

LEGAL DIMENSION OF THE FIGHT AGAINST TERRORISM

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Terrorism, defined as the indiscriminate use of force to achieve political aims, was one of the major problems of the last century and continues to be a top issue nowadays.

However, terrorism is not an invention of the twentieth century. It has deep roots in the ancient times but then the acts of terrifying violence or the crimes against statesmen were not perceived as terrorist crimes and legislation against these acts did not exist. For example, if we judge Caesar's assassination in accordance with our contemporary rules we will find Brutus and his accomplices guilty of a terrorist act.

It was only the last century when people became interested in creating a legal base for the fight against terrorism. The first step of this process was to define the phenomenon.

A common academic definition of the concept was easier to find although even at this level disputes existed concerning the nature of certain acts of violence. *"Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperilled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of*

*terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought"*¹.

To give a juridical definition was much harder, and it was almost impossible to reach a consensus between states. Some says that reaching consensus on the definition of "terrorism" is even more arduous than defining, say, "obscenity". Indeed, by one calculation, over 100 definitions of terrorism had been proposed before 1983.

The issue of terrorism has been tackled for the first time at international level in the process of unification of the criminal law at the beginning of the twentieth century.

The Conference for the unification of the criminal law in Warsaw (1927) tried to define the phenomenon, but did not succeed in this attempt. The final resolution of the Conference suggested the punishment of certain acts as piracy, money falsification, slave trade and international use of means capable to produce a collective danger.

The second Conference on this topic held in Brussels, in 1930, agreed on a definition of terrorism: *Deliberate use of means capable to create a collective danger represents a terrorist act. These acts consist in crimes against the life, the freedom and corporal integrity of the people or are perpetrated against private or public property pursuing political or social gains*².

One year later, a new definition emerged from the Paris Conference: *A person that uses bombs, mines or other explosives, sets fire or uses fire arms or any other means against people or properties aiming to terrorize the civil population or anybody that stops or is trying to stop a*

*public service or a public utility will be punished*³. However, none of these definitions has been adopted.

During the thirties, due to the rise of the right wing extremism and nationalism a new wave of violence hit Europe. Alexander, the King of Yugoslavia, and Louis Bartou, French Minister of Foreign Affairs, were killed in Marsilia on 9 October 1934. Other countries confronted political violence, too. In Romania, for example, The Iron Guard, a right wing extreme party, killed on 29 December 1933 Romania's Prime Minister I.G. Duca. A few years later, other two statesmen were victims of this extremist party – Prime Minister Armand Călinescu (1939), and historian Nicolae Iorga (1940).

Following Marsilia assassinate, the French Government has sent to the Council of The League of Nation a memorandum that included the general principles, which could be the fundament for an international agreement against political terrorism.

Every member states of the League have sent their answers to the French memorandum to the League of Nations Secretariat welcoming the French Government initiative. On a Great Britain proposal the Council of the League decided to establish a Committee having the task to elaborate a project for an international convention for the punishment of terrorist actions. The Committee had eleven members representing Belgium, Chile, France, Great Britain, Hungary, Italy, Poland, Romania, Spain, Swiss and USSR. The Committee had as a work-base the French memorandum as well as a draft submitted by the Romanian jurist Vespasian V. Pella.

The last Committee meeting took place in April 1937. The results of this meeting have been sent to every government of the member states and had to be submitted to a Conference that the Council was going to convene in Geneva.

The Conference held its meeting between 1 and 16 November 1937 and adopted two conventions: a Convention for the Prevention and Punishment of Terrorism and a Convention for the Creation of an International Criminal Court. The first convention defined the acts of terrorism and reaffirmed the principle of international law

by virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities take shape. The acts of terrorism as this Convention stipulates were *criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public*⁴. Further, the Convention identified as components of a terrorist crime the willful acts causing death or grievous bodily harm or loss of liberty to Heads of States and their families' members, or to persons charged with public function. The list also included willful destruction of, or damage to, public property, any act intended to endanger the lives of members of the public and the manufacture, obtaining, possession or supplying of arms, ammunition or explosives⁵. The Convention has been signed by 24 countries, but it was only ratified by India.

After the World War II, the leadership of the fight against terrorism at international level was assumed by the United Nation Organization. The terrorist violence was denounced in the framework of the Universal Declaration of Human Rights (10 December 1948) which proclaimed that everyone has the right to life, liberty and security of person and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment⁶. United Nations work on preventing and combating terrorism had as concrete results the signing of twelve conventions concerning this issue:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
3. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

4. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.
5. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. (*Deposited with the Secretary-General of the International Civil Aviation Organization*)
6. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. (*Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America*)
7. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. (*Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America*)
8. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980. (*Deposited with the Director-General of the International Atomic Energy Agency*)
9. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988. (*Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America and with the Secretary-General of the International Civil Aviation Organization*)
10. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. (*Deposited with the Secretary-General of the International Maritime Organization*)
11. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988. (*Deposited with the Secretary-General of the International Maritime Organization*)

12. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.

Defining terrorism was a great challenge for the United Nations, too. The member states struggled for almost 30 years to give a universal definition for terrorist acts, but their attempt was impeded by political differences. This would explain the great number of Conventions adopted in order to combat specific actions considered terrorist acts. However, a common declaration made on 9 December 1994⁷, when Resolution 49/60 was adopted, stated that *criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.*

In the mean time, many states included anti-terrorism provisions in their national legislations. Belgium was the first state that included measures against terrorism in his domestic law in 1856. Some states even defined terrorist crimes.

In the United States, terrorism is defined variously as *"the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives"* (Federal Bureau of Investigations), *"the calculated use of violence or the threat of violence to inculcate fear, intended to coerce or intimidate governments or societies as to the pursuit of goals that are generally political, religious or ideological"* (Department of Defence) and *"premeditated, politically-motivated violence perpetrated against non-combatant targets by sub-national or clandestine agents, usually intended to influence an audience"* (State Department)⁸.

In the United States Code, *"international terrorism"* is defined in more detail to include: activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any

State [which] appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by mass destruction, assassination, or kidnapping [and which] occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries⁹.

Similarly, "*domestic terrorism*" was recently defined to include: activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State [and] appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of government by mass destruction, [etc.] [and which] occur primarily within the territorial jurisdiction of the United States.

There are also more specific definitions related to collective offences such as "*federal terrorism crimes*" and "*acts of terrorism transcending national boundaries*"¹⁰.

In the United Kingdom "*terrorism*" was defined as the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear and as "[t]he use of serious violence against persons or property, or threat to use such violence, to intimidate or coerce a government, the public or any section of the public, in order to promote political, social or ideological objectives"¹¹.

In the Terrorism Act 2000 (UK), "*terrorism*" is defined as: the use or threat of [serious violence, property damage, threats to life, risk to health or safety or disruption of electronic systems] where [it] is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause¹².

The Chinese offers the broadest approach of the concept. President Jiang Zemin said that terrorism should be cracked down upon, whenever and wherever it occurs, whoever organizes it, whoever is targeted and whatever forms it takes. This is

not quite a definition, but is a very inclusive delimitation of the terrorist phenomenon. While the Americans fight against "terrorism", the Chinese fight "all forms of terrorism". It is in the Chinese leadership interest to broaden the definition and criteria regarding the global scourge because it offers them a good opportunity to crack down the antigovernment and secessionist groups in China, including Falun Gong, under the pretext of fighting terrorism.

Nevertheless, most legal and working definitions, whether of international or domestic terrorism, are constructed of four or five fundamental elements:

1. *The victims*: The victims of terrorism are usually specified as civilians or non-combatants, in order to differentiate terrorism from attacks on military targets, which are outright acts of war. Note that "non-combatants" would presumably include military personnel who are not in active service due to being wounded, off-duty, etc. "Civilians" would normally cover attacks on government employees, such as persons in the federal building in Oklahoma City. (The occasional and unfortunate insertion of the term "innocent" in the description of civilians makes the matter unduly subjective. "Innocent" is probably included to convey that the victims of terrorism are usually random or symbolic targets.)
2. *The targets*: The persons who are the victims of terrorism are merely its direct targets. Most acts of terrorism have secondary or ultimate targets, usually the leaders of one or more governments. The victims are used by the terrorists to convey a coercive message to the targets. (See "The intent")
3. *The intent*: The intent of terrorism is either to intimidate or coerce a civilian population (presumably a larger group than that selected as specific victims), that is, to spread fear widely for its own sake; or to coercively influence or manipulate the conduct or policy of one or more governments (the ultimate targets) through the intimidation of civilians or non-combatants.
4. *The means*: Terrorism involves violence or the threat of violence (often described

as “dangerous acts”) against persons or property. Some definitions enumerate specific acts such as assassination, hostage taking, bombing, sabotage, cyber-terrorism, bio-terrorism, and hijacking or other violent acts against civil aircraft or other means of public transport.

5. The motivation: While motivation is not usually a formal element of a crime, some definitions of terrorism specify that its acts are “politically motivated”. The term “politically” is used in these contexts as an umbrella for a range of justifications, including ideological, religious, and nationalistic ones. This seems to be a more subjective method of describing the intent of terrorism as attempting to influence governmental policy and in that sense is superfluous. Moreover, the use of the term “political” risks invoking the “political offense exception” in extradition treaties.

Following the September 11, 2001 terrorist attacks on the United States, legislation against terrorism has been reinforced both at national and international level.

The British Parliament enacted the Anti-Terrorism, Crime and Security Act 2001¹³. The Act amends provisions in the Terrorism Act 2000 relating to seizure of cash, terrorist property and police powers discussed above. It also contains measures complementing those provisions dealing with freezing orders (Part 2), duties to disclose and indemnities for disclosure (Part 3), immigration and asylum (Part 4), religious hate speech and crimes (Part 5), weapons of mass destruction (Part 6), security of pathogens and toxins (Part 7), security of nuclear infrastructure (Part 8), aviation security (Part 9), law enforcement powers (Part 10), retention of data by postal and telecommunications service providers (Part 11), and miscellaneous issues such as offences for anthrax-type scares or hoaxes.

The United States have also reinforced their legislation on terrorism. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act

of 2001 focuses on “proscribed organisations”, associated offences and law enforcement powers. However, it also deals with the detention of aliens who are suspected of having some involvement in terrorist activity.

The Act makes it an offence to import or export bulk cash into the United States and provides for seizure of the cash and any related property¹⁴. It extends offences related to operation of an “unlicensed money transmitting business” to include businesses that knowingly involve or support proceeds from criminal activity¹⁵.

It also makes it an offence to harbour or conceal persons who have committed or intend to commit a specified terrorist offence¹⁶. It includes various terrorist offences within the provisions dealing with organised crime¹⁷.

It empowers the Secretary of Treasury to take a range of special measures where he finds that reasonable grounds exist for concluding that a jurisdiction or a financial institution, account or transaction is of “primary money laundering concern”¹⁸.

It expands surveillance procedures relating to terrorism¹⁹. It permits wire, oral and electronic communication intercept warrants where interception “may provide or has provided evidence of” various terrorist offences such as the production, use, etc. of chemical weapons (18 U.S.C. 229), or weapons of mass destruction (18 U.S.C. 2332a), murder, serious assault or related inchoate offences (18 U.S.C. 2332), terrorist acts that transcend national boundaries (18 U.S.C. 2332b), financial transactions with state sponsors (18 U.S.C. 2332d), and providing material support or resources to terrorists (18 U.S.C. 2339A) or terrorist organisations (18 U.S.C. 2339B).

The Act expands the scope for foreign intelligence services to target domestic citizens and permits foreign intelligence agencies to undertake domestic surveillance where the gathering of such information is only “a significant purpose” of the activity²⁰.

The Act provides for the mandatory detention of any alien whom the Attorney General has reasonable grounds to believe is an “inadmissible alien” or “is engaged in any other activity that endangers the national

security of the United States"²¹. An "inadmissible alien" was defined to include persons who have incited or engaged in terrorist activity and members or representatives of a foreign terrorist organisation²². The Act extends the definition to cover persons who use a position of prominence to endorse or espouse terrorism, or belong to a group that endorses terrorism, in a way that "undermines United States efforts to reduce or eliminate terrorist activities". It broadens the definition of 'engaging in terrorist activity' to include incitement, preparation, information gathering, planning and soliciting funds or members for terrorist activities or organisations²³.

The United Nations General Assembly passed a number of resolutions in response to the September 11 attacks on the United States. Resolution 56/1 urgently called for international cooperation "to prevent and eradicate acts of terrorism". This followed calls over the last three decades for states to enact legislation dealing with terrorism. In the first decade those calls described terrorism in the context of attacks on independence, self-determination and "other forms of alien domination" under "colonial and racist regimes"²⁴. In the second decade the focus widened to include the criminality of terrorist acts²⁵, state sponsorship of or acquiescence in terrorist activities within their territory²⁶, and the nexus between terrorism and organised or transnational crime²⁷. In the third decade, interest grew in the impacts and human rights implications of terrorism²⁸.

The Security Council has also passed various resolutions. Resolution 1214 demanded that the Taliban "stop providing sanctuary and training for international terrorists and their organizations"²⁹. Similarly, Resolution 1267 demanded that the Taliban 'turn over Osama bin Laden without further delay' and required states to "freeze funds and other financial resources including funds derived or generated from property owned or controlled directly or indirectly by the Taliban"³⁰. Resolution 1333 reiterated the demands in Resolution 1267 and further required states to "prevent the direct or indirect supply, sale or transfer" to

Afghanistan of "arms and related matériel" or "technical advice, assistance or training".

Resolution 1368 called on states to "redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions"³¹. Resolution 1373 called for all states to "prevent and suppress the financing of terrorism", to "criminalize the willful provision or collection of funds for such acts" and to "[f]reeze without delay funds and other financial assets or economic resources of persons [or associated entities] who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts"³².

Regional international organizations have likewise endeavoured to address manifestations of terrorism in their respective jurisdictions through the negotiation of multilateral conventions and other measures. These organizations have included the Council of Europe, the European Union, the Organization for Security and Cooperation in Europe, the African Union, and the Organization of American States. In the inter-American system in particular, notable anti-terrorist initiatives efforts have included the promulgation of the 1977 Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, 1[24] the on going work of the Inter-American Committee against Terrorism, 2[25] and the recently adopted Inter-American Convention Against Terrorism.

Recent attempts to achieve international agreement on a comprehensive definition of terrorism include the negotiations for the Statute for the International Criminal Court, during which proposals were made to include terrorism within the jurisdiction *ratione materiae* of the Court. These efforts proved unsuccessful, with the result that any further proposals to include this or other crimes as amendments to the subject matter jurisdiction cannot be made for a period of seven years following the coming into force of the treaty.

To conclude, despite the agreement on the fact that terrorism must be eliminated, and the broad "coalition of willing" created after September 11, efforts to develop a comprehensive definition of terrorism proved politically difficult. It still remains a difficult task to make a clear distinction between

terrorism and other forms of political violence. Moreover, some people fear that a concerted action against terrorism backed by very restrictive rules may have as effect a drastic limitation of human rights and liberties.

¹ United Nations Office on Drugs and Crime, www.undcp.org/odccp/terrorism_definitions.html

² Adrian Năstase, Bogdan Aurescu, Cristian Jura, *Drept internațional public. Sinteze pentru examen*, ed.III, AllBeck, București, 2002, p.342.

³ *Ibidem*, p.342.

⁴ League of Nations, *Convention for the Prevention and Punishment of Terrorism*, Article I, Ministry of Foreign Affairs Archive, Fond Geneva, vol. 290, briefcase: League of Nations, 1935-1938, No official: C.546.M.383.1937.V.

⁵ *Ibidem*, Article II.

⁶ *Universal Declaration of Human Rights*, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, <http://www.un.org/Overview/rights.html>

⁷ United Nations, General Assembly, *Declaration on Measures to Eliminate International Terrorism*, A/RES/49/60, 9 December 1994.

⁸ David Whittaker (ed.), *The Terrorism Reader*, Routledge, 2001, p. 3.

⁹ United States Code, 18 U.S.C. 2331(1), <http://www4.law.cornell.edu/uscode/18/2331.html>

¹⁰ 18 U.S.C. 2331(5), inserted by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT 18 U.S.C. 2331(1).ACT) Act of 2001, Pub. L. 107-56, section 802.

¹¹ Lord Lloyd of Berwick, *Inquiry into Legislation Against Terrorism*, Cm 3420, October 1996.

¹² Terrorism Act 2000 (UK), subsection 1(1), <http://www.legislation.hmsso.gov.uk/acts/acts2000/00011--b.htm#1>

¹³ *Anti-Terrorism, Crime and Security Act 2001*, <http://www.legislation.hmsso.gov.uk/acts/acts2001/20010024.htm>

¹⁴ Pub.L. 107-56, section 376 amending 18 U.S.C. 2339A, <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR03162:TOM:/bss/d107query.html>

¹⁵ *Ibidem*, section 373, amending 18 U.S.C. 1960. Originally the offence focused on whether or not the business was licensed.

¹⁶ *Ibidem*, section 803, inserting 18 U.S.C. 2339.

¹⁷ *Ibidem*, section 813, amending 18 U.S.C. 1961(1).

¹⁸ *Ibidem*, section 311, inserting 31 U.S.C. 5318A.

¹⁹ *Ibidem*, section 201, amending 18 U.S.C. 2516(1).

²⁰ *Ibidem*, section 218, amending 18 U.S.C. 1804 and 1823. Prior to the amendments, surveillance could only be undertaken where the gathering of foreign intelligence information was 'the purpose' of the investigation. Thus, surveillance may be undertaken where this is only 'a significant purpose' of an investigation, for example where an investigation targeting terrorism seeks to identify state sponsorship of the terrorist activity.

²¹ *Ibidem*, section 412.

²² 8 U.S.C. 1182.

²³ Pub. L., section 411, amending 8 U.S.C. 1182(a)(3).

²⁴ United Nations. General Assembly, Resolution 3034(XXVII), 18/12/72, A/RES/3034(XXVII), paragraph 3; Resolution 34/145, 17/12/79, A/RES/34/145, paragraph 4, <http://www.un.org/documents/ga/res>.

²⁵ Resolution 34/145; Resolution 38/130, 19/12/83, paragraph 6; Resolution 40/61, 09/12/85, A/RES/40/61, paragraphs 1, 7 and 8; Resolution 42/159, 07/12/87, A/RES/42/159, paragraphs 1, 5 and 7, *loc. cit.*

²⁶ Resolution 34/145, paragraph 7; Resolution 38/130, paragraph 4, *loc. cit.*

²⁷ United Nations. General Assembly, Resolution 44/29, 04/12/89, A/RES/44/29, paragraph 9; Resolution 46/51, 09/12/91, A/RES/46/51, paragraph 9, *loc. cit.*

²⁸ Resolution 48122, 20/12/93; Resolution 49/185, 23/12/94, A/RES/49/185; Resolution 5086, 22/12/95, A/RES/50/186; Resolution 52/133, 12/12/97, A/RES/52/133 (Afghanistan voted in favour and Australia abstained); Resolution 54/164, 17/12/99, A/RES/54/164.

²⁹ United Nations. Security Council, Resolution 1214 (1998), S/RES/1214 (1998), <http://www.un.org/Docs/scres/1999>

³⁰ Resolution 1267(1999), S/RES/1267 (1999), *loc. cit.*

³¹ Resolution 1363 (2001), S/RES/1363 (2001), *loc. cit.*

³² Resolution 1373 (2001), S/RES/1373 (2001), *loc. cit.*