delve directly into the intricacies of how regimes are formed and how they relate to the two dominant IR theories of realism and neo-liberalism.

Firstly, agenda formation encompasses a process in which issues of international concern are identified and problems are defined and prioritised in international forums. The second stage is institutional choice whereby consensus is reached on the key provisions of the regime with which member states are expected to comply. Finally, the operational stage includes the actions or steps taken towards realising the objectives and goals set by members of the regime (Levy *et al.*, 1995:282). This stage requires the mobilisation of resources that may lead to the establishment of institutions that will be tasked to ensure compliance with the broad and specific provisions of the regime. It is important to note that non-state actors such as businesses and non-governmental organisations will be expected to comply if the regime requires member states to enact domestic legislation to fulfil the overall norms and principles of the regime.

The following section deals with the main theoretical crux of this study: the issue of compliance and the reasons why states tend to or do not comply with international agreements or treaties.

3.8   Compliance: A global perspective

International cooperation on issues of global significance requires commitment from members who have signed up to be part of a regime. Therefore, compliance with the key provisions of a regime is crucial towards realising the fundamental norms and principles for which the members or the great powers signed up. Despite the remarkable interest in studying compliance under the umbrella of international agreements, the effort to link theory with evidence is still in its infancy due to the difficulty in defining and measuring compliance (Simmons, 1998:77). This is because of the various academic disciplines that apply different methods of analysis, reasoning and standards of proof (Simmons, 1998:77). The following section investigates the key considerations that compel states to comply or not to comply with international commitments.

3.9   Factors influencing compliance and non-compliance

McLaughlin & Hensel (2007:722) observe that the "ultimate litmus test of cooperation and compliance theories occurs in situations where states' interests are directly opposed, such as competing interstate claims over territory, maritime areas, and cross-border rivers". As the preceding sections suggested, great powers play a fundamental role in the establishment of regimes, and the two dominant IR theories of liberalism and realism provide the theoretical assumptions behind the formation, maintenance and transformation of regimes. The literature on compliance provides a myriad of reasons why states tend to comply or do not comply with international obligations. The study draws on some of the pertinent considerations that relate directly to the objectives of the study in order to provide context. To achieve this, the study adopted the four political factors outlined in Beth Whitaker's (2010) journal article titled, 'Compliance among Weak States: Africa and the Counter-Terrorism Regime' to serve as the theoretical framework to measure the varying degrees of compliance by

Kenya and Tanzania with the international counter-terrorism regime. It is important to note that there have been significant changes in the counter-terrorism landscape of Kenya and Tanzania since the article of Whitaker (2010) was authored.

3.9.1 Financial resources

Decisions to join international regimes usually come at a cost for participating states. It is for this reason that Chayes and Chayes (1993:178) argue that individuals or organisations will conduct an economic or policy analysis to conserve financial and other resources for more pressing needs. That is to say, small or developing states may be reluctant to comply with international commitments because of financial constraints. Urgent matters engulfing the developing world such as drought, poverty, unemployment and disease are considered more pressing than complying with global regimes, which will divert much needed resources.

For instance, Stiles and Thayne (2006:156) assert that "while vulnerability makes a state more inclined to submit to international pressure, it is possible to be too weak to comply with international law". However, global hegemons will dedicate financial resources to ensure compliance by small states in order to combat terrorism. Apart from financial resources dedicated towards counter-terrorism initiatives such as police training, capacity building and technical assistance with passing counter-terrorism legislation, Whitaker (2010:647) contends that an appetite to comply with counter-terrorism can be external to the regime. Put differently, a state may comply with a regime that is spearheaded by powerful actors because it will receive aid in areas that it deems paramount (education, health, housing, etc.).

3.9.2 Interests and the perceived threat of terrorism

The previous chapter examined in-depth the various conceptualisations of terrorism and its historical context. This demonstrated that many countries in the developing world provided a safe haven or were sympathetic towards international terrorist organisations such as the Palestine Liberation Organisation (PLO) because they

themselves were waging anti-colonial wars against the great powers of the West before and during the Cold War. As Whitaker (2010:645) observes

> [O]ne reason that a government may comply with the international counter-terrorism regime is that its leaders believe their country is a possible target. The more threatened leaders feel (whether by terrorists or by political opponents), the more likely they are to implement counter-terrorism measures.

Similarly, Krasner (1999) as cited in Stiles and Thayne (2006:154) contends that "states generally behave in a manner that leaders perceive to be in the best interests of the nation and best ensure their own survival". The above gives credence to the key realist assumptions about state behaviour in the international system. However, states may find it difficult to implement a regime if complying with it means having trouble within its social and political institutions. Chayes and Chayes (1993:183) summarise as follows:

> From the point of view of the particular interests of any state, the outcome may fall short of the ideal. But if the agreement is well designed, sensible, comprehensible, and with a practical eye to probable patterns of conduct and interaction-compliance problems and enforcement issues are likely to be manageable. If issues of noncompliance and enforcement are endemic, the real problem is likely to be that the original bargain did not adequately reflect the interests of those that would be living under it, rather than mere disobedience.

Based on the above, one would expect compliance to be high amongst countries that have experienced incidents of terrorism because their interests and expectations would converge with that of the counter-terrorism regime. In fact, the member state may exploit the provisions of the regime "to justify, legitimate, and strengthen its own anti-terrorism efforts" (Whitaker, 2010:646). However, for states that have not suffered the wrath of domestic or international terrorism, the incentive to comply may be reduced in order to focus on other domestic priorities. Boutton (2014:742) argues that countries such as the United States provide aid in the fight against terrorism because of their strategic interests in the recipient states even if they know funds may be misappropriated or channelled towards other causes. More pointedly, it is the assertion of Boutton (2014:742) that a domestic security threat such as terrorism may be a "strategic benefit" for the recipient state in order to continue receiving financial

assistance to combat terrorist activities within their borders. Regarding the issue of compliance in the developing world, Boutton (2014:742) further observes that

> African countries were aware of the strategic motives driving Western aid allocation and knew that the threat to withdraw aid if they did not comply was usually an empty one. As a result, they promised to implement democratic reforms, accepted the aid, and then reneged on their promises.

Generally, compliance in countries that are heavily dependent on foreign aid will be much higher compared with those that do not (Whitaker, 2010:648). Self-interest and funding are important factors to consider regarding compliance with a regime, but local political dynamics such as institutions of the state are equally important.

3.9.3 *Domestic political institutions*

The literature on the compliance of states with international commitments identifies local political institutions as a pivotal factor. Given that contemporary states have different political systems, it becomes essential to recognise that the respective organs of the state such as the legislature and judiciary will have a different type of influence and role towards honouring international agreements. For instance, Stiles and Thayne (2006:156) argue that a democratic state is more likely to comply with contentious issues in international law for ideological and cultural reasons. One of these reasons could be political pressure from opposition parties for the government to comply with international commitments. On the contrary, political debate in the legislature may stall ratification or implementation of international agreements since opposition parties have a propensity to oppose motions or laws brought forward by the governing party (Weiss, 1999 as cited by Stiles & Thayne, 2006:157).

Similarly, Whitaker (2010:648) contends that autocratic regimes may find it easier to comply with international agreements in certain areas due to the absence of political opponents. The author adds that "there have been contradictory findings as to whether democratic institutions increase or decrease compliance with international agreements" (Whitaker, 2010:649). Based on the above, it becomes evident that compliance will differ from state to state regardless of the type of political system. Similarly, Young (1979:1) proffers that "the mere existence of a rule, law, a moral

standard, a social norm, or any other behavioural prescription does not guarantee that those subject to it will actually comply with it". On the issue of compliance, the various competing domestic institutions are closely related to the domestic political institutions. These are discussed briefly in the following section.

3.9.4 *Competing domestic constituencies*

On a global level, the issue of terrorism and counter-terrorism has evoked a variety of responses from individuals, groups and institutions that are directly and indirectly affected by it. On one end of the spectrum, government agencies have embarked upon counter-terrorism measures that include equipping the various security clusters with the necessary training and resources (financial and physical) and legislation that at times curtails civil liberties. These are the constituencies that will most likely comply with the counter-terrorism regime (Whitaker, 2010:649). Non-compliant constituencies consist of groups that will be negatively affected by counter-terrorism measures. These groups may include ordinary citizens, "human rights advocates, lawyers concerned about constitutional issues, and individuals who expect to be targeted (Muslim populations in many countries, for example)" (Whitaker, 2010:650).

British philosopher, Grayling (2010:19) observes that the application of intrusive surveillance and control measures by the state is predicated on the assumption that every citizen is a "potential suspect and must be treated as such". In the United States, the September 11, 2001 terrorist attacks witnessed the promulgation of an intrusive counter-terrorism legislation called "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act of 2001)" (Martin, 2019:241). As expected, the provisions of this legislation were heavily criticised by civil liberties watchdog organisations because the Act included provisions such as granting security agencies sweeping powers to intercept email and telephonic conversations as well engaging in rendition where terror suspects were detained and interrogated in foreign countries without trial. (Martin, 2019:241).

Constituents who tend to oppose governmental attempts at encroaching on civil liberties on the pretext of combating terrorism are not only prevalent in the Western

world but have emerged and continue to spread in the developing world. Hence, this constituency's ability to apply pressure on states that are determined to implement provisions of the counter-terrorism cannot be underestimated.

In addition to the above-mentioned factors that influence compliance with the norms and principles of the regime, Chayes and Chayes (1993:187) highlight three circumstances under which a state may not intentionally comply with a regime: (1) the language of the regime is vague; (2) constraints faced by members (technical capacity); and (3) the various temporary changes that regimes take as a consequence of external. Furthermore, and of paramount importance is the assertion that a "state may be 'in compliance' when it has taken the formal legislative and administrative steps, and, despite the vagaries of legislative and domestic politics, it is perhaps appropriate to hold it accountable for failure to do so" (Chayes & Chayes, 1993:194).

As previously mentioned, there is no overarching counter-terrorism regime with which member states of the UN should comply, but the domestication of counter-terrorism legislation is the cornerstone of the regime as it seeks to criminalise all terrorist-related activities. For the most part, hard-core aspects addressed at combating terrorism such as training, intelligence sharing, and policing are usually pursued on a bilateral or regional basis. Nevertheless, Chayes and Chayes (1993:198) argue that "an acceptable level of compliance" tends to be subjective because it depends on the nature of the treaty, the context and the exact behaviour of the parties involved. In order to attain a better understanding of the above, the final section of this chapter delves into the pertinent elements of the international counter-terrorism regime in order to determine the level of variance regarding compliance with the regime by the two countries under consideration in this study.

3.10   The international counter-terrorism regime

The previous chapters provided introductory comments on the genesis of the international counter-terrorism regime and the events and global actors that led to its development. This section expands upon this and provides some background to the global counter-terrorism architecture and its key legal statutes. Terrorism scholar, Romaniuk (2010:591) observes that the post-9/11 world has witnessed the emergence

of new norms and rules pertaining to counter-terrorism and covering a plethora of transnational activities such as transport, aviation, finance, the maritime industry, immigration, law enforcement and cooperation amongst the judiviary and other measures to control and regulate nuclear weapons. Prior to 9/11, the global community of states developed counter-terrorism policies that were heavily influenced by domestic priorities (Romaniuk, 2010:592).

Put differently, the institutionalisation of counter-terrorism cooperation proliferated only after the events of 9/11. Extending on this logic, Kramer and Yetif (2007:413) contend that "with a swiftness and decisiveness unprecedented in UN history, the Security Council unanimously adopted Resolution 1368 within 24 hours of the attacks which laid the foundation for the new, more assertive focus of the Security Council on international terrorism". Furthermore, the authors argue that "the post September 11 resolutions carry more significance and clout, frame the work of the UN organs on terrorism, and provide a framework and guide for action for most of the member states of the UN" (Kramer & Yetif, 2007:420). Based on the previous sections that discussed regimes, especially realism thought, it becomes evident that institutions and international cooperation are principally backed by great power interests and that smaller or weaker states in the international system are compelled to comply. As noted in this section, the UN Security Council spearheads the institutionalisation of counter-terrorism. From this, the following section provides an overview of the various resolutions, bodies and organs tasked with global counter-terrorism cooperation and coordination.

3.10.1   Response of UN Security Council to terrorism

At the core of the Security Councils' international counter-terrorism coordination efforts and institutionalisation of the counter-terrorism regime was the establishment of the CTC after the adoption of Resolution 1373 was passed on 28 September 2001 (three weeks after the 9/11 attacks). This resolution provided far-reaching and specific obligations for all member states to implement. Key amongst them was for member states to

criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorists' acts. (United Nations, 2001)

In addition, Resolution 1373 prohibited states from providing support to entities or individuals involved in terrorist acts. To ensure commitment and progress by members, the CTC was mandated to submit a work programme to the Secretary General within 30 days for the purpose of support. Moreover, the Security Council drew in experts on a permanent basis with the formation of the Counter-Terrorism Executive Directorate (CTED) to support the activities of the CTC. According to Cortright, Lopez, Millar and Gerber-Stellingwerf (2007:24), the primary functions of the above-mentioned organisations are to strengthen the counter-terrorism capacity of UN member states, to provide them with the necessary technical assistance to carry out their UN-prescribed mandates and to "coordinate the counter-terrorism efforts of a wide range of international, regional, and sub-regional organizations within and beyond the UN system".

Despite this global coordinated attempt to counter terrorism, the CTC and the CTED are constantly confronted with a plethora of obstacles pertaining to compliance by member states. Key amongst these is the inability to develop an effective operational framework with a global outreach in order to determine whether member states are fulfilling their mandates entirely (Cortright *et al.*, 2007:24). Another critical component is the inability of the Security Council to enforce compliance with the mandates of Resolution 1373. For instance, the CTC and CTED do not have an "agreed global criteria for evaluating implementation capacities or for deciding what additional steps a state should take to achieve compliance" (Cortright *et al.*, 2007:30).

Furthermore, the current legal instruments of the Security Council cannot impose punitive measures on states that are able but not willing to comply with key provisions of UN resolutions on combating terrorism. This may be attributed to the assumption that resolutions and the composition of the UN Security Council are dominated by superpowers that impose their will on the developing world by acting as 'global legislators'.

Despite these shortcomings, Cortright *et al.* (2007:29) observe that

more than 600 reports received by the CTC provide a wealth of information about worldwide counter-terrorism capacity. The reports indicate that many states are taking steps to revise their laws and enhance their enforcement capacity for implementation of UN counter-terrorism mandates.

Furthermore, there has been an increasing number of states partaking in the 13 UN counter-terrorism conventions, especially the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999) (Cortright *et al.*, 2007:28). As mentioned in Chapter 2, not only did member states reach the consensus that a global response is required to combat terrorism but also, the adoption of the UN Global Counter-Terrorism Strategy in September 2006 provided the impetus as a unique global instrument in the campaign against terrorism at national, regional and international levels (United Nations, 2006). Regarding the counter-terrorism efforts pursued by African states, the domestication of counter-terrorism legislation is heavily influenced by the CTC, not its continental body, the AU. The following section provides an overview of the legal instruments and structures that are in place to combat terrorism in Africa.

3.11   An overview of the African counter-terrorism regime

Since the focus of this study is on terrorism in Africa in general and Kenya and Tanzania in particular, an overview with reference to the key strategies, policies and legal framework is pivotal in understanding how the continent as a regional body has been waging the campaign against terrorism. As discussed earlier, the theories on regime formation denote a scenario in which an issue on the international stage is identified and diagnosed as a problem and states then collectively employ Krasner's (1982:2) conceptualisation of regimes by developing "implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations". The literature review chapter of this study pointed out the convergence of expectations towards the campaign against terrorism on the continent, more specifically, the role of the OAU Convention on the Prevention and Combating of Terrorism (1999) and the Plan of Action of the African Union for the Prevention and Combating of Terrorism adopted in Algiers in 2002. The

Africa Peace and Security Architecture is the continent's non-military approach towards resolving violent conflicts that are prevalent in the region (Desmidt, 2019:79).

It is evident that the continent's legal architecture in the fight against terrorism has been tremendously influenced by the events of 9/11. It is important, however, not to overemphasise the dominance of the United States and the UN in compelling states to criminalise terrorist activities since some African states welcome the authority in order to fulfil their own political agendas such as supressing political opponents or critics or having a genuine concern regarding terrorists within their borders. The latter gives credence to Solomon (2015:105) who posits that the threat of terrorism is on the increase and that the significant number of 22 countries on the continent has been targeted by terrorism. By 2014, the transnational goals of terrorist organisations such as Al-Qaeda, the Islamic State, Boko Haram and Al-Shabaab had already penetrated states such Benin, Cameroon and Mozambique that had previously never experienced terrorist activities.

Before the adoption of Resolution 1373 of the UN in 2001, the OAU Convention on the Prevention and Combating of Terrorism (1999) had already made provision for member states to criminalise terrorist activity in order to counter the terrorist threat. However, it was only after 9/11, after pressure from the UN, that member states started enacting domestic legislation to criminalise terrorism and its associated activities. In other words, international pressure primarily driven by the United States saw a surge in African states complying with their international obligations. Core areas of the convention are that member states should:

- "Review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that account for the grave nature of such offences;

- Prevent their territories from being used as a base for the planning, organisation or execution of terrorist acts or for the participation or collaboration in these acts in any form whatsoever; and

- Develop and strengthen methods of monitoring and detecting plans or activities aimed at the illegal cross-border transportation, importation, export, stockpiling

and use of arms, ammunition and explosives and other materials and means of committing terrorist acts" (African Union, 1999:4-6).

In line with the CTC/CTED of the UN Security Council, Sturman (2002:106) argues that although the Constitutive Act of the African Union, 2000 Article 23(2) makes provision for sanctions against a member state that fails to comply with its decisions and policies on counter-terrorism in practice, the AU has "no precedent and little power to enforce compliance".

To demonstrate its commitment to the scourge of terrorism and to cement the provisions of the above-mentioned declaration, the AU developed a *Plan of Action of the African Union for the Prevention and Combating of Terrorism*, which was adopted in September 2002. Furthermore, this Plan of Action catered for a think tank / technical arm called the African Centre for the Study and Research on Terrorism (ACSRT) (Institute for Security Studies (ISS), 2019). The primary objective of the ACSRT "is to contribute to and strengthen the capacity of the African Union through the PSC [Peace and Security Council] in the prevention and combating of terrorism in Africa, with the ultimate objective of eliminating the threat posed by terrorism to peace, security, stability and development in Africa". (ISS, 2019)

It becomes evident that the counter-terrorism instruments of the UN and the AU are in harmony if one considers the technical assistance that is embedded in their attempts to provide capacity-building programmes for their members. Moreover, the Plan of Action mimics the core provisions of the UN Security Council Resolution 1373 and amongst other counter-terrorism measures states:

> Eradicating terrorism requires a firm commitment by Member States to pursue common objectives. These include: exchange of information among Member States on the activities and movements of terrorist groups in Africa; mutual legal assistance; exchange of research and expertise; and the mobilization of technical assistance and cooperation, both within Africa and internationally, to upgrade the scientific, technical and operational capacity of Member States. (African Union, 2002:1)

Despite these bold steps to combat terrorism, African states have been reluctant to share information on a multilateral basis despite the existence of a Terrorism Activity

Report developed to share information on lessons learnt and tactics on counter-terrorism on a secured network (Sturman, 2002:106). Additionally, Solomon (2015:114) contends that the problem with the African counter-terrorism framework lies in the behaviour of individual states. Furthermore, Solomon (2015:114) argues that African states "jealous refusal to share sovereignty with the continental body; its short-sighted and parochial view of national self-interest in the face of the transnational security threat posed by terrorism; its predatory behaviour towards citizens; and its growing criminalisation".

3.12   Concluding remarks

This chapter provided the theoretical anchor and the key assumptions developed by the dominant strands of IR, namely liberal institutionalism and realism. The chapter began by providing an overview of the competing theories of regime formations as articulated by the above schools of thought. However, there is a clear ideological divide between the two, with liberal thought asserting that regimes are instrumental in addressing failures in world politics in a variety of issue areas, and the realist contending that the state is the pre-eminent actor in world politics. Nevertheless, both schools of thought consider regimes the product of rational self-interested actors. Of primary importance is the issue of compliance. The chapter provided a multiplicity of factors that may influence states to comply or not to comply with the norms of a regime. To address the problem statement and research questions of this study, the theoretical framework of this chapter is applied in Chapter 4 in order to explain the variance in compliance with the international counter-terrorism regime of the two case studies. The chapter concluded by providing an overview of global counter-terrorism cooperation and coordination, its architecture, challenges and the factors that led to its evolvement.

What is evident from the literature, especially from a regime-theory perspective, is that the development of the counter-terrorism architecture was significantly influenced by the events of 9/11. Although terrorism and its proliferation is a genuine concern for states in the international system, the urgency to promulgate laws, policies and strategies was never a priority until the adoption of Resolution 1373 compelled member states of the UN to take a firm stand against terrorism by criminalising it in all

its facets and manifestations. This gives credence to the realist school of thought that international institutions and agreements merely represent the distribution of power in the international system that is anarchic by nature and that hegemons exploit them for their own interests. However, according to liberal institutionalists, international institutions are pivotal in forging global peace and security and provide a platform to address global concerns such as the environment, poverty, the global arms trade, nuclear weapons, terrorism, which is of great significance to this study, and other major issue areas.

CHAPTER 4: TERRORISM AND COMPLIANCE WITH THE INTERNATIONAL COUNTER-TERRORISM REGIME IN KENYA AND TANZANIA

4.1   Introduction

The previous chapter highlighted the conceptual framing of the international counter-terrorism regime by delving into and dissecting the major IR theories of realism and liberalism. Most importantly, Chapter 3 served as the theoretical anchor and is applied in this chapter in order to answer the research questions and address the problem statement of this study. The main research question that the study aimed to answer is: *How do political factors explain the degree of variance in compliance with the international counter-terrorism regime by Kenya and Tanzania?* The latter guides and is the crux of this chapter. In addition, although it is not the main focus of this study, this chapter provides a brief overview of the terrorism landscape of Kenya and Tanzania and attempts to explain their respective level of compliance with the international counter-terrorism regime by critically unpacking the factors that influence the degree and nature of compliance. More specifically, the central tenets of regime theory have been applied as an analytical tool to assess the various counter-terrorism laws, policies, programmes and present the patterns and depth of cooperation with regional and international institutions by Kenya and Tanzania in the fight against terrorism.

4.2   Terrorism in Kenya: The geographical curse

As mentioned in previous chapters, after the Embassy bombings of 1998, Kenya suffered another terrorist attack by Al-Qaeda operatives in November 2002, a bomb attack in its coastal town of Mombasa that killed 15 people (Muhala, 2007:43). In the following year, security forces were alerted to another imminent threat targeting Western interests, which led to major airlines cancelling flights to Kenya for many weeks. The authorities in Kenya responded by suspending aviation activities from the source (Somalia) of its problems pertaining to terrorism. (Muhala, 2007:43). More than a decade later, Kenya continues to be the victim of the fanatical ideologues of local and international terrorism as the Somali-based terrorist group, Al-Shabaab, continues

its assault on Kenyan territory. The terrorist organisation killed 67 people in an upmarket shopping mall (Westgate Shopping Mall) in the nation's capital in September 2013. The attack lasted for four days as the terrorists battled with Kenyan security forces (Cat & Graham, 2014). As the threat from the group intensified, another deadly attack was launched by the group on 3 April 2015. Four gunmen entered Garissa University College and killed 148 people who they singled out as Christians. This was the second-deadliest terrorist attack in Kenya (BBC News, 2019). In January 2019, the Al-Shabaab terrorist group struck again as five gunmen stormed an office complex and hotel in Nairobi killing 21 people. Before the attack, the terrorists set off car bombs and suicide explosions outside the complex (Osman, 2019). Importantly, Kenya is a target due to its leading military role in 2007 under the auspices of the UN Security Council's sanctioned AU peacekeeping force in Somalia, known as the African Union Mission in Somalia (AMISOM) (Felter *et al.*, 2020) and its US-backed efforts to dismantle the group military in Somalia (Ward, 2019:1). Muhula (2007:49) contends that the primary reason why Kenya became target is primarily because of the collapse of the state apparatus and the subsequent disillusionment of radical Muslims. As Scharrer (2018) posits, the marginalisation of Kenyan-Somalis generated anger amongst Al-Shabaab functionaries, leading to attacks on Kenya because of disgruntlement. The geographical proximity of Kenya to Somalia coupled with an insecure border and ungoverned spaces in the periphery provide Al-Shabaab the impetus to launch terrorist attacks in Kenya.

Similarly, Aronson (2013:26) argues that the proximity of Kenya to weak states such as Sudan has "created a safe haven for transnational terrorist groups". Furthermore, Kenya has a significant Muslim population of approximately 300 000 "who mainly live along the coast that borders Tanzania and Somalia" (Muhala, 2007:47). Moreover, since local Muslims share a common ancestry with states in the Arab-Peninsula, it made it more convenient for radicals with extreme views to co-exist with the local community, start families and conduct their terrorist activities (operating cells) (Muhala, 2007:47). According to the U.S. National Security Strategy of 2017:

> "Many African states are battlegrounds for violent extremism and jihadist terrorists. ISIS, al-Qaeda, and their affiliates operate on the continent and have increased the lethality of their attacks, expanded into new areas, and targeted U.S. citizens and interests. As a global hegemon and a victim of the deadliest

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terror attack by Islamic fundamentalists, the U.S. has vested interest to ensure that there is no safe haven for terrorist organisations to train, recruit and use East Africa as a launching pad to attack its interests in the region and its homeland". (Trump, 2017:52)

Kenya continues with counter-terrorism measures to stave off the onslaught from internal and external security threats and has cooperated to a significant degree with regional and international bodies and states in certain counter-terrorism issue areas.

4.3   Major extremist and terrorist Incidents

Apart from the 1998 Nairobi U.S. Embassy bombing, the Garrisa University attack, the Westgate Shopping Mall siege and the Dusit Hotel attack, Kenya's historiography of terrorism continues unabated. The table below from the Counter Extremism Project (2020) bears testimony to the frequency of terrorist incidents within Kenyan territory and is, therefore, worth reproducing in full.

Table 4.1: Summary of major extremist and terrorist events in Kenya

Date	Description of Terrorist/Extremist Incident
January 7, 2020	"Al-Shabab militants open fire near Saretho village in Garissa county near the border with Somalia. The attackers kill four children and wound three others before security forces repel the assailants. The extremists were targeting a telecommunications mast".
January 5, 2020	"Al-Shabab militants attack the shared U.S.-Kenyan Manda Bay Airfield near Kenya's border with Somalia. The attack kills one U.S. Service member and two U.S. military contractors. Two other contractors are also wounded. The attack is the first against U.S. forces inside Kenya".
December 6, 2019	"Suspected al-Shabab militants attack a bus in Kotulo, Kenya near the border with Somalia. The attack kills at least 10".
October 12, 2019	"A Kenyan police vehicle strikes a homemade bomb near the border with Somalia. At least ten police officers are killed. Al-Shabab is suspected to have planted the bomb".
June 15, 2019	A roadside bomb hits a police vehicle near Kenya's border with Somalia. The blast kills at least 11 officers who were in pursuit of recovering three police reservists kidnapped by

	Islamic insurgents the previous day. Al-Shabab claims responsibility for the attack.
April 13, 2019	"Two Cuban doctors working for the Kenyan government are kidnapped by gunmen reportedly affiliated with al-Shabab. One police officer is shot and killed during the abduction. It is suspected that the gunmen took the doctors to Somalia".
July 5, 2017	Al-Shabab militants, using rocket-propelled grenades and gunfire, kill three Kenyan policemen in a raid on a police station in the north-eastern Kenyan town of Pandanguo. The raid follows a series of al-Shabab attacks in Kenya that killed at least 28 people in the previous six weeks, most along the border with Somalia.
May 24, 2017	Nine Kenyan police officers are killed in two separate roadside bombings in Eastern Kenya. Al-Shabab claims responsibility for both attacks. A day earlier, Kenyan police said they were "on alert" for an increase in violence after al-Shabab fighters was detected moving into Kenya in small groups.
November 26, 2016	Kenyan police say they have thwarted a terror attack in Garissa County after discovering a large cache of weapons and ammunition, including improvised explosive devices and a suicide vest. The cache is believed to have belonged to al-Shabab militants who snuck into the country across the border with Somalia.
December 2011	Kenyan police arrest British national Jermaine Grant, his Kenyan wife, and an accomplice for planning to attack British, French and American targets. Samantha Lewthwaite, the widow of July 7, 2005, London bomber Germaine Lindsay, had also been part of the cell and reportedly escaped minutes before police arrived. Police found bomb materials in Grant's Mombasa apartment where he was arrested. Grant and his accomplices reportedly planned to blow up Western hotels along Kenya's coast during Christmas. Investigators connected the cell to al-Shabaab".

Source: Counter Extremism Project (2020, 3-8)

From the above, it is clear that Kenya continues with counter-terrorism measures to stave off the onslaught from internal and external security threats and has cooperated to a significant degree with regional and international bodies and states in certain counter-terrorism issue areas. As the following sections demonstrate, there have been

major shortcomings by various state institutions in their handling of terrorism-related cases. These and the inertia by some organs of the state in dealing with the threat of terrorism are discussed. The following section provides a brief overview of the terrorism landscape of Tanzania and concludes with a similar table highlighting the major terrorist- and extremist-related incidents.

4.4 Terrorism in Tanzania: The threat of domestic Islamic militancy

It is important to note that Tanzania's experience with significant terrorist attacks is limited to the 1998 bombings of the U.S. Embassy in Dar es Salaam. The existing literature on the study of terrorism pertaining to Tanzania denotes a scenario of a state battling primarily with internal conflicts emanating from or immersed in religious and socio-economic dynamics. Nonetheless, the country has not escaped the wrath of Islamic extremism shaped and influenced by terror activities occurring in its region. Its geographical proximity to conflict-ridden states such as Somalia and a significant Muslim population has been exploited by local religious leaders who incite violence against other faiths. Relatedly, the report, *Tanzania: Extremism and Counter-Extremism* of 2018 by the Counter Extremism Project asserts:

> "Since 2009, Tanzania has experienced low-level sporadic extremist violence in the form of arson, acid-attacks, shootings, beheadings, and bombings. Tanzanian authorities rarely investigate these attacks fully, leading to an intelligence gap with regard to the identity, affiliation, goal, and ideology of the perpetrators". (Counter Extremism Project [CEP], 2018:5)

Despite the absence of organised terror attacks in Tanzania, militants from Kenya and Tanzania have been linked to the rising insurgency in the Cabo Delgado province of Mozambique (Mukeredzi, 2020). This exportation of terrorism poses a serious threat to states within the Southern African region.

The genesis of these domestic extremism acts is fuelled by the systematic discrimination against Muslims by Christians that has persisted since the colonial era (CEP, 2018:1). In addition, the report succinctly states that "Tanzania's Islamic extremist landscape is a blurred mix between domestic networks incensed by local grievances and the future of the most powerful terrorist group in the region, Al-Qeada"

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(CEP, 2018:2). The ambitions of terrorist organisations are to establish an Islamic fundamentalist state in the Horn of Africa and in countries where they have a presence. Complementary to this is the assertion of LeSage (2014:9) that while the threat from local Islamists is real, the lethal threat is posed when they partner up with like-minded groups that operate on a global level. Another significant aspect as to why Tanzania has not suffered a full terror attack by Al-Shabaab is that it does not share a direct border with Somalia and only has a moderate Somali population. In addition, it is not part of AMISOM comprising Kenya, Burundi, Djibouti, Ethiopia, and Uganda that battle against Al-Shabaab militants (Dang, 2019:3).

Moreover, the report notes that Tanzania is considered as a safe haven, logistical hub and launching pad for extremists joining Al-Shabaab in Kenya and the broader region, and it was at Dar es Salaam international airport where the infamous Islamic State executioner 'Jihadi John' was arrested while on his way to Somalia from the Netherlands (CEP, 2018:5). The broader security implications for Tanzania is a concoction of its domestic Islamic extremist elements and "at the extreme … it could emerge as part of a wider, regional safe haven for militants linked to al Shabab" (LeSage, 2014:5).

4.5 Major extremist and terrorist incidents

Unlike Kenya, "the attacks in Tanzania have been relatively unsophisticated. They have involved crude homemade explosives, handguns, and buckets of acid; they have been focused on poorly protected targets of opportunity; and they have not resulted in mass casualties" (LeSage, 2014:1). Today, the threat persists from domestic Islamic extremists who may team up with regional or international terrorist organisations to launch sophisticated attacks and inflict damage that is even greater than the Dar es Salaam U.S. Embassy bombing. Below is a redacted version of Tanzania's experience with terrorism-related activities presented by the Counter Extremism Project. For purposes of comparison in tracing the frequency of terrorist attacks, a table similar to that for Kenya in Section 4.3 is reproduced in full.

Table 4.2: Summary of major extremist and terrorist events in Tanzania

Date	Description of Terrorist/Extremist Incident
April 13, 2017	"Gunmen ambush a police vehicle in Kibiti, Pwani Region, shooting dead eight officers and stealing their weaponry. Police pursue the assailants back to their hideout, killing four of them—though other assailants escape into a nearby forest. According to Police Commissioner Nsato Mssanzya, the incident 'does not in any way relate to terrorism,' and is instead 'criminal activity which was carried out by a group of bandits.' The incident follows a string of small-scale killings in Kibiti. In August 2017, Tanzanian security officers apprehend and shoot dead 13 individuals allegedly tied to the April Kibiti killings.
May 30, 2016	Unidentified assailants wielding machetes behead eight people after invading three homes in Mzizima Ward, Tanga Region. According to media sources, the assailants had been living in the Amboni Caves in Tanga and had carried out the killings fearing that the victims would reveal information to authorities about accomplices in the group. Tanzanian news outlets refer to the assailants as 'thugs' and 'bandits.' On June 27, 2016, police in Dar es Salaam shoot dead a suspected accomplice in the incident, and that city's Special Police Zone Commander Simon Sirro says his security forces are making progress against 'terrorism.'
May 19, 2016	Fifteen masked perpetrators wage an attack with IEDs, machetes, and axes at the Masjid Rahmani mosque in the northwest region of Mwanza—hacking to death three people, including the mosque's imam. According to eyewitnesses, the assailants, carrying black flags, begin the attack by turning off the lights and asking worshippers: 'Why are you praying while our fellow Muslims are unfairly held by the police?' Police describe the incident as a 'terrorist-style attack' and arrest at least three suspects. No group claims responsibility.
February 14, 2015	Security forces conduct a raid on suspected al-Shabab militants hiding in the Amboni Caves in Tanga City, weeks after those operatives are believed to have robbed police of two machine guns. The raid results in the death of one Tanzania Peoples' Defense Forces (TPDF) soldier and the wounding of five others. The suspects are able to flee, leading police commissioner Paul Changoja to concede that officials 'do not have any idea' if they are associated with al-

	Shabab—though he says that they are 'more than bandits.' Following the raid, al-Shabab releases an 11-minute video online, during which a man calling himself Kaisy bin Abdullah claims responsibility for the killing of the soldier and warns of attacks on prisons where inmates are 'inappropriately jailed.'
September 6, 2014	Suspected Islamist assailants storm a police station in Bukombe District, Geita Region, killing two policemen and injuring two others. Police arrest the perpetrators and, according to the U.S. Department of State, claim that they are Islamists seeking to steal weaponry to use in attacks against Christians. Tanzanian news sources, however, refer to the assailants as 'armed gangsters' and 'robbers.'
October 2013	On October 7, Tanzanian police arrest 11 al-Shabab suspects on Mt. Makolionga in Tanzania's southeast region of Mtwara. During the arrest police seize firearms, machetes, and 25 DVDs containing al-Shabab training materials. According to authorities, the suspects—all Tanzanian nationals—had engaged in 'intensive' military training exercises. On October 18, Mtwara police arrest two other al-Shabab suspects, allegedly tied to the previous group of 11. During the same month, Kenyan military forces arrest three Tanzanians in Somalia as they attempt to travel to an al-Shabab training camp there.
February 11, 2013	Suspected Islamists behead a priest, Mathayo Kachila, in the northwest region of Mwanza amid interfaith rioting related to Christian butchery practices. A group of Christians had reportedly arranged for a non-Muslim butcher to prepare meat for a Christian funeral reception, setting off the violence. Muslims generally oversee all butchery practices in Tanzania, as Muslims only eat meat that has been ritually slaughtered, and Christians have no such restraints.
October 12, 2012– October 18, 2012	Suspected Islamists wage arson attacks on numerous churches throughout Zanzibar and mainland Tanzania— including five in Dar es Salaam alone. The attacks are reported to stem from inflammatory comments made by Islamic leaders including Sheikh Ponda Issa Ponda against Christians, following an October 10, 2012, incident in Dar es Salaam in which a 14-year-old Christian schoolboy urinated on the Quran of his Muslim peer. Rumors subsequently spread within the Islamic

	community that a Christian leader had instructed the boy to defile the Muslim holy book. Authorities arrest at least 126 people in the wake of the church attack
June 2012	Tanzanian authorities at the Dar es Salaam airport arrest German national of Turkish origin Emrah Erdogan, alleging that in early May, Erdogan crossed into Kenya from Somalia where he had been fighting with al-Shabab. Authorities suspect that Erdogan was complicit in an al-Shabab bombing at a Nairobi shopping center just before flying to Tanzania.
November 2011	Tanzanian police arrest 10 Tanzanian nationals with suspected links to al-Shabab on the Tanzanian-Kenyan border. According to authorities, the suspects had been planning to join al-Shabab in Somalia".

Source: Counter Extremism Project (2018:6-9)

The foregoing sections offered background regarding the terrorism landscape of the countries under study and the following sections unpack their various counter-terrorism measures and level of cooperation with the international counter-terrorism regime spearheaded by the UN Security Council. Furthermore, and most importantly, the sections attempt to analyse and explain the level of cooperation with various actors in the counter-terrorism regime and explain the degree of compliance or the lack thereof.

4.6 Kenya: Counter-terrorism law, institutions and practice

4.6.1 Counter-terrorism legislation

Regarding the legal instruments to combat terrorism, Kenya only enacted its first counter-terrorism law dubbed the 'Suppression of Terrorism Bill 2003' five years after the 1998 Nairobi U.S. Embassy bombing. However, this piece of legislation faced heavy criticism from across Kenya's social, religious and political spectrum after being labelled as an infringement on international human rights, goes against the fundamental principles of the supreme law, detrimental towards national unity and cohesion, and a product of western states (Mogire & Mkutu Agade, 2011:477). The above characterisation of the bill pressured government to shelve it and two years

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later, the Anti-Terrorism Bill of 2006 was created, which suffered the same fate as the previous bill (Mogire & Mkutu Agade, 2011:477). Kenyan politicians perceived the law as imposed by the United States and hence not a priority for Kenya. Furthermore, and Members of Parliament then lamented that they would only support the bill if the United States compensated the victims of the 1998 terror attack, which the United States refused to do (Mogire & Mkutu Agade, 2011:277). Despite these legal and political challenges, the country finally promulgated and implemented the Prevention of Terrorism Act of 2012 (amended 2014) and enacted a new constitution in 2010, which laid the foundation for Kenya's overarching counter-terrorism legal framework (Bailey, 2019:137). The new Constitution promotes civil liberties, a "strengthened judiciary and by passing a range of new statutes, provides a strong set of counterterrorism tools" (Bailey, 2019:137). However, despite the enactment of legal frameworks to protect human rights, Kenyan security forces have been confronted with fierce opposition for violating the fundamental freedoms of citizens suspected of involvement in terrorist activities, as illustrated in the following section.

4.6.2   Counter-terrorism practice

The main objective of Kenya's counter-terrorism strategy is to create stability in East Africa (Somalia) and prevent terrorist attacks in its homeland, but the security threat from Al-Shabaab persists, as previous sections demonstrate. In attempting to thwart attacks from this terrorist group, the country's security apparatus has constantly been accused of violating the Constitution by denying due process to terrorist suspects. The *World Report 2015* of the Human Rights Watch (HRW) provided a damning account of Kenya's counter-terrorism measures by asserting that "Kenya's efforts to tackle a wide array of security threats have been marred by ongoing patterns of serious human rights violations by Kenyan security forces, including extrajudicial killings, arbitrary detentions, and torture" (Human Rights Watch [HRW], 2015:331). The overreach by government forces during one of their counter-terrorism operations in 2014 that targeted ethnic Somali and Muslim communities resulted in gross human rights violations and other civil liberties that the 2010 Constitution meant to protect and uphold. The HRW report further states:

[D]uring Operation Usalama Watch in Nairobi and Mombasa in April 2014, security forces from multiple agencies raided homes, buildings, and shops, carting away money, cell phones and other goods. They harassed and detained thousands-including journalists, refugees, Kenyan citizens and international aid workers-without charge, and in appalling conditions for periods well beyond the 24-hour legal limit. (HRW, 2015:331)

The HRW's latest report of 2020 narrates with concern the enforced disappearances of citizens by security forces coupled with a lack of accountability and utter impunity despite promises by Kenyan President Uhuru Kenyatta to hold them to account (HRW, 2020:330). The above challenges towards combating terrorism have been exacerbated by the corruption of state officials, the absence of security forces in remote areas, a significant refugee population and the circulation of illegally owned small firearms (Bailey, 2019:134). With reference to the judicial process of prosecuting suspected terrorists, the existing literature and media sources narrate a high acquittal rate as Kenyan authorities blithely ignore the legal process from the arraignment of terror suspects through the judicial process to trial. The remarks made by the High Court during the trial of alleged Al-Shabaab suspects are considered:

I wish to point out that the investigations, if any, were poorly done. I am aware it was at a time, and this continues to date, when this Republic was facing anxiety due to insecurity due to terrorism. The Police and all security agencies must play their part and do it well. The Judiciary must also do their part. However, the anxiety, fear or suspicion alone cannot be used as a basis of conviction where evidence is lacking. (Bailey, 2019:106)

Judicial setbacks such as the above pose serious setbacks to the country's counter-terrorism efforts if state institutions lack the capacity to investigate and do not cooperate on an inter-agency level to detect, disrupt and successfully prosecute terrorists. It inevitably provides impetus to terrorists' ambitions and emboldens their propaganda machinery to cause further destruction and insecurity. The legal framework, no matter how robust, will be futile if it fails to achieve what it was meant to accomplish as a consequence of inertia and incompetence emanating from state agencies at the forefront of the 'war on terror'. Responses should always be lawful, proportionate and accountable.

4.6.3 Counter-terrorism institutions

The ability of the Kenyan government to respond effectively to the threat posed by terrorism relies on joint efforts from various agencies within the security cluster to collaborate and share information about imminent threats and the envisaged coordinated response. As the previous sections have illustrated, the link between counter-terrorism law and practice is to a large degree dependent on the effectiveness of state institutions that are at the frontline of countering the deadly threat presented by terrorism. In the case of Kenya, the establishment of various bodies and other common security agencies derive their legitimacy from the *Prevention of Terrorism Activities Act.* However, Mogire and Mkutu Agade (2011:476) proffer that the crux of Kenya's counter-terrorism strategy has been spearheaded by the United States with an emphasis on "institutional development in order to improve government counter-terrorist capacity".

Perhaps more pointedly is the proliferation of counter-terrorism initiatives spearheaded by the United States after the 1998 terror attacks that culminated in the establishment of institutions such as the National Counter-Terrorism Centre (NCTC) and the "designation by the US government of Kenya as 'an anchor state' in the Horn of Africa and a 'frontline' in the 'Global War on Terror' GWOT" (Mogire & Mkutu Agade, 2011:475). The *Country Report on Terrorism* (UCRT) *2018* released in October 2019 by the State Department of the U.S. asserts that Kenya's counter-terrorism structures consist of three branches:

1) "The National Police Service – the Kenya Police Service (including the paramilitary General Service Unit, Traffic Police, and countrywide regional, county and local police stations);
2) The Directorate of Criminal Investigations (including the investigative Anti-Terrorism Police Unit, the Bomb Disposal Unit and the Cyber Forensics Investigative Unit); and
3) Administration Police (including the Border Police Unit)"

Notwithstanding the above institutionalisation of counter-terrorism measures fundamentally influenced by the United States, no other country on the African

continent has benefitted more from counter-terrorism support, training and resources than Kenya. As Section 4.8 illustrates, Kenya remains the cradle of American attempts and actions to contain the threat of terrorism within the Horn of Africa because the country remains a sanctuary for terrorist and radical movements that threaten American interests and its allies in the region. Nonetheless, one cannot discount similar counter-terrorism initiatives in the region, especially in a country such as Tanzania that has experienced terrorist activities. This is a focus of the current research in order to achieve the objectives of the study.

4.7   Tanzania: Counter-terrorism law, practice and institutions

4.7.1 Counter-terrorism legislation

Unlike Kenya, Tanzania's counter-terrorism legislation setting out the nation's legal framework against terrorism was passed in 2002 (The Prevention of Terrorism Act, 2002) with minimum debate owing to internal political dynamics. As with most counter-terrorism legislations, the Act defines a terrorist act as an act with the intention to:

- "Seriously intimidate a population;

- Unduly compel a government or perform or abstain from performing any act;

- Seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation; and

- Otherwise influence such government or international organisation" (United Republic of Tanzania, 2002:7).

The Act further defines an act of terrorism as "(1) attacks upon a person's life that may cause death; (2) attacks upon the physical integrity of a person; and (3) kidnapping of a person" (United Republic of Tanzania, 2002:7).

It is important to note that the above legislation is not the only legal instrument that criminalises terrorist activities. In fact, within the context of counter-terrorism legislation, the country's 1981 Penal Code (applicable only to the mainland) criminalises a plethora of terrorism-related activities such as treason, warlike activities,

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seditions and armed public riots (Bailey, 2019:240). Furthermore, these two legal instruments are complemented by the 2006 Anti-Money Laundering Act (United Republic of Tanzania, 2006) that criminalises illicit financial flows, money laundering and the financing of terrorism. In addition, the Act makes provision for the establishment of a Financial Intelligence Unit that legally compels financial institutions to report suspicious financial transactions and to set up various risk mitigating measures that will prevent individuals and groups from compromising the integrity of the country's financial system (United Republic of Tanzania, 2006).

4.7.2 Counter-terrorism practice

Despite the absence of mass casualties inflicted through terrorism, the nation's security forces, as in the case of Kenya, have come under heavy criticism for the way they have dealt with terror suspects. Dang (2019:1) asserts that "local communities are concerned about the securitized response to violent extremism and the involvement of police and security forces in extrajudicial disappearances and executions of violence extremism suspects." Complementary to this, the UCRT of 2018 (2019:46) narrates how security forces exercised brutality and transgressed the nation's laws by denying terror suspects due process.

As the previous sections have shown, the rising extremist violence emanating from local extremist groups, have been downplayed by the Tanzanian government and security forces as acts carried out by "criminal bandits" (Dang, 2019:7) and, therefore, not terrorism related. According to the UCRT (2019:46), the reluctance to register these attacks as terrorism perhaps explains why Tanzania reported no terrorist incidents in 2018. This is compounded by a shortage of literature on the effectiveness of the counter-terrorism framework in terms of the number of successful prosecutions of terrorism-related offences. Despite these shortcomings, the report noted that "in October 2018, Tanzanian authorities announced the arrest of more than 120 Tanzanian nationals in southern Tanzania for alleged involvement with terrorist organizations in Mozambique" (UCRT, 2019:46). This transnational cooperation on counter-terrorism efforts demonstrates the country's willingness to provide a hostile environment for terrorist activities. The following section provides an overview of the

institutions tasked with combating terrorism and how they have been able to respond to the terrorism threat.

4.7.3 Counter-terrorism institutions

The Prevention of Terrorism Act, 2002 overwhelming provides the Tanzanian Police Force the operational mandate to be at the forefront of countering terrorism. In addition, in 2005, the government established the National Counter-Terrorism Centre (NCTC) within the Ministry of Home Affairs for a coordinated and cooperative relationship between intelligence, police, correctional services and immigration (Dang, 2019:5). The overarching objective of the NCTC hinges on forging formidable partnerships locally and internationally to prevent rather than respond to terrorism," and it is the focal point for the government's engagement with the international community on countering violent extremism efforts" (Dang, 2019:5). Outside official security structures, the government has embarked on community policing initiatives to combat violent extremism and at the same time ease community tensions and various crimes (Kessels, Durner & Schwartz, 2016:49-50). However, there are concerns that this approach is primarily focused on intelligence gathering and may be exploited by community members providing "false information to target personal opponents rather than legitimate suspects" (Dang, 2019:17).

The above illustrates the complexity and unintended consequences of counter-terrorism efforts not only in Tanzania but also in Kenya and other states that have embarked upon counter-terrorism measures. As the sections of this study on Kenya and Tanzania have shown, the attempts to detect, disrupt and successfully prosecute terror suspects have been overshadowed by the erosion of civil liberties by security forces, which has negatively affected the notion of democratic governance, even in the United States. The U.S. Patriot Act has undergone various iterations in areas that provide the security cluster with sweeping and unfettered powers to encroach upon civil liberties. Nonetheless, international pressure to comply with the UN Security Council Resolution 1373 and other supplementary resolutions continues unabated. As the 'global legislator', the UN's role has predominantly been focused on the soft aspects (technical skills to draft laws and capacity-building initiatives) of counter-terrorism, while the hard aspects (military cooperation, training of security

forces, the investigation of terrorism-related crimes, etc.) have been formed on a bilateral basis with strong states.

4.8   Compliance with the counter-terrorism regime: A comparative analysis of Kenya and Tanzania

The aim of this study was to explain how specific political factors affect the degree of compliance with the international counter-terrorism regime by Kenya and Tanzania and to present the nature of the terrorism threat faced by these two countries as the background. The study attempts to achieve the above objectives by critically analysing the key theoretical issues that pertain to compliance with international obligations through exploring the IR theories from a regime-theory perspective of realism and liberal institutionalism. In addition, the 2010 journal article by Beth Whitaker titled, 'Compliance among Weak States: Africa and the Counter-Terrorism Regime' was employed as the theoretical framework.

There is a dearth of studies in the regime literature that specifically delve into the relationship between regime formation and compliance with the international counter-terrorism regime. As the literature demonstrates, the phenomenon of counter-terrorism is primarily determined by states' compliance with the UN Security Council Resolution 1373 that requires them to domesticate specific counter-terrorism legislation in addition to the cooperation and collaboration of weaker states with global hegemons such as the United States through bilateral counter-terrorism initiatives. Furthermore, this regime formation was precipitated by the specific interests of states in the international system according to the dictum of the theory of hegemonic stability discussed in Chapter 3. Thus, the analysis section of this study focuses on the specific theoretical factors pertaining to compliance and non-compliance as narrated in Chapter 3 and the dominant IR theory that led to the formation and maintenance of the international counter-terrorism regime.

Considering the above, Chapter 5 evaluates whether the main research questions and sub-questions have been answered according to the aims and objectives set out in Chapter 1. In addition, the chapter makes recommendations for areas of future research.

4.9 Development of the international counter-terrorism regime: Has realism been vindicated or has liberal institutionalism prevailed?

As mentioned in Chapter 3, the UN is at the epicentre of the global counter-terrorism regime through bodies and institutions established by its Security Council. Nonetheless, scholarly evidence suggests that this attempt at institutionalising the global counter-terrorism response is marred by overlapping bodies and bureaucratic red tape that significantly hamper the mandate of the Security Council. Similarly, Cortright *et al.* (2007:42) argue that because of its political nature, the UN is incapable of executing the majority of the technical aspects of the resolutions it adopts. As can be seen in Figure 4.1, the hierarchical structure of the UN-led approach to counter-terrorism is convoluted with a number of bodies and institutions tasked with combating terrorism around the globe. There is currently more than 20 different institutions within the UN structure that addresses terrorism, with bodies such as the CTC and the CTED under the Security Council at the centre of this institutionalisation effort (Cortright *et al.*, 2007:406-407).
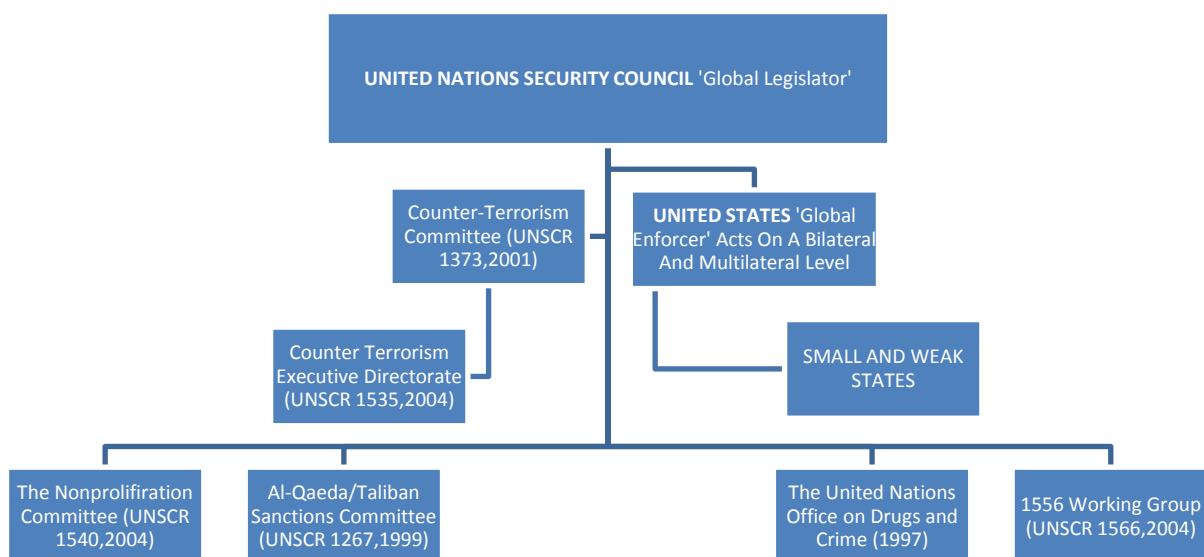

Figure 4.1: The international counter-terrorism regime

Current literature on the formation of the global counter-terrorism regime abounds with examples of how the United States used its power in the international system to advance its own national interests when it launched the 'Global War on Terrorism' after the September 11, 2001 terrorist attacks. Invoking military solutions as a response to the terrorist attack suggests that the United States used one of the fundamental precepts that underpins realists' thinking – might makes right. The basic premise of realism theory that states only cooperate when it is in their interests and the perception that institutions are a mere reflection of the distribution of power in the international system has been upheld by the way the international counter-terrorism regime architecture has been formed, reconfigured and maintained by powerful states on the global stage. The passing of Resolution 1368 only 24 hours after the 9/11 attacks and the subsequent passing of Resolution 1373 illustrates the pressure exerted by the United States. As former president, George W Bush, asserted, "[E]ither you are with us, or you are with the terrorists". The above resolutions, evidently driven, sponsored and articulated by the United States and solely representing the interests of America, led to the establishment of the global counter-terrorism regime and its accompanying bilateral engagements with various states around the globe on hard-core aspects of counter-terrorism such as law enforcement, intelligence sharing, joint military operations and border control.

Hence, the formation of the international counter-terrorism regime demonstrates that states act according to their interests in the international system, and the decisions and outcomes emanating from these international institutions are a reflection of the power dynamics on the global stage. Contrary to the liberal institutionalist view that international institutions are a panacea for global peace and security, the hard-core aspects of combating terrorism is executed by individual powerful states that engage in bilateral counter-terrorism measures with weaker states, essentially necessitating these weak states to become involved with them. As the following sections demonstrate, regime enforcement is made possible by the United States but only in states where their national security is at risk. This may explain why, as alluded to in the previous chapter, the UN's role in counter-terrorism is limited to the formulation of specific counter-terrorism laws by member states without the ability to enforce compliance. Herd and Dunay (2010:3) assert "while intergovernmental institutions are

entitled to create norms, their 'masters'-the states of which they are compromised - identify and define the areas where the organisations may establish norms and the nature of the regulation".

It is this type of norm diffusion that gives credence to the realist assumptions that states are the most important unit of analysis and are the pre-eminent actors in the international system. Despite these fundamental divergences with liberal institutionalism in the realm of international security, the application of its key assumptions and relevance to the counter-terrorism regime is pertinent in certain respects. As Tankel (2018) observes, states affected by terrorism willingly cooperate with the United States for shared priorities and are "aware of how they can benefit from the unique, high-end capabilities that the United States can provide". However, regardless of these common interests, Pokalova (2015:491) argues:

> States that joined the War on Terror have done that under the leadership of the United States, thus indicating, even if indirectly, that the U.S. as a great power exerted some level of leverage on the international arena in counterterrorist efforts.

Augmenting this argument is the fact that the United States continues to play a dominating role in the institutionalisation and cooperation of all member states of the UN in complying with international counter-terrorism legal instruments and efforts. As Cortright *et al.* (2007:36) argue, the United States and its Western allies have always been against the establishment of a multilateral capacity-building trust fund, with the United States asserting that bilateral counter-terrorism initiatives are sufficient to address the global need.

The obvious implication of this argument is that the UN-led counter-terrorism efforts do not have the capacity to manage this global counter-terrorism security cooperation and coordination and hence, the bilateral intervention by powerful states such as the United States. This is not surprising given that the CTC lacks the political authority and the necessary resources such as finances to implement fully the key provisions of Resolution 1373 (Cortright *et al.*, 2007:27). For these reasons, it is possible to argue that this is preferable for the United States in order to ensure that it can enforce compliance directly and assist only states in which its national interests are at risk. The most compelling argument on the formation of the international counter-terrorism

regime and the dominant IR theory that led to its development is provided by Romaniuk (2010:613) who asserts the following:

> Liberals would expect that institutions offer opportunities for mutual benefits and absolute gains from cooperation. But the facts here do not reflect such liberal assumptions. If counter-terrorism cooperation were driven by consensus, the pattern of influence and resistance would be less stark and, for example, efforts to rationalize the UN's role would proceed with less conflict.

Overall, the events of 9/11 provided the impetus for a more structured and coordinated approach to a global counter-terrorism campaign, with smaller states having little or no choice in being involved with the international effort against terrorism.

To conclude this section, it is pertinent to note that the institutionalisation of counter-terrorism through the UN provided the political cover for states that were susceptible to an 'imposed regime' or were perceived as pro-American and afforded the support that the United States needed to combat terrorism on an international forum (Kramer & Yetiv, 2007:431). Understanding why states cooperate and collaborate in the international system is fundamental in the study of IR. It can be gleaned from the above analysis that the global counter-terrorism architecture developed after 9/11 came about because of the domestic security situation in the United States, which ultimately led to global ramifications in security governance. As stated previously, issues pertaining to compliance and regime maintenance cannot be analysed without the involvement of the dominant actor or hegemon in the regime (United States). Hence, the subsequent sections provide an analysis in the varying levels of compliance with the international counter-terrorism regime by Kenya and Tanzania.

4.10   Factors explaining the degree of compliance

Accounting for the above theoretical and empirical conditions for the formation of the counter-terrorism regime and with reference to the theoretical framework discussed in Chapter 3, the following sections delve into the specific factors that attempt to explain the degree of compliance of Kenya and Tanzania with the counter-terrorism regime.

4.10.1   Interests and the perceived threat of terrorism

As mentioned previously, the geographical proximity of Kenya to states such as Somalia and Sudan coupled with domestic issues such as a porous border and a police force riddled with corruption provided the impetus for the country to be a victim of terrorist attacks. As of this writing, the Al-Qaeda-affiliated terror group, Al-Shabaab, continues to pose a threat to Kenya's national security. According to Allen (2020), Kenya has experienced at least 15 terrorist attacks by Al-Shabaab since the beginning of 2020. Contrary to Whitaker's (2010:657) assertion that: "Kenya is a reluctant partner in the counter-terrorism regime, cooperating strongly in some areas and resisting compliance in others", the country has significantly stepped up its counter-terrorism cooperation in all areas of the regime.

Since Whitaker authored the 2010 article, Kenya has joined forces with the United States to establish the first Joint Terrorism Task Force outside the United States (FBI National Press Office, 2020) and has willingly forged and perceived international cooperation and collaboration crucial towards combating terrorism (Mogire & Mkutu Agade, 2011:489). As a way to demonstrate its willingness to cooperate with global powers, Kenya reached out to the United States, Britain and Israel, allowing their intelligence services to play a leading role in its domestic terrorism cases and "use its territory to pursue terrorists operating there and in neighbouring countries" (Mogire & Mkutu Agade, 2011:479). This perceived threat of terrorism by Kenya accelerated its involvement in regional and international efforts on countering terrorism. In effect, Kenya remains a key member of AMISOM and is an active member of the Partnership for Regional East African Counter-terrorism (PREACT) (Mwangi, 2018).

In comparison, since the 1998 U.S. Embassy bombings, Tanzania has only experienced low-level extremist violence, which nevertheless poses an existential threat to the state. This perhaps explains its non-involvement in AMISOM, the AU peacekeeping mission in Somalia, its non-participation in the U.S.-led coalition against the Islamic State and its reluctance to designate Al-Shabaab and the Islamic State as a terrorist organisation (U.S. State Department, 2019). Furthermore, Tanzania's reluctance to cooperate with global counter-terrorism efforts led by the United States has led to repercussions being imposed by President Donald Trump through the

Executive Order 13780 of March 6, 2017 titled *Protecting the Nation from Foreign Terrorist Entry into the United States.* On 31 January 2020, the White House banned Tanzanian nationals together with nationals from several other countries (e.g. Myanmar, formerly Burma, Eritrea, Kyrgyzstan, Nigeria and Sudan) from entering the United States for non-compliance on matters pertaining to hard-core aspects of the counter-terrorism regime. Key amongst the proclamations was that (1) the state Tanzania does not sufficiently share intelligence pertaining to terrorism and security matters that may comprise the homeland of the United States.; and (2) relative to other countries in the world, the country presents an elevated danger of its citizens travelling to the United States.

The above castigation and punitive measures imposed by the United States on Tanzania but not Kenya clearly illustrates that the former (from a United States point of view) is not a reliable partner on global counter-terrorism measures. Whitaker (2010:646) explains that leaders, even though their countries have been targeted by terrorism, they may not see the urgency to respond swiftly as they believe the attacks were collateral damage. The initial may have been western governments or international organisations such structures of the United Nations. Since Tanzania's only major experience with terrorism targeted the U.S. Embassy in 1998, one may conclude that the country perceives the terrorism threat differently from Kenya, which aligns with Whitaker's (2010:646) key assumptions that states will comply with bilateral and international commitments and treaties if their domestic and foreign policy goals converge with that of the regime.

Furthermore, the available scholarship evidence strongly suggests that Tanzania, unlike Kenya, views the threat of terrorism quite differently if one considers its policy stance on bilateral and multilateral counter-terrorism initiatives. One may argue that this kind of laissez-faire posture by Tanzania is because Tanzania is the only country that denounced the sweeping provisions of Resolution 1373 before it was adopted on the 28th of September 2001 (Laurenti, 2002:24). It can, therefore, be argued that Tanzania perceives the international counter-terrorism regime as an imposed order that caters for Western interests. Moreover, in the report titled *Global Survey of the Implementation of Security Council Resolution 1373 (2001) by Member States*, the CTED observes that Kenya is the only country that has developed an overarching legal framework to freeze the assets of individuals or groups associated with the

financing of terrorism (CTED, 2016:29). This achievement by Kenya may be attributed to the strong relationship it has with the United States that continually provides the necessary technical and financial assistance in the key thematic areas (e.g. counter-financing of terrorism and law enforcement) of Resolution 1373. Notwithstanding its perception of the threat it faces from terrorism, Kenya perhaps cooperates with the UN and the United States to expand its interests beyond the counter-terrorism regime (becoming a regional hegemon). Unlike Tanzania, Kenya is recognised by the CTED as having dedicated units tasked with prosecuting terrorist-related cases and specialised police divisions that employ special investigative techniques.

4.10.2   Financial resources

Both Kenya and Tanzania as developing countries rely on external funding to finance their major counter-terrorism operations and initiatives. As a major target of terrorism compared with Tanzania, Kenya has been and continues to be a major beneficiary of U.S. counter-terrorism aid, having received over US$400 million over the last decade and receiving over US$1 billion annually in development aid that is meant to offset the threat of terrorism (CEP, 2020:9). According to the U.S. Congressional Research Service (CSR) report of 2019, "Kenya ranks among the top U.S. foreign aid recipients globally and is one of the largest African recipients of U.S. counterterrorism assistance" (CSR, 2019:1).

In addition, Kenya is also highly placed in the list of global non-counter-terrorism aid, receiving US$800 million annually. In terms of the scale, there is no comparison between Kenya and Tanzania regarding the magnitude of counter-terrorism funding and aid. As the 2017 CSR report on Tanzania states, "Tanzania receives some counter-terrorism assistance through the U.S. State Department-led multi-country PREACT" (CSR, 2017:27). For the above reasons, one may argue that Tanzania's limited level of compliance on regional and international terrorism cooperation is in part due to its limited fiscal position as a developing country.

The hard-core aspects of counter-terrorism require significant financial resources, and a developing nation such as Tanzania perceives the threat of terrorism as minimal since other pressing priorities take precedence. For these reasons, Tanzania's

moderate level of compliance with the regime gives credence to the underlying postulation of Whitaker (2010:648) that one should expect higher levels of compliance from countries that are highly dependent on financial and other forms of assistance. However, financial assistance for countries with high levels of corruption such as Kenya is not always directed towards its intended purpose. As Boutton (2014:742) perceptively asserts:

> Sending foreign assistance to a country for the purpose of combating terrorism signals a donor's strategic interest in the recipient. Because the donor's national interest is at stake, the recipient is confident that aid will not be withdrawn, even if it suspects that a large portion of it is misspent.

4.10.3   Domestic political institutions

With reference to the enactment of domestic counter-terrorism legislation and as mentioned in the previous section, the Parliament of Tanzania passed its Prevention of Terrorism Act of 2002 with minimum debate or opposition from parliamentarians and civil society organisations. Ironically, this occurred as civil society organisations were vocal about a bill that that was equally detrimental towards the operations and freedom of non-governmental organisations (Whitaker, 2010:656). If this were to be considered a measure of compliance, Tanzania would have been declared a willing partner by the UN's CTED because it domesticated counter-terrorism legislation.

Despite the reluctance by Tanzania to become involved in a variety of counter-terrorism efforts driven by the United States, the country has one of the strongest counter-terrorism legal instruments in the region and its terrorism law, modelled after the USA PATRIOT Act, is "broad, detailed and generally consistent with prevailing international norms" (Bailey, 2019:248). In comparison, fierce parliamentary debate ensued in Kenya's legislative chambers as two counter-terrorism laws were rejected on different intervals by the governing party's political opponents. The attempt to pass the 'Suppression of Terrorism Bill 2003' was vehemently rejected by the Administration of Justice and Legal Affairs Committee because it "threatens to tear apart the very fabric of one nation and could offer fertile ground for inter-religious animosity and suspicion" (BBC News, 2003). This rejection of the Bill corresponds to

Whitaker's (2010) and other scholars' assertions that as much as democratic governments tend to comply with international commitments, party politics can stall laws that are meant to cooperate with the counter-terrorism regime. This can be attributed to "contradicting findings as to whether democratic institutions increase or decrease compliance with international agreements" (Whitaker, 2010:649).

Amplifying the argument above is the assertion by Cortright *et al.* (2007:30) that there is no global consensus on a criterion to evaluate the implementation of counter-terrorism measures and the required steps needed to achieve compliance by member states. Put differently, should the enactment of counter-terrorism legislation by Kenya or Tanzania serve as a 'checklist' for complying with the regime without operationalising the key provisions thereof? The most compelling argument is presented by Romaniuk (2010:593) who contends that the existing institutions established to combat terrorism "have been neither uniform nor constant and cooperation has advanced more quickly in some domains than others". In view of the above, it becomes contentious to measure compliance in the absence of a compliance or operational framework despite the fact that Kenya and Tanzania have both complied to varying degrees with the UN, the United States and other Western powers.

Closely related to 'domestic political institutions' is 'competing domestic constituencies' since they both denote a degree of resistance to the implementation of the counter-terrorism regime.

4.10.4 Competing domestic constituencies

As discussed in Chapter 3, the theoretical aspects of the factor, Competing Domestic Constituencies, is generally divided between a segment of society that is determined to protect civil liberties and a government that is committed to protect its citizens from the onslaught of terrorism. In the case of Kenya, human rights activists, more specifically, the Kenya National Commission on Human Rights (KNCHR) has been at the forefront of being a vocal 'non-compliance' constituency regarding counter-terrorism operations being enforced by Kenya's security forces. In their damning 2015 report, '*The Error of Fighting Terror with Terror: Report of KNCHR Investigations on Human Rights Abuses in the Ongoing Crackdown Against*

Terrorism', several recommendations are suggested to reform the way Kenya's security forces operate in their attempt to investigate and prosecute terrorist suspects. One recommendation makes a clarion call:

> The President should acknowledge and condemn the abuses by security agencies and call upon them to ensure respect for the rule of law and human rights in the fight against terrorism. He should issue an official public apology to the survivors and families of victims of the abuses (KNCHR, 2015:40).

Similarly, Smith (2014) narrates how one of the activists labelled the Prevention of Terrorism Act of 2012 (amended 2014): "It's not an anti-terror bill, it's an anti-media, anti-activist, anti-citizens bill. They can arrest me without evidence or a warrant. We are going back to the days of dictatorship". These sentiments and concerns are shared in both Kenya and Tanzania, countries with significant Muslim populations that continue to be disproportionately targeted by counter-terrorism operations and that have established organisations and platforms to air their grievances. In Kenya, the Muslim community played a significant role in the denouncing and the ultimate rejection of both the Suppression of Terrorism Bill 2003 and the Anti-Terrorism Bill 2006. Thurston (2012) argues that as a significant voting constituency, "a high degree of Muslim unity seems to have been a critical factor in making this pressure felt". As the previous sections pointed out, Tanzania, unlike Kenya, passed its counter-terrorism legislation with relative ease, passing through its legislative chambers without amendments despite protests from the Muslim community.

4.11   Conclusion

This chapter served as the analysis of the theoretical framework applied to the two case studies. The central tenets of the regime theory pertaining to regime formation and compliance were applied as an analytical tool to assess the various counter-terrorism laws, policies, programmes and to present the patterns and depth of cooperation with regional and international institutions by Kenya and Tanzania in the fight against terrorism. The chapter provided an overview of the terrorism landscapes of Kenya and Tanzania and discussed the four specific factors that explain their degree of compliance with the global counter-terrorism regime. Overall, the threat

of terrorism is more pervasive in Kenya because of regional dynamics whereas in Tanzania, skirmishes and low-level sporadic attacks perpetrated by locals with foreign terrorist links have been labelled by government forces as criminal elements. The chapter further argued that realist theory, applying the lenses of regime analysis, witnessed the emergence of a counter-terrorism regime that propagated the domestication of counter-terrorism legislation at an international level spearheaded by the UN Security Council and the operational aspects thereof headed by global powers, more specifically, the United States. The journal article of Whitaker (2010) provided the four factors applied in this chapter as an analytical tool for this case study.

The final chapter draws conclusions and determines whether the research questions of this study have been answered. In addition, Chapter 5 provides recommendations for possible future research in the field of counter-terrorism cooperation and collaboration.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study applied regime theory as an analytical framework to evaluate the degree of compliance and non-compliance with the international counter-terrorism regime by Kenya and Tanzania. Furthermore, it delved into the key assumptions of realist and liberal institutionalist theory by discussing the key theoretical issues pertaining to compliance with international obligations and the emergence of the international counter-terrorism regime. Chapter 2 provided the conceptual review by introducing the various salient issues regarding the study of terrorism and by presenting a general outline of the history, understanding and definition of the concept. In addition, the chapter provided a brief overview of the key concepts and their relevance to the research questions and problem statement. Chapter 4 discussed in detail the terrorism landscape of Kenya and Tanzania and the central tenets of regime theory (discussed in Chapter 3) that were applied as an analytical tool. The analysis assessed the various counter-terrorism laws, policies, programmes and presented the patterns and depth of cooperation with regional and international institutions by Kenya and Tanzania in the fight against terrorism. Chapter 5 commences by evaluating the research questions stated in Chapter 1. The main findings and the theoretical findings are presented and recommendations for future areas of research are made.

5.2 Research problem statement and research questions

The literature highlights that there is not an international overarching counter-terrorism regime or operational framework to determine and evaluate levels of compliance. Kenya and Tanzania, as developing states, have been responding differently to the imposition of various laws and counter-terrorism efforts spearheaded by the counter-terrorism bodies of the UN Security Council (CTED and CTC) and the United States. The study's main research question is as follows:

How do political factors explain the degree of variance in compliance with the international counter-terrorism regime by Kenya and Tanzania?

The main research question guided Chapter 4 and adopted the four political factors outlined by Whitaker (2010). This question was answered by providing a comparative analysis of the various political factors that explain the variance in the compliance of Kenya and Tanzania with the counter-terrorism regime. To a large degree, each factor demonstrated how Kenya is a willing partner on the 'war on terror' by way of its perception of the terrorism threat and it being a major recipient of U.S. military and economic development aid compared with Tanzania. Because of the persistent threat it faces from Al-Shabaab, Kenya has significantly stepped up its counter-terrorism cooperation in all areas of the counter-terrorism regime. Furthermore, its status as an 'anchor state' and its geographic proximity to political unstable states such as Sudan and Somalia provided the impetus to cooperate willingly with the United States to quell domestic and international terrorism threats.

Compared with Tanzania, Kenya is a primary recipient of military and economic aid from the United States and has been able to use these resources to confront the scourge of terrorism and enhance its capacity to prosecute terrorist-related offences. Because of the limited resources that Tanzania receives from the United States and its threat perception of terrorism, scholarly evidence illustrates how Tanzania has been a reluctant partner in the global counter-terrorism campaign and has yet to designate terrorist organisations such as the Islamic State as terrorist organisations. Furthermore, the current study argues that despite its territory being used as a conduit to launch terror attacks, Tanzania does not participate in regional counter-terrorism operations such as AMISOM to thwart the threat posed by Al-Shabaab militants in the region. Unlike Kenya, Tanzania vehemently opposed Resolution 1373 that provided the international legal framework towards combating terrorism and the financing thereof. The country argued that the resolution provided sweeping powers to the UN Security Council and its monitoring bodies and encroached on its sovereignty. As the 'global enforcer' of the international counter-terrorism regime, the United States imposed a ban on Tanzanian nationals from entering the United States because of its non-compliance in sharing information pertaining to public safety and terrorism. Discussions of the research sub-questions follow.

1. *What is the nature and extent of terrorism threats in Kenya and Tanzania?*

This sub-question was addressed in Chapter 2, and Chapter 4 highlighted the varying degrees of terrorism threats faced by Kenya and Tanzania. Chapter 4 concluded that unlike Kenya, Tanzania's experience with terrorism is limited to the 1998 U.S. Embassy bombings, which may explain its reluctance to be an active member and to comply willingly with various international and regional counter-terrorism measures. For the most part, the terrorism-related incidents experienced by Tanzania have been labelled by its security forces as acts committed by 'criminal bandits' and not terrorist organisations that indiscriminately target civilians and public spaces. Furthermore, the absence of a major terrorist attack that poses an existential threat to the Tanzanian state perhaps explains its poor approach towards combating terrorism. Regarding Kenya, this study has shown that the country remains on high alert as the threat from the Al-Shabaab terrorist network persists. The high-profile attacks on Garrisa University (148 casualties), the Westgate Shopping Mall (67 casualties) and the Dusit Hotel complex (26 casualties) demonstrates the threat that Kenya faces from the terrorist group.

2. *How does regime theory explain the emergence of the international counter-terrorism regime, particularly with respect to Kenya and Tanzania?*

This question pertained to the theory supporting this study, which explains how regime theory has its roots in the neo-liberal theory of IR and how it dominates the analysis of regime formation. Chapters 3 and 4 addressed this question by explaining the factors that led to the attempt to institutionalise the fight against terrorism internationally. In addition, the analysis of how the United States, through realist theory, shaped and influenced the counter-terrorism regime was presented in detail by narrating the impact that the events of 11 September 2001 had on the emergence of the international counter-terrorism regime. The adoption of Resolution 1373 spearheaded by the United States provided unprecedented powers to the UN Security Council that made it legally binding for member states to enact specific legislation that criminalises terrorism and the financing thereof and prohibits its members from providing a safe haven from which terrorist organisations can operate.

5.3   Theoretical implications

The study employed regime theory as the theoretical anchor to explain the formation of regimes through the lenses of the dominant IR theories – realism and liberal institutionalism. Furthermore, Whitaker's (2010) article on compliance with regimes in the African context made significant contributions to the study of compliance in the area of counter-terrorism. Nonetheless, time is a crucial factor since compliance by a state is influenced and determined by various internal and external dynamics that fluctuate over time. As demonstrated in Chapter 4 through the various political factors determining compliance, this study largely disagrees with Whitaker (2010) that Tanzania is a more willing partner than Kenya regarding the international counter-terrorism regime. Although the four factors significantly assisted in analysing the varying levels of compliance by Kenya and Tanzania with the counter-terrorism regime, they discounted the importance of issues such as hegemony and corruption that play a fundamental role on the ability of these states to cooperate on counter-terrorism measures. For example, by delving specifically into the literature on hegemony, the great power interests played out by the United States could have provided a vivid representation of how the country explicitly enforces compliance. In addition, because of the absence of an overarching counter-terrorism regime, the measurement of compliance is problematic.

5.4   Recommendations for future research

As a non-monolithic issue area, further research in the field of the counter-terrorism regime is certainly warranted because of the very nature of its current institutionalisation. As the literature demonstrated, the area of counter-terrorism covers a broad spectrum of issues ranging from the hard-core aspects such as intelligence sharing, policing, military operations and the use of drones to the soft aspects such as capacity building and countering violent extremism and radicalisation by addressing the social ills of poverty and overcoming unemployment and discrimination against minority groups. For the above reasons, further research is needed on the modalities to establish a global institution for counter-terrorism, which is similar to that of the anti-money-laundering regime. This further inquiry should be

cognisant that counter-terrorism laws differ in various parts of the world and are based on countries' unique histories, priorities and interests.

Since this study only focused on Kenya and Tanzania, it is recommended that case studies examining the same or more factors influencing compliance are carried out in other parts of the developing world to assess global patterns of differences and similarities. This may aid in developing a comprehensive operational framework to measure compliance and to provide countries with the necessary resources to combat terrorism more effectively.

5.5   Recommendations and concluding remarks

The regime theoretical perspective was employed to explain the emergence of the international counter-terrorism regime by adopting two major strands of IR theory, namely realism and liberal institutionalism. This study argued that realism best explains the formation of the international counter-terrorism regime since its development primarily represented the interests of the United States. The factors underpinning compliance or non-compliance were unpacked for each case study, and the precipitating conditions for the varying degrees of cooperation with the regime were explained. There are very few studies on security cooperation that apply regime theory as a theoretical framework, especially on matters pertaining to counter-terrorism.

Furthermore, the current study provided a comprehensive overview of the terrorism landscapes of Kenya and Tanzania and concluded that the former faces a significant threat from terrorism because of the factors, interests and the perceived threat of terrorism explained in chapters 2 and 4. What makes counter-terrorism challenging is that the definition of terrorism remains contested (as explained in Chapter 2) and thus, the application of counter-terrorism law and practice will invariably result in different interpretations and different levels of cooperation in combating international terrorism. The absence of a global operational framework with a common methodology to assess compliance continues to pose a challenge to bodies such as the CTC and CTED in the execution of their mandates.

Compliance should not only emphasise the domestication of specific counter-terrorism legislation but should also focus on the implementation of the key provisions without infringing on the political and civil liberties of those found on the wrong side of the law. To avoid great power rivalry between nations such as China, Russia and the United States, the UN Security Council should take a leading role in strengthening and spearheading all major counter-terrorism measures. The United States and other Western nations should provide assistance through channels established by the UN and engage in multilateral not bilateral efforts to combat terrorism in Africa. This will prevent accusations such as 'imperialism' and 'new colonialism' being uttered by states in the developing world that perceive unilateral actions in the form of sanctions and other punitive measures as counter-productive towards combating terrorism.

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