

General Assembly I: DISEC

Topic II: Legal Status of Apprehended Terrorists

Scope of the Problem

The term “terrorism” is a contested label, meaning that there is disagreement and controversy over what terrorism is, and by extension, who a terrorist is. It is worth reflecting carefully on how your HSMUN country defines terrorism. Even so, one thing nation-states are generally eager to agree upon is that “terrorism” is intolerable and illegitimate. Intolerable, because as the name would suggest, “terrorism”—as an act defined by its tactics—is intended to instil fear in a population, to kill, and to disrupt normal economic, social and political activity; illegitimate, because its perpetrators use the normally illegitimate means of violence to affect political decisions. In this sense, although the “end,” or goal, of a terrorist act might be understandable or “legitimate”, terrorism’s inherently destabilizing effects lead state actors to concur that it is an unacceptable “means”. Despite disagreement over whether the term “terrorist” is justified in many specific cases, overall it is obvious that fighting terrorism involves arresting people considered by at least one government to be terrorists. The legal status of these people as terrorists is at issue here. Can the international community come to an agreement over how to treat people apprehended as terrorists?

In general usage, the term “terrorism” is usually reserved for the actions of non-state actors (individuals/groups, as opposed to governments/government agencies) who plan and/or carry out acts of violence targeted at civilians, with the motive of furthering some political goal. (The latter aspect of the definition acknowledges that “terrorist violence” has a different motivation than “normal” crimes.) In the context of the UN, it is particularly relevant that terrorists have often worked across international borders; modern tools of communication like the internet and the mobile phone complicate efforts to detect them.

The lack of consensus over how alleged terrorists should be treated (for example, whether they have the normal right to *habeas corpus*, which entails the right to be brought before a judge so that the (un)lawfulness of their detention can be shown), combined with the commitment of some countries to fight a “War on Terrorism,” has led to legal attempts to justify what has often seemed to be *ad hoc* treatment of prisoners arrested as terrorists. Because terrorism, at least conceptually, poses an incomparable threat to the stability of states and societies, it has been understood by some as a crime in a class of its own. An important question to be answered is whether this uniqueness as a crime must necessarily lead to special legal provisions for dealing with it. After all, hearing a terrorism trial in open court would likely compromise the sources and abilities of a country’s intelligence agencies to gather “intelligence” about terrorism. But how can someone accused of terrorism, or his/her lawyer, mount an adequate defence without hearing all of the evidence and charges? Are there ways around these problems? Is terrorism always an international problem, or can it be dealt with by the criminal code of country in which a suspect was apprehended? Should “terrorists”/insurgents who act against NATO and Afghan or Iraqi troops in Afghanistan or Iraq be treated like terrorists who plan attacks in non-war zones, or

treated differently? If differently, are they entitled to the legal status of Prisoners of War (POWs) and its concomitant protections? What if they are dressed like civilians when they attack the forces defending the new, internationally-recognized governments of these countries or other ones?

The most fundamental questions to consider for this topic are related. What does your country think the legal status of apprehended terrorists *should* be? And, how does the (perhaps) harsh answer to this question need to be balanced with existing precedents, both domestically and internationally, in order to create a system that adequately protects the human rights of suspected terrorists? Other important considerations include the question of whether treating terrorists like “normal criminals” unacceptably hamper the co-ordination of international efforts to detect people plotting (and to prevent acts of terrorism, or is this a compromise that has to be made? Also, why is terrorism a concern for your country?

Recent Historical Background

Terrorism neither began nor ended with the attacks September 11th 2001, but it was the events of “9/11” that have raised the sense of vulnerability to terrorism and many states’ resulting efforts to spy out potential and actual terrorists. The capture and imprisonment of hundreds of alleged terrorists since these attacks speaks to the need for a concrete guideline on the legal status of apprehended terrorists.

The U.S. prison facility at Guantanamo Bay, Cuba, has been widely criticized as an example of an *ad hoc* approach to dealing with the legal rights of terrorists. Several problems at this most high-profile of all sites at which suspects of terrorism are held have led the United Nations Office for the High Commissioner of Human Rights (OHCHR) to push strongly for a standard for defining the legal status of captured terrorists. These include long-term detentions without trial, the proposal that special military tribunals should be used for hearings (rather than civilian courts), and the allegations that inhumane methods of interrogation have been practiced on suspected terrorists. Today, no official definition on the legal status of apprehended terrorists has been agreed upon.

UN Involvement

First and foremost, it is important for the UN to settle on a universal classification of what a terrorist is; a prisoner of war or a perpetrator of crime. Different organizations and countries have their own definitions and laws. The Organization of American States (OAS) has its own treaty on terrorism and terrorists, as does the European Union (EU), the South Asian Association for Regional Cooperation (SAARC), and the Commonwealth of Independent States (CIS). But there remains no unified definition. The United States Code [*U.S. Code Title 22, Ch.38, Para. 2656f(d)*], a code of law observed by American citizens, was formulated by the United States Office of the Law Revision Counsel and provides the following definition:

- (1) The term “international terrorism” means terrorism involving the citizens or the territory of more than one country;

(2) The term “terrorism” means premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents.

If a unified definition of a terrorist is reached by the UN, it is crucial to determine a universal way of handling and treating terrorists and to enforce that all nations observe human rights when dealing with apprehended terrorists. Do and/or should the doctrines of the Third and Fourth Geneva Conventions apply to suspected terrorists? Specifically, the UN must define the legal status of apprehended terrorists, and ensure that all nations abide by the status determined by the UN.

Points of Contention

- 1) How can the United Nations determine if a particular act of terrorism is classified as an act of crime or an act of war?
- 2) Should apprehended terrorists have the same rights as any other criminal in the justice system, or should their rights be further restricted?
- 3) How can the United Nations ensure that countries provide the determined legal status to the apprehended terrorists, if an appropriate guideline is formulated?
- 4) To what extent can the United Nations infringe on the sovereignty of a nation by defining the rights it chooses to give to terrorists apprehended on its soil?