

<https://doi.org/10.36719/2706-6185/44/84-94>

Nadir Artbas

University of Mouloud Mammeri, Tizi Ouzou

<https://orcid.org/0009-0005-2506-9578>

nadir.artbas@ummto.dz

The Phenomenon of International Terrorism and the Right of Self-Defense – Armed Struggle

Abstract

This study aims to explore the points of overlap between terrorist acts and armed resistance or the right of self-defense and self-determination as recognized by the United Nations, in order to eliminate any misinterpretation or confusion between these two concepts.

This issue is the absence of a comprehensive definition of terrorism and the difficulty in identifying its fundamental characteristics which makes it even more difficult. Such a gap allows major powers to exploit these ambiguities to interfere in weaker states under the pretext of protecting them from terrorism, despite the fact that the features of armed struggle are clear and internationally recognized.

Keywords: *right of self-defense, armed struggle, fighting of terrorism, international intervention, conditions of armed struggle*

Nadir Artbas

Mouloud Mammeri Universiteti, Tizi Ouzou

nadir.artbas@ummto.dz

<https://orcid.org/0009-0005-2506-9578>

Beynəlxalq terrorizm fenomeni və hüququ özünümüdafiə - silahlı mübarizə

Xülasə

Bu tədqiqat terror aktları ilə silahlı müqavimət və ya Birləşmiş Millətlər Təşkilatı tərəfindən tanınan özünümüdafiə və öz müqəddəratını təyinetmə hüququ arasında üst-üstə düşmə nöqtələrini araşdırmaq məqsədi daşıyır ki, bu iki anlayış arasında hər hansı yanlış şərh və ya çəşqinlik aradan qalxsın.

Bu məsələni daha da çətinləşdirən terrorizmin hərtərəfli tərifinin olmaması və onun əsas xüsusiyyətlərini müəyyən etməkdə çətinlik olmasıdır. Belə bir boşluq böyük dövlətlərə silahlı mübarizənin xüsusiyyətlərinin aydın və beynəlxalq səviyyədə tanınmasına baxmayaraq, bu qeyri-müəyyənliklərdən istifadə edərək daha zəif dövlətləri terrordan qorumaq bəhanəsi ilə onlara müdaxilə etməyə imkan verir.

Açar sözlər: *özünümüdafiə hüququ, silahlı mübarizə, terrorla mübarizə, beynəlxalq müdaxilə, silahlı mübarizə şəraiti*

Introduction

International law and the principles of the United Nations Charter distinguish between international terrorism, which refers to killing for the achievement of illegal objectives, and the right to self-defense—the right of peoples to self-determination—which is considered a legitimate right under international conventions. However, this has not prevented major powers, driven by their interests, from attempting to confuse the two terms and using them as political excuses and media tools to alter the legal classification of legitimate actions, turning them into illegal ones and labeling them as terrorism.

Since the sword of law is one of the most essential methods required to prevent confusion and properly classify these actions, and in light of the growing scale of armed struggle and the phenomenon of terrorism and its connection to other crimes, international conventions have sought

to establish legal conditions that allow for armed struggle for self-determination, recognizing it as a human right. They also distinguish it from the term "international terrorism," which threatens the daily lives of individuals, and have attempted to find legal and practical means for addressing and suppressing it on both the international and domestic levels by enacting punitive legislations and signing a number of international and regional agreements to unify efforts and promote international cooperation in combating it (Azmouni, 1996).

Research

Therefore, we ask:

What are the legal foundations that allow for the distinction between the right to self-defense—armed struggle—and the phenomenon of international terrorism?

To answer this question, I have divided this paper into two sections: The first section discusses the phenomenon—or rather, the crime—of international terrorism in the perspective of international law and methods for combating it. The second section addresses the distinction between the phenomenon of international terrorism and the right of peoples to self-defense through armed struggle by highlighting the key legal conditions that frame this classification as legitimate.

I. The Legal Framework for Combating the Crime of International Terrorism

Terrorism is one of the most dangerous criminal phenomena that threaten the security of the international community and the stability of international relations. It spreads fear and terror among innocent people. The undeniable truth is that terrorism is an age-old phenomenon, as old as human history itself. However, in the present day, with the widespread occurrence of terrorist acts, there has been an unprecedented focus on this phenomenon (Attallah, 2004).

In this chapter, we will explore the crime of international terrorism, the rules and regulations governing it, and the evolving changes in the behavior of individuals and states concerning the emergence and development of this phenomenon. We will also examine the penal solutions aimed at addressing these dangerous acts against vital international interests, particularly through the signing of agreements that treat various aspects of terrorist actions as international crimes.

1. The Phenomenon of Terrorism from the Perspective of International Law

Terrorism is considered one of the most dangerous negative phenomena that has spread in the contemporary world. Its danger has extended to the entire globe, and no society is immune from it. In reality, terrorism is a vague term with no universally agreed-upon legal definition. The term is often used differently depending on the political or security circumstances of each country (Bashir, 1994).

In recent years, terrorist operations have increased, diversified, and taken on new forms, which has made them a real threat to the international community and the stability of its institutions, as well as its economic, social, and cultural structures. Hardly a day passes without the media reporting on individuals or groups committing terrorist acts that cause fear, stir up disorder, and send terror into the hearts of people.

1.1. The Meaning of the Phenomenon of International Terrorism

The word "terrorism" originates from the Latin language and later spread to other languages, where it came to refer to acts of terrorism, counter-terrorism, and so on. The term terrorism is derived from the Latin word *terreor*, which itself comes from *tersere* or *terrere*, meaning to cause someone to tremble or shudder, from a linguistic point of view.

In terms of its definition, there have been many attempts to find a specific definition of terrorism. The list of crimes described as terrorism is not exhaustive; in fact, it is flexible enough to accommodate more crimes, especially when they involve perpetrators from certain ethnic, national, or racial backgrounds. Terrorism is based on various elements, such as hijacking airplanes, arms trafficking, financing terrorism, assassinations, hostage-taking, espionage, and so on (Choukri, 1991, p. 201).

Terrorism is the use of violence against civilians to promote political goals. The term's origin traces back to the Reign of Terror following the French Revolution, a period associated with infamous figures like Robespierre and Saint-Just. It is not surprising that governments were the initial perpetrators of terrorist acts, used to subdue their populations or to expand influence and control over

other nations and territories following wars. The use of violence against civilians to achieve political goals is almost a characteristic of authoritarian regimes and the stability of occupying governments. Individuals, political movements, and political parties may resort to terrorism in an attempt to achieve political objectives (Cortin, 2014).

Professor George Levasseur defines terrorism as: “The deliberate and organized use of means that are likely to provoke terror, with the aim of achieving specific goals such as assaulting the right to life, the right to bodily integrity, or committing acts of violence using bombs, car bombs, sending explosive packages, or arson attacks on property”. On the other hand, Professor Glaser views terrorism as: “The use of terror and coercion through violence or the employment of violence in order to achieve illegitimate goals (Dailier, Pellet).

Terrorism was defined in the draft of the international convention to combat crimes against humanity, which was prepared and discussed by the International Law Commission in 1988. Article 11 of the draft states: “Acts of terrorism are criminal acts directed against a state or its population, which are likely to instill fear in individuals, groups, or the public, and aim to destroy or damage public property.

From the previous attempts to define terrorism, we can extract the key elements that distinguish it, which are:

- The method or approach used, which is any act of sudden violence or the threat of such violence against innocent people.
- The terror and panic it instills in the targets, serving as a deliberate message intended to achieve a particular interest. This interest could involve imposing a political or ideological principle or undermining the confidence of citizens in their governments or their representatives.

The issue of defining terrorism remains an urgent necessity, as it would allow international bodies to adopt a unified legal framework on one hand, and oblige states to abide by a single legal commitment, unaffected by the interests of any particular country, on the other. Given the difficulty in reaching a comprehensive international agreement to define terrorism, some scholars have argued that terrorism does not yet constitute a crime under international law. As one such scholar expressed it: “How can one punish behavior that is still undefined (Draper, 1965).?”

1.2 Forms of International Terrorism

Some individuals, when discussing the various forms and images of terrorism, confuse them with the methods and techniques used to carry out those forms. This confusion arises from mixing terrorism itself with the terrorist act, as we observed in the discussion of the definition of terrorism. Many scholars have defined the terrorist act instead of terrorism itself by providing a detailed description of its various forms, assuming these forms are synonymous with terrorism.

Here, we will address the most important forms of international terrorism: ideological terrorism (first), separatist terrorism (second), and criminal terrorism (third).

A. Ideological Terrorism (Doctrinal Terrorism)

Ideological terrorists fight to achieve a particular ideology they believe in, such as what occurred in Russia during the Bolshevik Revolution of 1917. The objective may also be religious, as seen during the Middle Ages in Europe, when attempts were made to impose loyalty to the Catholic Church in Rome (El-Ghazali, 1986).

Ideological terrorism can take the form of a state conducting military raids against civilians in another country for strategic objectives. Examples include the American attack on Libya in April 1986 and the Israeli attack on Lebanon in June 2006. It can also manifest as support and financing for terrorist activities. Some studies point to the involvement of American and Israeli intelligence in terrorist operations during the communist era.

B. Separatist Terrorism (Ethnic Terrorism)

This type of terrorism is limited to individuals and political groups based on ethnic or national grounds. Its aim is the secession of a particular group from the mother state, seeking recognition of independence for a specific group or ethnicity. Current examples include the Irish Republican Army (IRA), the Basque separatist group ETA in Spain, and the Tamil Tigers in Sri Lanka (Fauchille, 1921, p. 10).

Separatist terrorism is marked by the use of military or authoritarian state forces to employ violence and repression to instill fear among the public in order to achieve political goals, such as retaining power or silencing opposition voices by restricting basic freedoms and abusing power. A historical example of this is Nazi Germany during Hitler's regime.

It is important to distinguish between acts of terrorism committed by a state within its territory and acts of genocide (le génocide) carried out against ethnic or religious minorities.

C. Criminal Terrorism

This form of terrorism is driven by personal, economic, or social motives and adopts various methods such as extortion, armed robbery, hostage-taking, and other forms of individual and organized crime, which some reject from being classified as terrorism (Fauchille, 1921, p. 10).

Most of these crimes are committed to exert pressure on a specific party, either to achieve political purposes or personal gains, such as demanding ransom for the release of hostages. One historical example is the 1975 kidnapping of eleven OPEC ministers, where a ransom of \$25 million was demanded for their release. Another example is the incident of the Japanese Red Army's storming of the U.S. embassy in Kuala Lumpur, where employees, including the American consul, were taken hostage to pressure the Japanese government to release political prisoners. These hostage situations often end with the killing of the hostages, with the news broadcasted via media outlets and online platforms, similar to the tactics used by armed groups in Iraq against foreign hostages (Gamal El-Din, 2004, p. 19).

2. Combating International Terrorism

Since the mid-20th century, the international community has increasingly focused on taking effective measures to confront terrorism in all its forms. To this end, many countries and international organizations, with the United Nations (UN) at the forefront, have worked to establish conventions, issue reports, and make recommendations condemning all forms of international terrorism, urging states to adopt appropriate measures to deter these crimes. Moreover, specialized international organizations in various fields have endorsed the same principles and criminalized such actions and violations (Swidan, p. 33).

2.1 The Role of the United Nations in Combating International Terrorism

After its establishment, the United Nations (UN) sought to find serious solutions to contain and eliminate terrorism, starting with efforts to define terrorism, investigate its causes, and explore methods of combating it. In a report by the UN Secretariat in 1972, it was stated that the underlying causes of violence should be investigated, focusing on factors such as poverty, disappointment, feelings of injustice, and despair, which drive some individuals to sacrifice their lives in a bid for radical changes in their societies (Guillaume, 1977, p. 4).

The UN succeeded in concluding several important conventions, including the 1973 New York Convention on preventing and punishing crimes committed against international persons and those enjoying international immunity, and the 1979 Convention on the suppression of hijacking and hostage-taking. In 1997, the UN signed the International Convention for the Suppression of Terrorist Bombings, followed by the International Convention for the Suppression of the Financing of Terrorism in 1999 (Suleiman, p. 155).

The General Assembly established a special committee on international terrorism, which was divided into three sub-committees: a committee for defining terrorism, a committee for identifying the causes of terrorism, and a committee for outlining measures to prevent terrorism. The committee issued its recommendations after extensive discussions, which revealed deep disagreements over the definition of terrorism. Despite calls for and proposals by representatives to hold an international conference under the UN's umbrella to define terrorism, distinguish it from the legitimate struggle of peoples, and determine the international responsibility of parties involved in terrorist acts, no international treaty has been concluded yet (Guillaume, Levasseur, 1976-1977, p. 62).

The disagreement between states regarding the true meaning of terrorism has been a major hindrance to international efforts to combat it. For instance, the United States considers liberation movements as terrorist groups, accusing Arab and Islamic countries such as Sudan, Syria, and Iran of being breeding grounds for terrorism. At the same time, the U.S. sees Israeli airstrikes on Lebanon

and daily massacres of the Palestinian people as acts of legitimate defense. This policy—based on a double standard in assessing terrorist actions—has deeply affected the UN's efforts, particularly the Security Council, which has become an instrument in the hands of the U.S. administration, granting it the right to intervene and wage aggressive wars against member states of the organization under the pretext of combating terrorism (Hamdy, p. 89).

Before the start of the U.S. military operations in Afghanistan on October 7, 2001, the Security Council had issued Resolutions 1368 and 1373, in which it considered the September 11 attacks as a real threat to international peace and security. It took urgent measures to address the crisis's consequences and called on the international community to intensify efforts to prevent its recurrence, expressing its readiness to respond to the attacks on the United States according to its responsibilities under the Charter. In response, the Security Council adopted Resolution 1456 in 2003, which confirmed that terrorism could only be defeated, according to the UN Charter and international law, through a comprehensive approach involving the active participation and cooperation of all states and international and regional organizations (Hussein, 1959, p. 48).

Efforts continued to enhance dialogue and broaden the scope of understanding between civilizations, as part of an effort to prevent the random targeting of different religions and cultures and to continue addressing regional conflicts and unresolved issues, including development issues. Since 2001, the Counter-Terrorism Committee held four meetings with international and regional organizations to discuss ways to cooperate with the committee within the framework of international efforts to combat terrorism. During the first of these meetings, held on March 6, 2003, with the participation of 57 organizations, an agreement was made to exchange information and experiences and prioritize combating terrorism within the framework of Resolution 1373. Three subsequent meetings were hosted by the Organization of American States and its Counter-Terrorism Committee in Washington in 2003, the United Nations Office on Drugs and Crime in Vienna in 2004, and the last one held in Kazakhstan in 2005 within the framework of the Commonwealth of Independent States (CIS).

2.2 The Role of Specialized International Organizations in Combating Terrorism

After discussing the efforts of the United Nations in combating terrorism as the international body responsible for maintaining global peace and security, we now turn to the efforts of specialized international organizations in combating unlawful acts against air and sea navigation, specifically in the framework of the International Civil Aviation Organization (ICAO) (First), then the International Maritime Organization (IMO) (Second), and finally the International Criminal Police Organization (Interpol) (Third).

A. In the framework of the International Civil Aviation Organization (ICAO)

Aircraft terrorism emerged in the early 1960s, primarily affecting the economies of airline companies due to the lack of passenger trust in the safety and security of air travel. To address this issue, which had not been governed by international legal rules except for Article 12 of the 1944 Chicago Convention, ICAO urged all states to adopt legal, security, and preventive measures at airports and on aircraft to prevent such incidents. This led to the conclusion of three international agreements specifically aimed at preventing and combating aviation terrorism (Jahani, 2002, p. 16):

- The Tokyo Convention of 1963 on crimes committed on board aircraft, which entered into force in 1969.
- The Hague Convention of 1970 on the unlawful seizure of aircraft, which entered into force in 1971.
- The Montreal Convention of 1971 on suppressing unlawful acts affecting civil aviation security, along with a protocol to suppress acts of violence at airports, which entered into force in 1973.

B. In the framework of the International Maritime Organization (IMO)

The hijacking of the "Achille Lauro" ship on October 7, 1985, served as the catalyst for the development of an international convention. Following a call from the UN General Assembly, the International Maritime Organization (IMO) was tasked with preparing a study on the issue. Egypt, Italy, and Austria proposed a draft convention aimed at suppressing attacks and violent acts, or threats

of violence, used to hijack ships, control persons aboard, or cause damage to the ship or its cargo, including placing explosives or dangerous materials on board in any manner.

The convention was approved on March 10, 1988, and entered into force on March 1, 1992. According to the provisions of the convention, each of these acts constitutes a distinct crime against maritime navigation, and it is not necessary for all these actions to occur together; any one of them is sufficient to constitute an unlawful attack on maritime navigation (Jaafar, 2006, p. 205).

C. The Role of Interpol in Preventing International Terrorism

Interpol plays a crucial role in preventing international terrorism crimes by analyzing patterns of terrorist activities to derive results that help develop effective means of preventing such acts and protecting people and assets from their destructive consequences. This is achieved by gathering all data related to internationally wanted terrorists, which is provided by central offices across the regions of member states. The exchange of information has been facilitated by the organization's use of modern communication tools, ensuring rapid transfer of information, images, and fingerprints, particularly concerning crimes such as hijacking and hostage-taking. The effectiveness of this role depends on the volume of information available, and Interpol has contributed to thwarting numerous terrorist operations and capturing their perpetrators (Kheirou, 1977, p. 45).

Given that one of the primary objectives of the European Union is to uphold human rights and fundamental freedoms, it has focused on combating international terrorism since its establishment. The advisory body of the EU has condemned terrorism in many of its decisions and recommendations and urged European states to impose stricter penalties on terrorists. It also recommended the need for a unified European stance against international terrorism (Suleiman, p. 157).

II. The Right to Self-Defense and its Comparison with International Terrorism

"Legal self-defense" is a concept that was recognized early in domestic laws as a situation that removes the unlawful nature of an act and renders it permissible. However, this concept is relatively recent in international law, emerging only after international customs and treaties established that war is a crime that should only be resorted to in exceptional cases. Article 51 of the UN Charter recognizes that states have the right to self-defense in the event of an armed attack, until necessary measures are taken by the Security Council to restore international peace and security. When states exercise this right, they are subject to precise legal standards, under the risk of international responsibility in this regard (Krill).

Thus, it is essential to highlight the concept of the right to self-defense and distinguish it from terrorism (First Requirement), as well as the legal conditions for the right to armed struggle (Second Requirement).

A. Defining the Right to Self-Defense and Distinguishing it from Terrorism

It is important to note that the requirements for the application of international humanitarian law to individuals in armed resistance groups are often ambiguous and raise many questions. This may prevent these groups from being treated as prisoners of war, instead treating them as war criminals stripped of any rights. Furthermore, the issue of resistance movements operating from outside the territory of the occupied state is a complex matter in international law. This prompts the discussion of the definition of the right to self-defense (First Section) and distinguishing it from terrorism (Second Section).

1.1. Defining the Right to Self-Defense - National Liberation Wars

Armed resistance is one of the most prominent forms of resistance against occupation. Armed resistance refers to:

"The action of a group of civilians using weapons to expel the occupier, either spontaneously or through an organization that does not reach the level of an army (United Nations).

It refers to the acts of resistance carried out by national liberation movements, supported by the people, to achieve independence in the face of an occupying power. This narrow concept emerged during the Brussels Conferences in 1874 and the Hague Conferences of 1899-1907. These movements benefited from international recognition through the establishment of the principle of self-determination, which is one of the fundamental principles in international law, giving legitimacy to the operations aimed at achieving this right (Kunz, 1949, p. 314).

It can be said that armed struggle is a form of mass violence directed against colonial presence in a specific territory, calling for resistance against occupation, colonization, or oppressive regimes through the use of weapons and violent methods to remove occupation, colonialism, or the despotic system by force. It advocates for armed action to liberate oppressed countries from the fires of colonial powers and despotic regimes, and to assert the right of oppressed peoples and restore their dignity, a principle recognized by the United Nations in 1945.

The diplomatic conference that approved the first and second Geneva Protocols in 1977 set conditions for this, one of which is that it must be directed against foreign occupying forces and racist regimes. Therefore, national liberation wars refer to armed conflicts led by peoples against foreign control, characterized by the national element, which differentiates them from secessionist wars that oppose the principle of territorial integrity outlined in Article 2, Paragraph 4 of the United Nations Charter. The question that remains is: what are the distinguishing boundaries between acts of terrorism and armed struggle for independence (United Nations)?

1.2 Distinction between Terrorism and the Right to Self-Defense - Armed Struggle.

As terrorism is violent behavior aimed at achieving ideological goals and ideas, it may blend with other forms, and this blending results in significant outcomes that considerably affect the methods of combating it. One of the most important of these forms is national liberation wars, as follows:

A. In terms of nature and goal

National liberation wars are characterized by a military nature and popular support, whereas terrorist operations receive no support. The motive for armed struggle is the liberation of the land and the freedom of the nation from colonial rule. One of the most important historical examples is the "Algerian Revolution" against French colonialism (1830-1962), while the motivation behind committing terrorist crimes is merely extortion, sabotage, and the spread of violence and tension in internal and external relations (Margenau, 1990, p. 15).

B. In terms of the targeted person

It is clear that liberation movements carry out their operations against a foreign enemy and its military targets without affecting unarmed civilians. On the other hand, terrorist activities, as a criminal phenomenon, are often directed against innocent people to spread terror. The importance of the foreign element in the process of distinction is evident, even though the targeting of some innocent targets by some liberation movements has sparked a debate about its legitimacy, which some see as harming their national struggle, prompting them to reassess and return to direct confrontation with the enemy.

C. In terms of legal support

We have previously explained that armed struggle is based on a set of principles established by international law. The United Nations and other regional organizations have adopted a position recognizing the legitimacy of these movements' struggles, including the UN General Assembly Resolution No. 3237 of 1974 during its 29th session, which recognized the Palestine Liberation Organization and granted it observer status in the General Assembly and UN organizations and agencies. In the 30th session of 1975, Resolution No. 3375 affirmed that the PLO is the legitimate representative of the Palestinian people (Meyrowitz, 1971, p. 56).

Additionally, the principles established by the 1907 Hague Convention and the four Geneva Conventions for the wounded, sick, and prisoners of war granted legal protection to all forms of resistance. The fourth convention describes armed resistance members as combatants, meaning they should be treated as prisoners if captured by the enemy under the following conditions:

- They must be under the command of a person responsible for their subordinates.
- They must have a distinguishing insignia.
- They must carry arms openly.
- Their operations must be conducted in accordance with the laws of war.
- The illegitimacy of aggression and occupation.

However, this recognition of the right to armed resistance has not been fully acknowledged by the great powers, which have considered it a form of international terrorism that must be confronted under the guise of "international war on terrorism (Montesquieu)."

This idea was clearly present in the minds of the drafters of the UN Charter. Today, states are subjected to armed attacks by some groups, which may be closely linked to a particular state, in which case the right of self-defense is applied in its known and traditional form. However, if these groups have no connection to any state, applying this theory becomes difficult. Can the host state of these groups be subjected to a military attack under the guise of self-defense? Can force be used as an exception to Article 2, paragraph 4 of the Charter against these groups (The United States)?

B. Legal Conditions for the Right to Self-Defense.

International humanitarian law has recognized the legitimacy of armed struggle by national liberation movements, considering it an international armed conflict rather than international terrorism, contrary to what Western countries claim. Additionally, members of the armed resistance in national liberation movements have received further protection under international humanitarian law, but this is contingent on their adherence to international legal norms.

Therefore, the conditions necessary for considering armed struggle as a right to self-defense and not international terrorism will be discussed, including the conditions of aggression that establish the right to armed struggle (First Subsection) and the conditions for actions taken in self-defense (Second Subsection).

2.1 Conditions of Aggression that Establish the Right to Self-Defense.

The right to legitimate defense is linked to the existence of prior aggression against a state, which has the right to repel it with an unlawful counteraction to protect its rights and defend its territory. This right is subject to a series of conditions, as follows (Moussa, 2004, p. 104):

A. Immediate Aggression.

It is required that the aggression has occurred before responding to it. It must be an ongoing act that has not yet ended. This means that defense cannot precede the aggression under the pretext of preventing an alleged attack, nor can it follow the cessation of aggression, as it would then be considered an act of retaliation rather than legitimate defense. In domestic law, the threat is considered immediate, giving rise to the right to defend, even if the aggression has not yet occurred but is imminent. Regarding international law, some scholars argue that as long as aggression is imminent, it is sufficient to establish the right to legitimate defense. This was stipulated in many international treaties, including Article 6 of the "Nuremberg Charter," which states that "any planning, preparation, or arrangement for war is considered a crime against peace." However, others have rejected this view, arguing that aggression cannot be considered immediate unless it actually occurs to justify self-defense. This was confirmed by Article 51 of the United Nations Charter, as well as the definition of aggression by the General Assembly in Resolution 33/14 of 1974, which states that aggression "is the use of armed force by one state against the sovereignty, territorial integrity, or political independence of another state." This latter view is the most precise and stringent in justifying war, as there is concern that adopting the first doctrinal direction could lead to false claims and erroneous accusations of aggression (Ouyahya, 1987, p. 67).

B. Armed Aggression.

Article 51 of the United Nations Charter requires that aggression be armed, which is a condition not found under domestic law. This refers to the mobilization of armies for invasion, bombings, occupation of territories, imposing blockades on ports or coasts, and other forms of weapon use. The international community is keen not to justify acts of war under legitimate defense unless they are a response to armed aggression. Mere incidents with limited impact on state borders do not justify the use of force in self-defense, as their consequences can be avoided by various means, the most important of which is diplomacy. In a decision issued by the International Court of Justice in 1986 regarding military and paramilitary activities between the United States and Nicaragua, it was considered that the exercise of the right to self-defense depends on the condition of armed aggression (Suleiman, 1992, p. 233). Furthermore, Article 51 itself establishes an exception to Article 2, paragraph 4 of the Charter, and exceptions should only be interpreted in the narrowest possible sense, as established in legal doctrine. The question that remains is whether a terrorist attack can be considered armed aggression under Article 51 of the Charter, justifying the use of military strikes for self-defense?

C. Violation of a State's Fundamental Rights.

Aggression against a state's territory is clear when its borders are violated by an attack or invasion, or when part of its territory is annexed. Aggression may also target a state's sovereignty, for instance, when a foreign state prevents the victim state from exercising all or part of its rights or authority, as it is the rightful authority to manage its internal and external affairs. A key principle that has been settled in international custom and international treaties is the recognition of the right of peoples to self-determination. Therefore, any state that prevents a people from exercising this right is considered an aggressor (Ordant, 1991, p. 50).

2.2. Conditions for Actions Taken in Self-Defense.

Actions taken in self-defense are subject to legal rules that align with the temporary nature of the defense procedure outlined by the United Nations Charter, ensuring that such actions do not hinder Security Council intervention and that the use of force remains in the narrowest possible scope, in line with the general and comprehensive prohibition on its use under Article 2. Therefore, the action taken in self-defense must be necessary and proportional to the aggression the state has faced. Was the U.S. military action against Afghanistan carried out according to these conditions (United Nations)?

A. Necessity:

The military action taken in self-defense must be necessitated by an urgent and pressing situation that leaves no room for hesitation or alternative means. It must be the only viable option after exhausting peaceful means to respond to, stop, or limit the aggression. The action should be a direct response to the aggression. If it is delayed, it turns into retaliatory action, which is prohibited by international law. For example, the downing of a plane heading toward the "White House" in Washington D.C. on September 11, 2001, can be justified by the necessity of the situation. However, waiting nearly a month to wage war against Afghanistan under the pretext of self-defense is not legally justifiable, especially considering that the Security Council had intervened and expressed its readiness to take appropriate measures, as we will see in the second section. This means that continuing the response after the Security Council's decision is no longer considered legitimate defense but could be classified as an international crime (Pradel, 1987).

B. Proportionality:

The right of any state to defend itself against aggression permits it to respond only to the extent necessary and sufficient to repel the attack, without exaggeration or excess. Consequently, if a state exceeds this limit, its action is considered an international crime if it has the criminal intent. However, if the state exceeds the limit due to an error in judgment, its action is classified as an unintentional international crime.

For example, the United States' strike on "Al-Qaeda" headquarters and training centers in Afghanistan targets Afghanistan itself. It is difficult to accept this as a proportional response when the entire state and all of its institutions and facilities are being attacked with the aim of removing a regime and installing another in its place (Saadallah).

C. Informing the Security Council.

This condition is derived from Article 51 of the United Nations Charter, which states that measures taken by members in exercising the right of self-defense must be reported to the Security Council immediately. The purpose is to inform the Council of the developments in areas experiencing conflict, enabling the Council to take appropriate decisions to prevent the escalation of the crisis and maintain international peace and security. After the International Court of Justice ruling in the case of military and paramilitary activities in Nicaragua, which established that states must comply with the obligation set forth in Article 51 regarding the need to notify the Security Council of any defense measures, states have become keen to respect this commitment. Failure to comply may weaken their claim of acting in self-defense (Sharif, 1997, p. 120).

Regarding the military operations against Afghanistan, the U.S. permanent representative to the Security Council informed the Council that U.S. military forces had begun operations aimed at preventing future attacks against the U.S. However, he did not specify the nature or scope of these actions nor provide evidence that "Al-Qaeda" was responsible for the attacks. The condition of

informing the Security Council implicitly assumes that evidence of the state's responsibility being targeted must be presented. The U.S. representative only mentioned that the U.S. had "compelling evidence" of "Al-Qaeda's" involvement in the attacks but did not present it, instead sharing it with the British Prime Minister and the Secretary General of NATO, leaving open the possibility of targeting other groups and, consequently, other states in the future (United Nations).

Conclusion

Colonialism and its continuation are considered international crimes that violate human rights, despite the fact that international treaties, including international humanitarian law, aim to protect them. International humanitarian law recognizes armed struggle as a right of self-defense based on the Geneva Conventions and does not consider it a civil war. Members of the resistance movements benefit from the protection provided by international humanitarian law, being considered prisoners of war rather than terrorists. However, the situation may change and become unlawful if these liberation movements deviate from the right of peoples to self-determination and self-defense, and target civilians.

According to the theory underlying international humanitarian law, protection cannot be extended to resistance members if their actions are directed against civilians, based on the principle of "respect for human rights during armed conflicts." This allows for the protection of innocent civilians and prohibits combat activities against them, in accordance with the principles of the laws of war.

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Received: 18.10.2024

Revised: 04.12.2024

Accepted: 27.01.2025

Published: 28.02.2025