



## LEGAL TREATMENT OF TERRORISM ABUNDANCE AND EFFICACY

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Terrorism *per se* is one of the most ubiquitous and rampant manifestations of violence in the world. With a spate of despicable tragedies unfolding, indelible memories come flooding into the human conscience which is forced to relive the scourge of hard and troubled times. The assassination of Archduke Francois Ferdinand de Habsburg, Crown Prince of Austria, in Sarajevo in 1914 was a direct cause of the outbreak of the First World War (1914-1918), which killed and injured about 63 million people (16 million deaths and 20 million injuries). The 9/11 Attacks 2001 on the World Trade Center Towers in New York and one of the United States Department of Defense Headquarters killed nearly three thousand people of different nationalities. These attacks were followed by wars that toppled the ruling regimes in Afghanistan and Iraq, and acts of violence, killing and destruction targeting institutions and people in several countries all over the world.

The foregoing phenomenon has witnessed constant spread and development with regard to its goals, organization and means. The current article seeks to provide compelling answers to a number of leading questions:

- How and in which directions has this phenomenon developed?
- How do international and national laws interact with terrorism?

### DEVELOPMENT OF TERRORISM

In the wake of the Cold War, international terrorism has taken different forms, such as hijacking aircraft, seizing ships (Achille Lauro is a case in point), destroying civil facilities, assassinating political and diplomatic figures, artists and businessmen, attacking embassies and public institutions, and planting explosives in public places, leading up to mass murder. Following the 9/11 Attacks, terrorism has turned into an international phenomenon, and has become the most notorious non-traditional source of threat to international peace and security, with the number of terrorist groups soaring from 30 organizations in 1971 up to 170 organizations, and with the socially,

educationally and geographically different backgrounds of those involved. Terrorism has geographically expanded, leading to an increase in the number of terrorist operations and the number of people falling victims to such brutality, which has exceeded the number of victims of conventional wars! In addition to millions of refugees and displaced persons, and the operations of plundering the cultural heritage of countries, as happened to that of Afghanistan, Iraq and Syria, and the destruction of the infrastructure of many countries.

Technically, terrorism over the first decade of the third millennium displayed much development in organizational methods and operational instruments, with the number of male and female members of terrorist organizations on the increase, including different ages and nationalities and the use of state-of-the-art technologies. Therefore, keeping track of the existing terrorist organizations, uncovering their clandestine cells, countering their proliferation and eradicating their territorial and ideological existence through obsolete methods and outdated weapons have become a glaringly onerous, costly and risky action. Against a backdrop of such formidable challenges, the transformations which the terrorism phenomenon witnessed have imposed on states and their executive, legislative and judicial institutions and the international community a crying necessity to keep pace with and confront such life-threatening transformations by enacting appropriate international, regional and national laws.

## **MULTIPLE LEGAL TREATMENTS**

The international community concluded about 13 international legal instruments under the supervision of the United Nations (UN) and respective and competent agencies, between 1963 and 2001, which provide for the criminalization of terrorist acts and form a basis for international cooperation in this field. This includes countering unlawful hijacking of aircraft and the Convention on Combating Unlawful Acts Toward Civil Aviation Safety in 1971. The General Assembly issued a number of resolutions condemning terrorism as an international crime. In 1972 (Session 27), it adopted a new method of addressing the issue of terrorism that featured much breadth and severity, and called for actions to be taken to prevent terrorism and other manifestations of violence that endanger the lives of innocent residents, in addition to the International Convention on Combating Crimes against Protected Legal Persons, including Diplomatic representatives, in 1973, and the International Convention against the Taking of Hostages in 1979.

The General Assembly addressed important aspects of the terrorism, including the phenomenon of “State Terrorism” as a practice that attempts to undermine the social and political systems of states, the protocol on combating acts of violence at airports, the agreement on combating acts threatening the safety of maritime navigation in 1988, and the international convention for the suppression of terrorist attacks which use plastic explosives in 1991. In respect of the “Lockerbie” Crisis, Resolution 748 affirmed that it is the role of every state, according to the principle stated in Article 4/2 of the UN Charter, to refrain from orchestrating terrorist acts in other countries, incitement, assistance or involvement thereof or even approving activities of any organization within any territory structured to commit such acts. The Council also issued the International Convention for the Suppression of Terrorist Bombings in 1997, and the International Convention on the Financing of Terrorism in 1999. Resolution 1566 of 2004 is considered one of the most important terrorism-related resolutions issued by the Council, as it called for the involvement of relevant international, regional and sub-regional organizations to work in tandem and strengthen international counterterrorism cooperation and to intensify their interaction with the UN, especially with the Counter-Terrorism Committee.

The Security Council has stressed the need for the counterterrorism process to pass through the consolidation of the rule of law and the development of cooperation between states. Based on Chapter VII of the UN Charter, the Council adopted a binding resolution on all states in combating the financing of terrorist activities and adopting strong legislations to provide real control over their territories and avoid using these territories for hostile and aggressive purposes against other countries.

Regionally, counterterrorism agreements are now varied and in abundance. This includes the adoption by the American states on February 2, 1971 the Convention on the Prevention and Punishment of Acts of Terrorism as well as relevant extortion. The European Convention for the Prevention and Suppression of Terrorism was signed in Strasbourg on January 27, 1977, in addition to the Regional Counterterrorism Agreement of South Asia signed in 1987 and came to effect in 1998, the Unified Arab Convention on Combating Terrorism signed in 1998 (the Arab Strategy for Combating Terrorism), the Organization of the Islamic Conference Convention to Combat International Terrorism in 1999, the 1999 Organization of African Unity Counterterrorism Agreement concluded in Algeria, and the security agreements of the Gulf Cooperation Council concluded in 2012 in Riyadh, alongside local national counterterrorism strategies that have been implemented on the recommendation of the UN.

## MEANS OF COUNTERTERRORISM

The UN has made concerted and unremitting efforts contributory to the issuance of many counterterrorism-related laws, agreements and decisions. However, the UN has been helpless to formulate a unified, unambiguous and clear-cut definition of terrorism and terrorist crime. Most of the agreements consider and include crimes within the concept of terrorism while exclude others. The UN also relied on formulating vague and imprecise terms within terrorist acts. Some agreements did not draw a line between acts of violence that fall within the concept of armed struggle and resistance to determine the fate of peoples under occupation, as stated in the UN Charter and the principles of the international law on the one hand, and acts of subversive violence aimed at terrorizing citizens and inflicting losses on the economies and security of states on the other hand.

While a unanimous consensus is almost arrived at among jurists that the Security Council resolutions (1368, 1373 & 1390) on terrorism, especially those issued in the wake of the 9/11 Attacks are a dangerous international precedent, which may pave the way for the end of international law, since the set of procedures and practices on which they were based represent a serious challenge to the provisions of international human rights law, and a blatant violation of the principle of international legitimacy, and may lead up to a new legal reality; the emergence of customs and practices contrary to such legitimacy in all areas of international relations. It is noteworthy that what distinguishes most of the chapters of these conventions and provisions, whether collective or with the contribution of a limited number of non-influential countries, is that they are of an immediate curative or remedial nature, as if their goal were to find mitigation treatment to alleviate the material, human and psychological repercussions after each and every terrorist operation.

## SECURITY AND LEGAL TREATMENTS

The legal counterterrorism treatments that were employed before the 9/11 Attacks were based on the approach of deterrence and containment (France, Italy, and Spain), while the legal treatments following the 9/11 Attacks were concerned with military security solutions; that is, the use of force while supporting unilateral action, and relying on the ideology of preventive proactive defense (US and UK). As for other countries, they believe that these terrorist operations are among the types of crimes that are characterized by being international disputes that can be settled by taking non-military measures by the UN, as is the case with the wars in Afghanistan and Iraq by relying on the international law. This matter has had a great impact on the key role of

the Security Council in maintaining international peace and security, including the expansion of the use of Chapter Seven to impose coercive measures on states and groups that sponsor, pander to and cater for terrorism, in line with the position of the United States of America and its behavior on the ground.

The bottom line is that the war on terror has become a fundamental factor in shaping international relations in the post-9/11 world, and in building new alliances at the expense of other factors. It seems that the justification for the humanitarian intervention used by the major states with wide and multiple influences on international politics would lead to a change in the rule of international law in the form that the influential international powers agree with, which may contribute to undermining the remaining fragile and ramshackle system of international legitimacy, and deviating from the core of the basic principles and laws on which the international relations were based in the wake of the Second World War.

Undoubtedly, the legal treatment of terrorism has two interconnected approaches or two complementary fields, albeit sometimes divergent; namely, the legal treatment and the security treatment in all its dimensions. Counterterrorism is an ongoing challenge to the international law. For terrorist violence to be entirely eliminated, denouncement or condemnation would not pay off alone; rather, it is necessary to agree legally and procedurally on the methods and means that can be followed after identifying the root causes of the spread and expansion of the phenomenon, and how many people have been decoyed by its wiles and ruses. It stands to reason that addressing the phenomenon of terrorism is not limited to legal and security treatment, despite their great importance. It is also necessary to support this treatment with the whole gamut of power, including societal, political, ideological, cultural, educational and economic efforts.