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DEFINING TERRORISM UNDER INTERNATIONAL LAW

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EXECUTIVE SUMMARY

Terrorism is a term that has found permanent usage in everyday life around the globe. Legal and political fields both use the word at leisure; counter terrorism is a rapidly growing field of work. It is therefore concerning that terrorism does not have a single universal definition under international law. Important terms used across international law usually are defined so that a threshold is set for their application. Leaving terrorism undefined means that there is no uniformity in national approaches to issues related to it. The United Nations currently has 19 instruments on ‘unlawful’ acts (rather than acts of terrorism). These are referred to as the anti terrorism conventions or protocols.¹ In 1996, there was an attempt by the United Nations to unify international rules related to terrorism into one single instrument.² The process did not lead to a satisfactory conclusion, leaving the attempt incomplete. However, it is high time that there is a set definition as the international community needs to be unified in the fight against terrorism as a global phenomenon. Countries of the Global South, such as Pakistan, need to be heavily consulted during the process as they have had extensive experience in the field that has led to some solid national definitions which the international community would greatly benefit from.

Policy Recommendations

- For uniform application of counter terrorism laws and strategies, international law needs to accelerate the process of reaching a singular definition of terrorism. The clearest way forward is for the United Nations General Assembly's Ad Hoc Committee on Terrorism to urge the international community to prioritise negotiations for the Comprehensive Convention on International Terrorism.
- The Committee should acknowledge the differences within the international community that have led to a stalemate so far and find the best way to reach a compromise in order to finally reach a conclusion on the matter. The Committee can rely on case law by international courts and tribunals on terrorism to seek guidance on the matter.
- To ensure distinction between legal grounds for terrorism and political usage, any instrument that comes about as a result of a singular definition being decided upon needs to be constructed with strict criteria for terrorism laid out in its wording. The Committee should propose drafts that have already been agreed upon in previous meetings to use as a starting point for further negotiations in order to avoid further stalemates.
- Pakistan should ensure that it is part of the process of creating a comprehensive legal instrument on terrorism under international law. To that end, it should send representatives to meetings held on the subject by the UN Ad Hoc Committee on Terrorism.

¹ Alex P. Schmid, ‘Defining Terrorism’ [2023] ICCT Report.

² Comprehensive Convention on International Terrorism (CCIT), Resolution 51/210 of 17 December 1996 on Terrorism.

- Pakistan should also draw on its experience with counter terrorism to push the international community to give this issue the utmost importance in order to reach a conclusion as soon as possible.

Hurdles in Creating a Definition for Terrorism

The United Nations General Assembly started the process to create the ‘(Draft) Comprehensive Convention on International Terrorism’ (CCIT) in 1996. This Convention was supposed to set a definition for terrorism as well as criminalize acts of terrorism or acts supporting terrorism. Early on in the process, disputes over the wording of the instrument arose. Some parties, such as the Organization of Islamic Conference (OIC) wanted to exclude freedom fighters from being classified as terrorists.³ This led to a stalemate as other members of the international community claimed this to be problematic. Another problem was that some states did not agree that state terrorism should be included in the Convention and argued that the use of force by the state was justified in certain situations.⁴ These major disagreements led to the virtual abandonment of the process and it is, to date, a work in progress.

Special Tribunal for Lebanon

The Special Tribunal for Lebanon (STL) was the first international court that had jurisdiction over the crime of terrorism.⁵ In order to properly perform its functions, it first had to set a definition of terrorism. The court’s mandate stated that it was to use Lebanon’s national definition, but it was ruled (by the Appeals Chamber) that as it was an international tribunal, the STL could interpret the Lebanese definition in line with international law.⁶ While this was a suitable way of using the working definition for the purposes of the STL, the issue remained that international law still does not have a set definition, which would have helped avoid the confusion of which definition to use and how to interpret it.

The Anti Terrorism Protocols

There are currently 19 instruments of the United Nations on ‘unlawful acts’ that are referred to as the anti terrorism protocols. Some of the conventions included are the 1997 International Convention for the Suppression of Terrorist Bombings,⁷ 1999 International Convention for the Suppression of the Financing of Terrorism⁸ and the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation.⁹ A casual glance at

³ Mahmoud Hmoud, ‘Negotiating the Draft Comprehensive Convention on International Terrorism: Major Bones of Contention’ (2006) 4 *Journal of International Criminal Justice* 1031, 1033.

⁴ Hmoud (n 3).

⁵ Michael Schard, ‘Special Tribunal for Lebanon Issues Landmark Ruling on Definition of Terrorism and Modes of Participation’ ASIL 1.

⁶ Special Tribunal for Lebanon, Appeals Chamber Interlocutory Decision, ¶¶ 45, 62.

⁷ 1997 International Convention for the Suppression of Terrorist Bombings.

⁸ 1999 International Convention for the Suppression of the Financing of Terrorism.

⁹ 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation

these instruments, as well as the rest, shows that they cover a range of acts that could constitute terrorism. None of them sets out a universal definition of terrorism though.

Issues Caused by a Lack of Definition

International law has a clear, direct impact on legislation at a state level. States incorporate international law into their domestic legislation in different ways. The effect of this is that there is unification, in a broad sense, of laws around the world so that they do not vary drastically in nature and scope from those of other regions. In the case of an issue so important as terrorism that the world at large needs to combat as a united front, the lack of a definition, and therefore, a lack of definitive counter strategies, poses multiple problems.

Counter terrorism is a matter of national and international security. There needs to be no room for arbitrary application or interpretation in the field so that states and the international community at large can respond to threats swiftly rather than being drawn into the problematic issue of classifying acts of terrorism and analysing what the proper response would be under international law.

The lack of a singular definition has created a gap that allows for different states to interpret terrorism according to their own national interests, political viewpoints and other factors that lead to arbitrariness rather than legal conclusions.

The entire field of counter terrorism law exists in international law as well as under most domestic jurisdictions. However, there is no definition to serve as a solid guiding basis, which means that it is up to the relevant authorities to proceed as they see fit. This creates major issues where there is an overlap with other fields of law such as humanitarian law, criminal law, and so forth.

Approaching a Singular Definition

1. Ideology Based Definition

One way to create a standard meaning of terrorism is to base it on ideology. Experts ranging from political figures to security professionals to legal scholars have proposed the idea that terrorism is a form of violence that stems from certain ideologies which unite people under an umbrella cause based off of their beliefs.¹⁰ Such ideologies could be of a religious, social or political nature. However, there are certain problems with having just an ideology based definition of terrorism, where ideology is believed to be the only factor that establishes an act as terrorism.

If one is to look at Al Qaeda, their aim as an organization was never to just spread unadulterated terror; their goals include the liberation of the largely overlooked or sidelined Sunni Muslims across the globe (in their opinion) and to unite these people against the global West because of the latter's support for Arab leaders that were not good for their own people

¹⁰ Gary A Ackerman and Michael Burnham, 'Towards a Definition of Terrorist Ideology' (2021) 33 *Terrorism and Political Violence* 1160, 1160

as well as their support for Israel despite their occupation of Palestine.¹¹ Using the incitement of terror is a tool employed by the organization to further their means as well as to draw attention to their cause – the organization is not founded with the aim of spreading terror in society as a standalone unifying ideology.

Most countries that incorporate ideology into their definition of terrorism combine it with one or both of the following factors as a standalone ideology-based description is difficult to classify as illustrated by the example above. An example of an ideology based definition is as follows:

In Pakistan, Section 6 of the Anti Terrorism Act (ATA) 1997 defines terrorism as:

‘the use or threat of action where:- (a) the action falls within the meaning of subsection (2); and (b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies].’¹²

There is mention of ideology in subsection C of section 6, yet it is clear that the factor ideology is not the only driving factor behind the definition of terrorism; other criteria are required in order to qualify an act as an act of terrorism.

2. Actor Based Definition

Another approach is to categorise actors that carry out acts of violence which are also acts of terrorism and to focus the definition on these actors. According to this method, certain groups or individuals would be defined as terrorists according to their actions. An example of an actor based definition is as follows:

The US State Department’s definition of terrorism is:

‘...politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience’.¹³

Here, there is an emphasis on the actors that carry out certain acts that are categorised as acts of terrorism. Again, this cannot be a standalone basis for a definition as there are other factors to be taken into consideration (the US’ definition has other criteria also).

3. Act Based Definition

¹¹ Jeffrey Haynes, ‘Al Qaeda: Ideology and Action’ [2005] *Critical Review of International Social and Political Philosophy* 177, 181.

¹² Anti Terrorism Act Section 6.

¹³ Omar Lizardo, ‘Defining and Theorizing Terrorism: A Global Actor-Centered Approach’ [2008] *Journal of World-Systems Research* 91.

Defining the act of terrorism rather than focusing on ideological movements or the actors involved has also been an approach taken by many. The existing anti terrorism protocols take this approach and focus on acts that are committed as acts of terrorism instead of other factors.

As aforementioned, the working definitions adopted by the United Nations for example focus largely on the acts being committed instead of other factors that may or may not be important. Multiple acts such as hijacking, terror financing, and acts of violence are currently treated as terrorist acts. A big difference between this approach and the previous ones is that it does leave room for State terrorism to be acknowledged as being part of the problem. A

For example, the United Kingdom uses this approach. The Terrorism Act 2000 defines terrorism as ‘as the use or threat of one or more of the actions listed below, and where they are designed to influence the government, or an international governmental organisation or to intimidate the public; and also for the purpose of advancing a political, religious, racial or ideological cause:

- serious violence against a person;
- serious damage to property;
- endangering a person's life (other than that of the person committing the action);
- creating a serious risk to the health or safety of the public or a section of the public; and
- action designed to seriously interfere with or seriously to disrupt an electronic system.’¹⁴

Combined Approach

The best way to approach a working definition that would be applicable across the world would be to combine the three approaches mentioned above. As standalones, all three of these methods have their flaws. An ideology based definition would narrow the scope of terrorism too much as there is a very low chance that groups or individuals that spread terror function solely with the purpose of spreading terror.¹⁵ Similarly, basing it off of actors alone would mean that distinction between terrorists and other categories of fighters would become impossible.¹⁶ A definition solely defined by acts has been the best bet so far but is also not all-encompassing enough to become a singular universally adopted definition. The best way forward would be to set a threshold for intent, actors and acts all combined to create a solid definition for terrorism.

¹⁴ Terrorism Act 2000.

¹⁵ Richard Jackson, ‘An Argument for Terrorism’ [2008] Perspectives on Terrorism 25.

¹⁶ Makau Mutua, ‘Terrorism and Human Rights: Power, Culture, and Subordination’ (2002) 8 Buffalo Human Rights Law Review 1, 9. Mutua cites multiple instances where freedom fighters against colonizers were dubbed terrorists

Pakistan's Anti Terrorism Act (ATA) 1997

The ATA is Pakistan's primary anti terrorism legislation. It sets out Pakistan's definition for terrorism (as mentioned above under the heading 'ideology based definitions'). It further lists acts of terrorism, punishments for terrorism and the ways to classify organizations involved with terrorism. However, one of the major mandates set out by this Act was the creation of Anti Terrorism Courts, specifically to deal with violations under the ATA.

The Act is a detailed legal instrument which is specific in its definitions, punishments and directions. However, it is an instrument designed solely in keeping with domestic laws. Once a definition for terrorism is set under international law, Pakistan and the ATA would be greatly impacted by it as there would definitely have to be changes to comply with an instrument set out by international law. Therefore, it is of utmost importance that Pakistan stay up to date with developments on the subject.

Policy Recommendations

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- Pakistan should also draw on its experience with counter terrorism to push the international community to give this issue the utmost importance in order to reach a conclusion as soon as possible.

Action Matrix

Options for Pakistan and the international community

Option	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
Resume work on the Comprehensive Convention on International Terrorism	The UNGA Ad Hoc Committee on Terrorism should lay out an urgent agenda regarding the finalization of Comprehensive Convention on International Terrorism.	All participant parties should be notified that the Draft Convention is to be discussed and agreed upon within a certain time limit.	<ul style="list-style-type: none"> • United Nations General Assembly • Ad Hoc Committee on Terrorism 	6-9 months for the notifications, meeting of the Ad Hoc Committee and the UNGA yearly meeting to all be included in the process.
Create a new pathway to drafting a singular definition for terrorism	A new instrument on terrorism can be proposed in order to dispel old issues with the existing draft and start afresh.	The simplest way forward would be for a new instrument to be proposed at the general debate at the United Nations General Assembly so that the process of the creation of a multilateral treaty is easily accessible for all relevant parties.	<ul style="list-style-type: none"> • United Nations • Organisation of Islamic Cooperation • Other States or international organizations that wish to propose such an instrument 	2 weeks-1 month for the draft proposal before the UNGA and the 9 days of UNGA general meeting.
Adopt a definition from an international court	Until the creation and adoption of a new universal instrument on terrorism, the international community can	Using the definition that has already been used by the Special Tribunal for Lebanon.	<ul style="list-style-type: none"> • Ad Hoc Committee on Terrorism 	6-9 months for the notifications, meeting of the Ad Hoc Committee and the UNGA yearly meeting to

	collectively opt to use the definition used by the Special Tribunal for Lebanon.			all be included in the process.
Pakistan; ensure it is part of the process for creation of a comprehensive instrument on terrorism	Pakistan should stay up to date on any new actions by the international community to reach consensus on a definition and instrument on terrorism under international law.	Send a representative/ representatives to meetings by the Ad Hoc Committee or other UN meetings on the subject of terrorism.	<ul style="list-style-type: none"> • Government of Pakistan • United Nations • Ad Hoc Committee on Terrorism 	1-2 years depending on the scheduling of new meetings, etc.