

TERRORISM, COUNTER-TERRORISM AND INTERNATIONAL LAW: THE MALAYSIAN PERSPECTIVE

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1. Terrorism

- what is 'terrorism'?
- the circumstances that give rise to terrorism,
- why and how terrorism is perpetrated and
- what makes terrorism to be different from mere 'insurgencies'.

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- Branches of international law relevant to counter-terrorism
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1. TERRORISM

- What is 'terrorism'?
- What circumstances give rise to terrorism?
- Why and how terrorism is perpetrated?
And
- What makes terrorism to be different from mere 'insurgencies'.

WHAT IS 'TERRORISM'?

- The term 'Terrorism' is the English translation of French term '*terrorisme*', which is based on the Latin verb **terrere** (meaning to frighten).
 - Historical example: **The Reign of Terror** (1793-94), when the new French government punished— usually by death—those people thought to be against the ongoing **French Revolution**. It was a gruesome and protracted period of official state-sponsored violence
- 'Terrorism' is commonly understood to refer to **the unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aim**
- Beyond this there is no comprehensive universally accepted definition of terrorism
- Nevertheless, attempt has been made at the international level to define certain acts and core elements of terrorism.
- For instance, in 1994, the GA's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes
 - “*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*” and that such acts “*are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.*”

WHAT IS TERRORISM? CONTINUE

- In 2004 the UN Security Council, in its resolution 1566 (2004), defined terrorism as
*“criminal acts, including against civilians, committed with the intent to **cause death** or **serious bodily injury**, or **taking of hostages**, with the **purpose to provoke a state of terror** in the general public or in a group of persons or particular persons, **intimidate a population** or **compel a Government or an international organization to do or to abstain from doing any act**”.*
- Later in 2005 the UN Secretary-General’s High-level Panel on Threats, Challenges and Change described terrorism as **any action** that is
*“**intended to cause death** or **serious bodily harm to civilians or noncombatants**, when the purpose of such an act, by its nature or context, is to **intimidate a population**, or to **compel a Government or an international organization to do or to abstain from doing any act.**”*
- Currently, the UN GA is currently working towards the adoption of a comprehensive convention against terrorism

WHAT IS TERRORISM? CONTINUE

- Basically terrorism include the following:
 - It is the use of violence or threat of violence in the pursuit of political, religious, ideological or social objectives.
 - It can be committed by state actors, non-state actors, undercover agents (used on behalf of foreign governments in proxy conflicts).
 - It target victims randomly or selectively
 - It is both *mala prohibta* (i.e., a Latin phrase which means "wrongs [as or because] prohibited by legislation) and *mala in se* (i.e., wrongs that are naturally evil according to the sense of a civilized community)
 - What do u think of the following?:
 - WWI
 - WWII (particularly in Nazi Germany)
 - the genocide of Rwanda,
 - 9/11,
 - Al-Qaeda, Daesh, and Boko Haram.
 - In a number of resolution UN SCDecided that:
"act[s] of international terrorism, constitute
a threat to international peace and security"
- Elements of terrorism**
- Violence, death and destruction
 - Aims to instill fear
 - driven either by political ideology, religious ideology (al-Qaeda, Daesh, Taliban, Buku Haram, al-shabab) or ethnic differences
 - Targets are generally random but occasionally selective
 - ***Compel a Government or an international organization to do or to abstain from doing any act***

CIRCUMSTANCES THAT GIVE RISE TO TERRORISM

- **Breakdown of Law and order**

- Usually, terrorism occurs when there is breakdown of law and order (because of armed conflicts, IAC or NIAC, eg., Somalia, Afghanistan, Syria, Iraq, etc.)
- In countries where there is law and order terrorism has little chance to grow
- However, there have been cases where terrorism strikes at some countries where law and order is well maintained, eg., 9/11 in US, UK Bombing (London) in several occasions, particularly in July 2005, France and Spain to mention few.

- **Weak or failed states**

- Failed states or state with weak governments are fertile ground for terrorism.
- But terrorist groups have emerged from, and operated within, countries which have strong, stable states and a variety of systems of government.
- Nevertheless, these countries' foreign policy attract terrorists attention, some of these countries involve in waging war in other countries or basically involve in proxy wars abroad.

- **Lack of Good Governance**

WHY AND HOW TERRORISM IS PERPETRATED?

- **Why is terrorism caused?**

- Terrorism is usually caused when there is uneven development or low development that causes people to pick up guns and fight
- Terrorism may also arise because of differences between people, difference may either be ethnic differences (Rwanda, Serbia), religious differences or political differences
- Terrorism arise when one state wages aggressive war against another state
- Terrorism may also arise in proxy war situations.

- **How is terrorism perpetrated?**

- Suicide bombing (on daily basis in Afghanistan, Syria, Iraq)
- Hijacking plane (9/11)
- kidnaping (Boko Haram-kidnaping schoolchildren)
- Beheading (happened in Syria, Iraq... by Daesh)
- In discriminate bombing of cities, towns, religious sites etc)
- Forcing victims to sit on bomb and then detonate the bomb (Happened in Jalabad, Afghanistan)
- Setting victim on fire alive (this is happened to a Jordanian pilot in Iraq)

WHAT MAKES TERRORISM TO BE DIFFERENT FROM MERE 'INSURGENCIES'

- The objective of terrorism is to get public attention toward their cause. So they will perpetrate activities on a very large scale **against civilians and civilian installations** so that they can attract media attention.
- Terrorism has three main objectives:
 - Renown
 - Revenge
 - Recognition
- An insurgency is between a government forces and rebels or rebels inter se.
- Insurgency has a specific military objective. It has taken up arms to fight against government to overthrow it and replace it by a government of their own choice or they simply fighting foreign occupation. It uses guerrilla tactics or fight face to face with the enemy. It does not intentionally target civilians, non-combatants, hors de combat and civilian installations.
- Insurgents only attack combatants. It does not attack civilian or civilian installations.

COUNTER TERRORISM & INTERNATIONAL LAW

- IL provides the framework within which national counter-terrorism activities take place.
UNSC resolution 1456 (2003):
[...] 6. States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law...”
- IL allows **States to cooperate** with each other effectively in preventing and combating terrorism.
SC Res. 1373 (2001)—adopted under chapter VII of the Charter of the UN—establishes a framework for improved international cooperation against terrorism including by obliging States to criminalize and prosecute acts of terrorism, and to disrupt and prevent the financing of terrorism)
- In addition to general IL, different branches of IL relevant to counter-terrorism are explored making sure that any measure states take to combat terrorism must comply with their obligations under international law, in particular IHRL, IHL, ICL and IRL
SC resolution 1456 (2003) reaffirms that States’ measures to combat terrorism must comply with IL, in particular IHRL, refugee and IHL

WHAT IS IL?

- IL is “the system of law containing principles, customs, standards and rules by which relations between States and other international persons are governed”.
- Subjects of IL
 - States
 - Ios
 - Individuals

PURPOSES OF IL

- **World harmony**

(but complete world harmony is far from reality – look at the crisis in Palestine, Iraq, Afghanistan, Sudan-*Darfur* , the missile crises between US and Russia...)

- **Dispute resolutions**

(but see Iran and US dispute – Israel and Palestine disputes and other major interstate disputes)

- (but look at 2006 Israel military attack against Lebanon)

- **Creates a common framework for nations & IO** to work to save the world from becoming more chaotic than it is now.

SOURCES OF IL

- Statute of the ICJ, article 38 (1)

a) **international conventions (treaties)**

“Every treaty in force is binding upon the parties to it and must be performed by them in good faith” (VCLT, art. 26)

Example: International Convention for the Suppression of Nuclear Terrorism 2005, article 25:

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the 22nd of ratification, ..., with the Secretary-General of the UN.

2. For each State ratifying,, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Once a treaty come into force, it becomes binding on its parties: **States cannot invoke national law to avoid this obligation (VCLT, art. 27)**

- , b) **international custom**, as evidence of a general practice accepted as law;
- c) the **general principles of law** recognized by civilized nations;
- d) [...] **judicial decisions** and the **teachings of the most highly qualified publicists** of the various nations, as subsidiary means for the determination of rules of law.

SOURCES OF IL, CONTINUE

- Other possible sources of IL
- Soft Law
- UN GA Res and Declaration

ICJ , Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (8 July 1996): ‘[GA] resolutions, even if they are not binding may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a or the emergence of an opinio juris. To establish whether this is true of a given Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an opinio juris exists as to its normative character. Or a series of resolutions may show the gradual evolution of the opinio juris required for the establishment of a new rule.’(*ICJ, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* (8 July 1996), Report 1996, pp. 226-267.)

- UN SC Res
 - the legal effects of SC resolutions: both soft and hard law
 - Binding if adopted under chapter VII of the UN Charter
 - Example of Chapter VII Resolution is Security Council resolution 1373 (2001), which was adopted in the wake of the 11 September 2001 terrorist attacks and, inter alia, obliges all United Nations Member States, to take the necessary steps to prevent the commission of terrorist acts, to criminalize assistance for terrorist activities, deny financial support and safe haven to terrorists, and to “afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings.”

INTERNATIONAL CONVENTIONS AND PROTOCOLS THAT RELATE TO THE PREVENTION AND SUPPRESSION OF TERRORISM?

- Currently there are **sixteen—international conventions** and protocols which relate directly to the prevention and suppression of terrorism. Examples:
- **1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft (Aircraft Convention)**

This Convention applies to acts affecting in-flight safety; authorizes the aircraft commander to impose reasonable measures, including restraint, on any person he or she has reason to believe has committed or is about to commit such an act, where necessary to protect the safety of the aircraft; and requires contracting States to take custody of offenders and to return control of the aircraft to the lawful commander.
- **1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention)**

This Convention requires State Parties to make it an offence for any person on board an aircraft in flight to “unlawfully, by force or threat thereof, or any other form of intimidation, [to] seize or exercise control of that aircraft” or to attempt to do so.

CONVENTIONS ON COUNTER TERRORISM *CONTINUE*

- **1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention)** (deposited with the International Civil Aviation Organization) Requires State Parties to make it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of the aircraft; to place an explosive device on an aircraft; to attempt such acts; or to be an accomplice of a person who performs or attempts to perform such acts;
- **1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic agents Convention)** (deposited with the Secretary-General of the United Nations) Defines an “internationally protected person” as a Head of State, Minister for Foreign Affairs, representative or official of a State or international organization who is entitled to special protection in a foreign State, and his/her family; and requires parties to criminalize and make punishable “by appropriate penalties which take into account their grave nature” the intentional murder, kidnapping or other attack upon the person or liberty of an internationally protected person, a violent attack upon the official premises, the private accommodations, or the means of transport of such person; a threat or attempt to commit such an attack; and an act “constituting participation as an accomplice”.

CONVENTIONS ON COUNTER TERRORISM *CONTINUE*

- **1979 International Convention against the Taking of Hostages (Hostages Convention)** (deposited with the Secretary-General of the United Nations) Provides that “any person who seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage within the meaning of this Convention”.
- **1980 Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention)** (deposited with the International Atomic Energy Agency) Criminalizes the unlawful possession, use, transfer or theft of nuclear material and threats to use nuclear material to cause death, serious injury or substantial property damage.

CONVENTIONS ON COUNTER TERRORISM *CONTINUE*

- **1997 International Convention for the Suppression of Terrorist Bombings (Terrorist Bombing Convention)**
Creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.
- **1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)** (deposited with the Secretary-General of the United Nations) Requires parties to take steps to prevent and counteract the financing of terrorists, whether direct or indirect; commits States to hold legal persons which finance terrorism civilly or administratively liable and individuals criminally liable for such acts; extends criminal liability also to individuals, civil and administrative liability to legal persons; and provides for the identification, freezing and seizure of funds allocated for terrorist activities, as well as for the sharing of the forfeited funds with other States on a case-by-case basis. Bank secrecy is no longer adequate justification for refusing to cooperate.
- **2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)** (deposited with the Secretary-General of the United Nations) Covers a broad range of acts and possible targets, including nuclear power plants and nuclear reactors; deals with both crisis situations (assisting States to solve the situation) and post-crisis situations (rendering nuclear material safe through the International Atomic Energy Agency (IAEA))

CONVENTIONS ON COUNTER TERRORISM *CONTINUE*

- International Convention for the Suppression of Terrorist Bombings 1998, article 6:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State; or
- (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

BRANCHES OF IL RELEVANT TO COUNTER-TERRORISM

- IHL
- IHRL
- **ICL:** The ICC Statute does not provide jurisdiction for prosecuting an offence of “terrorism” but may prosecute terrorist acts if they amount to war crimes, crimes against humanity, or genocide within the definition provided in the Statute.

Jurisdiction of the ICC can be triggered in three different ways under the Statute:

1. Referral by the UN SC under chapter VII of the UN Charter;
2. Referral by a State party; or
3. ICC Prosecutor’s own motion.

- IRL,
- etc.

UN GLOBAL COUNTER-TERRORISM STRATEGY

- The UN GA adopted the Global Counter-Terrorism Strategy on 8 September 2006.
- It aims to enhance national, regional and international efforts to counter terrorism.
- This is the first time that all Member States have agreed to a common strategic approach to fight terrorism by resolving to take practical steps individually and collectively to prevent and combat it.
- It consists of four pillars:



COUNTER-TERRORISM: MALAYSIA'S PERSPECTIVE

- The security and stability of the Southeast Asian countries, including Malaysia, have long been threatened by terrorism. Indonesia for example was shaken by a wave of deadly attacks – most notoriously the JI-claimed **Bali nightclub bombings which killed 202 people in October 2002**. Also the **2016 deadly terrorist attack in Jakarta**, killing that killed civilians and the **2017 ISIS-inspired militants attack on Marawi, a city of Philippine**, has confirmed that the threat of terrorism in the region is real and must be combated
- Although Malaysia thwarted major acts of terrorism, yet the fear is that Malaysian fighters returning from Syria and Iraq may launch attacks in Malaysia. The country also fears ISIS' online recruitment and radicalization efforts may inspire terrorist sympathizers to carry-out low-tech, lone-wolf attacks
- Malaysia therefore take the threat of terrorism seriously and thus have taken measures to counter it effectively. It effectively thwarted
 - Domestic terror groups**, like Kumpulan Mujahidin Malaysia (KMM),
 - Regional terror groups**, such as Jemaah Islamiyah (JI),
 - Transnational terror groups**, like Al-Qaeda have all been thwarted
- Malaysia has clear counter-terrorism policy and laws

MALAYSIA'S COUNTER TERRORISM POLICY

- Malaysia's policy towards terrorism is clearly stipulated in Directive No. 18 (Revised) issued by the National Security Council (NSC) of Malaysia.
- This policy include:
 - i. Denouncing any form of terrorist acts;
 - ii. Protection of hostages' life and property;
 - iii. Preference for negotiated solutions;
 - iv. No exchange of hostage to resolve the crisis; and
 - v. Strike action as a last resort following failure of negotiation.

MALAYSIA'S ANTI-TERRORISM LEGISLATIONS

- Malaysia considers terrorism as a threat to its national security – So, initially only **Penal Code** and **Internal Security Act (ISA) 1960 (Act 82)** was deployed against those who posed threat to national security
- In September 2011 **ISA was repealed** and replaced by the **Security Offences (Special Measures) Act (SOSMA) 2012 (Act 747)**, which is a law that relates to security offences.
- SOSMA 2012 provides the procedures for arrest for serious offences under Chapter VI and VIA of the Penal Code which include offences against state and terrorism-related offences, among others.

SOSMA 2012

- **SOSMA 2012** added to the existing penal code a range of provisions covering terrorism-related offences and crimes against the state.
- The listed offences included violent attacks aimed at causing fear, in addition to encouraging terrorist acts and financing, and harboring or providing assistance to terrorists.
- **SOSMA** enable judges to sentence those convicted of terror offences to **lengthy prison sentences**, and in some cases even the **death penalty**.
- **Penal Code**, the law that codifies most criminal offences in Malaysia, provides provision for the criminalisation of terrorism and other terrorism related offences such as:
 - i. Financing of terrorism;
 - ii. Harboring of terrorists;
 - iii. Providing assistance to terrorists; and
 - iv. Inciting and promoting terrorism act.
- Under the Penal Code, the above-mentioned offences carry a severe penalty of imprisonment of up to 30 years or imprisonment for life or death penalty.

PREVENTION OF TERRORISM ACT (POTA) AND THE SPECIAL MEASURES AGAINST TERRORISM IN FOREIGN COUNTRIES ACT (SMATA)

- In 2015, Malaysia also introduced the Prevention of Terrorism Act (POTA) and the Special Measures against Terrorism in Foreign Countries Act (SMATA)
- These laws give the police greater powers to arrest and detain individuals, as well as designated two detention centers to house terror suspects.
- Whilst legitimate human rights concerns have been raised over the powers granted to law enforcement agencies, the updated legislation has thus far achieved its aim of preventing attacks within Malaysia.

- According to the Malaysian Special Branch Counter-Terrorism Division, since 2013 Malaysia **foiled 19 large terrorists plots and detained more than 340 terror suspects**
- In 2013 just four individuals were arrested; that number rose to 59 in 2014, 82 in 2015, and 106 in 2016.
- In 2017, the number of terror arrests passed the one hundred mark for a second successive year.
- Malaysia also has one of the highest conviction rates for terror offences, with 101 individuals found guilty and sentenced in the last four years.
- Whilst these figures indicate an ever-rising threat, they also indicate the increased capability of the Malaysian authorities to respond in turn.

- Malaysia also has cracked down on terrorist financing –
- In 2001 it passed the **Anti-Money Laundering and Anti-Terrorism Financing Act** (AMLATFA), which requires financial institutions to submit suspicious transaction reports (STRs) to the Malaysian Central Bank.
- Malaysia's compliance with global counter-terror financing standards has improved markedly, and in 2016 it was granted membership to the international Financial Action Task Force (FATF), marking Malaysia out as a country committed to **cutting off funding for terrorist groups**.
- These improved anti-terror finance capabilities add to the legislation already discussed, making **Malaysia an unattractive base for Islamist terror groups**.
- Malaysia is often cited as **a leading example in the field of de-radicalization**, and has willingly shared its expertise and best practice with other nations. In the age of ISIS, Malaysia has also taken steps to combat radicalization online, spearheading a new regional initiative – the Digital Counter-Messaging Centre (CMC) – established in September 2016 to

- Malaysia's de-radicalization programs are among the most successful in the world. Of the 229 suspects enrolled between 2001 and 2012, only seven relapsed into terrorism-related activities, giving the program a 97% success rate.
- These efforts are a collaboration between the Ministry of Home Affairs (MoHA), Ministry of Education (MoE), the prison authorities, and religious institutions. Counseling sessions aim to counter extremist interpretations of Islam and successfully reintegrate radicalized individuals back into society, whilst post-release support mechanisms are designed to continually engage both the participant and their family members, lessening the risk of relapse.
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CONCLUSION

- Terrorism is a phenomenon that affects every nations around the world
- Combating it requires international cooperation
- A successful fight against terrorism necessitates taking a hybrid approach involving hard and soft measures
- This is exactly what Malaysia has done. It Strengthened counterterrorism legislation and vigilant law enforcement operations to tackle the threat of terrorism
- In the meantime it adopted measures to de-radicalize the radicals
- Malaysia has continually emphasized that a military solution alone will not solve the problems of radicalization and violent extremism.
- Although Malaysia's counterterrorism measures have proven highly successful, it remains impossible to eliminate the threat entirely. Low-tech lone-wolf attacks inspired by ISIS remain particularly difficult to prevent.
- However, in a world where a lasting solution to terrorism appears a distant prospect, Malaysia's hybrid counterterrorism approach – aimed at preventing attacks and reducing radicalization – serves as the leading example for confronting the scourge of terrorism.