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Counter-Terrorism Laws: Analysis of Selected International and Regional Frameworks

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Abstract
Robust legal frameworks are essential in the global struggle against terrorism, as they facilitate international cooperation, protect human rights, and enhance security. This article analyses the counterterrorism legislative frameworks established by four key international organisations: the United Nations (UN), the Organization of African Unity (OAU)/African Union (AU), the European Union (EU), and the Organisation of American States (OAS). It discusses the development and importance of these frameworks, emphasising their definitions of terrorism, strategies for addressing terrorism financing, and measures to uphold human rights. The paper reviews the significant legal documents ratified by each organisation, including OAS treaties, AU conventions, EU directives, and UN Security Council resolutions. Furthermore, it explores the relationships between these frameworks and their impact on national counterterrorism laws within member states. Despite their strengths, these frameworks encounter challenges such as jurisdictional disputes, enforcement limitations, and the evolving nature of terrorist threats. The study concludes that successful counter-terrorism efforts depend on strengthened multilateral cooperation and compliance with international legal standards.

Keywords: Counter-Terrorism Laws, International, Regional Frameworks, African Unity United Nations.

Introduction

The threat posed by terrorism globally is of such a grave nature as to require a unified global response. To devise an efficient counterterrorism policy, the international community has, through the United Nations, developed a global legal framework made up of instruments, which member states are expected to domesticate in their national laws on terrorism. The advantage of this approach is that it ensures that member states' responses to terrorism are coordinated and in line with extant international laws. The success of the global legal framework on terrorism is, therefore, hinged on regional and national legal measures and institutions put in place by member states to combat terrorism, mainly in the form of ratification of the various United Nations conventions and treaties on terrorism. It is in this regard that laws have been deployed nationally, regionally and internationally to stem the growing tides of terrorism, protect society and punish perpetrators of acts designated as 'terrorist' in nature. These laws include those enacted at international, regional and national levels. Thus, there is in existence globally a wide range of Legal frameworks on terrorism. These frameworks address global issues as well as terrorism-related issues that may be peculiar to particular regions, sub-regions or nations.

The question of how best to combat terrorism has been described as one of the foremost issues globally (Choi, 2010). The discourse on how to tackle this issue has influenced national and international efforts aimed at curbing terrorism, which has taken several forms including, but not limited to, military action, economic sanctions and the enactment of laws. While the total efficacy of military action and economic sanctions may appear questionable,

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the existence of an effective criminal justice system ensures that perpetrators are punished for preparatory offences as well as the actual terrorist acts committed. It is for this reason that the use of law has been viewed as an integral and important element in efforts aimed at ending terrorism and all forms of violence associated with extremism (Ford, 2011). As a strategic asset in this regard, the reach of law goes beyond what can be accomplished nationally and globally through enhanced security measures. While recognising the important roles played by sustained military action, security intelligence gathering and policing, the use of law within an efficient legal framework complements the efforts to curb the rising wave of terrorism globally.

The International efforts at the use of law as a weapon to curb the spread of terrorism globally began with the United Nations Convention on Offences and Certain Other Acts on Board Aircraft and were followed by 15 other anti-terrorist conventions, treaties, resolutions and protocols (Abeyratne, 2014). These international efforts only received the much-needed boost after the terrorist attacks on targets within the United States on September 11 2001. At the regional level, several conventions, protocols and treaties have come into existence, all with the same purpose of attempting to curb terrorism through the use of law. The European Union, the Organization of African Unity (OAU)/African Union (AU), Asia, and the Americas have all taken steps, through the use of legislation, to curb terrorism and the activities of terrorists and terrorist organisations.

This study explores the complex terrain of these frameworks, with a particular focus on four major players: the Organisation of American States (OAS), the European Union (EU), the Organization of African Unity (OAU)/African Union (AU), and the United Nations (UN). Due to their various regional settings, security concerns, and legal traditions, these organisations have each created distinctive legal tools and tactics to fight terrorism. The main ideas of these frameworks are evaluated in this study, along with their advantages and disadvantages, as well as the places where their methods differ and overlap. This will give insight into the current status of counterterrorism legislation and how well it works to solve this enduring worldwide issue.

The United Nations Instruments on Terrorism

Since 1963, the international community has elaborated 19 international instruments to prevent terrorist attacks (Reisman, 1999). These instruments have been designed to address specific aspects of terrorism and member states of the organisation are expected to domesticate same in their national legislation. The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, which pre-dated the work of the United Nations Ad-Hoc Committee on Terrorism, is one of the legal instruments against terrorism (Boyle and Pulsifer, 1964). This Convention was informed primarily by the upsurge in the incidents of aircraft hijackings, especially in the United States. The Tokyo Convention, therefore, represented the first global attempt to criminalise the unlawful seizure of and interference with civil aircraft. Article 11 of the Convention was primarily concerned with the restoration of control over a seized aircraft, the speedy resumption of the interrupted flight and the return of the aircraft to the persons lawfully entitled to its possession. Among its noted shortcomings, this Convention failed to address the possibility of the seizure of military aircraft. The Convention also failed to provide for any form of punishment for the illegal seizure of civil aircraft and any harm done to passengers aboard such aircraft. Allied to this was the failure to make provisions for the extradition of persons who illegally took control of civil aircraft and flew them or forced them to fly from one country to another.

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Despite the Tokyo Convention, there was an upsurge in cases of hijacking of planes in the late 1960s (Falvey, 1986). The Hague Convention for the Suppression of Unlawful Seizure of Aircraft was, therefore, the United Nations' response to these concerns as it sought to make the unlawful seizure of aircraft a criminal offence (Follows, 1970). This offence would be committed once the elements set out in Article 1 of the Convention, which states that the aircraft must be in flight. Thus, the seizure of an aircraft on the tarmac before take-off would not fall under the provisions of the Hague Convention because of the caveat in Article 1 that the aircraft must be 'in-flight' when the unlawful seizure takes place. The United Nations did not foresee the likelihood of an unlawful seizure taking place before the take-off or at the point of landing of a flight and the necessity of including such as a criminal offence under the Convention. The requirement that the aircraft must be 'in-flight' at the time of the unlawful seizure also threw up a legal question of jurisdiction when the seizure occurred in the course of an international flight. Which country would be properly placed to exercise jurisdiction for the trial of the alleged perpetrators? The Hague Convention attempted to address this concern when it was provided in Article 4 (Silberman, 1994). Like the Tokyo Convention before it, the Hague Convention focused primarily on the seizure of civil aircraft without making mention of the seizure of non-civil aircraft.

The Montreal Convention is another law that is critical to counterterrorism. The main distinguishing factor between the Hague and Montreal Conventions is the fact that the Montreal Convention took into consideration physical damage inflicted upon an aircraft in the course of its unlawful seizure (Sekiguchi, 2000). The Montreal Convention addresses harm to passengers on aircraft and includes broader offences than the Hague Convention, which mainly deals with the seizure of civil aircraft in flight. In contrast, the Montreal Convention focuses on acts that harm individuals on board or damage the aircraft itself. The relevance and application of this provision in the Montreal Convention can be seen in the case of *United States of America v Reid,* where the accused pleaded guilty to several charges bordering on terrorism (De Leon and Eyskens, 2000).

Another important Convention was the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 1973, which aimed at offering protection against terrorist attacks to Diplomats (Hevener and Sisco, 2019). The Convention, adopted by the United Nations General Assembly on December 14, 1973, aims to protect a specific group of people from personal attacks that could threaten international peace. The Protection of Diplomats Convention, outlined in Article 2(1)(a), addresses serious offences like murder, kidnapping, and violent attacks against diplomats (Barker, 2016). It was created in response to rising crimes in South America, Europe, and Asia, requiring State Parties to ensure protection and prosecute offenders (Mittelman and Johnston, 1999). States must criminalise these acts to establish jurisdiction over offenders and provide appropriate punishments (Barker, 2016).

The Convention sought cooperation among states to prevent the crimes outlined in Article 2(1). States with jurisdiction over alleged offences were required to keep the victim informed of all developments in the investigation and trial (Barker, 2016). The Protection of Diplomats Convention has been criticised for its broad definition of crime and its new criteria for determining criminal behaviour (Di Filippo, 2008). In particular, Article 2(1)(c) makes it an offence to threaten a diplomat, raising concerns that it overlooks the requirement of *actus reus* (Barker, 2016). Despite its criticisms, the Convention is a key step toward creating a global legal framework to combat terrorism and ensure appropriate punishment for offenders.

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In the past three decades, the United Nations has enacted various anti-terrorism conventions, including the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Plant, 1990). This convention aims to protect ships from unlawful detention by individuals intending harm. A notable case it seeks to address is the hijacking of the *Achille Lauro* by a Palestinian terrorist group in September 1984 (Migaux, 2007). The Convention on the Physical Protection of Nuclear Material prohibits unlawful possession and handling of nuclear materials, as well as their use to cause harm or damage (Saizon Jr, 1980). Similarly, the Convention for the Suppression of Terrorist Bombings criminalises the intentional use of explosives in public places to kill, injure, or cause significant destruction (Attia, 2018).

The Convention on the Suppression of the Financing of Terrorism was informed by two major factors, namely, the danger posed by the financing of terrorism and its execution (Alweqyan, 2022). The Convention, therefore, criminalises the financing of terrorism and the activities of terrorists. An offence is committed under this Convention if any person provides or assists in the collection of funds with the intention or knowledge that such funds would be used to carry out terrorist activities. This Convention is noteworthy because it recognises the important role finance plays in the activities of terrorists (Attah, 2019). This Convention, therefore, seeks to cut off the sources of terror finance by criminalising the provision of funds through any means to terrorists (Attah, 2019). The Convention has, however, been criticised for falling short of expectations in at least two regards:

(i) Its equation of actual intent to direct the funds to terrorist purposes with mere knowledge of the ultimate destination of such funds.
(ii) Its failure to criminalise the laundering of funds intended for terrorist purposes (Norton and Shams, 2002).

The UN's counter-terrorism framework includes several resolutions, the most comprehensive being Security Council Resolution 1373, adopted after the September 11, 2001 attacks in the US (Hinojosa-Martínez, 2020). Resolution 1373, condemning the attacks, reaffirmed that such acts threaten international peace and expressed deep concern over rising global terrorism. The Resolution urged member states to unite against terrorism, particularly by implementing anti-terrorism conventions and preventing terrorist financing within their borders. The Resolution requires states to establish legal and institutional frameworks criminalising terrorist acts as serious offences with appropriate penalties.

Efforts to establish a global legal framework against terrorism face challenges, including the exclusion of terrorism from offences under the International Criminal Court. This omission hinders the effective use of law in combating terrorism, as the Rome Statute limits the court's jurisdiction to specific crimes (UN, 1998). The International Criminal Court, created by its signatory states, has a 128-article statute outlining its jurisdiction over specific offences. Terrorism, often targeting civilians through murder, displacement, imprisonment, and sexual enslavement, is not included in the Rome Statute, preventing the ICC from trying terrorists.

Several factors contributed to excluding terrorism from the Rome Statute, including the belief that it was not of sufficient international concern, the desire to avoid overburdening the court, and the fear of state rejection. (UN, 1998) While these arguments exist, they are weak. A working definition of terrorism could have been used. Given terrorism's global rise and the

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fact that no nation is immune, the need to combat it outweighs concerns about the court's workload or potential state disapproval. Since terrorism isn't in the Rome Statute, terrorists could be prosecuted for other offences like crimes against humanity and war crimes, which often cover terrorist acts. Groups like Boko Haram commit acts that qualify as crimes against humanity, such as murder, rape, and sexual slavery (Attah, 2016). Prosecuting terrorists for these existing offences can help combat terrorism both nationally and globally.

Organisation of African Unity (OAU)/African Union (AU) and Counter-Terrorism Legislation

The African continent has played host to several terrorist groups and has also witnessed a series of terrorist attacks. These terrorist groups include *al-Shabaab* operating in Somalia, the Janjaweed of Sudan, *al Qaeda* in the Islamic Maghreb in Mali, the Lord's Resistance Army in Uganda and *Boko Haram* in Nigeria, among others. In response to the threat posed by these and other terrorist groups, African countries have collectively and individually enacted legislation aimed at curbing terrorist activities and punishing those who engage in acts of terrorism on the continent. These legal frameworks include the Organisation of African Unity Convention on the Prevention and Combating of Terrorism, which was adopted by African heads of state in Algiers in July 1999 and came into force in December 2002 (Levitt, 2003). This was a historic Convention as it was the first time African countries had reached an agreement on a legal instrument that would combat and prevent terrorism. This Convention also drew a link between terrorism and organised crime, while state parties expressed their determination to ensure the eradication of all forms of terrorism in Africa (Levitt, 2003).

The Organisation of African Unity (OAU) and its successor, the African Union (AU), have coordinated the fight against terrorism on the continent. The AU's Constitutive Act gives it the power to step in on issues that are vital to peace and security, even though the OAU was established on the tenet of non-intervention in member states' domestic affairs (OAU, 1963; AU, 2000; Fry, 2002). The OAU (1963) Charter's Article III highlights each member state's sovereign equality. According to an Assembly decision, the African Union may intervene in a Member State under the Constitutive Act in cases of grave concern, including crimes against humanity, genocide, and war crimes (AU, 2000). The OAU Convention for the Elimination of Mercenarism in Africa, which was established in 1977, was the first continental legal tool against terrorism (OAU, 1977). This convention defined mercenarism as armed violence committed by people, organisations, or nations that oppose the territorial integrity or self-determination of another state that was made a crime (OAU, art 1(2), 1977).

The OAU then adopted the Resolution on Strengthening Cooperation and Coordination Among African States during its 28th Ordinary Session, which took place from June 29 to July 1, 1992, in Dakar, Senegal (OAU, 1992). The Member States pledged in this Resolution to fight terrorism and extremism. On June 13–15, 1994, the Organisation of African Unity (OAU) Assembly of Heads of State and Government adopted a Declaration on Inter-African Relations during its 30th Ordinary Session in Tunis, Tunisia (OAU, 1994). Discrimination, injustice, extremism, and terrorism based on religion, ethnicity, or tribalism were all condemned in this Declaration. The OAU Convention on the Prevention and Combating of Terrorism, which was ratified in Algiers on July 1, 1999, is the primary counterterrorism tool in Africa (OAU, 2002). In addition to establishing jurisdiction over defined terrorist activities and requiring States Parties to include them in their national laws, this Convention also specifies areas of cooperation and procedures for the extradition of accused individuals (AU, 2002). The African Terrorism Protocol was adopted on July 1, 2004, by the African Union's Assembly of the Heads of State and Government (OAU, 2004). The growing threat of

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terrorism was acknowledged in this protocol, along with its links to money laundering, transnational organised crime, drug trafficking, corruption, mercenarism, weapons of mass destruction, and the unlawful spread of small arms (OAU, 2004).

The OAU Convention on the Prevention and Combating of Terrorism (also known as the Algiers Convention) and the African Terrorism Protocol are the primary legislative foundations for countering terrorism in Africa, which are our focus (Bailliet, 2017). The OAU Assembly of Heads of State and Government approved the Algiers Convention, namely, the OAU Convention on the Prevention and Combating of Terrorism, on July 1, 1999, and it became operative on December 6, 2002 (Mbaku, 2021). Included are 23 articles, a preamble, and an appendix that outlines global tools for counterterrorism. Member states highlight the Organisation of African Unity Charter's tenets of security, stability, and collaboration in the Preamble. They also emphasise how critical it is to oppose terrorism in all its manifestations and to foster tolerance. In their declarations, delegates cited many UN decisions on counterterrorism, such as resolution 49/60 of December 9, 1994, and resolution 51/210 of December 17, 1996 (Rosand, 2004). To tackle terrorism, the delegates emphasised the necessity for increased cooperation among Member States and voiced their profound concern over the threat it poses to state stability and security. They stated that terrorism infringes upon fundamental rights and impedes socio-economic advancement, acknowledging the link between terrorism and human rights. The Algiers Assembly unanimously declared that terrorism is never acceptable and that all forms of it must be opposed, regardless of their causes or goals. They also called on Member States to commit to eradicating terrorism (Mbaku, 2021).

The Convention's Article 1 defines important terminology, including "terrorist act." Critics point out that this definition is too wide, making it difficult to fight terrorism while simultaneously defending people who are exercising their right to self-determination and self-defence against attack (AU, 2004). The International Federation for Human Rights (IFHR) emphasised how difficult it is for legislators to discern between state terrorism and lawful resistance to occupation (Cardenas, 2011). According to the IFHR, imprecise definitions of terrorism make it possible for governments to abuse anti-terrorist legislation against dissident citizens and misclassify crimes (Cardenas, 2011). Such abuse is made possible by the Algiers Convention's lack of a neutral definition, underscoring the necessity for more precise standards to assist law enforcement in identifying actual terrorist attacks and their perpetrators. A closer look at the definition of "a terrorist act" reveals some imprecise terms, including "according to certain principles" and "causes or may cause." Furthermore, it is unclear how these actions are deemed unlawful due to the definition's poorly stated components.

The principle of *aut dedere aut judicare*, which mandates that governments either extradite or prosecute individuals, poses challenges for the Algiers Convention. The main goal should be to establish a systematic extradition process in all State Parties, ensuring that those charged with terrorism are sent to the state where the crime occurred. Refusals based on "political crimes" should not be allowed. The International Federation for Human Rights (IFHR) points out that the Convention does not explicitly prevent extraditing individuals who may face torture or the death penalty in the requesting country, except under the protections of Article 22 (Pătrăuş, 2023). A State can deny an extradition request if the crime is punishable by death in the requesting country unless that country guarantees the death penalty will not be applied (Powers, 2002). International human rights treaties also prohibit extraditing individuals to countries where they may face torture or cruel treatment (Weissbrodt and Heilman, 2011).

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Additionally, monitoring and data collection on opposition groups may violate their right to privacy.

In the African Terrorism Protocol's Preamble, States Parties voiced their grave concerns about the growing number of terrorist attacks globally, particularly in Africa, and the growing links between terrorism and problems like organised crime, drug trafficking, mercenarism, and WMDs (Fernandez and Puyana, 2017). Under the OAU Convention on the Prevention and Combating of Terrorism, which was adopted at the 35th OAU Summit in Algiers in July 1999 and was informed by pertinent international conventions and UN resolutions, such as Security Council Resolution 1373 from September 28, 2001, delegates pledged to fight all forms of terrorism during the Ordinary Session on July 8, 2004, in Addis Ababa (Bailliet, 2017; Ahmad, 2023).

The African Terrorism Protocol defines important terminology like "assembly," "chairperson," "state party," "terrorist act," and "weapons" (Garrod, 2024). With a focus on coordinated efforts to prevent and combat terrorism and implement pertinent international instruments, Article 2 of the Protocol aims to support Article 3(d) of the Protocol of the African Union's Peace and Security Council and to improve the implementation of the Convention. The African Union's Peace and Security Council (PSC) is tasked by the Terrorism Protocol with organising counterterrorism and prevention initiatives (Olajuwon and Asamoah, 2024). Additionally, it gives the African Union Commission a role. According to Article 5, the Commissioner for Peace and Security is in charge of managing issues of the prevention and fight against terrorism, working under the direction of the Chairperson (Olajuwon and Asamoah, 2024). The Commissioner's duties include fighting terrorism financing, creating model legislation and regulations for Member States, and offering technical help on legal and law enforcement issues. Along with performing other responsibilities to strengthen prevention and combat efforts, the Commissioner will also monitor the execution of decisions made by the Peace and Security Council (PSC) and other Union bodies concerning terrorism.

The African Terrorism Protocol asserts that the Algiers Convention's provisions will take precedence over those of current accords and that it offers a solid legal foundation for extradition between States Parties in the absence of bilateral agreements (Jarvis and Legrand, 2023). The abuse of anti-terrorism legislation by governments to repress opposition rather than stop terrorist attacks is a significant obstacle to successfully countering terrorism in Africa. These laws frequently restrict freedoms like assembly and speech. By interpreting the constitution and making sure it complies with regional and international human rights standards, the judiciary plays a vital role in these nations. It has the authority to declare anti-terrorism laws that are inconsistent and unlawful and to force legislators to change or enact new laws. The court can serve as an effective legal weapon in the battle against international terrorism, even in countries with weak counterterrorism frameworks.

The European Union Legal Framework on Terrorism

European counter-terrorism efforts began with the 1976 establishment of the Terrorism, Radicalism, Extremism, and International Violence (TREVI) group by the 12 European Community (EC) member states to coordinate policing and combat terrorism (Bunyan, 1993). This Counter Terrorism measure was, however, hampered in the early years by the absence of the necessary legal and institutional frameworks (Devoic, 2012). The Terrorism, Radicalism, Extremism, and International Violence group was formed to facilitate information sharing and assistance among European police officials regarding terrorism. It was divided into five

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working groups tasked with proposing counter-terrorism measures, exchanging knowledge, and training officers. The TREVI group's main mandate was to analyse and advise on terrorism threats, enabling members to develop counter-terrorism strategies. Member state police officials regularly shared information, experience, and best practices. Due to TREVI's limited success, it was replaced by the Maastricht Treaty (TEU), which established judicial, customs, and police cooperation among EC members, along with the European Police Office (Europol) (Bunyan, 1993). Following a rise in global terrorist attacks, the EU took several counter-terrorism steps, including the 1993 Declaration on Financing of Terrorism, the 1995 La Gomera Summit Declaration emphasising member state coordination; the 1996 Convention on Extradition; And (4) the 1998 European Judicial Network (EJN) to facilitate judicial cooperation (Bures, 2006).

These measures were, however, not diligently implemented by the member states of the European Union, as terrorism was not on the front burner of their priorities, as evidenced by the absence of any legislative instrument to that effect (Argomaniz and Rees, 2012). The terrorist attacks on targets in the United States on 11th September 2001, however, altered Europe's attitude towards terrorism (Peers, 2003). At the meeting of the European Council held on 21st September 2001, the Council approved the first Plan of Action to Combat Terrorism – the Counter Terrorism Roadmap (Conclusions, 2004). The Framework Decision on Combating Terrorism can be regarded as the first comprehensive attempt by Europe to create a legal framework binding on all member states to curb terrorism on the continent (Dumitriu, 2004). The Framework Decision also provides for penalties, jurisdiction and prosecution of alleged offenders.

The strengthening of this legal framework was again necessitated by another terrorist attack, which took place in Madrid, Spain, in 2004 (Reinares, 2010). After this incident, the EU endorsed a revised Action Plan on Combating Terrorism in 2004. This plan outlined measures to strengthen counter-terrorism efforts, promote international consensus, cut off terrorist financing, and ensure prosecution of offenders. The EU then adopted a Conceptual Framework on the ESDP Dimension of the Fight against Terrorism (Berenskoetter, 2008). This Framework promoted coordinated member state action, using crisis management and conflict prevention to support European counter-terrorism objectives outlined in the March 2004 Council's Declaration. The 2005 London terror attacks spurred further counter-terrorism legislation, some of which had been pending. The EU condemned the attacks and pledged to implement its existing Action Plan on Combating Terrorism. This declaration stressed intelligence gathering and sharing, protecting citizens and critical infrastructure, and urged member states to implement existing European counter-terrorism legislation (Devoic, 2012). European counter-terrorism efforts have often been reactionary. The TREVI was formed after a rise in European terror attacks, the Counter Terrorism Roadmap followed 9/11, and the EU Action Plan responded to the Madrid bombing. Legislation enacted in response to specific incidents is often rushed and less thorough.

The UK's Anti-Terrorism Crime and Security Act 2001 allowed for forfeiture of property and freezing of funds linked to terrorism. However, it also included controversial provisions, like indefinite detention without charge or trial for non-UK terror suspects. The House of Lords held, in the case of *A v Secretary of State for the Home Department*, that the detention provisions of the United Kingdom Anti-Terrorism Crime and Security Act 2001 were not in compliance with the provisions of the European Convention on Human Rights (Feldman, 2005). The Act in Section 21 provides for the indefinite detention of non-United Kingdom

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citizens accused of acts of terrorism on the ground that such detention was necessary to safeguard national security.

The UK Act allowed indefinite detention of non-UK citizens based on suspicion, violating the presumption of innocence and the right to a fair hearing. The House of Lords ruled that these detention provisions were contrary to the European Convention on Human Rights (Feldman, 2005). Both the UK and the US have similar anti-terrorism detention provisions allowing indefinite detention of non-citizens suspected of terrorism, disregarding their rights to a timely trial and fair hearing. Citizens of both countries are exempt from these provisions. The detention provisions suggest, mistakenly, that terrorism is only committed by non-citizens, which is a troubling stance for countries leading the fight against terrorism. These discriminatory provisions were challenged in the case of *A and Others v Secretary of State for the Home Department* (Feldman, 2005). The case involved the detention of non-citizen terror suspects in Belmarsh prison. The Court ruled their detention discriminatory and disproportionate, as British nationals suspected of terrorism were not similarly detained. This decision led to the repeal of the discriminatory provisions in the UK's Anti-Terrorism, Crime and Security Act 2001.

Unlike the U.S. approach of indefinite detention at Guantanamo Bay, the UK opted for "three-wall" detention, where foreign terror suspects would only be held indefinitely if they refused immediate deportation to their home countries (Mathew, 2008). The issue with deportation was that some suspects feared torture upon returning to their home countries. UK law prohibits torture and degrading treatment, as affirmed in *A v Secretary of State for the Home Department (No 2)* (Feldman, 2005). The House of Lords ruled that evidence obtained through torture is inadmissible in UK court proceedings. As a result, the UK requires assurances from governments that detainees will not be tortured upon return (Feldman, 2005).

These guarantees were, however, of little practical value since they were not enforceable against such governments in the event of a breach, ultimately leaving the detainees with no option but to remain in indefinite detention in the United Kingdom. In the case of *Chahal v United Kingdom*, the European Court of Human Rights held that the United Kingdom could not deport foreign detainees to their home countries if there was evidence that they might face torture or inhuman and degrading treatment upon their return (Rudolf, 1998). While the UK can seek assurances from other governments that deported terror suspects won't be tortured, it cannot hold them accountable for breaking those promises. This has led to indefinite detention without trial. A solution is ensuring universal adherence to global instruments banning torture, making it binding on both governments and individuals.

This situation, however, should not be taken to mean that foreign terror suspects cannot be tried in courts in the United Kingdom. There have been several cases involving the trial of foreign terror suspects in the United Kingdom. In the case of *R v Mohommod Hassin Nawaz and Hamza Nawaz*, the accused, who were brothers, pleaded guilty to conspiring between 1 January 2012 and 16 September 2013 to attend a place used for terrorist training, knowing or believing that instruction or training would be provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism, contrary to section 8(1) of the Terrorism Act 2006 (Stott, 2015). Mohommod Nawaz was sentenced to 4 and half years imprisonment for the conspiracy and 2 years imprisonment concurrent for possession of the ammunition without a certificate. Hamza Nawaz was sentenced to 3 years' imprisonment for the conspiracy offence. In *R v Mohammed Ahmed*, the accused was found guilty by the Central Criminal Court (Old Bailey) for entering into an arrangement to make his property

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available to another person knowing that it could be used for purposes of terrorism and sentenced to imprisonment for a term of one year and nine months (Stott, 2015).

The Organization of American States Counter-Terrorism Legislation

The Organisation of American States established a convention to prevent and punish terrorism, specifically targeting acts like kidnapping and extortion, primarily for individuals entitled to special protection under international law, such as diplomats (Hevener and Sisco, 2019). Article 2 guarantees a fair trial for the accused. A prior General Assembly Resolution highlighted the need for legislation against these crimes, condemning them as crimes against humanity and emphasising their serious impact on society (Hevener and Sisco, 2019). Unlike the convention, this resolution acknowledged that kidnapping and extortion affect a broader range of individuals. The Convention that followed this resolution defined the crime as the kidnapping of individuals entitled to protection under international law without addressing those not covered by such protections. Nonetheless, the Resolution condemned the kidnapping and extortion of all individuals under international law protections. This comprehensive approach required all member states of the Organisation of American States to enact laws protecting citizens and those entitled to international protection from kidnapping and terrorism. Member states were also obligated to include provisions for extraditing suspects and sharing information to prevent terrorism (Hevener and Sisco, 2019).

The Organization of American States established the Inter-American Committee against Terrorism (CICTE) in 1999 to combat terrorism in the Americas by promoting cooperation among member states (Cerna, 2019). CICTE has implemented the United Nations Global Strategy Against Terrorism and assisted in drafting relevant legislation (Khalid, 2022). Additionally, it has supported the adoption of the Financial Action Task Force's recommendations on Money Laundering and Terrorist Financing, forming the foundation of the OAS's legal framework to curb terrorism (Khalid, 2022).

Member states have begun reflecting these recommendations in their national laws. The United States of America, as a member of the Organisation of American States, has taken steps to put in place a legal framework on terrorism in light of recurring terrorist attacks on the country and its citizens. Terrorist attacks against the United States are not a recent phenomenon as, on several occasions, United States citizens and facilities have been the subjects of terrorist attacks, mainly on political or religious grounds (Forst, 2008). Notably, Islamic extremist groups have launched a series of terror attacks on the country (for instance, in 1993, an Islamist fundamentalist group attempted to blow up the World Trade Centre (WTC) with a truck bomb), which led to the death of six people while about one thousand others sustained varying degrees of injuries (Forst, 2008).

Indefinite detentions of suspects often occur without inquiry, as these individuals are not recognised as combatants and thus do not qualify for prisoner-of-war status (Johns, 2005). This practice violates existing criminal laws, which require that detainees be arraigned before a competent court to determine their guilt or innocence. The state must provide evidence of the suspect's guilt; if insufficient, the defendant should be released (Douglas, 2014). Terrorism trials carry security risks since they may require disclosing classified information, leading many states to choose indefinite detention over trials (Douglas, 2014). This practice is not only illegal but also a significant financial drain on the state, diverting resources that could be better utilised. This issue is evident in Nigeria, where terrorism suspects are often held for extended periods before trial, placing a heavy burden on the country's finances (Douglas, 2014).

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Apart from the indefinite detentions, there were allegations of torture and cruel, inhuman, and degrading treatment of detainees at the camp (CCR, 2006). In the events that followed the 11th September 2001 terror attacks on targets in the United States of America, the government appeared to have legitimised the use of torture on those captured on suspicion of planning or participating in terrorist activities against the United States of America. The use of torture is, however, prohibited by International Laws such as the international conventions prohibiting the use of torture by governments and individuals, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention"), the Geneva Conventions, which forbids the torture and ill-treatment of those taken prisoner in the course of armed conflict (Gane and Mackarel, 1997). The detainees who were regarded not as 'prisoners of war' but as 'enemy combatants' were, by their status, deprived of access to the legal protection offered by the Geneva and other Conventions which prohibit torture. By this decision, therefore, the United States of America has removed Guantanamo Bay detainees from the protection offered by these conventions and also removed the detention facility from the reach of the United States laws (Douglas, 2014).

This has, in turn, afforded the government of the United States opportunities to hold the detainees indefinitely, subject them to unlawful modes of interrogation and charge them for specific offences at their pleasure. As stated earlier, this constitutes a bad precedent for other countries engaged in the fight against terrorism because depriving terror suspects of their human rights effectively brings the government down to the same level as the terrorists since they would thereby be employing the same tools of disregard for the law as the terrorists. This classification of detained terror suspects as 'enemy combatants' did not go unchallenged by some of the detainees, for instance, in *Hamdi v Rumsfield*, the Court held that detainees had the right to challenge their classification as an enemy combatant before a neutral decision-maker (Martinez, 2004). It was in consequence of the landmark decision in this case that the government of the US was obliged to set up the Combatant Status Review Tribunals, which were charged with the responsibility of reviewing the status of such detainees.

Additionally, some of the trials took place in civilian courts, while others took place in military courts. One such case involved *Richard Reid,* who attempted to blow up a civilian aircraft and was tried before a civilian court, convicted and sentenced to life imprisonment (Kozinski, 2017). In the case of *Rasul v. Bush,* the Supreme Court of the United States held that the courts have jurisdiction to consider matters relating to the legality or otherwise of the detention of foreign nationals who were apprehended outside the United States and their subsequent detention at Guantanamo Bay (Azmy, 2006). This decision has upheld the right of detainees to challenge the basis of their detention at the Bay. A similar decision was reached by the United States Supreme Court in the case of *Hamdan v. Rumsfeld*. (Shamir-Borer, 2007) The accused was alleged to have, between the years of 1996 and 2001, engaged in actions in preparation for the 11th September 2001 attacks against the United States. He was apprehended in Afghanistan and brought over to the United States by the Military in 2002.

Thereafter, he was transferred to Guantanamo Bay and detained for a year without any charges being brought against him. He was later charged with one count of conspiracy to commit offences triable by the military commission. At the end of this trial, he was convicted. In a suit challenging his trial and conviction by the military commission, the United States Supreme Court held that persons captured in the course of a war (prisoners of war) cannot be tried in military commissions that fail to protect their rights under the Geneva

Conventions (Shamir-Borer, 2007). The Court further held that the military commissions established to try Guantánamo detainees were not validly constituted because, among other things, they violated common Article 3(1)(d) of the Geneva Conventions, which provided that all detainees must be tried by a court, which can guarantee and protect their rights (Shamir-Borer, 2007).

Canada has, as part of its legal framework on terrorism, a law which empowered the government to detain foreigners suspected of posing security threats to the country (Oriola, 2009). The power to detain can be regarded as discriminatory because it seems to imply that only foreign nationals can constitute security threats in Canada. It was based on this argument that the Supreme Court of Canada held in the case of *Charkaoui v Canada* (Citizenship and Immigration) that such provisions were unconstitutional, and it led to the amendment of the legislation (Schwartz, 2007). The Anti-terrorism Act, which was enacted after the 11th September 2001 terrorist attacks in the United States, in section 4 amended the Criminal Code, which hitherto had served as the country's legislation on terrorism (Roach, 2002). The amendment made provisions inter alia for the powers to arrest persons suspected of committing terrorism offences to secure their attendance at investigatory hearings related to such offences and equally conferred powers of detention where a peace officer reasonably believes that the arrest and detention of such persons were necessary to prevent a terrorist attack (Roach, 2002).

Conclusion

A significant collection of international tools has been created by the UN to stop and prevent terrorism. The UN has gradually broadened the legal framework, starting with the Tokyo, Hague, and Montreal Conventions' early emphasis on aircraft hijacking and moving on to the Protection of Diplomats Convention and later treaties that address maritime safety, nuclear materials, terrorist bombings, and the financing of terrorism (Gallager, 1991). Importantly, Security Council Resolution 1373, which called on member states to enact strong national laws and put these treaties into effect, strengthened these initiatives. There are still difficulties despite these developments. A major weakness in the international legal system is the exclusion of terrorism from the jurisdiction of the International Criminal Court (Goldstone and Simpson, 2003). Although terrorists may face prosecution for other offences, the lack of a specific terrorism offence prevents a thorough and cohesive international legal response. Resolving this shortcoming, along with continued efforts to improve current conventions and adjust to changing terrorist strategies, is crucial to enhancing the ability of the international community to counter this enduring threat to world peace and security.

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