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Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul

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Inter-Parliamentary Union High Level Group on Countering Terrorism and Violent Extremism

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Item 7 – Definition of Terrorism

Excellencies, distinguished participants

In my report the Human Rights Council last month,[1] I urged States to define terrorism to more effectively protect human rights from terrorist violence, and to ensure that State counter-terrorism measures fully respect human rights and are effective and legitimate.

Vague and overbroad definitions of terrorism have led to countless violations of human rights and have counterproductively fueled grievances and reduced cooperation with the authorities. The abuse of counter-terrorism law has become a tool of choice to suppress critics, civil society, and human rights defenders, including through transnational repression.

My report provides a "best practice" model definition that updates the mandate's 2010 definition and broadly aligns with Security Council resolution 1566 (2004), the Terrorist Financing Convention 1999, the General Assembly's Declaration on Measures to Eliminate Terrorism of 1994, and OHCHR's recent Guidance Note. The model definition may be used to guide national, regional and international practice, including to assist parliaments in making and reviewing counter-terrorism laws and in promoting legal harmonization between countries.

In this regard, I welcome my recent cooperation with the Inter-Parliamentary Union on its report on the definition of terrorism, which properly takes into account international human rights law and international humanitarian law and is consistent with international standards.

Elements of the model definition

My model definition limits the physical conduct of terrorism to serious criminal acts that intentionally cause death, serious bodily injury, or involve hostage-taking. This properly confines the stigma, exceptional powers, and heavy punishment of the terrorism category to the gravest threats to the right to life, security of person, and liberty.

[1] A/HRC/61/52, https://www.ohchr.org/en/documents/thematic-reports/ahrc6152-defining-terrorism-respect-and-protect-human-rights.

The model definition does not recommend including harm to property, infrastructure, information systems and the environment as terrorism. However, such interests are often included in national, regional and treaty laws. If they are retained, my report suggests model clauses to ensure they are legally certain and impose sufficiently high thresholds.

A defining characteristic of terrorism is its instrumental purpose beyond the underlying physical conduct. Thus, the model definition firstly requires that a person must intend that their conduct either (i) provokes a state of terror in the public or a group of persons; or (ii) unduly compels a government or an international organization to do or to refrain from doing something.

The element of terrorizing people advances the human right to security of person, which includes psychological integrity. A state of terror is closer to the ordinary meaning of terrorism and has been endorsed by the General Assembly and Security Council. It is preferable to a test of mere "intimidation", although the European standard of "serious intimidation" is acceptable; but both terror and intimidation should not be given as alternatives in the same definition.

The element of compelling a government recognizes the rights of the population to exercise political freedoms without unlawful violence and coercion, and ensures that governments can fulfil their human rights obligations without violent disruption. The definition is tightened by requiring "undue" compulsion, as in European law, rather mere compulsion as under the Terrorist Financing Convention.

Secondly, a further critical element is that the conduct must be intended to advance a political or ideological purpose. This element properly differentiates political terrorism from private violence, including profit-motivated organized crime, which are more appropriately addressed by other legal frameworks.

The terrorist purpose should also be the dominant, or at least a substantial, purpose, to avoid capturing conduct that is largely motivated by private reasons and not genuinely terrorist.

The definition does not include a religious purpose due to risks of discriminatory profiling and public stigmatization of particular religions in practice, especially in a climate of Islamophobia, but religious violence would usually be indirectly covered as ideological and/or political.

Finally, the person must intentionally cause serious damage to a country or an international organization. This element is based on European law. It reflects that terrorism should be limited to the most exceptional threats.

Exceptions to the definition

My report emphasizes that even narrow definitions require principled exceptions to further safeguard human rights and confine liability to genuinely terrorist conduct. The definition accordingly proposes five exclusions.

Firstly, if definitions do include harm to property, then they must exclude acts of protest that do not intentionally cause death or serious bodily injury, in order to protect political freedoms.

Secondly, conduct in armed conflict that does not violate international humanitarian law should be excluded, so as not to undermine the special law that governs armed conflict, while ensuring attacks on civilians can be addressed as both war crimes and terrorism.

Thirdly, humanitarian and medical activities by impartial humanitarian organizations must not be treated as terrorism, with these activities being protected under humanitarian law in order to ensure that civilians in need can be assisted.

Fourthly, the activities of State military forces in the exercise of their official duties should be excluded as long as they comply with international law. This recognizes that militaries may need to legitimately use force in exceptional peacetime situations, including peace operations, but violations of international law, including assassinations, can still be treated as terrorism.

Fifthly, the definition excludes acts intended to establish or restore democracy, constitutional government, the rule of law, or to exercise or safeguard human rights. Various constitutions preserve these rights, and counter-terrorism law should not shield atrocities by authorities.

Conclusion

To conclude, for almost a century, the international community has failed to define terrorism, with enormous cost to the victims of terrorism and counter-terrorism alike. This legal blackhole at the heart of international counter-terrorism efforts must be remedied.

Thank you.