

LEGAL WARFARE: USING INTERNATIONAL LAW AS A WEAPON AGAINST GLOBAL TERRORISM

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Abstract:

This paper talks about terrorism from the point of view of international law, focusing on the legal and institutional steps that have been taken to fight terrorist threats. Using or threatening violence to scare people for political or ideological reasons is terrorism. It is different from regular violence because it uses an indirect coercive strategy, in which Actor A targets Victim B to get a third party, usually the State or the international community (C), to do what they want. It is hard to control and punish terrorism because it means attacking civilians and non-combatants on purpose to achieve strategic goals. Terrorism has been around for a long time and has changed over the years. For example, during the French Revolution, there was the Reign of Terror, and now there are guerrilla tactics. It is still a common way for people to be violent in politics. This paper talks about how international law can help fight non-State terrorist groups. It focuses on how States, regional organizations, and the UN system have responded. We look at important international tools, norms, and ways for countries to work together to see how well they deal with the changing and cross-border nature of terrorism while also protecting human rights, state sovereignty, and global security.

Key words: Terrorism, International Law, Non-State Actors, Coercion, The United Nations

1. Introduction

Even though many people around the world have condemned "terrorism," the international community has not been able to come up with a legal definition of the word since the 1920s. The usual definition of terrorism is simple: a lot of fear. However, it has been very hard to turn that literal meaning into a legal meaning that everyone agrees on.

The problem is mostly political, not technical; a treaty can clearly define any issue. Some states should put denouncing government violence at the top of their list, but they should not include violence aimed at self-determination or freeing a country from foreign occupation. Some states put a higher priority on dealing with violence that isn't caused by the government, no matter what the

reason is. This is partly because there are already rules in place for state violence, such as the prohibition of force, intervention, international humanitarian law (IHL), and human rights law. There are still technical problems, especially when it comes to making sure that definitions are not too broad or too narrow and do not violate human rights.

There is a basic legal agreement around the world that terrorism is violence that is illegal and meant to scare people or force a government or international organization to do something. Some state laws also say that the goal of terrorism is to promote a political, religious, or ideological agenda. There is still a lot of disagreement in politics about whether or not to include state and self-determination violence, as well as how counter-terrorism law and international humanitarian law, which governs all violence in armed conflict, work together. So, even though progress is being made toward an international legal agreement, there is still a conceptual stalemate.

From the 1960s to the 1990s, most states dealt with terrorism by using a mix of regular crimes and crimes against public order or national security. This was because there was no agreement on what to do. In cross-border cases, these were made worse by the passing of transnational "sect-oral" treaty offenses in the home country. These offenses make common terrorist tactics like hijacking or hostage-taking illegal without clearly defining what a terrorist offense is. Also, a number of later treaties make their crimes less political when it comes to extradition. These include treaties about terrorist bombings (1997) and terrorist financing (1999).¹

After the terrorist attacks in the United States on September 11, 2001 ('9/11'), most states started to pass laws against 'terrorism' offenses. This was because the UN Security Council's resolution 1373 (2001) told them to make terrorist acts illegal under their own laws, even though the Council didn't give them a definition of what that meant. The idea of "terrorism" now has legal meaning in international law for the first time.² Terrorism crimes are common in national laws, but there is a lot of disagreement over what terrorism actually is. This article looks at the main international efforts to define terrorism, including the ongoing efforts at the United Nations since 1999 to negotiate a Draft Comprehensive Terrorism Convention and the actions that have come out of the Security Council's responses.³

The idea of terrorism on a global scale is most important for defining crimes and related areas of law, like law enforcement authority, criminal procedure, and extradition and mutual legal assistance. The range of violations also has an effect on international humanitarian law and respect for human rights law. The legal framework for using force doesn't seem to care as much about the meaning, since its key legal terms (like "armed attack" and "self-defense") don't depend on whether someone is called a "terrorist" or not. Definitions can have a big impact on many areas, such as working together internationally to stop terrorism and violent extremism, providing technical help, UN initiatives, and making national plans for counter-terrorism sanctions and the designation of people and groups (and then freezing or seizing their assets).⁴

2. The Law and Terrorism Before 1945

In the late 1700s, the term became part of political speech to describe the Jacobin reign of (state) terror during the French revolution. Different disapproves have used it to make people think badly of violence by the government and violence by private citizens. There has been a long and heated moral and political rejection of "terrorism," but only recently have legal ideas come up.

National law defined terrorism in a different way starting in the middle of the 1800s. People who committed political violence were charged with crimes against public order or safety. When people who committed political violence ran away to other countries to avoid punishment, the states where the victims lived often asked for their surrender. In these situations, national extradition laws and

bilateral treaties that are very different from each other often made it hard for countries to work together because of the "double criminality" requirement (the act must be a crime in both jurisdictions) or the "political offense exception" (which says that extradition is not allowed for "political" offenses) and political asylum protection. This caused violence between states and allowed all criminals to go free, even those who killed or hurt civilians without reason.

Modern efforts around the world to fight "terrorism" came about because people wanted to get around these legal barriers to working together. Starting in 1856, the Belgian "attentat" clause made it possible to extradite people who killed heads of state or government, no matter what their political reasons were. This idea quickly spread to other Western European countries and the United States. In the 1890s, anarchist violence spread across Europe and other continents. It was seen as "asocial" and against all political systems. This led to efforts to depoliticize it in extradition, as shown by a resolution from the International Law Institute in 1892 and the Rome Anti-Anarchist Conference with 22 states in 1898. To fight terrorism, Spain, Italy, and Switzerland made it a crime in the mid-1890s.⁵

These improvements did not stop other types of violent conflict that rose in the 1800s, such as political, nationalist, separatist, and socialist violence. These types of violence became more common after World War I, when anarchism declined. Still, getting everyone in the world to agree to limit the political offense exception to things like targeted killings or anarchism was very hard before World War II. The idea of "terrorism" became more and more important to efforts to make things better.

From the late 1920s to the mid-1930s, major civil society groups worked to separate terrorism from other crimes. Their goal was to make sure that national criminal law was the same across the board and that politics had less of an impact on extradition cases. The lawyers of the International Association of Penal Law and its branch, the International Bureau for the Unification of Criminal Law, talked about the difference between political terrorism and anarchist "social crime." ⁶In 1935, terrorism was defined as attacking people who are protected by international law to create a "state of terror" that makes it hard for the government to do its job or for countries to get along. They couldn't depoliticize terrorism extradition, especially because of fears of tyranny in the 1930s. The plan didn't change any national laws, and a 1934 earthquake in the League of Nations overshadowed it.

A Macedonian rebel killed King Alexander of Yugoslavia and French Foreign Minister Louis Barthou in 1934. This led to the biggest international effort to officially fight "terrorism." Italian courts refused to extradite fugitives on the grounds of political offense. The League of Nations worked on a treaty to set up an international criminal court to punish terrorism and a convention to stop it from happening from 1934 to 1937. They couldn't make terrorism extradition less political, especially since liberals were worried about tyranny in the 1930s.⁷ The plan didn't change any national laws, and an earthquake in the League of Nations in 1934 made it less important.⁸

In 1934, a rebel from Macedonia killed King Alexander of Yugoslavia and French Foreign Minister Louis Barthou. This was the beginning of the largest international effort to publicly fight "terrorism." Italian courts would not send fugitives back to their home countries because of the political offense exception. From 1934 to 1937, the League of Nations worked on a treaty to set up an international criminal court to prosecute terrorism and a convention to fight it. This was done to keep the peace.⁹

The 1937 Convention for the Prevention and Punishment of Terrorism said that countries had to make terrorism illegal. The second part of Article 1 defined "acts of terrorism" as "criminal acts

directed against a [foreign] State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public." ¹⁰Article 2 listed the physical acts that States must make illegal, such as crimes against people and property, weapons offenses, and other related offenses. This is why terrorism is defined by its goal (a state of terror), its ultimate target (a state), and the illegal ways it tries to reach that goal. But people did not agree with the idea that terrorism is a way to reach a political goal. Even though people were worried about how vague and open to abuse the term "acts of terrorism" was, it was defined in a circular way by referring to "a state of terror."¹¹

The Convention's extradition rules do not leave terrorism out of the political offense exception. As authoritarianism grew, many states were hesitant to limit their own power in extradition cases, especially when it came to defining political offenses, and they wanted to protect the integrity of asylum. The treaty didn't go into effect because the League broke up and the Second World War started. Most national laws still saw terrorist violence as normal, political, or security crimes instead of terrorism. Also, in cases that crossed national borders, different interpretations of the political offense exception still had an effect on extradition. But the definition of the League had an effect on later talks about international law.¹²

3. Legal Definitions of Terrorism Between 1945 and 2001

3.1. Putting International Crimes into Law

The idea of terrorism came back to life after World War II when the International Law Commission (ILC) tried to make international crimes official from 1954 to 1998. A lot of people's thoughts on terrorism changed. People used to think that it was only done by non-governmental groups, but now they see it as something that governments support. The International Law Commission said in 1954 that "terrorism" was when one country broke the law against another, but it didn't say what that meant.¹³ In 1991, a proposal was made for a crime called "international terrorism" that one state commits against another. It was defined as follows:

Taking part in, planning, helping, paying for, supporting, or letting actions against another State that target people or property and are meant to make public figures, groups, or the general public afraid.¹⁴

The 1995 revised draft says that actions must be taken "to compel" the victim State "to grant advantages or to act in a specific manner." The ILC's final draft code of international crimes was approved in 1996, but it did not include a terrorism offense. The General Assembly gave the Preparatory Committee for the Establishment of an International Criminal Court (ICC) the 1996 ILC Draft Code. Article 5 of the 1998 Draft Rome Statute, which was presented at the 1998 Rome Diplomatic Conference, defined three different "terrorism crimes."

The first crime was:

Taking part in, organizing, funding, commissioning, enabling, supporting, or allowing acts of violence against another State aimed at people or property, with the goal of instilling terror, fear, or insecurity among public figures, groups, the general population, or communities, for any political, philosophical, ideological, racial, ethnic, religious, or other reasons.

This first offense is like the 1991 ILC draft, but it wasn't just for armed conflict like the 1996 ILC draft. It includes parts of the League's 1937 definition and the General Assembly's 1994 working definition of terrorism.¹⁵ The second offense was any breach of six sect-oral anti-terrorism treaties, which are explained below. The third crime involved using guns, weapons, explosives, and other

dangerous substances to commit random acts of violence that kill or seriously hurt people or groups, or that cause a lot of damage to property.¹⁶

At the Rome Conference, 34 countries pushed for the inclusion of terrorism. They did so because it can shock people's consciences, cause a lot of pain and damage to property, happen more often and on a larger scale, and threaten peace and security. Sending terrorism cases to the ICC is meant to reduce jurisdictional conflicts between states and give the Security Council more power to deal with the problem.¹⁷

The 1998 Rome Statute did not include terrorism in the end. A conference resolution said it was sad that, even though terrorism was widely condemned around the world, there was no universally accepted definition of it. There is a lot of disagreement about violence in national liberation movements, and some people worry that terrorism could make the International Criminal Court (ICC) more political. Some states thought that terrorism was better suited for national prosecution because it wasn't serious enough for international prosecution, or they thought that the most important factors were investigative rather than legal. Many of the 23 states that didn't want terrorism to be included in the law agreed that it was a serious crime, but they wanted to wait until a clearer definition was made before including it. It is interesting that terrorism is not included because it shows that the world community did not see it as a crime that everyone agreed on in 1998. Terrorism has not been included in the ICC's jurisdiction as of 2015, even though the Netherlands tried to change the ICC Statute in the early 2000s to include it.¹⁸

3.2. The General Assembly of the UN

In the 1970s, the UN General Assembly talked about terrorism on its own, not with the ILC. After Palestinian extremists attacked Israeli competitors at the 1972 Munich Olympics, there was a lot of disagreement. During the 1973–1979 UN Ad Hoc Committee meetings, countries couldn't agree on what terrorism is, what causes it, or how to stop it. Liberation violence and state terrorism were especially controversial because socialist governments called the West brutal and imperialistic.

In the 1980s, people started to agree more and more, and this continued into the 1990s after the Cold War. The 1994 Declaration on Measures against International Terrorism (A/RES/49/60) was a big step forward because it said that terrorism is "criminal acts intended or geared to generate a state of terror in the general public, a group of persons or particular persons for political purposes." There is no way to defend these kinds of crimes, no matter what political, intellectual, ideological, racial, ethnic, religious, or any other reasons may be given to do so. This approach was supported by repeated resolutions. The General Assembly and Security Council also think that terrorism is a threat to stable government, human rights, and international security.

Even though more and more people agree on the issue, many countries still see self-determination violence as different from terrorism and want a legal definition. This is especially true for the 118 Non-Aligned Movement states and the 56 Organization of Islamic Cooperation states that are also members of the Non-Aligned Movement. The definition didn't make terrorism a crime or make people responsible for it, but it did show how the world saw it politically.¹⁹

3.3. Sectoral Counter-Terrorism Treaties

After 1945, there was no legal definition of terrorism that applied to the whole world, but the international community was still able to take practical steps to fight it. Since the 1960s, liberation groups fighting colonial powers have used transnational terrorism, such as hijacking planes, taking diplomats hostage, attacking embassies, and other forms of political violence. Since the 1960s, 19 "sectoral" treaties have dealt with common terrorist tactics like hijacking, kidnapping hostages, and

putting maritime facilities at risk. Most treaties don't say "terrorism" at all, except for three recent ones: one about terrorist bombs (1997), one about terrorist finance (1999), and one about nuclear terrorism (2005).

Treaties usually require countries to make certain actions illegal, set up extraterritorial jurisdiction, and work together to prosecute or extradite people (*aut dedere aut judicare*). A few recent treaties say that states must treat crimes as non-political in order to extradite someone, but most do not. No treaty has a general definition of terrorist crime. The Terrorist Financing Convention comes the closest to defining terrorist financing for illegal purposes:

Any other act that is meant to kill or seriously hurt a civilian or other non-combatant in an armed conflict in order to scare people or force a government or international organization to do or not do something.

This practical approach has helped stop a lot of terrorism without solving the problem of what terrorism is. Even though they are reactive, making treaties on the fly leaves gaps in the law. International cooperation has worked, but treaties don't make modern methods like small-arms attacks (like the 2008 Mumbai attacks) illegal.²⁰

3.4. UN Draft Comprehensive Convention

Based on an Indian proposal, the UN came the closest to making terrorism a crime during the 1999 Draft Comprehensive Terrorism Convention talks. By 2002, most of the 27 articles, including the definition, had been agreed upon. The fact that it applied to both state and non-state violence in armed conflict and state military violence in peacetime made negotiations harder. There has been no agreement in regular sessions in 2021. Draft Article 2(1) says that killing someone or seriously hurting them, seriously damaging public or private property, or damaging property, places, facilities, or systems that causes major economic loss is a crime. The goal of such behavior must be "to intimidate a people, or to coerce a Government or an international organization to do or abstain from doing any act." The treaty would not allow these crimes to be extradited as political offenses. Some common law countries require proof of a political, religious, or ideological goal in order to prove terrorism, but this definition does not. There is no "democratic protest" exception, like there is in other countries' laws that make it illegal to protest, dissent, or go on strike as long as it doesn't threaten life, limb, or public health or safety. In the spirit of direct democracy, these kinds of restrictions make it illegal to call minor injuries (like property damage or public order offenses) "terrorism." The Draft Convention, like most national laws, doesn't include other "just causes" like fighting against dictatorial regimes; killing Hitler is just as "terrorism" as killing the president of a democracy that respects rights.²¹

The main problem is the exceptions to the crimes, which is a disagreement over "terrorism." The Draft Convention would leave out "armed forces" in "armed conflict," as IHL defines it, just like the Terrorist Bombings Convention. The exclusion clause partly refers to IHL, which is the special law (*lex specialis*) made to keep conflicts from getting out of hand and turning combatant violence into terrorism. IHL makes it a crime to plan attacks on people or certain illegal military attacks during wartime. If someone were to be exempt from the Convention crime of terrorism, they would not be free from punishment, but their actions would be subject to war crimes law.²² The exclusion provision may be too broad because it covers all military activities, even attacks on civilians. It may

be better for civilian protection to make illegal acts under IHL terrorism as well, since anti-terrorism laws often have better ways to investigate and hold people accountable for crimes.

The OIC wants to change the exclusion clause in the Comprehensive Convention. OIC supports leaving out "parties" instead of "armed forces," even in "foreign occupation." This is because it's not clear if "armed forces" includes non-state armed groups or if "armed conflict" includes occupation. IHL makes it clear that occupation is a type of international armed conflict. Some governments have said that only state forces are part of armed forces, but IHL article 3, which deals with non-international armed conflicts between states and non-state actors, specifically uses the term "armed forces." The OIC's suggestions are not needed, but defining "armed forces" in the Convention to include non-state forces would solve the problem.

The OIC's suggestion to include "parties" may also leave out civilians who are directly involved in hostilities under IHL but are not part of non-state "armed forces" that are always fighting. People usually think of only the latter as "fighters" and leave them out of the Convention. If this is true, it would make terrorism even less responsible by getting rid of fighters who aren't trained in IHL and might be more likely to break the law against civilians.

The Draft Convention also says that state military forces can't do official missions in peacetime, which are "governed" by international law, like the Terrorist Bombings Convention. The OIC only supports excluding them if their actions are in line with international law. In peacetime, official duties include law enforcement, evacuation, peacekeeping, the UN, and humanitarian aid. The OIC thinks that the agreement should call excessive state violence in peacetime "terrorism," even though this goes against international law. Unlike the Convention, when a government breaks international law (like the law on force and human rights), it doesn't usually get in trouble with the law.

3.5. The War Crime of Terrorism

IHL is one of the few branches of international law that has clearly accepted the idea of terrorism. However, it only applies in armed conflict, which can be between states (international law) or between states and non-state armed groups (non-international law). In response to the fascist powers' threats against civilians during World War II, several IHL treaties make terrorism illegal. In the Galić case in 2003, the International Criminal Tribunal for the former Yugoslavia said that breaking these treaty rules could be a war crime if the goal was to spread terror among civilians. Terror was simply defined as "extreme fear."²³

The war crime of terror was found to have been committed in Galić by sniping and shelling civilians in the besieged city of Sarajevo. This was because of "the nature of the civilian activities targeted, the manner in which the attacks on civilians were carried out, and the timing and duration of the attacks on civilians." The Special Court for Sierra Leone has also convicted people of the war crime of terrorism for things like cutting off and mutilating civilians. The crime of terror in war is different from the ideas of terrorism that were mentioned earlier, which are acts of violence meant to force a government or international organization to do or not do something.

3.6. Laws of regional groups to fight terrorism

There has been more progress in the region because there is no general agreement. Some regional conventions, like the League of Arab States (1998), OIC (1999), African Union (1999), and Shanghai Cooperation Organization (2001), define terrorism in a general way, while others, like international treaties, define it "sectorally." The EU's Directive on Combating Terrorism 2017 isn't a treaty, but it does require EU member states to make their own laws more like those that deal with terrorism.

The regional conventions' narrow definitions of terrorism are a problem for human rights because they go against the law. Some people call everyday crimes or crimes against public order terrorism

or insurrection. Some laws make it illegal to do things that threaten the "stability, territorial integrity, political unity, or sovereignty" of a state or the "honor" or "freedoms" of an individual.²⁴ Some protect vague assets like damaged "national resources" or "environmental or cultural heritage." One mixes terrorism with "separatism" or "extremism." The EU adds the vague goal of "seriously destabilizing or undermining the core political, constitutional, economic, or social institutions of a country or an international organization."²⁵

When terrorism is defined so broadly, getting rid of the political offense exception makes it very hard for communities to fight back against violent, oppressive governments in their own countries. Even if opposition groups only attack military targets in ways that follow international humanitarian law, other governments in the region must stop them. Three conventions (OIC, Arab, and African) "carve out" acts by liberation forces seeking self-determination, which means that any means are acceptable for a good cause.²⁶

4. Terrorism since September 11, 2001

4.1. UN Security Council Resolution 1373 from 2001

Before 9/11, the UN Security Council sometimes spoke out against terrorist acts and punished Al Qaeda and the Taliban in Afghanistan. After 9/11, they changed their plans a lot. The UN Security Council, through resolution 1373 (2001), told all countries to punish terrorism under their own laws and make the crimes in the Terrorist Financing Convention, which has very few ratification, apply to everyone.

Resolution 1373 said that states could define terrorism on their own, but not for national criminalization. Some states defined terrorism for political or human rights reasons, which led to different definitions. When definitions aren't clear enough for people to know what they have to do, they worry about things like discrimination, violations of political freedom, and violations of the law. The Council wants governments to carry out a lot of vague "preparatory" crimes that make the definition of "terrorism" even more vague. Laws in some states make it illegal to work together to violate rights, and too many foreign rules may make it harder for countries to work together.²⁷

The Council wants states to work together to "bring to justice" terrorists, but different national definitions make this harder, which is not helpful. If two jurisdictions have different definitions of terrorism, the "dual criminality" clause in many extradition and mutual aid laws and treaties may make it hard for them to work together. If a state can't extradite a terrorist who broke the law in another state but not in its own, they may go free.²⁸

The same state might not be able to put a foreign criminal on trial in its own system. There is no need for extraterritorial quasi-"universal" jurisdiction to make the same "terrorist" act a crime in another country if there is no international definition. Several domestic counter terrorism laws, on the other hand, pass like ships in the night. Legal differences can also lead to political problems when one state is pushed by another or its supporters to pass laws against terrorism.

Different national definitions make it harder to work together on other Council-mandated measures besides criminal law. These include states' responsibility to stop supporting terrorism, fight terrorist financing, stop terrorism and support for it, stop terrorist movement, deal with refugee abuse, and stop and suppress the travel of "foreign terrorist fighters."²⁹ The same goes for the UN General Assembly's Global Counter-Terrorism Strategy and the work of the UN Office of Counter-Terrorism, the UN Counter-Terrorism Center, the UN Office of Drugs and Crime, and 42 other groups that are part of the UN Global Counter-Terrorism Coordination Compact.

The Council has also not done a good job of talking about how definitions affect IHL. Some EU countries have national terrorism laws that don't apply to all terrorist offenses. These laws are sometimes based on the Terrorism Bombings Convention. On the other hand, the UK and Australia make it illegal for armed groups to fight in wars as a way to pressure another country, even if they follow IHL. This is true even if the attack only hits a military target, doesn't kill too many civilians, isn't treacherous, or uses illegal combat methods. In *R v Gul* [2013], the UK Supreme Court said that while counter-terrorism treaties don't cover all parts of military conflict, national laws can make armed combat a crime of domestic terrorism.³⁰

This approach makes it less likely that armed groups will follow IHL because the same legal penalties apply to attacking civilians and the military. Worse, some terrorism charges go against IHL protections for medical and humanitarian workers and activities, putting bystanders, the wounded, and captives in danger. It might also be harder to talk about peace and make up after a war.³¹ The Council has told countries to "take into account" humanitarian needs and follow IHL, but it hasn't talked about how regimes work together as a whole.

4.2. Resolution 1566 of the Security Council (2004)

The Security Council defined terrorism in resolution 1566 (2004) after human rights groups and civil society spoke out against it:

Taking hostages, killing or seriously hurting civilians, or committing crimes against civilians to scare people, intimidate them, or force a government or international organization to act are all crimes under international conventions and protocols.

The cumulative definition only calls acts that terrorize, intimidate, or force people to do things "terrorism" if they are set out in treaty offenses. The UN Special Rapporteur on human rights and terrorism agreed with its simple, rights-respecting definition of terrorism.³² This definition connects terrorism to convention offenses, which are crimes that everyone agrees on and that are carefully worked out through open and participatory treaty processes. These offenses also meet the legal requirements for crime definitions, such as being clear and predictable. Some terrorism convention crimes, which aren't usually "terrorist" but are meant to keep people safe in aviation, shipping, or nuclear power, are made more specific by adding personal harm and a specific purpose. A lot of conventions deal with both "public" (political, religious, or ideological) and "private" (criminal) violence.

The issue with this standard is that it leaves out a lot of terrorist acts. One reason for this is that the resolution only talks about harm to people, not property, resources, infrastructure, utilities, communications, financial systems, the environment, or public health and safety. More importantly, it only counts terrorism as breaking the rules, which is too narrow. They include hostage-taking and bombings, but they were made to be reactive and don't cover all types of terrorism, like small arms attacks. A lot of them only talk about transnational terrorism, but the Council also says that domestic terrorism needs to be dealt with. The term doesn't say what the right relationship between terrorism and IHL should be (other than by referring to set out conventions, which only a few of which talk about that relationship), and it implicitly lets terrorist offenses happen in armed conflict. Many states have adopted broader definitions because of these limits. Resolution 1566 from the Security Council is a working definition that doesn't require governments to follow it and hasn't had much of an effect.³³

4.3. The legality of Council Actions

Since 2001, there has been a debate about whether the Council's quasi-legislative response (resolution 1373) to the general threat of future terrorism is constitutional under the Charter. This is in contrast to the Council's historical role as a "policing" body (not a legislative body) in response to specific (not abstract) threats. It is okay to defend Charter security powers by treating terrorism as a general threat and making governments make laws in the future, as long as this is understood in a dynamic way and with broad state support.³⁴ This is true even if the universal General Assembly or participate, transparent, negotiated, consent-based multilateral treaty-making are better at making laws than the Council.

The extent of this radical legal trend raises more basic worries. How can the Council honestly and legally call all "terrorism" a threat to world peace and security and call for legal action against it without defining it? How can terrorism that happens in one country be a threat to international security when it only affects that country? It's okay to recognize a general threat category, but it's not okay to use Charter power to fix a black hole. The Council may know a lot about politics and security, but the law needs to be clear and certain; otherwise, it's just politics and arbitrariness dressed up as law.

4.4. Is terrorism a crime under customary international law?

There is no definition of terrorism in treaties or the Security Council. The Appeals Chamber of the hybrid UN Special Tribunal for Lebanon, which was set up to prosecute the terrorist bombings in Lebanon in 2005, tried to find a customary international crime of terrorism that could be used in peacetime in 2011. They then used this to help them understand domestic terrorism offenses under Lebanese law. There are three parts to the crime:

(i) committing a crime (like murder, kidnapping, hostage-taking, arson, etc.) or threatening to do so; (ii) wanting to scare the public, which usually puts them in danger, or wanting to force a national or international authority to act or not act; (iii) when the act has a transnational aspect.

The need for a transnational element rules out terrorism that only happens in one country. The Tribunal agreed that terrorism is a crime even when there is no war, but it also said that a broader rule against terrorist acts during armed conflict may be forming. The basic parts of the crime are the same as those in the 1999 Terrorist Financing Convention and the UN Draft Comprehensive Convention. The definition is broader than the narrow, rights-respecting one that the Security Council gave in resolution 1566. The Appeals Chamber agreed that adding a political or other motive element, as some common law definitions do, would make the definition more precise, limit its overuse, and strengthen the principle of legality. It did, however, come to the conclusion that this kind of element is not currently part of the customary law definition, but it could change to include it in the future³⁵.

The Appeals Chamber said that the 37 national terrorism laws mentioned are mostly "concordant" and show "a widespread stance and a shared perspective on terrorism." It was also noted that common elements in national laws that define terrorism include using criminal acts to scare or intimidate people, force government officials to do what they want, or disrupt or destabilize social or political structures.

In the process of making customary international law, national laws can show how states act. The Appeals Chamber's conclusion is not clear. It combines laws from different countries that deal with both national and international terrorism, each with its own set of rules. It combines definitions of what is and isn't a crime. A close look at the national laws mentioned shows that they don't all agree, since they all have very different ideas about what terrorism is. Some of these meanings are civil war and sectarian conflict (Iraq), public disorder (Egypt), constitutional subversion (Peru), threats to international relations, sovereignty, or territorial integrity (Uzbekistan), and violations of

honor (Saudi Arabia). The Appeals Chamber only mentioned 37 "best example" laws, but it's clear that the legal frameworks for dealing with terrorism in most national legal systems, including the 160 states that weren't mentioned, are even more different.³⁶

The Appeals Chamber cites Security Council resolution 1566, but this doesn't support its definition because the resolution only applies to sectoral treaty offenses, which is different from the broader definition suggested by the Appeals Chamber.³⁷ UN General Assembly resolutions, international and regional treaties, and national court decisions are some other sources that do not support the idea that terrorism is a customary international crime.³⁸ Recent decisions by national courts have not recognized that there is a definition of international law that everyone agrees on.

5. Conclusion

From one point of view, the legal definition of terrorism may seem unnecessary because normal criminal law or national security laws can usually handle acts of terrorist violence. At the same time, it can add specific definition elements that set it apart from other crimes. This shows that the international community does not support, for example, political or religious violence used to scare people or force a government to do something. It can practically turn on certain powers and procedures, as well as offenses and measures that are meant to stop them. This can improve cooperation and extradition between countries while fixing problems with current ad hoc sectoral counter-terrorism treaties.

There are also risks that come with the legal ideas about terrorism. Definitions of terrorism that are too broad or unclear can seriously hurt human rights that are recognized around the world. Politics about keeping the state alive and keeping the country safe often affect how terrorism laws are made and carried out. The broad range of special powers and crimes that come with a definition, along with the lack or weakening of standard protections, put human rights at great risk.

It makes more sense to use terrorism laws to protect democracies from violent threats than to protect authoritarian governments from legitimate opposition. Because of this complexity, it is very hard for a wide range of states to agree on what terrorism is. Most people agree that killing civilians for political reasons during peacetime is terrorism. The word "terrorism" is still up for debate, which shows how important it is for the world to come up with a clear and rights-respecting definition.

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