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TERRORISM AS AN INTERNATIONAL CRIME: TOWARDS A UNIVERSAL LEGAL DEFINITION

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1. RESEARCH PROBLEM

Under in international law no such universal definition of terrorism has accepted. The problem is that different countries interpret terrorism based on their political interests, which results in inconsistencies in punishments and creates obstacles for effective international cooperation.

2. RESEARCH OBJECTIVES

- To investigate the change of terrorism as a part of international criminal law.
- To study and compare the legal definitions and frameworks concerning terrorism.
- To recommend the changes necessary for world cooperation and legal uniformity.

3. HYPOTHESIS

The adoption of a universal definition of terrorism would result in enhanced international cooperation, standardized punishment, and improved human rights protection and global security.

4. LITERATURE REVIEW

Antonio Cassese and Ben Saul have brought out that there is not a single legal definition of terrorism applicable globally. Different specific acts were defined in the Tokyo (1963) and Hague (1970) Conventions, but they did not have a shared definition. UN Resolutions 1373 (2001) and 1566 (2004) facilitated the cooperation between the countries, however, they did not associate terrorism with be a core international crime. The Indian CCIT proposal (1996) is still considered the most significant attempt to have a worldwide definition.

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5. SCOPE OF THE STUDY

Through various measures such as UN conventions, international tribunals (ICC, ICTY, ICTR), and national laws in India, the US, and the UK, this study investigates the worldwide legal reaction to terrorism. It explores how these structures deal with terrorism and the possibility of characterizing it as an international crime.

6. RESEARCH METHODOLOGY

This work involves doctrinal and analytical work:

Primary sources:

international conventions, UN resolutions, and tribunal judgments.

Secondary sources:

books, scholarly articles, and official reports.

INTRODUCTION

Terrorism is one of the central issues that the world has to cope with today. The act of terrorism causes fear, death, and ruin in numerous countries. The killing of innocents during these terrorist operations is meant to frighten the population and is simply a way to political, religious, or ideological goals; they are not confined by boundaries and do not obey any law. Consequently, an issue that has turned into a worldwide problem which endangers the very existence of peace and security in the world has been terrorism.

By and large, though, most nations concur that terrorism is bad, yet still, there is no one clear global legal definition of what terrorism really is. One nation's terrorist act may be viewed by another as a fight for freedom or a right to self-determination. This confusion has made it practically impossible to come up with universal international laws that would punish terrorists.

The first real attempt at defining terrorism legally was made by the League of Nations in 1937, but it did not succeed as the states could not find common ground. The international law gradually turned its focus from the problem of terrorism to more serious crimes like Genocide, War crimes, and Crimes against humanity after World War II.

It was only after the terror attacks on the U.S. on 9/11 that the problem got rid of its dust and became world's priority again. UN Security Council took up the issue and passed the Resolution 1373 which mandated all countries to adopt legislation against terrorist acts and engage in international

collaboration. The international community was no longer faced with the problem of dealing separately with each type of terrorism, for almost all kinds of anti-terrorism treaties covering the areas of hijacking, use of explosives and hostage taking had been already concluded. Still, no single international law exists that classifies terrorism as a crime.²

The root cause of the issue lies in the fact that each country has its own definition of terrorism that they arrived at through their own political or national interests.

A worldwide legal definition would help guarantee that terrorists receive uniform punishment and that nations cannot abuse the term for political ends. Additionally, it would strengthen international collaboration and advance justice.

THE RESEARCH OBJECTIVES

The purpose of this study is to:

1. Recognise the evolution and treatment of terrorism in international law.
2. Examine the recent terrorism definition.
3. Determine the primary legal and political obstacles to a consensus definition.
4. Make suggestions about how to classify terrorism as a transnational crime.
5. Make reform recommendations to improve international collaboration in the fight against terrorism.

THE IMPORTANCE OF RESEARCH

A clear and commonly accepted definition of terrorism is necessary for international peace and justice. It helps to contribute our understanding of how to enhance international law to combat terrorism in a way that is more equitable, consistent, and successful.

²U.N. Security Council Resolution 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

CHAPTER II – EVOLUTION OF TERRORISM IN INTERNATIONAL CRIMINAL LAW

Terrorism is not a new problem. The world has been suffering from this crime for a long time, but one common international law against terrorism has always been difficult to make. Every country has its own political viewpoint and definition of what terrorism is. Some nations hold the view that certain acts are terrorism, while others term them “freedom struggles.”

This chapter is about how the concept of terrorism as an international crime has developed from the beginning of the discussions up to the present day.

2.1 EARLY EFFORTS: THE LEAGUE OF NATIONS CONVENTION (1937)

The League of Nations held the first major international initiative to characterize and strangle terrorism globally in 1937. This was in response to the assassination of the King of Yugoslavia, Alexander I, and the French Foreign Minister, Louis Barthou, in 1934. The horrific nature of the crime that claimed the lives of the world’s top diplomats and the panic it generated were indications to the planet of how easily violence could traverse international borders.³

The definition of terrorism was provided by the League through the Convention for the Prevention and Punishment of Terrorism (1937) which stated.:

“All criminal acts directed against a state and intended to create fear in people or groups.”

Nevertheless, this treaty never took effect because:

1. Only a few nations were willing to sign it.
 2. It was too limited in its scope, focusing solely on state-targeted actions.
 3. A World War was about to break out, and the attention of the world was diverted to war problems.
- Still, the 1937 Convention could be considered a failure, but it was a milestone, as it was the first international move towards the definition of terrorism.

2.2. POST–WORLD WAR II PERIOD AND COLD WAR DEADLOCK

In the aftermath of World War II, mainly through the Nuremberg and Tokyo Tribunals (1945–46), the focus of the international law gradually moved towards the issue of war crimes, genocide, and

³ Convention for the Prevention and Punishment of Terrorism, League of Nations. Nov. 16, 1937.

crimes against humanity. At first, terrorism was not considered a central issue as the main goal of the international law was the imposition of sanctions on war crimes.⁴

The Cold War era (1947–1991) came next, which was the period when the United States and the Soviet Union were in a political and ideological conflict. During this period:

Many countries which attained independence recently and established socialism argued that the fight for liberation from colonial rule was not terrorism but a liberation struggle.

The Western nations did not agree and maintained that such an acts should be classified as terrorism no matter what.

The conflict of opinions between countries made it impossible to arrive at a universal definition of terrorism. Therefore, instead of having one major treaty, separate conventions were established for each type of terrorist act by the countries.

2.3 RISE OF SECTORAL CONVENTIONS

Since no mutual definition could be reached, the international community, including the United Nations, started to draw up different treaties for dealing with different kinds of terrorist activities, which are called sectoral conventions.

Among the most prominent conventions are:

- Tokyo Convention (1963) – Addresses crimes committed in the airplane.⁵
- Hague Convention (1970) – Talks about the illegal seizure of planes.⁶
- Montreal Convention (1971) – Secures civil aviation against sabotage and other violent acts.⁷
- Hostages Convention (1979) – Outlaws hostage taking.⁸
- Convention on the Physical Protection of Nuclear Material (1980) – Prevents nuclear materials from falling into the hands of terrorists.⁹
- Convention for the Suppression of Terrorist Bombings (1997) – Aimed at bombings as a form of terrorism.¹⁰

⁴ Charter of the United Nations art. 39, June 26, 1945, 59 Stat. 1031, T.S. No. 993.

⁵ Tokyo Convention, Sept. 14, 1963, 704 U.N.T.S. 219.

⁶ Hague Convention, Dec. 16, 1970, 860 U.N.T.S. 105.

⁷ Montreal Convention, Sept. 23, 1971, 974 U.N.T.S. 177.

⁸ International Convention Against the Taking of Hostages, Dec. 17, 1979, 1316 U.N.T.S. 205.

⁹ Convention on the Physical Protection of Nuclear Material, Mar. 3, 1980, 1456 U.N.T.S. 124.

¹⁰ International Convention for the Suppression of Terrorist Bombings, Dec. 15, 1997, 2149 U.N.T.S. 256.

- Convention for the Suppression of the Financing of Terrorism (1999) – Concentrates on the financial side of terrorism.¹¹

2.4 INDIA'S PROPOSAL: COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM (CCIT)

Across the board, India has been a fierce advocate for the existence of a single worldwide definition of terrorism.

The Comprehensive Convention on International Terrorism (CCIT) at the UN was India's proposal in the year 1996.

The CCIT's fundamental objectives include:

- To develop a precise and shared definition of terrorism.
- To impose stiffer penalties for every terror act performed for any reason or motive.
- To eliminate the practice of states providing safe havens to the terrorists.¹²

Still, the CCIT has not been approved, because of the 2 points,

1. should we consider as a terrorist who fight for their national right?
2. The terrorist acts committed by states can be part of it?

The CCIT is still a matter of the debate, but it is still one of the major factors that lead to the establishment of global anti-terrorism legislation.

2.5 AFTER THE 9/11 DEVELOPMENT. 1373 AND 1566 UNSC RESOLUTION HAS BROUGHT UP

On the 11th of September 2001, 9/11 took place in US which lead to the shocking terrorist attack incident around 3 thousand people were death.

1373 UNSC RESOLUTION (2001)

Under chapter 7 of UN Charter resolution was permitted, hence for all states it was converted into legal obligation with binding force.

Directed countries to:

- Freeze terrorists' bank accounts and cease providing them with funds.

¹¹ International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 229.

¹² CCIT, U.N. Doc. A/C.6/51/8 (1996) (India's proposal).

- Terrorists need to be avoided as beneficiaries of a trustworthy cover.
- To help for the arrest of offender and to interchange the information.¹³

UN SECURITY COUNCIL RESOLUTION 1566 (2004)

- The act which create pressure on government like killing or harm the civilians is included under terrorism definition.
- Terrorists were to be subjected to severe punishment.
- The UN was urged to create a database of terrorist groups and individuals.

The ancient resolutions were very important steps to global cooperation but did not lead to terrorism being treated as a primary international crime alongside genocide or war crimes.¹⁴

Every state still operates under its own legal system and definitions leading to disparity in punishment.

CHAPTER III: TERRORISM AND THE INTERNATIONAL CRIMES RECOGNIZED BY THE ROME STATUTE

The year 1998 saw the birth of the ICC through the Rome Statute and additionally enumerated four primary international crimes:

1. Genocide
2. Crimes against humanity
3. War crimes
4. Aggression

However, terrorism has not yet included under in the definition of core crime in Rome Statute.

According to Article 7, a terrorist act directly aimed at a large number of civilians may be considered a crime against humanity provided it forms part of a pre-planned or systematic policy.

To illustrate: If terrorist organization repeatedly targets non-combatants to create terror, it could be charged under this article.

¹³ UNSCR 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

¹⁴ UNSCR 1566, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

WAR CRIME (ARTICLE 8)

Terrorism acts of such kinds committed during wars like bombings or attacks on non-combatants are likely to be classified as war crimes. For example: If non-combatants are killed or displaced by terrorists during warfare or flags of the Red Cross are misused, the latter can be designated as a war crime.

GENOCIDE (ARTICLE 6)

In rare situations, if terrorists are predominant oppressors of a specific group (characterized by race, religion, or ethnic origin) through sheer violence, they may even be classified as genocide perpetrators.

3.1 ROLE OF TREATIES, CUSTOMARY LAW, AND GENERAL PRINCIPLES

1. TREATIES

The fight against terrorism has led to the signing of several international treaties throughout the years.

An illustration of such international treaties:

UN Conventions which are aimed at preventing hijacking, taking hostages, and conducting bombings.

The 1999 Convention on the Financing of Terrorism prohibits any type of financial assistance to acts of terrorism.

By these agreements, countries are encouraged to include the offense of terrorism in their domestic law and also to cooperate in the processes of investigation and extradition.

2. CUSTOMARY INTERNATIONAL LAW

To put it simply, customary international law is made up of those practices that are considered legal by countries (the belief is called *opinio juris*) and those that are followed regularly by countries simply because they think it is legally required.

Terrorism is condemned and punished in almost all countries, but the lack of agreement on a definition and inconsistency in the practices of different countries have together made it impossible to consider terrorism an international crime under customary law.

In other words, there is still no legal uniformity worldwide despite the existence of moral and political agreement.

3. GENERAL PRINCIPLES OF LAW

Criminal law has several basic principles common to all legal systems which include the punishing of murder, torture, kidnapping, and destroying property.

Terrorism often has the same characteristics, thus it can also be covered by general legal principles, even where there is no particular international treaty.

For example:

- Every nation forbids the killing of non-combatants.
- Giving money or backing to violent acts is also to be punished.

As a result, universal legal norms promote the idea that terrorism is a global harm and that is not even acknowledged as international crime.

3.2 COURT RULINGS FROM INTERNATIONAL COURTS: PROSECUTOR V. TADIĆ (ICTY, 1995)

The ICTY was established in 1993 with the purpose of punishing those responsible for the Balkan Wars. It marked a transition in the history of international courts.

Prosecutor v. Duško Tadić (1995) was a critical trial that directly addressed the issue of international war crime and the nature of the conflict in a very concrete manner.

This case involved the Tribunal's outlining of the use of violence against the civilian population and the question of punishment.¹⁵

JUDGEMENT

Any deliberate violence against civilians in times of war is a grave breach of international law.

These actions fall under war crimes or crimes against humanity even if they are not referred to as "terrorism" for they cause terror among the populace.

This ruling indicated that terrorist acts (such as bombings or civilian attacks) can be tried within the boundaries of existing international crimes even when there is no distinct "terrorism" classification.

¹⁵ Case No. IT-94-1, Defence Motion for Interlocutory Appeal on Jurisdiction, 628 (ICTY Oct. 2, 1995).

3.3 RECOGNITION OF TERRORISM AS A TRANSNATIONAL CRIME AND POSSIBLY AN INTERNATIONAL CRIME

THE TERRORIST GROUPS OF TODAY (LIKE ISIS OR AL-QAEDA)

- Transfer funds, armaments, and people through various routes.
- Employ advanced communication technologies and social media to propagate their belief system.
- Work simultaneously in multiple nations.

Terrorism was the international community's only option to classification as a threat to global peace and security along with genocide and war crimes. Among the international organizations that have recognized this issue is the UNSC:

- Resolution 1373 (2001) declared terrorism as a global menace.
- Resolution 1566 (2004) placed it at the same level as terrorist actions to civil violence aimed at instilling fear or gripping governments.

CHAPTER IV – JURISPRUDENCE OF INTERNATIONAL AND HYBRID TRIBUNALS

1. ICTY AND ICTR: TERRORISM AS WAR CRIMES

The United Nations set up the ICTY and the ICTR to manage the criminal side of the conflicts in the Balkans and in Africa respectively.

The ICTY tribunal in Galić case (ICTY, 2003) ruling held that the purposeful killing of non-combatants in Sarajevo with the aim to infect fear was a serious violation of the laws of war. By this, the tribunal stated that international law prohibits the usage of terror in wars.¹⁶

According to the ruling in the Akayesu case (ICTR, 1998), the judges of the ICTR deemed it a crime against humanity when they used force and terrorism to completely remove a whole civilian population.¹⁷

¹⁶ Case No. IT-98-29-T, Judgment, 132–135 (ICTY Dec. 5, 2003).

¹⁷ Case No. ICTR-96-4-T, Judgment, 589 (ICTR Sept. 2, 1998).

2. LEBANON'S SPECIAL TRIBUNAL (STL, 2011)

The STL's establishment to investigate the assassination of Rafik Hariri (former PM of Lebanese 2005). Since the STL declared in 2011 that terrorist activity is a customary international crime, most nations view it as unlawful under international law.

Besides that, the tribunal explained that terrorism is a practice of violent actions which are meant to frighten the people or to put pressure on the governments.¹⁸

3. ICC'S APPROACH (ROME STATUTE, ARTICLES 7 & 8)

The International Criminal Court (ICC) does not provide a separate category of crime for terrorism in its statutes that are made in Rome.

However

Article 7 claims that terrorist acts which are part of a massive, synchronized attack on non-combatants can be judged as crimes against humanity.

On the other hand, acts of terror committed in the course of a war with the intent to kill or cause injury to civilians can be judged as war crimes as per Article 8.

4. REGIONAL COOPERATION (EU, OAU, SAARC)

In an effort to counter terrorism, many of the regions have come up with their own pacts:

The prohibition of financial assistance, potential recruitment, and terrorist training were among the common regulations imposed on all the European Union (EU) members.¹⁹

In 1999, the African Union Organization (OAU) began the adoption of the Africa Convention on Preventing and Combating Terrorism.²⁰

In 1987, the South Asian Association for Regional Cooperation (SAARC) facilitated the signing of a non-violent extradition of terrorists treaty among India and other South Asian nations.²¹

¹⁸ Prosecutor v. Salim Jamil Ayyash et al., STL-11-01/I, Judgment, 85 (Feb. 14, 2011).

¹⁹ EU Council 2002/475/JHA on Combating Terrorism, 2002 O.J. (L 164) 3.

²⁰ OAU Convention, July 14, 1999, OAU Doc. AHG/Res. 213 (XXXVIII).

²¹ SAARC, Nov. 4, 1987, entered into force Aug. 22, 1988

CHAPTER V – BARRIERS TO TERRORISM’S CLASSIFICATION AS AN INTERNATIONAL CRIME

1. ABSENCE OF A COMMON DEFINITION

The world's biggest problem is that the nations are divided even on such a basic issue as the definition of terrorism.

Some countries want to draw a line around liberation movements (like struggles for independence) and not to call them terrorism just as well.

Others argue that once one goes as far as killing civilians (for example, in the case of state violence) such actions should be defined as terrorism.

Thanks to these disagreements, it’s practically impossible to create a single law against terrorism internationally.

2. SOVEREIGNTY AND POLITICAL INTERESTS

A lot of the powerful nations do not want the international courts to meddle with their internal issues. They are afraid of being dubbed terrorists for their military or political actions.

Consequently, countries keep away from giving authority to international courts like the ICC to handle terrorism cases.

3. FRAGMENTATION OF INTERNATIONAL LAW

International law has been fragmented since there are several treaties dealing with terrorism (hijacking, bombings, financing, etc.) but none encompass all forms of terrorism.

This has resulted in different pieces of law being scattered and not being consistent with each other. Thus, a single global legal framework that specifies and punishes terrorism in the same way is not available.

4. HUMAN RIGHTS CONCERNS

To fight terrorism, many countries, especially in the West, resort to very harsh methods for example:

- Preventive or indefinite detention
- Torture or cruel treatment
- Extrajudicial killings

Human rights are being violated, and international law is being undermined (weaken trust).

CHAPTER VI – PROSPECTS FOR CODIFICATION AND REFORM

INDIA'S PROPOSAL FOR CCIT DRAFT

“In 1996, India introduced the CCIT to the UN.”

The main aims:

To provide a clear and universal terminology for terrorism.

To prohibit any justification of terrorist actions on the basis of political, religious, or ideological reasons.

To facilitate the collaboration of countries in arresting, punishing, and extraditing terrorists.

Nevertheless, the convention is not yet in force as it has not been agreed upon by all the countries, in which some question the inclusion of freedom fighters and state action's in the definition of terrorism.²²

THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC) ACKNOWLEDGES FOUR MAIN INTERNATIONAL CRIMES:

A strategy has been developed making terrorism the fifth core crime under the Rome Statute.

1. Crime of Aggression
2. Genocide
3. War crime
4. Crime against humanity²³

Many legal scholars feel that terrorism should be included as the fifth basic international crime under the ICC.

The ICC will be able to:

- Prosecute and punish terrorists of any nationality.
- Hold nations responsible for their terrorist support.
- Guarantee international justice to the victims of terrorist acts.

²² CCIT), U.N. Doc. A/C.6/51/8 (1996)

²³ Rome Statute art. 5–8, July 17, 1998, 2187 U.N.T.S. 3

IDEA OF A SPECIFIC GLOBAL COUNTER-TERRORISM TRIBUNAL

There are a few experts and states that support the idea of a universal court solely for the purpose of dealing with terrorist acts and crimes.

Such a court would have the following functions:

- To carry out an investigation, trial, and punishment of terrorists responsible for international or cross-border crimes.
- To facilitate the legal and secure way of sharing intelligence and evidences between countries.
- To guarantee fair and speedy trials free from political meddling.
- To create a uniform understanding of terrorism laws.

THE NECESSITY OF ALIGNING DOMESTIC AND REGIONAL LEGISLATIONS

Country having the anti-terrorism legislation.

Example:

- India – Unlawful Activities (Prevention) Act (UAPA)
- United States – Patriot Act
- United Kingdom – Terrorism Act
- European Union, African Union, and SAARC – these regions have different agreements and conventions

Despite the fact that these laws are sometimes based on the same idea they are still very hard to cooperate worldwide. This calls for harmonisation, that is, all nations should opt for making their anti-terrorism laws alike so that no terrorist could escape punishment by just relocating from one country to another.

IMPORTANCE OF BALANCING HUMAN RIGHTS AND STATE SECURITY

In the combat against terrorism, governments generally resort to very strong measures such as:

- Prolonged arrests
- Strict monitoring
- Extrajudicial proceedings

Nevertheless, these measures violate human rights. Therefore, in addition to the protection of state security, the rights and dignity of individuals have to be regarded as equally important.

Governments have to make ensure:

- Wrongful punishment of innocent people does not occur.
- An accused person receives his/ her due process.
- Law is not bypassed in the counter-terrorism actions.

CONCLUSION

The issue of terrorism ranks high today among the concerns that threaten world peace and security. It spreads panic, causes death, and disrupts the normal flow of both national and international affairs. While the nations involved are on the same page regarding the end of terrorism, a universally accepted legal definition of terrorism is still missing. Such a situation where no one agrees acts like a barrier to the effective punishment of the terrorists and the establishment of a worldwide coalition against them. Over time, the issue of not having a common definition for terrorism has been a matter of discussion and deliberation that had various attempts like the 1937 League of Nations Convention and the UN Security Council Resolutions after the 9/11 terror attacks, but ultimately none had a major impact on the matter. The suggestion made by India for a Comprehensive Convention on International Terrorism (CCIT) is one of the most valid initiatives that are waiting for the issue to be resolved, albeit the political disparities between countries.

Presently, the terrorists' acts according to the Rome Statute of the International Criminal Court (ICC) are not classified among the most serious international crimes such as genocide, war crimes, crimes against humanity, and aggression. However, in the case of certain acts of terrorism being against civilians or in the course of war, there is a likelihood of them being classified as the above crimes. The most difficult issue to deal with is how to strike a national security versus human rights balance. The implementation of counter-terrorism measures has often led to the perpetration of human rights violations such as wrongful arrests or torture. Therefore, any international legislation on terrorism should be mindful of and put in place the safeguards for justice and human rights.

In the future, the planet will need to come to a mutual understanding regarding a clear and equitable definition of terrorism and a concerted effort made through international and regional cooperation. The acceptance of terrorism as an international crime will not only make punishment more certain but also bring justice to the victims.

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