

## THE ANALYSIS OF THE THEORETICAL AND CONCEPTUAL FRAMEWORKS ASSOCIATED WITH TERRORISM

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The article would delve into the legal ramifications associated with terrorism in order to ascertain the efficacy and effectiveness of the same. It can be inferred that terrorism as a multidimensional concept has definitional and theoretical ambiguities associated with it because of the highly subjective nature of terrorism, as well as its content and scope.

Since terrorism breaks into the monopoly of violence of the state and challenges the state in provision of security and stability frameworks, it becomes necessary for regional, local and international governmental bodies and entities to tackle with the menace of terrorism head on.

What seems likely is that the platform or leverage provided by terrorism has been greatly mishandled unilaterally by United States and its other western allies in perpetrating crimes of terror by themselves inflicting massive civilian casualties.

This research would also briefly highlight Article 2 of the United Nations that provides the right to self defence and what are the inherent interpretations of this article and whether it can be used against terrorism and terrorist organisations. In addition the research would also focus on how the role of UN and legal frameworks has changed after 9/11, and what is the degree of efficiency with which these legal frameworks can stem terrorism and terrorists.

### **Legal frameworks in countering terrorism: historical context**

Given the increasing importance of terrorism, it would be pertinent at this stage to create a brief synoptical understanding of the different legal frameworks, regional and multilateral protocols that have evolved regarding terrorism so that a holistic understanding of the legal backdrop associated with terrorism can be gauged.

It has been argued by Wardlaw that while in the field of international terrorism, the UN system as a whole has taken a sustained interest,

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nevertheless, palpable or tangible benefits of the same are yet to be realized<sup>2</sup>.

It has been argued by Ward that the legal battle of terrorism still represents the Achilles heel for the global community, as these legal frameworks, protocols or multilateral instruments are part of only a piecemeal approach that does not satiate the criteria for fulfilment of key objectives. In wake of a lack of comprehensive approach for tackling terrorism, isolated frameworks or legal injunctions serve only as a drop in the ocean of burgeoning global terrorism<sup>3</sup>.

It can be inferred, that the development of universal legal norms in this area has been greatly tempered by superpower conflict and competition, national liberation movements, parochial attitude of superpowers and the unholy nexus between US and the Zionist forces. Such warped and biased legal injunctions serve as an impediment in the peaceful resolution of the Palestinian question that continues to act as a catalyst for stimulating radical organizations and being misused for basing their ideologies of terror on a sympathetic cause.

The apparent apathy in relation to the effectiveness of legal frameworks in relation to countering terrorism and the inherent threat of terror organizations is clearly resonated in the speech delivered by former UN Secretary General Javier Perez de Cuellar on the 40<sup>th</sup> anniversary of UN Charter in 1985:

*“Mere condemnation of .... [terrorist] acts is insufficient. Effective international action is required. Resolutions and conventions have been adopted in the past.... These provide a vital framework for countermeasures. It is tragically evident, however, that new, multilaterally coordinated efforts are urgently required to deal with this terrible phenomenon, which is beyond the capacity of any one country to handle alone”<sup>4</sup>.*

Nevertheless, in spite of the despondency expressed in terms of legal parameters and legal instruments in curbing terrorism, one can assume that the most the world community can do against terrorism is by strengthening these legal injunction by participating in it in a unanimous fashion. It would be highly warranted to have a brief backdrop of these evolving legal frameworks so that a critical analysis of legality and complications in tackling terrorism can be aptly understood.

According to Williamson, it can be noted that at present there are 12

<sup>2</sup> Wardlaw, G, Political Terrorism: Theory, tactics, and counter-measures , Cambridge University Press, 1989,pp.88.

<sup>3</sup> Ward, Curtis A. "Building capacity to combat international terrorism: the role of the United Nations Security Council." *Journal of Conflict & Security Law* 8, no. 2 (2003): 289-305. <http://www.jstor.org/stable/26294277>.

<sup>4</sup> cited: Maxwell Finger, S. *The United Nations and International Terrorism*. In C.W. Kegley, (Ed.), *International Terrorism: Characteristics, Causes, Controls*, New York: St. Martin's Press. 1990, p.259.

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international, and nine regional, conventions or protocols relating to terrorism<sup>5</sup>.

Furthermore, the International Convention for the Suppression of Acts of Nuclear Terrorism has been put forth for signatures and suitable ratifications from the global community<sup>6</sup>. Nevertheless, the lack of a comprehensive definition associated with terrorism, severely constricts the focus of many international government agencies and departments even for that matter the UN in dealing effectively and efficiently with the problem of terrorism.

At the generic level though several expositions have been articulated that re – underline the importance of developing collated, comprehensive legal frameworks for deterring terrorists and effectively rooting out the scourge of international terrorism.

At the Madrid International Summit on Democracy, Terrorism and Security in March 2005 the ex Secretary-General Kofi Annan elaborated and outlined a general strategy against terrorism that included five D's:

- 1) dissuading disaffected groups,
- 2) denying terrorists the means,
- 3) deterring states from supporting terrorists,
- 4) developing state capacity, and
- 5) defending human rights.<sup>7</sup>

Apart from the general rhetoric and legal hyperboles associated with terrorism and fight against terrorism, let us briefly chronologically analyze the evolution of some of the legal frameworks associated with terrorism and terror prior to 9/11 attacks.

### **Legal frameworks of terrorism during first half of 20<sup>th</sup> century**

It can be argued that the global community tried to deal with the terrorism problem through quantification of a relevant definition of terrorism from as early as the 1930s. In this context, a series of meetings was held under the auspices of the International Conference for the Unification of Penal Law, in various European capitals that was well participated by states, public and private organizations and international government organizations.

The third Brussels International conference for the Unification of Penal Law can be attributed to be the first public forum that at the international stage tried to

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<sup>5</sup> Williamson, M., *Terrorism, War & International Law: The Legality of the Use of Force Against Afghanistan* in 2001, Aldershot, UK: Ashgate Publishing Ltd., 2009, pp.37-71.

<sup>6</sup> It is worth noting, that The International Convention for the Suppression of Acts of Nuclear Terrorism was adopted by the General Assembly on 13 April 2005 and opened for signature on 14 September 2005.

<sup>7</sup> Secretary-General Kofi Annan launches global strategy against terrorism in Madrid, 10/03/2005 <https://www.un.org/press/en/2005/sg2095.doc.htm>

come up with the coinage of international terrorism terminology, in an attempt to appropriate codify and quantify the content nature and scope of terrorism.

A further catalyst in this regard was provided by the assassination of King Alexander as well as the French foreign minister that promoted the French government to submit to the council of League of Nations a rough memorandum for suppressing the acts of terrorism and terrorist organizations.

In addition, a core committee of experts was also set up under the auspices of the Council resolution meeting, which was held between the periods of May 1935. Thereafter, in January 1936, this move was also buttressed by the 6<sup>th</sup> Conference in the Unification of Penal law series held in Copenhagen, whose main intent was to draw out a model penal provision on the concept of terrorism and its growing influence on global polity.

It may be noted that all these pre-war efforts did culminate in the final meeting of November 1937, wherein the League of Nations convention for prevention and punishment of terrorism was opened for signature and ratification by the other participating countries.

However, what is pertinent to observe is that the convention never came into existence as majority of the countries declined to ratify the convention as initially decided. Nevertheless, it can be noted that while the convention never fructified, it did help to outline the broad parameters associated with the challenging task of defining terrorism<sup>8</sup>.

Article 1(2) of the proposed convention that failed to fructify, outlined terrorism as "*All 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*"<sup>9</sup>. It is of some academic and practical interest to note that ironically from 1930s onwards the tussle of defining and quantifying terrorism has continued like a relentless saga. Even till the present time it can be noted that the UN still does not offer a comprehensive and modern definition of terrorism. UN at present only narrowly defines terrorism for operational and deterrence purposes as "*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*

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<sup>8</sup> T. M. Franck, Bert B. Lockwood, Jr., Preliminary Thoughts Towards an International Convention on Terrorism//The American Journal of International Law, Vol. 68, No. 1 (Jan., 1974), pp. 69-70.

<sup>9</sup> 19 League of Nations O.J. 23 (1938) (never entered into force)

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*justify them*"<sup>10</sup>. The discurs on terrorism does not change much from 1990s<sup>11</sup>.

### **Legal frameworks of terrorism during second half of 20<sup>th</sup> century**

Having analyzed the failed attempt of the global community for developing a tangible and practical definition associated with terrorism; let us now focus on era of 1960s and 1970s to find out what was the focus of the legal frameworks during this time.

It is worth noting, that the focus of terrorism though not in its comprehensive form was rekindled in the form of global debate before world community because of the increased frequency of terrorist airplane hijacking incidents of 1960s and 1970s.

These kind of terrorist activities therefore, acted as a catalyst in the aforementioned period of both the United National and ICAO (International Civil Aviation Organisation) to realistically debate and deliberate on options available that could prevent such criminal acts and deter terrorists in this regard.

In this regard, it can be concluded that these activities promoted the first signing of the Convention of Offences and Certain Other Acts Committed Onboard Aircraft in 1960s that was further improved through an updated agreement by ICAO resulting in the passing of the Convention for the Suppression of Unlawful Seizure of Aircraft in 1965.

However, since both of these conventions were of generic nature and focused only on aspects of terrorism, ICAO through meeting in Washington DC in 1972 considered passing of a new convention that would levy stricter penalties.

It was only in 1988 with the passage of Protocol for the Suppression of Unlawful Acts of Violence at Airports in Montreal that the right impetus of strengthening of the previous three conventions was made and the legal apparatus for curbing hijacking associated with terrorism was finalized for practical usage.

While 1960s and 1970s did demonstrate the intent of the global community to deal with criminal acts such as hijacking, nevertheless the comprehensive legal framework for preventing terrorism, deterring terror organizations and punishing the abettors of terrorism was never realized in full letter and spirit.

Having analyzed the newfound focus on particular aspects of terrorism, let us now analyze briefly the different types of regional and multilateral conventions that pertained to terrorism in the 1970s. It can be noted that in the

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<sup>10</sup> Perera R., Declaration on measures to eliminate International Terrorism, 1994, and the 1996 supplementary declaration thereto, 17 December 1996, pp. 3-4.

<sup>11</sup> See the report of Javier Ruperez "The United Nations in the fight against terrorism", [https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf)

1970s the UN issued its Declaration on Principles of International Law, which articulated that each state had a moral duty to refrain from engaging or encouraging armed bands or irregular forces and mercenaries for incursion into the territory of another states.

In a similar vein, it can be argued that during this period of 1970s, Organization of American States (OAS) adopted the Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes against Persons and Related Extortion that are of International Significance and related chiefly to the kidnapping of diplomats. According to Williamson, it also argued that with similar intent even the UN General Assembly adopted the International Convention against the Taking of Hostages, which was seen as a criminal act per se and could face suitable appropriate action from the global community<sup>12</sup>.

However, what can be noted from the brief perusal of all the aforementioned conventions in 1970s, is that terrorism term was not tackled in a holistic fashion, rather, all these conventions favoured a piecemeal focus on tackling with some of the criminal activities that also pertain to the realm of terrorism.

Lack of appropriate generic quantification of terrorism meant that coverage of legal frameworks had to tackle only specific facets of terrorism per se and not the totality of terrorism that is far more multidimensional for quantifying in a straightjacket fashion.

Given the need for tackling terrorism at a comprehensive level on 18<sup>th</sup> December, 1972 the UN General Assembly on the recommendation of the 6<sup>th</sup> committee established an Ad- Hoc Committee on Terrorism under the pressure posed by United States of America and other western nations. The focus was essentially to deal with the root causes of terrorism and formulate an international action plan that can codify terrorism and aid in the prevention of terrorism.

However, because of the strong chasm of ideological differences between the western nations and the developing world that included the Non Aligned Group of countries, a workable comprehensive definition of terrorism could not be worked out. The main stumbling block in defining terrorism was that how can one separate a genuine freedom struggle from a terrorist action as such interpretations are bound to be subjective. While Palestinian fighters no one can call terrorists, on the other hand Israeli forces one can term terrorists because of their suppression against innocent civilians. Violence by Palestinian fighters can be considered as symbolic whereas violence by Israeli forces because of disproportionality can be termed as state sponsored acts of terrorism. As a result because of development of such deep divides in

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<sup>12</sup> Williamson, M., *Terrorism, War & International Law: The Legality of the Use of Force Against Afghanistan in 2001*, Aldershot, UK: Ashgate Publishing Ltd., 2009,p. 52

ideological and political thinking, a comprehensive convention relating to terrorism could not be achieved during the 1970s period.

The only recourse available that time was to use the legality of framework offered by regional and multilateral instruments that favoured deterrence of terrorism based on individual criminal activities and acts.

It can be inferred that that strategy of adopting a piecemeal approach, which was articulated in the 1960s and 1970s also characterized the period of 1980s.

It can be argued that the focus of the piecemeal approach was also extended in the context of the 80s as this period marked the holding of two UN conventions. Two UN protocols and one regional convention that all catered to providing of specialized legal instruments for dealing with terrorists extraditions in respect to specific criminal activities associated with terrorism.

The focus of these aforementioned conventions and protocols was not so much to quantify and delineate causes or factors of general terrorism but develop a slip shod framework for tackling terrorism. However it can be appreciated that in doing so the UN did realise the evil influence and affects that terrorism can have at the global stage. Political violence and terrorism seem intertwined in many ways therefore it is difficult to clearly separate these two entities.

It can also be noted that during this period several general assembly resolutions were passed that condemned generically terrorism and asked for greater co-operation between international states and international governments for curbing the threat posed by terror organizations.

It was in the period of 80s, that General Assembly Resolution 40/61 was adopted by consensus on 9 December 1985 in the immediate aftermath of the *Achille Lauro* hijacking 184. The General Assembly “unequivocally condemned” such attacks and stated that these acts had the potency to erode the legitimacy of the state in the eyes of its citizens.” However, the focus on terrorism was relatively generic during this period and it seemed to be a reflection of continuing the policy a piecemeal approach to terrorism wherein actions are defined according to specific criminal activities and endorsements and ratifications from different nations states would be sought in due course.

The political emphasis for tackling with terrorism was only for a fragmented approach as terrorism was still not considered the number one "numero uno" factor influencing the strategic direction of different nation's foreign policy agenda. In addition, due to the continued ideological, political and social divergences between perspective of western and developing nations, terrorism was given a light touch emphasis, where condemnation of terrorism seemed to be unanimous but the image of terrorism as a universal Frankenstein was still quite amorphous.

However, a significant trend was observable in the general mood and direction of terrorism especially in the context of General Assembly's attitude towards it, while earlier the focus was on finding and investigating the causes of terrorism, now the focus seemed to have shifted to condemning all acts of terrorism or political violence especially if it did not serve the interests of western nations. (e.g. Libya's oppression against people is terrorism, USA's killing of innocent civilians in Vietnam is not terrorism).

In the 1980s the general attitude was one of unanimous condemnation irrespective of the underlying causes associated with terrorism. In this context it is notable to understand that while the General Assembly still supportive of the idea of self determination as an inalienable rights, its vocal amplification towards justifying violence associated with the same became somewhat muted.

In 1987, the General Assembly adopted resolution 42/159 which was another significant development as it called for the convening of international conference to debate and deliberate over the differences and distinction between terrorism and legitimate struggle for freedom and liberty.

During the 1990s the different regional and multilateral instruments came into effect for fighting terrorism.

What is interesting to note is that during this period while there is no strategic shift in trajectory of international policy frameworks, yet different regional and multilateral instruments started creating different forms of definition for terrorism. The piecemeal approach also continued during this period but the strategic difference was that condemnation of acts of violence, especially if unrelated to genuine freedom struggle against oppression were universally condemned.

From the regional perspective, it can be argued that 1990s marked the passing of four major regional instruments in different conventions of developing world countries that sought to tackle more effectively with terrorism. In this regard, it can be argued that the lead was taken by The Arab Convention on the Suppression of Terrorism that clearly reflected a bonafide attempt by Arab States to define terrorism and outline methods for tackling terrorism.

According to the aforementioned convention, terrorism was defined as "Any act or threat of violence. Whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda. Causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger" was considered a reprehensible act that was debunked by all Arab and Muslim nations.

However, while the generic articulation of definition of terrorism was made by the Arab convention, they explicitly expressed support for the right of people to combat foreign occupation and aggression by any means including



armed struggle as was evident in context of Palestinian struggle for independence. This seemed to be naturally in accordance with the genuine struggle for freedom going on in the Israel occupied Palestinian territories, although it was accepted that the right to armed struggle against oppression must be within the framework of Charter of the United Nations.

In a similar vein, it can be seen that another important regional instrument during this period was The Convention of the Organization of the Islamic Conference (OIC) that was adopted in July 1999. This convention also recognized the legitimacy of freedom struggle against foreign occupation provided it was in accordance with all UN Resolutions and UN charter.

However, on the other end of the spectrum during this period, the Commonwealth of Independent States (CIS) signed a Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism in 1999. According to this act, a definition of terrorism was proposed which was somewhat different as it did not give recognition to the legitimacy of use of violence in freedom struggle against oppression, be it in keeping with the UN resolution or the United Nations charter.

Hence it can be clearly seen that even at the regional level there was substantial dichotomy in defining terrorism and outlining the parameters that quantify a terrorist act or a freedom struggle. It is interesting to note over here that such dichotomy in tacking with terrorism has continued ever since even in modern times.

### **Multilateral Instruments**

In addition to the aforementioned four regional instruments that were passed against terrorism during the 1990s, it can be noted that this period was also characterized by the adoption of four relevant conventions at the UN level:

- 1) the Convention on the Making of Plastic Explosives for the Purpose of Detection,
- 2) the Convention on the Safety of United Nations and Associated Personnel,
- 3) the International Convention for the Suppression of Terrorist Bombings,
- 4) the International Convention for the Suppression of the Financing of Terrorism,

Each of these conventions did reflect a strategic resolve of the UN in order to tackle terrorism and create potent deterrents for discouraging terrorists and protecting lives of global citizens.

From the analysis of the aforementioned multilateral instruments, it can be gauged that while:

- a) the first convention was focused on expressing of concern regarding terrorists that utilize plastic explosives,

- b) the second convention was primarily aimed at improving the protection offered to UN diplomats and associated personnel,
- c) the third convention resonates the belief of the UN that terrorist activities of clandestine bombings had proliferated for some time in the 1980s and 1990s and the present checks and measures in place were relatively inadequate.
- d) In a similar vein, the fourth convention, the International Convention for Suppression of financing of terrorists, recognised the urgent need to stop financial supply to terrorist organisations and individuals.

Though it can be noted that the last two conventions aimed to fill the lacunas that were evident in legal frameworks, the failure to adequately define terrorism meant that all these conventions were more like undirected, random bullets.

It is worth noting, that while the fourth convention i.e The International Convention for the Suppression of the Financing of Terrorism, could refer to both the states and the individual actors, its main intent was not so much on defining terrorism per se but rather on articulating acts of terrorism which aims to kills, injure or compel a government or any international organization. While all these conventions do symbolise the good intent of UN or regional bodies for fighting against terrorism, the problem of poorly developed definitional frameworks associated with terrorism created impediments for implementation of all these conventions in both letter and in spirit. Part of the problem of poor ratification of UN multilateral instruments is that the Security Council has provided differential focus on the necessity and need for compliance or ratification of its conventions or instruments.

The Security Council issued a most stringent response through Resolution 1267 (hereafter SCR 1267) under the terms of Chapter 7 of the UN Charter, thus utilized its full weight for bringing an effective response. Whereas, in the context of in the context of the recent adoption of the twelfth UN agreement on terrorism (on the Suppression of the Financing of Terrorism), a different approach was taken by the Security Council in its SCR 1269<sup>13</sup>.

In retrospect in the 1990s while in relation to previous decades, it can be argued, that some greater impetus was provided against terrorists and terror organizations. Nevertheless, the fructification of commensurate results never materialized. As noted through the investigation, it has been found that since the 1960s, the responsibility for the development of these conventions has been assumed by the UN General Assembly despite the fact that the UN has not been able to translate this agreement to an obligation on the 191 members of the United Nations to sign and ratify them.

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<sup>13</sup> Security Council Resolution 1269, <https://www.securitycouncilreport.org/atf/cf/%7B65BF-CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Terrorism%20S%20RES%201269.pdf>

In light of the lack of comprehensive definition associated with terrorism, an acceptable universal definition of terrorism that can create the relevant intended distinction between terrorists and freedom fighters has never fructified.

According to Ward, it might seem ironical that although since 1960s, the UN General Assembly has laboured to develop a range of specialist conventions and protocols to counter acts of international terrorism, but as late as 2001 only two countries, Botswana and the United Kingdom, had acceded to all twelve UN conventions<sup>14</sup>.

In summation, it can be stated that September 11, 2001 serves as a grim reminder about the potency of modern day terrorism, nevertheless the crucial need of the hour is to develop a proactive and well co-ordinated macro strategy for dealing with terrorism in a comprehensive manner. Though the UN reacting to the watershed event of 9/11 has improved its legal frameworks for fighting terrorism, still there are many problems in implementation of these frameworks. The global community arguably seems to be at least in spirit and intent unanimous in developing tangible measures and undertaking participative approaches for tackling with the issue of global terrorism.

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ՇՐՋԱՆԱԿՆԵՐԻ ՎԵՐԼՈՒԾՈՒԹՅՈՒՆ**  
*Մոհամմեդ Հաջ Իբրահիմ*  
(Ամփոփագիր)

Մույն հետազոտությունը փորձ է վերլուծել «ահաբեկչություն» երևույթի տեսական և հայեցակարգային շրջանակը՝ վերհանելով առկա գործիքակազմը այս երևույթը սահմանելու և դրա դեմ հաջող պայքարելու համար:

Հետազոտությունը ցույց է տալիս, որ գոյություն չունի միջազգայնորեն համակողմանի ընդունելի որևէ փաստաթուղթ, որը հստակ կսահմանի 'ահաբեկչությունը» և այն կտարանջատի «ինքնապաշտանությունից»: Ժամանակի հրամայականով, խիստ անհրաժեշտ է մշակել գործուն և համակարգված հզոր ռազմավարություն՝ ահաբեկչության դեմ համապարփակ ձևով պայքարելու նպատակով: Թեև ՄԱԿ-ը, արձագանքելով սեպտեմբերի 11-ի սարսափելի իրադարձություններին, բարելավեց ահաբեկչության դեմ պայքարի իր իրավական շրջանակները, այնուամենայնիվ, այդ շրջանակների պահպանման և կիրարկման գործում դեռ առկա են բազմաթիվ խնդիրներ և թերություններ:

<sup>14</sup> Ward, Curtis A. "Building capacity to combat international terrorism: the role of the United Nations Security Council." *Journal of Conflict & Security Law* 8, no. 2 (2003): 289-305. <http://www.jstor.org/stable/26294277>.