

Defining the International Public Enemy: The Political Struggle behind the Legal Debate on International Terrorism

JÖRG FRIEDRICHS*

Abstract

Who shall have the power to define international terrorism? To answer this question, which means determining the international public enemy, is an eminently political task. According to Carl Schmitt, politics is essentially about determining the public enemy. When it comes to a situation of emergency, whoever is in the position to distinguish friend from enemy holds ultimate power. While Schmitt was still thinking primarily in terms of the nation-state, the determination of the public enemy has now become an international issue. To demonstrate this point, this article examines the political struggle behind the legal debate on the definition of international terrorism. This is done by comparing two debates on international terrorism, one held in the 1970s and the other in the 2000s. Both these debates had, and still have, their institutional locus in the UN General Assembly and its Legal Committee. In the 1970s the non-aligned countries tried to challenge the discretion of the West in determining the international public enemy. In the 2000s the incumbent regimes of the Third World agree with Western states that terrorism is a common threat. The main cleavage is now between the leading Western powers that would like to determine the public enemy on a case-by-case basis (the United States and the United Kingdom), and the status quo states that would like to tie these hegemonic powers by a legal definition. It is precisely the absence of such a legal definition that makes it possible for the hegemonic powers and their followers to determine the international public enemy on a case-by-case basis. A legal definition would increase the coherence of the international coalition against terrorism and serve as a limitation on the discretionary power of the hegemonic states.

Key words

Carl Schmitt; Comprehensive Convention on International Terrorism; definition of terrorism; terrorism; United Nations

Who shall have the power to define terrorism? Who will distinguish it from other forms of political violence? Who is going to tell a terrorist from a freedom fighter?

To answer these questions is an eminently political task. It is tantamount to deciding who is with ‘us’ and who is against ‘us’, or in other words it means

* Research Associate, School of Humanities and Social Sciences, International University Bremen, j.friedrichs@iu-bremen.de. Research on this article was carried out in a project on the internationalization of the monopoly of the legitimate use of force, within a collaborative research centre on the transformation of statehood. The research project is based at the International University Bremen, Germany, and is directed by Markus Jachtenfuchs. Funding by the Deutsche Forschungsgemeinschaft is gratefully acknowledged. Thanks are due to those who have collaborated on empirical research: Eva Herschinger, Christiane Kasack, Holger Stritzel, and Dana Trif; to those who have provided valuable comments: Alessandro Colombo, Bibi van Ginkel, and the anonymous reviewers of the *Leiden Journal of International Law*; and above all to Raphael Muturi for having contributed to an earlier version of the paper.

International Terrorism Political And Legal Documents

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International Terrorism: Political and Legal Documents Yonah Alexander, 2023-08-28 This is the first comprehensive single volume collection of terrorism documents The editor assembled material from both governmental and nongovernmental source relating to the prevention and suppression of terrorism The collection constitutes a valuable research tool for academics and also for those concerned with implementing instruments to combat terrorism

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Alexander, 1992-06-12 This is the first comprehensive single volume collection of terrorism documents The editor assembled material from both governmental and nongovernmental source relating to the prevention and suppression of terrorism The collection constitutes a valuable research tool for academics and also for those concerned with implementing instruments to combat terrorism **International Law Documents Relating to Terrorism** Omer Yousif Elagab, Jeehaan Elagab, 2007

Since 9 11 terrorism has been at the forefront of global politics and international relations This edition brings this comprehensive compilation of international law documents relating to terrorism up to date *Islamic State Practices, International Law and the Threat from Terrorism* Javaid Rehman, 2005-05-31 In the post 9 11 legal and political environment Islam and Muslims have been associated with terrorism Islamic civilization has increasingly been characterized as backward insular stagnant and unable to deal with the demands of the twenty first century and differences and schisms between Islam and the west are being perceived as monumental and insurmountable 9 11 terrorist attacks have unfortunately provided vital ammunition to the critics of Islam and those who champion a clash of civilizations In this original and incisive study the author investigates the relationship between Islamic law States practices and International terrorism It presents a detailed analysis of the sources of Islamic law and reviews the concepts of Jihad religious freedom and minority rights within Sharia and Siyar In eradicating existing misconceptions the book provides a thorough commentary of the contributions made by Islamic States in the development of international law including norms on the prohibition of terrorism It presents a lucid debate on such key issues within classical and modern Islamic State practices as diplomatic immunities prohibitions on

hostage taking aerial and maritime terrorism and the financing of terrorism The book surveys the unfairness and injustices within international law a legal system dominated and operated at the behest of a select band of powerful States It forewarns that unilateralism and the undermining of human rights values in the name of the war on terrorism is producing powerful reactions within Muslim States the new world order presents a dangerous prognosis of the self fulfilling prophecy of an inevitable clash of civilizations between the Islamic world and the west

Terrorism, War and International Law Myra Williamson, 2016-04-01 This book analyzes the legality of the use of force by the US the UK and their NATO allies against Afghanistan in 2001 The work challenges the main ground for resorting to force namely self defence under Article 51 of the United Nations Charter by examining each element of Article 51 that ought to have been satisfied in order to legitimise the use of force It also examines the wider context including comparable Security Council resolutions in historic situations as well as modern instances where force has been used such as against Iraq in 2003 and against Lebanon in 2006 As well as making the case against the legality of the use of force the book addresses wider questions such as the meaning of terrorism in international law the changing nature of conflict in the twentieth and twenty first centuries including the impact of non state actors and an overview of terrorism trends as well as the evolution of limitations on the resort to force from the League of Nations through to 2001 The book concludes with some insight into the possible future implications for the use of force by states particularly when force is purportedly justified on the grounds of self defence

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Criminalization of Environmental Protection International Terrorism M. Cherif Bassiouni, 2001 Contains the texts of the relevant conventions related to terrorism Conventions of the League of Nations the United Nations the Organization of African Unity the League of Arab States the Council of Europe the Organization of American States and the South Asian Regional Convention are included The texts are organized into themed sections related to such matters as civil aviation the use of explosives the safety of persons the financing of terrorism weapons of mass destruction genocide torture and war crimes Each section is preceded by a brief contextual introduction Annotation copyrighted by Book News Inc Portland OR

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security were set for the future Terrorism and the State Tal Becker, 2006-03-23 Winner of the 2007 Paul Guggenheim Prize Today's terrorists possess unprecedented power but the State still plays a crucial role in the success or failure of their plans Terrorists count on governmental inaction toleration or support And citizens look to the State to protect them from the dangers that these terrorists pose But the rules of international law that regulate State responsibility for preventing terrorism were crafted for a different age They are open to abuse and poorly suited to hold States accountable for sponsoring or tolerating contemporary terrorist activity It is time that these rules were reconceived Tal Becker's incisive and ground breaking book analyses the law of State responsibility for non State violence and examines its relevance in a world coming to terms with the threat of catastrophic terrorism The book sets out the legal duties of States to prevent and abstain from supporting terrorist activity and explores how to maximise State compliance with these obligations Drawing on a wealth of precedents and legal sources the book offers an innovative approach to regulating State responsibility for terrorism inspired by the principles and philosophy of causation In so doing it presents a new conceptual and legal framework for dealing with the complex interactions between State and non State actors that make terrorism possible and offers a way to harness international law to enhance human security in a post 9 11 world *The Laws of Genocide* Thomas W. Simon, 2007-06-30 The tools of reason offer the best hope for the international community to confront the increasing incidents of hate throughout the world A historically informed normative examination of the elements of the crime of genocide provides an excellent case study of how the law reason's handmaiden enhances understanding and improves practical ways of dealing with global injustices How should we confront hate As political activists we could resort to fighting hate with hate As concerned citizens we could consciously ignore or actively protest hate As committed educators we could put the implements and survivors of hate on display As committed scholars we could resuscitate the idea of evil As humanitarian jurists we could put individual hate mongers on trial Part I of this book makes a case for making the maximum use of reason to deal with hate This means that we should actively debate those who promote hate Further as a close look at the history of applying law to incidents of hate and violence illustrates the courtroom proves to be an excellent place to demonstrate the virtues of applying the tools of reason not to global evils but to the grave injustices of the world In Part II Simon demonstrates the power of legal analysis in enhancing our understanding of genocide probably the worst injustice imaginable A close examination of each purported element of the crime of genocide redirects misguided turns taken by international jurists Contrary to a more realistic perspective adopted at the Nuremberg trials jurists have mistakenly modeled international criminal law on national criminal law which focuses on individual responsibility However the cases of grave injustices throughout the 20th century amply demonstrate the primary collective responsibility underlying incidences of genocide The failure to prosecute criminal organizations for genocide has and will continue to have disastrous results While the Nuremberg tribunal at least disbanded the responsible Nazi organizations current war crimes tribunals have allowed organizations responsible for the Rwandan

genocide to continue to wreak havoc throughout Central Africa If the international community cannot forge a common understanding of genocide then it has little hope of establishing an international legal order or a global ethics *American Foreign Policy Current Documents* ,1989 Global Journal on Crime and Criminal Law ,1993 **The Palgrave Handbook of Global Counterterrorism Policy** Scott Nicholas Romaniuk,Francis Grice,Daniela Irrera,Stewart Webb,2017-07-26 The Palgrave Handbook of Global Counterterrorism Policy examines a comprehensive range of counterterrorism policies strategies and practices across dozens of states and actors around the world It covers the topics of terrorism and counterterrorism both thematically and by region allowing for discussions about the underpinning dynamics of these fields consideration of how terrorism and counterterrorism are evolving in the modern period and in depth analyses of individual states and non state actors and their approaches to countering terrorism and terrorist threats It draws upon a multidisciplinary range of established scholars and upcoming new researchers from across multiple fields including political science and international relations sociology and history examining both theory and practice in their respective chapters This volume is an essential resource for scholars and practitioners alike Blackstone's International Law Documents Malcolm Evans,2017 Market leading and first choice with students and lecturers Blackstone s Statutes have an unrivalled tradition of trust and quality With a rock solid reputation for accuracy reliability and authority they provide a careful selection of all the up to date materials students need for exams and course use *Transnational Terrorism and State Accountability* Vincent-Joël Proulx,2012-11-05 Every State has an obligation to prevent terrorist attacks emanating from its territory This proposition stems from various multilateral agreements and UN Security Council resolutions This study exhaustively addresses the scope of this obligation of prevention and the legal consequences flowing from its violation so as to provide greater clarity on governments counterterrorism duties and to enhance State accountability for preventable wrongs It defines the contents and contours of the obligation while placing critical emphasis on the mechanics of State responsibility Whether obscured by new technologies like the Internet the sophisticated cellular structure of some terrorist organisations or convoluted political realities the level of governmental involvement in terrorist activities is no longer readily discernible in every instance Furthermore the prospect of governments waging surrogate warfare through proxies also poses intractable challenges to the mechanism of attribution in the context of State responsibility This monograph sets out the shortcomings of the extant scheme of State responsibility while identifying a paradigm shift towards more indirect modes of accountability under international law a trend corroborated by recent State and institutional practice Drawing on varied legal and theoretical influences the study devises and prescriptively argues for the implementation of a strict liability inspired model grounded in the logic of indirect responsibility with a view to enhancing State compliance with counterterrorism obligations This shifts the policy focus squarely to prevention while promoting multilateralism and transnational cooperation Ultimately the legal and policy sensibilities underlying the book converge into a new theory of prevention in counterterrorism contexts

From the Foreword by Judge Bruno Simma International Court of Justice Even if one might disagree with the bases on which the author constructs his argument the execution of the argument is solid and thorough The coverage of the major policy arguments and the available legal source materials is equally impressive Moreover the author s positions are genuinely progressive and present a fairly innovative solution in the form of a strict liability mechanism It behoves all scholars and practitioners of international law with an interest in combating international terrorism to consider the proposals outlined in this book Transnational Terrorism and State Accountability by Vincent Jol Proulx has been awarded the 2014 Myres McDougal Prize for best book in Law Science and Policy from the Society of Policy Scientists Blackstone's International Law Documents Malcolm D. Evans, 2015 Market leading and first choice with students and lecturers Blackstone s Statutes have an unrivalled tradition of trust and quality With a rock solid reputation for accuracy reliability and authority Blackstone s Statutes provide a careful selection of all the up to date materials students need for exams and course use **Terrorism, Law and Policy** David Lowe, 2022-04-25 Terrorism Law and Policy A Comparative Study is a textbook offering a comparative study of the terrorism related legislation policy and practice introduced from international governmental bodies such as the UN and the European Union and individual states with a focus on Australia Canada New Zealand the UK and the US It offers a uniquely legal perspective on key themes relating to terrorism and security This new edition is brought fully up to date with the ever changing developments in terrorist activity as well as in states approaches to anti terrorism legislation and policy It includes new chapters on the far right and extreme far right cause one on offering a comparative study of the anti terrorism policies of states and international bodies and the role of international and national counter terrorism agencies planning and preparing acts of terrorism and a new chapter on freedom of expression hate crime and proscribing groups as terrorist organisations Terrorism Law and Policy A Comparative Study is ideally suited for terrorism and security modules at undergraduate and postgraduate levels and will also be of interest to practitioners working on the legal aspects of these areas

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