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The Threat of the Undefined: Implications of the Lack of a Universal Definition of Terrorism for the International Legal Order

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A terrorist attack on one country is an attack on humanity as a whole.

– Kofi Annan, UN Secretary-General[1]

[1] United Nations, 2001. Secretary-General condemns terrorist attack on United States 'in strongest possible terms' (text of a statement to the Security Council, 12 September 2001)/ (by the Secretary-General).

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ABSTRACT

Terrorism has been widely studied across disciplines, with political philosophy often focusing on its moral and ethical implications or potential grounds and limitations for justification. This research takes the persistent absence of a universal definition of terrorism in international law as its point of departure for a normative analysis of the international legal order. Rather than debating competing formulations, it examines how global counterterrorism governance is shaped by leaving terrorism undefined. This lack of a universal definition, rooted in continuous disagreement, allows states to preserve national sovereignty and reflects the pluralist structure of international law, yet it also produces fragmentation, incoherence, and doubts about legitimacy. At the same time, the international community proceeds to condemn and combat terrorism without a shared definitional basis, exposing tensions between legal universalism and sovereignty. Approached through non-ideal theory and political realism, this research assesses how such structural limitations affect the normative standing of the international legal order and its deficits in relation to global justice. Lying at the intersection of International Political Theory, Critical Security Studies, Critical Terrorism Studies, and International Legal Theory, it engages with ongoing academic debates and offers an interdisciplinary perspective on this unresolved problem.

Keywords: Definition of terrorism; Legal pluralism; International legal order; International political theory; State sovereignty; Universalism

LIST OF ABBREVIATIONS

CAIR	Critical Approaches to International Relations
CSS	Critical Security Studies
CTS	Critical Terrorism Studies
IHL	International Humanitarian Law
IPT	International Political Theory
IR	International Relations
JWT	Just War Theory
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

INTRODUCTION

'Terrorism' is not a new phenomenon, as shown by medieval practices of hiring assassins to have political opponents murdered. Yet, a series of technological and societal developments has made it more appealing for groups lacking conventional means of power to resort to terrorism. As civilian jet air travel has gained in popularity, this represented a milestone in mobility but also provided potential 'terrorists' with the ability to strike globally. Modern societies, increasingly dependent on these technological advancements, have eventually become more vulnerable to violence and potential targets for unpredictable disruption – anytime and (from) anywhere. While acts of terrorism initially unfolded on home soil, these were no longer bound by national borders. The late 1960s marked the rise of 'international terrorism', implicitly referring to incidents with international relevance. Developments in broadcasting and public communication have assured that such acts would receive broad coverage for their publicity, making the world both the stage and the audience for attention-seeking terrorists (Jenkins, 1974).

First introduced in 1794 in reference to the historical period known as 'La Terreur', the term 'terrorism' has evolved to designate and condemn both ideologies and acts of violence today, which are considered inacceptable, criminal (Sire, 2022), and inherently incompatible with norms rooted in any social or legal order they turn out to oppose.

While the concept of terrorism remains deeply contested in academia (Schmid, 2012), the lack of a universal definition has not prevented the international community from acting against what it labels as 'terrorism' (Tams, 2009: 361). As counterterrorism regimes operate without conceptual clarity, this raises doubts about the coherence of such actions and, more broadly, about the legitimacy of the international legal order. If international law is unable to provide authoritative guidance on what constitutes such an existential threat, this exposes a troubling gap between divergent international practices and the normative pursuit of global justice, leading us to ask the following research question: *How does the lack of a universal definition of terrorism affect the normative standing of the international legal order?*

As Schmid (2023) suggests, the definition of terrorism can be approached from five different angles, "(i) by focusing on the history of terrorism; (ii) by focusing on the psychology of 'terror' (the threat and fear factor); (iii) by focusing on forms of political violence other than terrorist violence; (iv) by focusing on the

terrorist act; and (v) by focusing on the terrorist. Subsequently it addresses the question who should have definition power" (Schmid, 2023: 1). As various typologies of terrorism arise, Schmid illustrates the concrete implications of different perspectives, formulations, and pleads for a narrow definition of terrorism, in order to make its operationalization more tangible and realistic in view of joint global counterterrorism efforts:

> The broader the definition of terrorism – as exemplified in the "Global War on Terror" rhetoric – the larger the efforts that are required to counter terrorism - and the larger the danger of abuse of authority in combating the phenomenon. Conversely: the narrower the definition of terrorism, the less terrorism there is to combat and the easier it should be to arrive at an agreement between nations as to what terrorism should be meant to mean in international legal terms. In that sense, a precise and narrow definition makes sense. Countering terrorism since 9/11 would arguably have taken a different course if leading Western policymakers had kept this in mind before embarking on a "Global War on Terror". (Schmid, 2023: 23)

Given the legal significance that terrorism holds (Saul, 2006; Burchill, 2008), the consequent "separation or intermingling of law and politics is a problem for any legal or political order. Whole schools of legal theory have arisen out of the different assumptions concerning this relationship" (Simpson, 2004: 103-104), so that it is justified to leave this foundational debate unresolved for the purpose of this research. Instead, it becomes apparent that the international legal order cannot be normatively assessed without considering the political practices with which it is intertwined. This is why this research question will be addressed through a normative inquiry situated within the discipline of IPT, completed by insights from related fields, notably international legal theory, CAIR, CSS, and CTS – aimed at supporting the normative-philosophical perspective at the core of the argumentation.

Firstly, the theoretical groundwork needs to be established, by clarifying the key concepts and highlighting the underlying stakes and challenges. This includes situating the theoretical debate within the disciplines of IPT and CSS *(Chapter 1)*.

In identifying normative desiderata as well as structural limitations posed by State sovereignty, the process of global norm-making within the international legal order will be examined from an ideal perspective, so as to serve as a benchmark in the assessment of normative deficits identified *(Chapter 2)*.

The subsequent analysis, mainly situated in CSS, explores the normative charge of defining terrorism, analyzing its construction as a security-based label, the performative effects of terrorist designation, and the fragmented realities of global counterterrorism governance *(Chapter 3)*.

Building on this, the normative deficit resulting from the lack of a universal definition of terrorism is assessed. Possible future perspectives are then considered in relation to the minimal normative requirements of a terrorism definition as an international legal norm. Finally, the potential of a global restructuring of the international legal order is explored, with attention to normative tensions between State sovereignty and legal universalism. These considerations serve to provide an outlook on whether global justice might require a universal definition of terrorism (*Chapter 4)*.

CHAPTER ONE

Theoretical Framework

1.1 Conceptual Clarification

1.1.1 Defining Terrorism

The question of how to define ‘terrorism’ has been the subject of long-standing academic debate, brought back to the forefront of international attention following the terrorist attacks of 9/11 and the emergence of the Islamic State. These debates do not consist of merely technical considerations, as they also entail significant political and ideological implications (Dubuisson, 2017). Thus, ‘terrorism’ turns out to be first and foremost a controversial concept, rather than a stable and clearly defined form of political contestation (Sire, 2024a: 19). On the contrary, only few “terms or concepts in contemporary political discourse have proved as hard to define as terrorism.” (Weinberg et al., 2004), both academically as well as legal-practically, due to persistent political disagreement among states (Scheinin and Vermeulen, 2010).

Alex P. Schmid’s work, particularly his edited volume *The Routledge Handbook of Terrorism Research*, is regarded as foundational for modern terrorism studies, systemizing decades of extensive research and surveys on terrorism definitions in the field. In the first edition of his authoritative work, Schmid examined more than a hundred different definitions of ‘terrorism’, none of which were able to gain consensus. Yet, as stated in the opening line of the second edition four years later, he admitted to the ongoing difficulties in his efforts of consolidating the various definitions into a one-size-fits-all one (Hoffman, 2002). While 22 ‘definitional elements’ have emerged as a result of his questionnaire, widely recognized and referenced in academia (Weinberg et al., 2004), the formulation of a single appropriate definition turned out to be difficult, as

> Terrorism is a contested concept. While there are many national and regional definitions, there is no universal legal definition approved by the General Assembly of the United Nations. […]

> In the absence of a *legal* definition, attempts have been made since the 1980s to reach agreement on an *academic* consensus definition. (Schmid, 2012: 158)

"Although the definition of terrorism and terrorist activities remains highly contested" (Badhi, 2003: 302), some scholars even argue that 'terrorism' is an 'essentially contested concept' (e.g. Jackson et al., 2007: 12), in the sense developed by W. B. Gallie and William Connolly, who identify specific criteria for the applicability of such a label. On this view, certain concepts are so multidimensional and internally complex that they inevitably lead to endless definitional disputes, with no single formulation able to capture their full essence (Weinberg et al., 2004). However, leaving this debate on whether the label of 'essentially contested' actually applies to the concept of 'terrorism' or not unresolved, the mere consensus on its 'contested' nature (Schmid, 2012) is relevant and sufficient to understand why even academia struggles to agree on a consistent definition. It becomes apparent that this may make universal legal settlement in international law possibly an even greater challenge, in view of the underlying normative stakes of agreeing on a universal definition. "Moreover, despite the impossibility of a clear and accepted definition, it is possible to identify a set of distinguishing criteria for terrorism which could form the basis of a consensus on the concept." (Jackson, 2007: 1).

As a result of his seminal work, Schmid (2011) proposes a *Revised Academic Consensus Definition of Terrorism*, crystallizing the essential definitional features identified in terrorism studies and providing a first orientational framework for this research:

> "Terror" is, first of all, a state of mind characterized by intense fear of a threatening danger on an individual level and by a climate of fear on the collective level. "Terrorism", on the other hand, is an activity, method or tactic which, as a psychological outcome, aims to produce "terror". (Schmid, 2011: 3)

Therefore, 'terrorism' can be understood as a psychologically impactful activity aimed at producing 'terror', rooted in the uncertainty and anxiety generated by the constant unpredictability of sudden violence or death, and of constantly fearing to be the next potential target (Schmid, 2011: 3). This is achieved through violence

or the threat of violence, in order to achieve political change. ‘Terrorism’ thus goes beyond the immediate victims of an ‘act of terrorism’, as the psychological impact is extended onto a wider audience, ranging from a specific ethnic or religious group, political party, or government, to targeting a whole country or public opinion at large. The objective then consists in creating or consolidating power that terrorists otherwise lack. “To terrorists, one may be considered an enemy, and therefore a target, solely on the basis of nationality, ethnicity, or religion.” (Jenkins, 1974: 2), which results in mainly targeting civilians and the non-combatant population (Schmid, 2012: 158).

Unlike ordinary crimes, the real significance of terrorism lies less in the immediate act of violence than in the psychological effect it generates. Amplified by media coverage, the choice of targets and methods is deliberately calculated to maximize the media-created attention and this ‘terrorizing’ psychological effect (Nagle, 2010). To achieve their political goals, terrorists rely on publicity to gain leverage, influence, and power (Hoffman, 2002). While both use violence, ordinary crime is motivated by egocentrism with the aim of personal material gain, whereas terrorism is politically or ideologically motivated, aiming at influencing the public opinion and eventually altering the system (Nagle, 2010). So, even though it can be part of both, the intended broader psychological effect and its political objective are innate to terrorism, as opposed to non-politically motivated ordinary crime (Jenkins, 1974; Hoffman, 2002). Therefore, a two-tier test can be applied to define terrorism: First, by considering the commission of the act itself and the manner in which it was carried out; and second, by examining the underlying motivation, namely whether the violence was politically or ideologically motivated with the purpose of influencing a government or shaping the public opinion (Nagle, 2010). The concept of ‘terrorism’ can thus be approached by defining it negatively, in contrast with other forms of crime, political violence, and warfare, in order to crystallize the features unique to it (Hoffman, 2002).

Other accounts emphasize recurring characteristics commonly associated with ‘terrorism’, which can be used to formulate a general definition, or else attempt to capture its dynamics through broader categorizations and typologies. One consists in distinguishing between secular and religious terrorism: Whereas secular terrorists see themselves as part of a system that is flawed but capable of correction or replacement through their acts, religious terrorists reject the system altogether as not worth preserving. They seek to bring about a profound transformation of the existing order at the regional or international level, perceived as fundamentally

incompatible with their worldview and of which they do not see themselves part of. That is why they are often willing to employ more destructive and lethal violence than secular terrorists, thereby extending their fear-inducing strategy of violence onto a broader category of designated 'enemies' (Hoffman, 2002).

Another influential attempt of historical systematization is Rapoport's (2004) 'four waves' theory, in which he identifies four successive 'waves' of modern terrorism since the 1870s, marked by their cross-border reoccurrences in given time periods. 'Anarchist', 'anticolonial', 'new left', and 'religious', their names respectively reflect the dominant ideological motivations and political contexts that shaped each wave. The fourth and last wave in his model inevitably resonates with the attacks of 9/11 and is characterized as explicitly antidemocratic, targeting broadly defined 'enemies of faith', ranging from Western powers to secular governments (Rapoport, 2004). Thus, they are inherently incompatible and opposed to any legal order – whether national or international – that is perceived as aligned with principles of liberty and democracy.

While acknowledging its foundational contribution to the academic field of terrorism studies, some scholars criticize Rapoport's model for its rigidity, as it would misleadingly suggest that terrorism unfolded in distinct and clearly separable waves. Some go as far as questioning the model's general usefulness for retracing the history of terrorism and for predicting the advent of a possible fifth wave (Millington, 2024). Others have put forward alternatives, elaborating or rethinking Rapoport's original model, such as the idea of continuous, coexisting, and intertwined 'strains' of terrorism, each with ideological and historical roots in the 19th century and simultaneously fitting into multiple categories (Parker and Sitter, 2015).

Since 'terrorism' has taken on multiple forms and waves, its very essence is already difficult to grasp for academia, which makes (international) political agreement on a precise legal definition even more so challenging from a merely academic perspective. Given the contested nature of the concept of 'terrorism' (Schmid, 2012) and in view of the challenges of conceptualizing it academically, settling on a fixed working definition is neither necessary nor productive for the purposes of this research, as it is precisely the lack of a universal definition that constitutes the core of this work's philosophical-normative argument. On the contrary, any attempt to do so would risk to incorrectly pretend to be exhaustive, by enumerating features of a hypothetical formulation of a definition. The concern here is not to propose a definition, but rather to examine the normative implications of the lack of definitional clarity within the international legal order.

1.1.2 The International Legal Order

"The legal rules governing the use of force form the core of modern international law." (Tams, 2009: 359), so that the modern international system is anchored around the ban on the use of force (Art. 2(4) UN Charter) as a peremptory norm in the international legal order. Not only does it evolve based on formal amendment but also through interpretation, revealing clear rules as well as defined exceptions. The UN Charter ultimately provides the institutional framework that organizes debates around international legal norms, as well as their adjustment, interpretation, and application. That way, the international legal order is able to provide clear results but remains normatively flexible to adapt to real or perceived changes (Tams, 2009).

Whereas international law tends to present the system as a horizontal one of formal equality between states, in reality

> States possess differing prerogatives in the international legal order. Some are Great Powers, capable of, and legally authorised to, project force in ways that would be unlawful for other states in the system. Other states are outlaws, denied the basic protections of sovereignty. (Simpson, 2004: 62)

Simpson (2004) has coined the term 'legalised hegemony' to describe "the relationship between sovereign equality and a particular form of hierarchy […], endorsed as a necessary part of the architecture of international legal order" (Simpson, 2004: 91-93). The Peace of Westphalia in 1648 introduced the doctrine of sovereign equality among states. While it remained formally recognized, the Congress of Vienna 1815 has openly acknowledged special rights and duties of 'Great Powers'. Constituting a legal category of its own, these were in charge of regulating the affairs of the rest of the international society, by the means of law. The modern international system continues to operate in conditions of anarchy, as consolidated by theories of IR in view of the lack of a centralized and overarching entity with enforcement powers above the State-level, such as theorized in Bull's *The Anarchical Society*. Theoretical debates in IR and international legal scholarship thus raise concerns about the compatibility of law in a setting of anarchy, and whether international law therefore actually qualifies as law. Legal positivist views, such as prominently defended by Hart, may characterize

international law as a 'primitive' system of law, but uncertainties about its precise status remain due to questions of validity, enforcement, and identification (Simpson, 2004). Others argue that even though "Hart is frequently identified as an international legal skeptic, that conclusion rests on a misreading of his analysis of international law, or in some cases, a misreading of his analysis of law. Hart does not deny that international law is law, only that it constitutes a *legal system*." (Lefkowitz, 2020: 3). While leaving this foundational debate in the discipline of international legal theory unresolved, the normative standing of the international legal order is inevitably challenged if the very status of international law as law remains academically contested, as long as it continues to operate in a post-Westphalian and anarchical setting of international relations according to IR.

By contrast, IR scholarship foregrounds hierarchy and power dynamics among states, demonstrating that law alone is insufficient to capture the real complexity of the international legal order. Simpson therefore justifies and adopts an interdisciplinary perspective to show how legal doctrines are not mere technical constructs but also shaped by theories and practices originating in the discipline of IR (Simpson, 2004). As the international legal order turns out to emerge both from international law and political practice, this research likewise adopts an interdisciplinary approach, enriching the normative framework of IPT and political realism with insights from (international) legal theory, international (criminal) law, CAIR, CSS, and CTS.

Engaging with international law from a philosophical standpoint, Lefkowitz (2020) moves beyond debates about international law's contested nature, to examine whether the international legal order conforms to the rule of law and what this implies for its legitimacy. In response to both conceptual and moral questions on its nature, status, and normative implications, international legal skepticism basically raises the question 'whether international law really is law' (Lefkowitz, 2020). While leaving this debate unresolved for the purposes of this research, the contestation of the very status of international law as law unavoidably has further implications for the normative standing of the international legal order.

While traditional perspectives on international law hold that it is legitimate because state consented to it, the 'Fair Democratic Association' model views consent – tacit or express – as part of the underlying decision-making process. The normative force for states to follow international law thus results from a mutual understanding of justice, as it is the result of a fair and inclusive process. As states, representing their citizens,

have a say in international legal norm-making, compliance and obedience then signals respect for others as moral equals. This eventually reflects a deep disagreement over the common basis of the legal norms that constitute the international legal order, from which it takes its legitimacy and normative force (Lefkowitz, 2020).

1.2 Analytical Approach

1.2.1 International Political Theory

1.2.1.1 Nonideal Theory

Philosophical debates in IPT, such as put forward in Primoratz's comprehensive edited volume *Terrorism: The Philosophical Issues*, address the normative and conceptual problems around terrorism, including debates on definition (whether 'terrorism' can be conceptually distinguished from other forms of political violence), moral evaluation (whether 'terrorism' is always wrong or sometimes can be justified), as well as comparisons to war, state violence, and considerations of victim perspectives and 'innonence' in view of the moral weight of targeting civilians (Primoratz, 2004).

Similarly, theoretical discussions on JWT and Just Revolutionary War are used to reflect on the moral status of terrorism and counterterrorism. These reflections not only try to establish a normative-ethical link between 'terrorism' and the right to resist but also explore under which circumstances counterterrorism can become unjust and may challenge the moral architecture of the international order and the JWT tradition more generally (Finlay, 2015).

Therefore, debates in IPT raise essential questions on the legitimacy, efficiency, ethical frameworks, and possible justification of terrorism (e.g. Jenkins, 1974; Primoratz, 2004; Saul, 2006; Held, 2008), such as by assessing the 'Right to Resist' and approaching terrorism through JWT theoretical frameworks and 'A Theory of Just Revolutionary War' (Finlay, 2015). Highly relevant for a comprehensive approach to terrorism, "Michael Walzer wrote of the 'triumph of just war theory'" (O'Driscoll, 2011: 283), which provides a useful and widely recognized theoretical framework in academia to reflect on the moral evaluation of the concept and practice(s) of 'terrorism'. Such considerations, however, are excluded from this analysis. The lack of a

universal definition of 'terrorism makes any normative evaluation of practices falling under this term not only impossible, but also irrelevant for the purposes of this research. While most international legal scholarship has aimed for descriptive, conceptual, and legal clarity surrounding the concept of ‘terrorism’, this work focuses solely on the normative implications resulting from the lack of a universal definition for the international legal order.

1.2.1.2 Political Realism

Derived from a loose label, political realism has emerged as an alternative approach to mainstream normative political theory, rejecting ‘political moralism’ as a starting point of reflection altogether – whether for attempting to guide political action by deriving prescriptions from abstract moral ideals (enactment model), or by imposing fixed moral limits on political conduct drawn from supposed pre-political ethical commitments (structural model). From a realist point of view, mainstream moralist political theory overlooks the complexity of real-world politics, both in their lack of consideration of causal and normative relationships between morality and politics (Rossi and Sleat, 2014: 689-90).

Beyond this negative definition of political realism as being opposed to the ‘moralist’ position, the realist alternative argues “that political theory should begin (in a justificatory rather than temporal sense) not with the explication of moral ideals (of justice, freedom, rights, etc.), which are then taken to settle the questions of value and principle in the political realm but in an (typically interpretative) understanding of the practice of politics itself” (Rossi and Sleat, 2014: 690), e.g. by interpreting norms, conflicts, and underlying logics.

A political realist approach in IPT thus practically addresses a core tension of modern international law: Although designed to be respectful of state sovereignty and inevitable legal pluralism in international law, the international community simultaneously displays universal ambitions in condemning terrorism as a ‘threat to all humanity’ (United Nations, 2001), in waging a ‘global war on terror’ (e.g. Jackson, 2007), and in the protection of human rights (Pogge, 1998). Yet states continue to guard discretion over their own national interests in security and resist to cede to a universal definition on terrorism in international law, due to persistent political disagreement (e.g. Scheinin and Vermeulen, 2010; Dubuisson, 2017). Accepting power dynamics and normative shortcomings of the international community as part of the international political reality, political

realism allows to theorize within the structural limits imposed by the state-centered architecture of international politics yet prioritizing practical feasibility over moral-ethical idealism.

1.2.2 Critical Security Studies

Reflecting the attempt to widen the traditional conception of security in IR and International Security Studies, CSS relies on post-positivist approaches and is in its origins usually associated with the Frankfurt School tradition. Like Peace Research, CSS has normative aims and prioritizes human security over mere state-centered operationalizations, rooted in classical conceptions of security. It redefines the individual as the primary 'referent object' of security – determining who or what requires protection, and from whom and what – while considering the conditions and lived experiences of individuals as well as of their communities (Wendt, 1999). By illustrating different ways in which security can be theorized and operationalized, it becomes apparent that normative concerns about individual human rights should be thought separately from the State's national interest in security, such as the preservation of its sovereignty and territorial integrity.

The term 'critical' is itself highly contested, as scholars disagree on what constitutes a 'critical' approach. While some emphasize normativity and guidance for policymaking, others focus on understanding and deconstructing hegemonic discourses. Despite these internal divisions, an overall 'critical turn' reflects a growing challenge to traditional, state-centric perspectives. Moving beyond those makes it possible to consider both state and non-state actors within international politics and to pursue a policy-relevant deconstruction and reconstruction of the structures that shape political reality, such as those surrounding political terrorism (Jackson, 2007).

1.2.3 Critical Terrorism Studies

Whereas "terrorism studies has been criticised for its failure to develop an accepted definition of terrorism and a subsequent failure to develop rigorous theories and concepts" (Jackson et al., 2007: 4), CTS has emerged in response to doctrinal assumptions, expansions, and developments in Terrorism Studies, especially since the significant growth in terrorism-related scholarship and research since 2001. That is why Jackson et al. (2007)

make the case for a critical approach applied to the field of Terrorism Studies, thus justifying the establishment of CTS as a sub-field, as opposed to orthodox, state-centric, and problem-solving tradition that dominated the field.

By contrast, CTS is considered to be both necessary and timely, and allows for a reflexive, emancipatory, and interdisciplinary inquiry of both the actors and practices labeled as 'terrorist'. Any research on terrorism entails inherent ethical-normative implications, as the mere definition and designation as 'terrorist' implies an underlying judgment of who may legitimately be killed, tortured or incarcerated in the name of counterterrorism. Therefore, CTS must remain transparent about any underlying biased assumptions and clearly state its values and ethical commitments in its own research, while resisting to reproduce hegemonic discourses of dominant state-centric security agendas, so that

> Rather than projecting or attempting to maintain a false neutrality or objectivity, CTS should openly adhere to the values and priorities of universal human and societal security, rather than traditional, narrowly defined conceptions of national security in which the state takes precedence over any other actor. (Jackson et al., 2007: 21)

Otherwise, CTS risks to become part of the problem unless critically examined: Its normative agenda of emancipation can unintentionally reinforce the very global power structures it is meant to criticize and deconstruct, if it fails to accurately take historical power asymmetries or contexts of legitimate resistance movements into consideration, thus imposing its own normative framework, e.g. by privileging Western conceptions of justice or security over alternative worldviews (Jackson et al., 2007).

Even though the term is politicized and contested, 'terrorism' still serves an important normative function of condemning and delegitimizing violence deliberately targeted at civilians. Rather than dropping the term because of its misuse, CTS calls for a critical engagement towards a consolidated and consistent use, taking into consideration the plurality of actors both labeling and labeled as 'terrorist'. By questioning the underlying power dynamics behind its continued employment and lack of definitional clarity, a CTS-oriented

perspective can highlight and challenge the problems of bias and selective application of this notion (Jackson, 2007).

Without isolating itself from traditional scholarship, CTS should recognize the inherent complexities of power relations and therefore engage with diverse neglected voices and critical perspectives, such as the experiences of the Global South or gendered impacts, towards a more critical and comprehensive research agenda on political terrorism and the deconstruction of hegemonic narratives. As "the disciplinary base for CTS is spread over a wide range of fields, including sociology, anthropology, peace studies, economics, history and well as political science and international relations" (Jackson et al., 2007: 19), it is grounded in methodological and disciplinary pluralism (Jackson et al., 2007), and reveals to be a useful theoretical framework for questioning the power-laden practices of global counterterrorism governance that stem from the lack of a universal definition of terrorism.

Expanding the theoretical scope of conceptualizing 'terrorism' onto "the study of terrorism, the discourse of terrorism, and the extra-discursive realm around terrorism discourse" (Jarvis, 2023: 469), CTS has evolved through three successive waves: first, agenda-setting efforts to establish itself as a distinct critical approach within Terrorism Studies, second, the elaboration of CTS's academic ambitions through empirical and conceptual enrichment; and third, the problematization of CTS's own assumptions and questioning prevailing power hierarchies (Jarvis, 2023).

By supporting this work's interdisciplinary ambition, CTS enables a broader normative assessment of the international legal order and further far-reaching ethical-normative implications, including any moral aspiration to achieve global justice, which lies at the very core of the discipline of IPT.

CHAPTER TWO

Global Norm-Making within the International Legal Order

2.1 Normative Desiderata

2.1.1 Towards International Legal Norms

To qualify as a fully developed and genuine *ordo iuris*, i.e. a legal order, a system of norms must exhibit "internal coherence or a clear system of elaboration, modification, and voluntary or coercive compliance" (Domingo, 2010: 121), grounded in transparent and mutually accepted procedures of norm-making. In reality, as noted in an International Law Commission (ILC) report from 2006, international law reveals to be fragmented as a result of its diversification and expansion:

> Even as international law's diversification may threaten its coherence, it does this by increasing its responsiveness to the regulatory context. Fragmentation moves international law in the direction of legal pluralism but does this, as the present report has sought to emphasize, by constantly using the resources of general international law, especially the rules of the VCLT, customary law and "general principles of law recognized by civilized nations". (Koskenniemi, 2006: 248)

While trying to consolidate the legitimacy and overall normative standing of the international legal order as an *ordo iuris* as a result of tacit or express mutual consensus and agreement by nationally sovereign States (Koskenniemi, 2006), this fragmentation reveals how international law struggles with internal normative coherence, inevitably accepting legal pluralism as a result and inherent part of a state-centered architecture of the international community, respectful of the principle of state sovereignty.

While peremptory norms (*jus cogens*) cannot be changed, overridden, or violated, international legal norms must also be respectful of obligations of *erga omnes* nature, as well as of integral or interdependent

obligations which presuppose compliance by all parties or where custom has created a legitimate expectation of non-derogation from preexisting legal norms (Koskenniemi, 2006). Consequently, the emergence or establishment of any new international legal norm cannot be conceived independently of the normative framework already provided for.

The international legal order must not exhibit any normative inconsistency in order to qualify as legitimate and constituting a genuine and coherent *ordo iurius* composed of consistent international norms. By contrast, the lack of recognized norm-making processes or the uneven enforcement of established international legal norms by States would put the legitimacy and normative standing of the international legal order at risk. Taken together, these desiderata constitute an ideal-theoretical normative benchmark against which any definition of terrorism in international law, as well as the international legal order as a whole, must be assessed. While actual international legal norms and practices may reveal normative shortcomings, as not only assumed but actively anticipated the present non-ideal and political realist approach to IPT, these criteria still serve as the essential reference point for any final normative assessment of the international legal order in view of its lack of a universal definition of terrorism.

2.1.2 Towards a Definition of Terrorism

Despite the large number of material sources of law at the regional, national, and international level, there is insufficient evidence that customary international law currently provides for a universal definition of terrorism (Saul, 2012). International attempts at a universal definition have consistently failed due to political disagreement, above all because of the unresolved struggle over whether national liberation movements and struggles for independence from colonization should be excluded from it. The phrase “One country’s terrorist is another’s freedom fighter” (Nagle, 2010: 348) reflects how the definition and designation of terrorism inevitably produce different perspectives (Jenkins, 1974), considered as legitimate ‘freedom fighters’ or delegitimized and criminalized under the label of ‘terrorism’. As “the events of September 11 triggered a renewed sense of cooperation and cohesiveness among nations” (Nagle 2010, 348), this fueled the establishment of a working group by the UNGA. However, no side was willing to concede over the issue on (de-)legitimatizing certain types of struggles for liberation, so that

> the goal of a universally accepted definition remains out of reach, even today. […] Thus, without a universally accepted definition, it is clear that when states are left to define terrorism on their own terms we will continue to see differing opinions as to what constitutes terrorism […]. This struggle is also expressed in court decisions, United Nations resolutions, and even within domestic legislation (Nagle, 2010: 349-350).

It has become apparent that rather than objectively describing a scientifically unambiguous phenomenon, the definition of terrorism is an inherently political act (Ragazzi, 2014). The scholarly debate on the definition of terrorism thus reveals more than just persistent disagreement and legal pluralism; it highlights the conceptual and normative complexity that makes any consistent definition inherently challenging, as it is a direct reflection and expression of prior normative judgments about which forms of political violence are to be condemned, tolerated, or legitimized under a given legal order. As such, both the current lack of a universal definition as well as any eventual consensus in the future must be examined in terms of their implications for the normative standing of the international legal order.

While the previous desiderata set out the normative requirements expected of any international legal norm, the case of terrorism and the concept's 'contested nature' demonstrate just how difficult it is to meet them in practice: To be both functional and fair, its formulation should be clear enough to be operationalized into existing legal frameworks, yet transparent and respectful of human rights in its application. While the current lack of a universal definition results in fragmentation and undermines the normative goals of a fully integrated international legal order, any normatively desirable definition should ideally provide sufficient legal clarity to guide international counterterrorism law, as well as coherence with established international legal principles such as human rights and IHL. At the least, however, its adoption as a universal international legal norm should enhance the normative coherence of global counterterrorism governance and strengthen respect for human rights, given the current violations enabled by the lack of such a universal definitional basis.

2.2 Sovereignty and Structural Limitations for the International Community

Constructivist approaches to IR have demonstrated how norms matter and constitute the basis of the international system. The concept of sovereignty lies at its very heart, as it is essentially composed by (sovereign) states. Therefore, sovereignty norms characterize not only the definitional features of states but by that what rights they have, such as the obligation to mutual respect of territorial integrity or the non-interference principle in other states' internal affairs. Throughout the last decades, the meaning of sovereignty norms has shifted from the respectful conduct of inter-state relations towards obligations directed at the states themselves, such as the protection of their citizens and the respect of universally understood human rights. Sovereignty thus has constitutive effects by defining, empowering, and enabling, as well as regulative effects by restricting, imposing, and obliging (Rosert, 2023). These effects stem from the normative framework that the international legal order authoritatively provides for. Because sovereignty both grants states their very status as primary actors and subjects in international law and protects their autonomous discretion over nationally defined matters of security and other internal affairs, it emerges as a structural limitation on achieving a binding universal definition of terrorism. In a system that respects (state) sovereignty as a constitutive norm, states effectively retain *de facto* veto power within international norm-setting, prone to oppose any externally imposed definition onto their national security regime, as long as no genuine consensus among the international community cannot be reached.

CHAPTER THREE

The Normative Charge of Defining Terrorism

3.1 The Security-Based Construction of Terrorism

The analytical approach chosen reflects a "point of view on reality that is usually identified with constructivist, post-structuralist, and critical understandings of security and terrorism in International Relations" (Martini, 2021: 2), as it conceives terrorism not as an unaltered phenomenon, but rather as constructed through political discourses. "The concept of terrorism is produced through discursive processes of labelling, measuring and categorising" (Jackson, 2007: 1). As discourses and practices mutually influence each other and cannot be viewed separately (Martini, 2021), their consideration becomes highly relevant for CSS and CTS, as well as for further normative reflections.

In *Terror and Taboo*, Zulaika and Douglass (1996) dismantle the discursive construction of terrorism: The way terrorism is constructed through public discourses and representation in media provides terrorism with the very power it is originally lacking and seeking for, resulting in an obscure 'mythology of terrorism' (Zulaika and Douglass, 1996). Presented as inherently illegitimate violence, as opposed to supposedly legitimate state violence, 'terrorism' thus is not just framed legally or politically, but morally (Primoratz, 2004).

As conceptualized by Schmid, the ultimate target extends well beyond the direct victim(s) of a terrorist attack and the discursive security-based construction of terrorism not only enable but actually fuels the power given to such terrorist practices (Zulaika and Douglass, 1966; Jackson, 2007). Amplified by mass-communication, the psychology of terror helps to understand what makes terrorism such a distinct form of political violence. The victims serve as mere generators of emotions, which echo in the broader target audience's feeling of intense fear or terror in reaction to the singular attack. So while the success of a singular assassination is limited to the targeted victim, 'terror' is a state of mind of collective fear and fueled by the 'threat and fear factor' (Schmid, 2011; Schmid, 2023).

> The *broader* objective of terrorism is to create an atmosphere of fear and alarm -- in other words, to terrorize. The random nature of the attacks makes the violence unpredictable, which adds to the fear, makes it more general, and more difficult to cope with. (Jenkins, 1974: 3)

'Terrorism' then describes the activity, which aims at producing 'terror' as the final intended psychological outcome (Schmid, 2011; Schmid, 2023).

The security-based construction of terrorism relies on vague and expansive notions such as 'radicalization', themselves contested. As the label of 'terrorism' constructs 'international political enemies', UN listings are tautological: Actors appear on the list because they are considered terrorists, and that listing then serves as evidence of their terrorist identity. By targeting not only violent acts but also embedding ideological, religious, or political criteria in the construction of the enemy, (Sire, 2024b), 'securitization' through the process of Speech Act Theory suggests that security issues or threats are actively constructed by powerful actors, by the means of discourses. The utterance of the discourse itself constitutes the speech act. To be successful, the 'securitization' process first entails the identification and prioritization of an issue as an urgent and existential threat, requiring an extraordinary and immediate response. In a second step, the 'securitization' of this issue then needs the target audience to accept the proposed countermeasures as legitimate. While this theoretical approach has been widely criticized in academia, it still reveals to be highly relevant for the CSS perspective and helps to understand how a phenomenon can be framed through discursive practices as an issue for 'national security' (Spear and Wiliams, 2012), as well as to better understand the normative charge behind the labeling process of people as 'terrorists'.

So, when definitional clarity on what this existential threat consists of is lacking, then 'terrorism' allows governments to construct and frame it in ways that justify extraordinary measures, thereby bypassing minimal normative legal standards and undermining the normative standing of the international legal order.

3.2 The Performativity of Terrorist Designation

CAIR recognize the performative function of terms like ‘terrorism’. Underlying security discourses behind their construction explain how such labels do not merely describe reality but actively constitute threats and justify far-reaching policies and securitization practices.

> It has become something of a cliché to note that there are over 200 definitions of terrorism in existence within the broader terrorism studies literature; that many terrorism scholars have given up on the definitional debate and use the term unreflectively; and that such a state of affairs hampers theoretical progress and skews terrorism research in unhelpful ways. However, the significance and consequences of the definitional debate go far beyond such narrow academic confines, important as they are to the field. Rather, it is central to the ideology and practices of the global war on terror, the constitution of terrorism as a legal subject in domestic counter-terrorism and the construction of knowledge and commonsense about what has been designated one of the defining security issues of our time. Furthermore, it has substantial indirect consequences for individuals and groups labelled as terrorists, who may then be legally subject to torture, rendition and internment without trial, and for the ‘suspect communities’ they belong to (Jackson, 2007: 1).

So rather than being paralyzed by the definitional debate, academia should recognize that the stakes extend well beyond disciplinary boundaries, with both normative and practical implications far beyond theory. On the contrary, the international legal order’s normative standing is deeply affected if the lack of definitional clarity and arbitrary designation turns out to allow for a systematic misuse of the performative label of ‘terrorism’ observed in state practice.

In a special issue, Amicelle et al. (2015) develop an analytical perspective on public policy instruments and security devices, critically assessing technology by shifting away from viewing it as merely neutral or autonomous forces. Instead, these devices produce both performative and political effects, thus requiring a thorough investigation of the underlying politics of performativity:

> Performativity has been invoked across the social sciences, and it has indicated a series of bold moves in critical international relations and security studies, which have challenged the naturalness of security, the state or sovereignty (Amicelle et al., 2015: 298).

From this CSS-oriented perspective, security is no pre-given condition but rather the outcome of performative practices and devices, themselves at the origin of the continuous (re-)configuration of social spaces. Such security-performing devices may be mundane, discursive, technical or theoretical in nature, so that terrorism as a constructed label falls under this category. Classifications such as MacKenzie's (2006) tripartite framework help to capture the different degrees of performativity's impact on reality – ranging from generic performativity, through effective performativity, up to 'Austinian' performativity. Building on Austin's Speech Act Theory, the latter form suggests that the performative effect can go as far as to actually alter the world in line with its assumptions. In response to criticisms that her account of performativity over-emphasized the linguistic dimension without sufficiently addressing symbolic power, material practices, and the role of 'things' in producing effects, Butler (2010) reformulated her theory to include 'perlocutionary' speech acts. This distinction from 'illocutionary' speech acts specifies whether the effect succeeds immediately at the moment of utterance (*illocutionary*), or whether it may follow indirectly under certain conditions (*perlocutionary*). Thus, performative effects do not stem from a single subject's proclamation, but from the reiteration of social relations, and only if the framework in place provides favorable conditions for them. When applied to securitization theory, this reformulation illustrates the limits of a reductive dichotomous reading of performativity between securitizing actors and their audiences. Rather than assuming a stable and pre-defined 'enunciating subject' whose utterance alone carries such authority, performative effects appear to emerge from wider social relations and material conditions that enable them to manifest. Extended beyond the original scope of security onto social relations and spaces, (security) devices can create categories based on law, gender, race, and class, defining boundaries, lines of exclusion and (ab)normality. The performativity of such devices demonstrates how realities and categories come into existence and are reproduced (or not), with significant real-world effects (Amicelle et al., 2015).

Being inherently pejorative and usually causing negative reactions, the label ‘terrorism’ is frequently applied by governments to all violent acts of their political opponents, whereas they avoid calling themselves ‘terrorists’ (Hoffman, 2002) and rather claim to be victims of government terror themselves. Essentially designating ‘what the bad guys do’ (Jenkins, 1974), ‘terrorism’ reveals to be less of an objective category rather than carrying a discursive function of labeling the political adversary. Such a designation itself performs a speech act: As a discursive construct, it redefines political opponents as enemies of the legal order, thereby legitimizing their exclusion and justifying exceptional state measures of security (Sire, 2024b). The label constitutes a moral act that actively influences the perception of who or what is labeled as ‘terrorist’, thus altering public attitudes and justifying exceptional measures through (media) language (Jenkins, 1974; Hoffman, 2002). If ‘terrorism’ does not represent an objective category of crime, then its deployment depends inevitably on the political perspective, respectively portraying a same act of violence as legitimate ‘freedom fighters’ or ‘terrorists’. As a result of this labeling process (Nagle, 2010), the outrage within the public discourse then functions as the assignment of responsibility for this major (perceived or factual) norm violation to tangible actors.

The UN’s handling of ‘terrorism’ further illustrates its function as a political label and performative construct, rather than a stable legal category. Its vague meaning and the lack of a universal definition allows for a flexible institutional use of designating the ‘international public enemy’, making terrorism labeling a convenient tool for building a whole UN counterterrorism framework and for justifying repressive and exceptional security measures. When the UN’s first attempts to draft a general universal definition in 1972 failed, states pursued a sectoral approach of only defining specific types of acts. Later, they moved to listing particular people or groups as ‘terrorists’ on a case-by-case basis, still without settling on a clear definitional basis for such designation (Sire, 2024b).

The very notion of ‘terrorism’ carries a powerful symbolic charge, perceived as a highly stigmatizing label that states strategically seek to avoid applying to practices that they consider as legitimate – whether it is the use of armed forces by the most powerful states, or the struggles for self-determination by states emerging from decolonization (Dubuisson, 2017: 31). As public threats are defined, performed, and written through discourses, the designation as ‘terrorism’ then represents a speech act that both defines and enacts threats

(Martini, 2021: 3). 'Terrorism' therefore is constructed through labels: While labeling itself is highly subjective and often politicized, terrorists reject the 'terrorist' label for its inherently negative and delegitimizing moral connotations (Hoffman, 2002), resulting in the significant normative charge behind terrorism designation.

Since 'terrorism' constitutes "a more political than scientific term that serves above all to denote political violence considered as illegitimate" (Ragazzi, 2014: 6), any universal definition of terrorism would inevitably constitute a performative (speech) act of designation, determining what counts as 'terrorism' and which practices are deemed in opposition with the international legal order and therefore as (il-)legitimate. Yet without such a definition, the international legal order risks perpetuating state-centered practices and deepening divisions among states, leaving the boundaries of legitimate and illegitimate political violence undefined for as long as no genuine consensus on a definition of terrorism has emerged.

3.3 The Realities of Global Terrorism Governance

3.3.1 State-Centered Definitional Practices

Despite ongoing debates since 1972 on reaching a legal definition, the UNGA has failed to establish and approve such a consensual definition (Schmid, 2012; Sire 2024b). Because of irreconcilable views among states, it has not been possible to adopt a general international convention on terrorism to this day. A draft was undertaken for that purpose, but negotiations stalled in 2002, precisely over the issue of definition (Dubuisson, 2017: 32). Instead, the authority to define who is considered as a terrorist remains in the hands of individual states, which adopt their own legal definitions and terrorist lists (Sire, 2024a: 18), as an expression of national sovereignty. Yet, this has neither left the international community paralyzed by the lack of a universal definition, nor prevented states from taking unilateral or multilateral action (Tams, 2009: 361). On the contrary, the lack of a universal definition "allowed States to unilaterally define terrorist acts without having any outer international legal standards of what is terrorism or who is considered as terrorist" (Margariti, 2017: 132).

"While there are now a great many national laws giving legal life to 'terrorism', the picture is highly fragmented and variable. […] The many national laws which address domestic terrorism are irrelevant in evidencing a customary international crime of *transnational* terrorism" (Saul, 2012: 83). Therefore, it becomes

apparent that no universal definition of terrorism has arisen from customary law, as states continue to deploy different national laws and definitions for various legal purposes, resulting in a broad normative disagreement and fragmentation at the international level. Even if many states happen to define terrorism in similar ways, that shared practice is still lacking *opinio juris*, assuming that such practice is the result of (international) legal obligation (Saul, 2012).

In result, the principle of sovereignty effectively entitles states to determine for themselves what constitutes a legitimate reason for the non-compliance with the peremptory international legal norm prohibiting the use of force – reaching from the fight against international terrorism initially to the broader application and interpretation of international criminal law today (Margariti, 2017).

Tams (2009) identifies a normative drift in 'jus ad bellum', i.e. the normative preconditions for the resort to force under JWT, from a restrictive state-centered regime toward a more flexible interpretation and application of UN Charter rules on the use of force. Whereas states have initially refrained from employing anti-terrorist force, more recent practice reflects a broader understanding of the doctrine of self-defense, under which the international community increasingly tolerates states taking unilateral action against terrorists. Despite the centrality of the ban on the use of force (Art. 2(4) UN Charter), international legal norms tend to allow exceptions to the ban, thus creating the risk that states may abuse these exceptions to justify use of force under this pretext more generally (Tams, 2009). "As such, until an international definition is agreed upon, the fight against international terrorism will heavily rely on individual (and the most powerful) States' understanding of what constitutes the best response, even if this response requires the use of force in a manner not clearly envisioned by the provisions of the UN Charter" (Margariti, 2017: 130), thus illustrating how the international legal order is shaped by power dynamics among states and left vulnerable to power-driven reinterpretations of fundamental international legal norms.

While securitization theory has often assumed a single 'enunciating subject', this role can in practice only be carried out at the national level, where the state is able to authoritatively define 'terrorism' within its own (national) legal order, designate terrorists, and enforce the corresponding legal consequences within its own jurisdiction. Here, the traditional reading of performative speech acts seems to be applicable, as the state functions as an 'illocutionary' actor not only capable of defining 'terrorism', but attaching binding legal and

political consequences to such a labeling. The effect is immediate within its own legal order because the audience to which its state sovereignty extends is predefined as the nation.

Beyond the national level, however, the international legal order cannot rely on a comparable 'enunciating subject' capable of coherently and universally defining 'terrorism' – yet the category continues to be invoked, identified, and combated internationally. In this context, a 'perlocutionary' reading of performative speech act theory seems to be more fitting, as condemnations may originate at the national or international level, but their actual effect depends on whether and how the overarching international legal order allows them to "come into existence, be altered, reproduced, dismissed or resisted" (Amicelle et al., 2015: 298). The lack of a universal definition of terrorism deprives this order of a binding international legal norm. That way, such a universal definition could serve as a benchmark to verify the compliance of counterterrorism regimes and to stabilize common practices and understandings. However, 'terrorism' is not consolidated through a single authoritative proclamation but is instead performed through a plurality of fragmented national practices that reproduce it in divergent ways under the current international legal order.

"Since the 9/11 terrorist attacks, the primary focus in states facing terrorist threats has been on preventing new terrorist attacks by taking anticipative action." (Hirsch Ballin, 2023: 793), such as by focusing on countering radicalization as a first enabling factor of adhering to terrorist ideologies and action (Rosanò, 2023). In a comparative study of France, the Netherlands, and the United Kingdom, Ragazzi (2014) shows that the widespread adoption of counter-radicalization policies reflects a general shift toward more proactive and anticipatory rationalities in counterterrorism governance. Much like terrorism itself, these policies rely on vague and politically charged notions of 'radicalization', 'de-radicalization', and 'counter-radicalization'. Through such framing, states claim not only to address the symptoms and consequences of terrorism but also to prevent its earliest ideological and behavioral manifestations. This broadened conception of terrorism legitimizes the early detection and prevention measures, implemented before any condemnable criminal act of terrorism has occurred. These policies, however, are not merely a reflection of neutral preemptive risk management. They function as tools of social control and reveal an increasing intertwining of security imperatives with the governance of diversity, disproportionately targeting Muslim communities and contributing to their alienation. Named "policed multiculturalism" by Ragazzi, this phenomenon signals a shift from respecting diversity to

managing it more closely through surveillance and suspicion, under the guise of preventing extremism. Non-security actors such as teachers, social workers, and even family members are included into systems of monitoring and reporting. Questioning their overall effectiveness, these measures reflect a profound expansion of the State's security apparatus into civil society. Operating through securitizing discourses, counter-radicalization frameworks thus produce performative effects that restructure social relations and reinforce state power under the guise of national security. As the joint fight against terrorism and radicalization in all three countries shifts from its initial preventive logic to repressive and potentially discriminatory security procedures, a practice of 'hard' counterterrorism becomes apparent. The broad definition of what counts as terrorist acts thus allows for legal and administrative measures, both resulting in the undermining of human rights (Ragazzi, 2014). Similarly, a case study of Canada's counterterrorism regime and policies suggests an increase in racial profiling, especially in the aftermath of the attacks of 9/11, leading to effects of heightened vulnerability and exclusion of racialized groups justified under the name of national security (Bahdi, 2003).

Given the normative charge and performative effect of terrorism designation, the politics of naming and power struggles at the international level showcase how international legal norms surrounding counter-terrorism governance reflect political power rather than a neutral framework rooted in the rule of law. In turn, states' control over defining terrorism reveals and reproduces power hierarchies within the international legal order

As divergent national definitional practices arise, states seem to refuse to cede control over defining such a normatively charged and security-based constructed notion as 'terrorism', lacking agreement on state practices involving their own military actions, the use of force, and liberation struggles. Such political divides and persistent disagreement over a universal definition showcase that even the post-/11 momentum failed in reaching an international agreement. Concretely, this leads to politically motivated labeling, unilateral exceptionalism, and inconsistent definitional practices between courts, UN resolutions, and domestic laws (Nagle, 2010), resulting in divergent practices and normative incoherence within the international legal order.

3.3.2 Counterterrorism Practices by the International Community

For decades, states have debated the legal definition of 'terrorism, without ever reaching a definitive consensus. “As regards counter-terrorism, for more than 20 years one of the persistent obstacles to the adoption of a comprehensive convention on terrorism has been the issue of whether such an instrument should also apply to the activities of non-State actors in an armed conflict.” (McKeever, 2020: 43). Therefore, the notion of ‘terrorism’ remains permanently contested, reflecting deeper ideological divisions that continue to hinder the adoption of a universally accepted definition in international law (Dubuisson, 2017).

Even though these debates have produced certain definitional criteria at both the international and regional level, they remain vague, leaving it largely to individual states to apply their own definitions. The first international instrument dates back to 1937, though it never entered into force. From the 1960s onwards, states began to focus more systematically on combating international terrorism, leading to the adoption of a series of conventions. These did not attempt to create a universal legal framework but instead took a ‘sectoral’ approach, criminalizing specific acts in individual conventions without resorting to a general definition. Either terrorism is merely mentioned without being defined, or it is completely omitted from the wording of these conventions. This pragmatic strategy allowed states to sanction certain methods of violence, sufficient to take effective action in combating international terrorism while leaving the notion of ‘terrorism’ legally undefined. Persistent disagreements between states reveal why they have intentionally avoided agreeing on a universal definition of terrorism to protect their own practices perceived as legitimate: While Western states wanted to exclude ‘state terrorism’ from any definition so that it would not restrain their use their use of military force both in times of armed conflict and peace, countries considered as part of the so-called ‘Third World’ in times of the Cold War wanted to exclude national liberation movements from being branded as ‘terrorism’, in order to preserve the legitimacy of anti-colonial struggles for self-determination within the international order of the time (Dubuisson, 2017: 30-32).

Aware of how the adherence to such a definition would inevitably be understood as an expression of where the international community drew the line on the (il-)legitimacy of certain forms of violence, a divide between Western and postcolonial states has become apparent and seemingly impossible to overcome on the path toward an agreement onto a universal definition of terrorism. By that, the double standard of the

permission and legality of state violence became apparent, as opposed to the illegality of similar or even greater non-state violence, as terrorist acts violated accepted norms of warfare, whereas (inter-)state violence is supposedly legally regulated. Due to the inflationary use of 'terrorism' discourse, the concept of so-called 'new terrorism' emerged in the late 1990s and now represents a discursive construct that rebrands an already overused concept. By further amplifying its supposed novelty into a threat of unprecedented scale, this rhetorical shift in political discourse primarily serves to justify exceptional state measures under the guise of counterterrorism (Sire, 2024a: 19). The attacks of 9/11 often serve as a dividing line between Old Terrorism and New Terrorism, even though their distinction carries only limited usefulness in academia, as both forms qualify as 'terrorism' and have more in common than what separates them (Schmid, 2023). "In the aftermath of the terrorist attacks of 11 September 2001, governments have increasingly resorted to vague and broad definitions of terrorism." (Scheinin and Vermeulen, 2010: 22), leading to a growth in unilateral attempts of justifying exceptionalist national counterterrorism regimes which undermining international legal norms, such as universal obligations arising from IHL. This explains how unilateral exceptionalism is normalized and legitimized, towards the suspension of international legal norms (Scheinin and Vermeulen, 2010), as a mere result of the performative effect of 'terrorism' designation and labeling. Despite the lack of consensus on a universal definition of terrorism in international law, international actors continue to operationalize 'terrorism' differently, resulting in fragmented terrorism-related norms in practice (Rosanò, 2023).

Today, international counterterrorism law is codified in a series of regional and universal treaties, the first of which was adopted in 1963[2]. While this international treaty framework has gradually evolved to facilitate cross-border jurisdictional regimes and international legal cooperation, UNSC resolutions have become an increasingly prominent source of counterterrorism law, especially in the aftermath of 9/11 (McKeever, 2020), positioning the UNSC as a central actor in shaping the normative framework of counterterrorism. This reflects a general institutional shift of power, moving from the UNGA as a deliberative and inclusive platform towards the UNSC as more exclusive, power-driven, and capable of providing rapid responses. As a result, the international community treated terrorism as an urgent threat to collective and international security, rather than constituting a subject for broad legal deliberation (Sire, 2024b).

[2] 1963 Convention on Offences and Certain other Acts Committed on board Aircraft, 704 UNTS 220, art 1(4)

Following the attacks of 9/11 on US soil in 2001, the subsequent launch of the 'global war on terror' has proven that terrorism, identified as a global threat, would require cross-border collective action taken by the international community, beyond national security measures. By 2002, van Krieken claims that the rapid accumulation of treaties, UN resolutions, and declarations on terrorism in response to the attacks of 9/11 was already sufficient to constitute 'a new international legal order'. The key challenge would lie less in new law-making than in the practical and effective enforcement of this large already existing body of legal-political instruments. Yet, the emerging international legal order continued to operate in the absence of a settled universal definition of this exact activity, continuously condemned and referred to (Walker, 2008: 733).

In a statement to the UNSC, Secretary-General Kofi Annan strongly condemned the terrorist attack on the United States, the host country and city of the UN Headquarters, and by extension on "humanity as a whole" (United Nations, 2001), thus imagining terrorism, security, and justice beyond boundaries of national borders.

In *Resolution 1368 (2001)* (United Nations Security Council, 2001a), the UNSC condemned the terrorist attacks of 9/11 in its immediate aftermath, affirmed its determination "to combat by all means threats to international peace and security caused by terrorist acts," and presented a two-fold response – urging "all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks" but specifically calling "*also* on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions". By addressing both States and the international community separately, this choice in words reflects a strategic discursive and normative differentiation: the individual responsibility of States, on the one hand, and the collective coordination of the international community, on the other hand, institutionalized through the UN and normatively enshrined in its Charter and UNSC resolutions.

The resolution's wording reflects an ambition to address the international scope of both the act of terrorism and the collective response to it, while remaining respectful of the principle of state sovereignty, national interest(s) in security, and preserving space to legitimize unilateral action of self-defense. At the same time, its intentionally ambiguous drafting implicitly provided a justificatory framework for bypassing the

peremptory international legal norm prohibiting the use of force, without ever explicitly authorizing it (Margariti, 2017).

In its subsequent *Resolution 1373 (2001)* (United Nations Security Council, 2001b), the UNSC laid down more specific and permanent obligations upon all States, both preventively and responsively to acts of terrorism. Those include the criminalization of terrorist financing, the freezing of financial assets, denying safe havens, restricting the movement of terrorists, and expanding the punishment onto involved accomplices. In the light of its unprecedented obligations, this resolution turns out to be a central legal instrument to understand recent changes in international attitude to terrorism under the international legal order (Walker, 2008: 732), as well as state obligations consisting of prevention measures and reporting procedures to a UNSC committee (Burchill, 2008).

This resolution is widely perceived as reflecting a shift in the UNSC's normative standing within the international legal order, assuming a more legislative role in the fight against international terrorism and reaffirming States' inherent right to self-defense. In doing so, the resolution exposed the UNSC's tendency to prioritize individual state-centered claims and sovereign interests over broader cosmopolitan ideals of global justice (Margariti, 2017).

Two months after the attacks of 9/11, the UNSC has issued *Resolution 1377 (2001)* (United Nations Security Council, 2001c), declaring that, evidently incompatible and contrary to the norms codified in the UN Charter and in international law, "acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century," as well as "a challenge to all States and to all of humanity" by extension. Beyond a universal normative "condemnation of all acts, methods and practices of terrorism […], regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed", a comprehensive approach to combating it would entail the active implication and collaboration of all UN Member States in a joined effort. This laid the groundwork for the UNSC's commitment to combat international terrorism globally, as reaffirmed over a decade later in *Resolution 2178 (2014)*.

By analyzing the discursive evolution of UNSC resolutions on combating international terrorism, Martini (2021) identifies a central paradox at the heart of the UN's global counterterrorism strategy: While the international community has repeatedly condemned terrorism and committed itself to combating it on a global

level, it has done so without ever first agreeing on a mutual understanding of what terrorism actually is. The UNSC has thus constructed an umbrella notion of a common enemy to all States and humanity in general, albeit lacking conceptual clarity from the very beginning. Building on Simpson's (2004) conceptualization, the UNSC and the 'permanent five' can be considered as a 'legal hegemon' in view its role and authority in the international legal order (Joyner, 2011).

> The *Kadi* decision constitutes an important data point for purposes of [the] current analysis because, *inter alia*, this case stands for the proposition that the UN Security Council cannot override domestic law when that domestic law contains fundamental legal rights. This case marks one of the first times that a tribunal, whether international or domestic, has held a Security Council resolution to be unlawful in its implementation to a domestic legal system, and thus establishes an important persuasive precedent of the principle that the power of the Security Council is not, in fact, unlimited (Joyner, 2011: 252).

This landmark case shows that UNSC resolutions can still be checked by domestic or regional courts if they conflict with fundamental rights (Joyner, 2011). By analogy, global counterterrorism measures must still respect fundamental legal norms enshrined in international law. Therefore, even if the UNSC is a 'legal hegemon', its legitimacy is still contestable, eventually depending on conformity with fundamental rights and international legal norms.

Without ever resolving the underlying lack of conceptual clarity, the UNSC's counterterrorism strategy evolved on the basis of an undefined yet normatively loaded notion of terrorism. Over time, it introduced new discursive framings, such as the rise of violent extremism, radicalization, and the presence of highly specialized groups like ISIL and Al-Qaida. These developments were symbolic of how the perception of terrorism has evolved and finally reflects a broadening and deepening in the UN's operationalization and governance of terrorism. The dynamics of the UN's counterterrorism strategy reveal how practices and discourses have mutually influenced each other, consolidating the international community's long-lasting global counterterrorism campaign and its commitment to combating it jointly and globally. Yet, these evolutions unfolded without an

internationally accepted and shared definition of the threat itself, which was given the name of terrorism but with no specific shape. In the process, it not only constructed the enemy it claimed to fight but has also shaped the normative identity of the international community as fundamentally opposed and a united front against acts of international terrorism (Martini, 2021).

"Alongside these international instruments, regional counter-terrorism instruments have been adopted by the European Union; the African Union; the Commonwealth of Independent States; the Organization of the Islamic Conference (OIC); the Association of Southeast Asian Nations (ASEAN); the South Asian Association for Regional Cooperation (SAARC); and the Council of Europe)" (McKeever, 2020: 46). As much as these instruments and discourses continue to affirm the inherent incompatibility of terrorism with the international legal order and the international community, they reflect the fragmentation of global counterterrorism governance practices and have simultaneously been marked by a persistent lack of definitional clarity surrounding the notion of terrorism, that continues to be invoked.

CHAPTER FOUR

Requirements for a Non-Ideal International Legal Order

4.1 Evaluating the Normative Deficit for Global Justice

4.1.1 Human Rights Protection and the Security-Rights Nexus

From a state-theoretical perspective, the *Prevent* paradox in the United Kingdom illustrates how the implementation of preventive counter-extremism measures embedded in national counterterrorism policy can result in defending liberal norms by the means of an extremist anti-liberal project, itself essentially contradicting and eventually destroying the very values rooted in liberalism, which it was initially supposed to secure and perpetuate (Boukalas, 2019). "The interaction of counter-terrorism law with international humanitarian law (IHL) has long created tensions" (McKeever, 2020: 43), as competing international legal entitlements and obligations arise from the defense against an inherently exceptional terroristic threat, as well as the universal upholding of human rights. Although not legally binding, the UDHR carries normative weight, most and foremost in its conception of human rights as universal.

"Various national definitions have been criticised for violating international human rights law, such as by being too vague to satisfy the principle of legality and freedom from retroactive criminal punishment" (Saul, 2012: 84), thus giving rise to the normalization of exceptional measures that undermine human rights obligations in the name of national security defense. Considering terrorism as a transnational legal problem, the dominant critique views the lack of a universal definition of terrorism as a failure to reach the highest possible level of international agreement and cooperation in counterterrorism governance. Other perspectives, however, acknowledge how such a failure can also be the result of a principled disagreement over international legal norms, such as the respect of political freedom or human rights. Given that certain formulations at the national level are in violation of human rights, it can be viewed as a success that the international community has resisted the adherence to such a risky definition. In that view, it might be better for the international legal

order not to have a definition than one that universally criminalizes legitimate politics and struggles for liberation (Saul, 2012).

States resort to a variety of arguments in order to justify unilateral exceptions to human rights norms in the name of the fight against terrorism (Scheinin and Vermeulen, 2010). As CSS shifts the focus of security away from the state towards human security and is guided by normative goals of emancipation of individuals and groups from structural violence and global insecurity (Wendt, 1999), the international legal order is normatively bound to provide a framework that guarantees the enjoyment of these human rights for every individual, regardless of citizenship or any other boundaries. This reflects an inherently cosmopolitan understanding of moral obligations and global justice. In reality, human rights organizations frequently criticize national security measures in regard to their treatment of 'terrorist' acts. As state surveillance upon individual suspects can go as far as strategic 'disruption' and 'disturbance', such security measures represent a form of harassment carried out by the State (in the form of the governmental administration or police) and conflict with human rights, such as laid out in the UDHR (Ragazzi, 2014: 22; Hirsch Ballin, 2023).

Conceptualizing the security-development nexus from a game-theoretical perspective, Spear and Williams (2012) illustrate different relationships in which both can interact. While zero-sum thinking has long prevailed in traditional security studies, framing development and security in either-or-terms, the 'security pie' turns out to be generally much larger in most states (Spear and Williams, 2012). Similarly, applied to the security-rights nexus, such zero-sum thinking would suggest that the allocation of resources to the achievement of either security or (human) rights would need to happen at the mutual expense of the other.

Ní Aoláin (2019) criticizes the widespread balancing approach to the security-rights nexus, which frames the relationship as a zero-sum game, suggesting that the effective protection of (national) security would have to lead to infringements on human rights protection. She argues that this tension can be overcome by rethinking security and liberty not as a trade-off between two mutually exclusive elements, but instead as inherently interdependent: Without adequate security, the entitlement to rights becomes hollow when the overall framework does not allow for their free enjoyment; conversely, without the protection of fundamental human rights, no genuine sense of security can arise where even the most basic requirements are lacking. By rethinking the security-rights nexus as a relationship of mutual necessity and capacity-building, the defense of

one cannot serve as a justification to sacrifice the other one (Ní Aoláin, 2019). From a normative perspective, this insight is valuable, as attempts to legitimize infringements on human rights should not be justified in the name of national security. Any liberal legal order is expected to embed national security within a framework that organically ensures the protection of both liberty and security. By extension, in order to be credibly understood as liberal and aligned with universal human rights standards, the international legal order should not only prevent systematic human rights violations by States at the national level but also ensure that its own global counterterrorism regime does not itself enable or even facilitate the justification of such violations. The lack of a universal definition of terrorism may thus be understood as a structural shortcoming and weakness of international counterterrorism governance, as the international legal order fails to provide the adequate legal and operational framework necessary to prevent such risks, for the sake of national sovereignty, prevention and protection from terrorist threats, and legal pluralism in international law.

While both democratic and non-democratic States have made the fight against terrorism a key priority for foreign policy, the compatibility of counterterrorism strategies and mechanisms with upholding IHL obligations turns out to be even more so challenging for democracies that claim the respect of human rights as part of their identity and legitimacy. In the light of numerous counterterrorism regimes, such as extended State surveillance, the use of torture, or inhumane treatment at detention and interrogation facilities, serious human rights concerns can be raised regarding such practices justified under the name of counterterrorism. The security-rights nexus for democratic States thus reveals a field of tension between protection from terrorism as part of their national security while guaranteeing the protection of fundamental human rights – not only constitutive of their self-perception (Ní Aoláin, 2019) but also enshrined as universal within the international legal order, such as codified in the Charter of the UN and the UDHR. Therefore, the protection of human rights becomes a crucial criterion for evaluation of a state's legitimacy, when it is tasked with ensuring protection from terrorism while remaining bound by legal and moral commitments to human rights. Joyner (2004) stresses the inherent connection between the dual obligation of national security for their own people and the protection of human rights, insisting that any legitimate counterterrorism effort must address this delicate security-rights nexus:

> Terrorism often thrives in countries where human rights are abrogated, and this situation intensifies the need to strengthen actions to combat violations of human rights. In this connection, terrorist acts should be viewed as assaults on fundamental rights. Put bluntly, when a government undertakes to fight against terrorism, those efforts must be respectful of the international human rights obligations owed to the people in that state (Joyner, 2004: 254).

The UN's contribution to balancing individual rights with protecting national security consists in norm-setting, codifying human rights law, facilitating inter-state communication, and the overall proposal and implementation of legal instruments as part of its multidimensional treaty regime aimed at counterterrorism. When terrorism arises where human rights are already violated, fighting terrorism must include the strengthening of human rights protection (Joyner, 2004: 254) – both as a preventive measure at the grass-root level, by conditions less favorable for terrorism to emerge, and as a constraint on the reactive measures taken against acts of terrorism, given that:

> The temptation for governments and parliaments in countries suffering from terrorist action is to fight fire with fire, setting aside the legal safeguards that exist in a democratic state. But let us be clear about this: while the State has the right to employ its full arsenal of legal weapons to repress and prevent terrorist activities, it may not use indiscriminate measures which would only undermine the fundamental values they seek to protect. For a State to react in such a way would be to fall into the trap set by terrorism for democracy and the rule of law. It is precisely in situations of crisis, such as those brought about by terrorism, that respect for human rights is even more important and that even greater vigilance is called for (Schwimmer, 2002, cited in OSCE, 2007: 22)

Therefore, responsive counterterrorism must not serve as an excuse for human rights violations in the name of security, since it seeks to combat acts that themselves originate in the violation of rights. Otherwise, it would amount to a victory for terrorists, who paradoxically succeeded in provoking a reaction that effectively undermines the very democratic values and freedoms it is meant to protect. On the contrary, human rights obligations

must prevail, no matter how tempting an unbalanced reaction might be, in order to demonstrate that they are truly universal and unconditionally guaranteed.

4.1.2 The Moral Limits of Legal Pluralism

Critical international law scholars, such as David Kennedy and Martti Koskenniemi, have enriched international legal theory with new approaches, resulting in the establishment of 'New Approaches to International Law' (*NAIL*). "The underlying idea that international law tends to facilitate and legitimize war is not new. […] What perhaps is new in the Kennedy argument is that in the contemporary world states harness 'law as a weapon, law as a tactical ally, law as a strategic asset, and instrument of war'" (Chimni, 2017: 295), as international legal categories are intentionally left ambiguous for diverse interpretation, or even undefined such as in the case of the lack of a universal definition of terrorism.

While international law allowed to establish values of universality beyond national legal orders, such perspectives of international law as cosmopolitan and universal turned out to be marked by underlying Eurocentric perceptions of the world. If the international legal order should really strive towards 'an ideal of universality', than such an universalism might turn out to be 'false universalism' (Chimni, 2017), reproducing hegemonic power relations and at the cost of marginalized voices, which are not reflected in the lack of pluralism at the expense of producing a normatively coherent, universalistic legal order.

Comparing the ongoing debate in international law to 'Opening a Pandora's Box', Nagle (2010) defends the minority position that in the absence of a universal definition, "terrorism is *not* a suitable crime for universal jurisdiction" (Nagle 2010, 340) under international criminal law, as this would require an extraordinary basis for justification to 'shock the conscience of humanity' and threaten the international order as a whole, not just individual states. Because of this exceptional gravity and because these crimes are created by broad consensus, recognized as *jus cogens* in customary international law, states accept that sovereignty can legitimately be overridden. Terrorism, however, lacks those characteristics today: Terrorist acts certainly cause grave harm, but remain transnational crimes in nature. Without a universal definition of terrorism, states retain pluralistic and nationally tailored definitions that often reflect their own political interests, so that 'terrorism' does not yet meet the moral and legal threshold for universal jurisdiction. Overriding the peremptory and

constitutive norm of sovereignty within the international legal order would be illegitimate, as it would impose one state's political definition on others without their mutual agreement (Nagle, 2010).

By contrast, other scholars such as Margariti (2017) argue that terrorism has already fostered international coordination, even without a universal definition. When international terrorism (even without a common definitional basis) is framed as a threat to collective international peace and security, coordinated counterterrorism efforts at the international level make the international legal order more prone to a cosmopolitan model of law implementation (Margariti, 2017: 132), which may justify international legal mechanisms of universal jurisdiction. Cosmopolitan accounts of global justice therefore challenge the very architecture of the international legal order, leaving room for legal pluralism and thus allowing the application of different and inconsistent standards of (national) jurisdiction. Singer (1972) famously defends the cosmopolitan view that

> The fact that a person is physically near to us, so that we have personal contact with him, may make it more likely that we shall assist him, but this does not show that we ought to help him rather than another who happens to be further away. If we accept any principle of impartiality, universalizability, equality, or whatever, we cannot discriminate against someone merely because he is far away from us (or we are far away from him). […] There would seem, therefore, to be no possible justification for discriminating on geographical grounds. (Singer, 1972: 232),

essentially delegitimizing any attempt to justify human rights infringements on the basis of statist conceptions of global justice, invoking national boundaries or territorial sovereignty. Yet, divergent national and regional practices undermine the homogeneity, legitimacy, and coherent application of such international legal norms, despite the universalist ambitions of such norms about human rights (Koskenniemi, 2006).

In his institutional conception of human rights, Pogge's (1998) insists that not just individual states but global institutional systems must be judged and reformed according to how well they achieve to uphold obligations in regard to human rights. By reinterpreting

> Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized (Art. 28 UDHR).

as a universal and global obligation, he opposes any purely statist or legal pluralist view that treats each state's legal order as normatively autonomous. Legal pluralism therefore becomes morally constrained: When overlapping regimes produce divergent and incoherent practices which collectively produce a global order that undermines human rights, then pluralism becomes normatively illegitimate. Therefore, there cannot be any legitimate alternative to universality (Pogge, 1998), following a cosmopolitan vision of global justice.

By analogy, the international legal order fails its institutional duty when it tolerates a lack of definitional clarity surrounding the notion of 'terrorism' for the sake of legal pluralism, which in turn enables divergent state practices and human rights violations. Pogge's cosmopolitan framework thus serves as a normative benchmark for assessing the moral limits of legal pluralism: If the agreement on a comprehensive universal definition, or at least on a normative minimum, would advance human rights protection and principles of global justice, then pursuing such a reform constitutes a moral obligation. So, while legal pluralism respects national sovereignty, it is morally constrained by universal human rights standards, which are currently not upheld in view of the lack of a universal definition of terrorism.

4.2 Future Perspectives

4.2.1 Toward a Normative Minimum for Defining Terrorism

Because any universal definition of terrorism would carry significant and far-reaching normative weight, potentially legitimizing or criminalizing certain acts of political violence, liberation movements, and carrying further ideological, religious, or political implications (Dubuisson, 2017; Sire, 2024b), its precise formulation would determine whether it reproduced global power asymmetries or enabled systematic human rights violations. Accordingly, the lack of a universal definition of terrorism can also be interpreted as aligning with ideal-theoretical, cosmopolitan global justice objectives, insofar as no universal definition in breach of international legal norms grounded in IHL obligations has yet been adopted within the international legal order (Saul, 2012).

However, leaving terrorism undefined internationally, as reflected in the UNSC resolutions issued in response to the attacks of 9/11, permits states to reinterpret terrorism as an armed attack and to autonomously invoke self-defense against non-state actors. In doing so, the lack of a universal definition of terrorism directly affects international legal practice, as it lets powerful states expand even peremptory international legal norms, such as the ban on the use of force which forms a cornerstone of the modern international system, to suit their own national security preferences and interpretations. Such framings undermine the cosmopolitan aspiration for the international legal order to be impartial and predictable globally in its cross-border application, highlighting the need for at least a normative minimum in the formulation of a universal terrorism definition in order to safeguard legal coherence and to provide a universally acceptable legal framework for the 'global war' against terrorism (Margariti, 2017).

Given the inevitably pluralistic nature of the international legal order, a minimalist account of human rights obligations appears both realistic and just, as argued by Cohen (2004). Conceptualizing a thin, widely defensible standard of global justice within an ethically pluralistic world, 'justificatory minimalism' represents a basic feature of 'global public reason', as opposed to 'substantive minimalism'. By accepting a certain, yet limited, degree of difference between the domestic and the international level, this can help consolidate minimal requirements for the respect of human rights, thus improving compliance with those standards as universal legal norms across national cultural settings. Achieving such a minimal agreement at the least would reduce the risk of important violations in different countries (Cohen, 2004), which – from a political realist perspective – seems inevitable given that the global society is plural, as well as given the essentially anarchic structure of IR, without any overarching power above the state-level (Wendt, 1999).

If minimalism about human rights truly represents 'the most we can hope for' (Cohen, 2004), then expectations about the normative shortcomings of the international legal order stemming from the lack of a universal definition of terrorism must likewise be lowered. By analogy, adopting a normative minimum for defining terrorism offers a pragmatic way to enhance the legitimacy and coherence of global counterterrorism governance. Keeping any attempt of defining terrorism universally both goal-free and agent-free (Primoratz, 2004), as well as narrow and as precise as possible to make it easier for states to reach consensus on that common ground (Schmid, 2023), this can help consolidate international legal norms on a minimal common

definitional basis and ensure that global counterterrorism enforcement regimes operate more consistently. At the same time, a minimal definition of terrorism would also minimize interference and overreach into national sovereignty and jurisdiction, while improving normative clarity at the international level.

Yet, such minimalism reveals to be incompatible with cosmopolitan aspirations to global justice, which demand an unconditional and universal defense of universal human rights, rejecting considerations of cultural pluralism as a justificatory basis for divergent practices that violate them.

As O'Driscoll (2015) approaches the 'victory of just war' through the theoretical framework of JWT, he highlights another problem, inherent to the vaguely defined 'war on terror', as

> 'we lack a metrics to know if we are winning or losing the global war on terror'. […] The problem with victory is, then, also an epistemic one: it is hard to recognize it when it occurs, or to establish markers for it. (O'Driscoll, 2015: 803)

This problem remains unresolved as long as there is no clear definition of who or what constitutes the 'international public enemy' (Sire, 2024b) that the 'global war on terror' is directed against, which makes it inherently impossible to further formulate what practical outcomes would represent a victory in such a war (O'Driscoll, 2015). Such a reasoning could strengthen the argument for the need of a universal definition of terrorism in international law, or of an agreement on a normative minimum definition at the very least. By reaching consensus on the specific universal norms that terrorism fundamentally violates, the international community would clarify and consolidate the normative foundations of the international legal order. This, in turn, would enhance its overall legitimacy and coherence, making any serious defense of these norms under the name of a 'global war on terror' more credible, concrete, transparent, and less vulnerable to political manipulation, abuse, or exceptionalist and arbitrary counterterrorism regimes.

4.2.2 The Potential of a Global Legal Order

From an ideal-theoretical, cosmopolitan perspective on global justice, and considering the universality of human rights, as enshrined in the UDHR, the normative imperative to think beyond these underlying structural state-centric limitations of the current state of the international legal order becomes particularly compelling, given that

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under another limitation of sovereignty. (Art. 2 UDHR)

Taking the structural limitations in the Westphalian state-centered architecture of the international legal order, theorizations on global law allow to conceptualize a (global) legal order, which would produce more normative coherence through universal legal norms across national jurisdictions, thus getting closer to a cosmopolitan ideal of global justice. Such attempts to restructure, or at the least to complement, the international legal order globally directly engage with the core debate in international legal theory between legal universalism and sovereign legal pluralism. The tension is highlighted by the international legal order's normative shortcoming of having failed to establish an authoritative, universally accepted framework for defining terrorism. While attempting to overcome inevitable limitations of the principle of state sovereignty, non-interference, and national interests in security – inherent to the current state of the international legal order – theorizations of global law do not have to be incompatible with the principle of the nation-state (Held, 2004; Domingo, 2010).

Domingo (2010) envisions such a rethinking towards a global legal order, but which does not yet constitute a full legal order because it lacks the necessary normative foundations as well as the enforcement mechanisms for internal coherence and compliance. Yet normative requirements and desiderata towards a global

legal order must be imagined and formulated independently from those towards the international legal order, as

> We would be making a serious mistake if we applied the current standards of national orders to a global legal order, for this could easily become an attempt to create a world state. It would also be a mistake to create something *ex novo*, as if no existing legal traditions were useful, or as if the constructs of international law born of the Peace of Westphalia were merely a set of useless ruminations. (Domingo, 2010: 121)

Constituting an *ordo iuris totius orbis*, such a global (legal) order would necessarily be complementary, internally coherent, and more comprehensive, as it applies to the global human community as a whole, rather than remain structurally limited to the nation-state and inter-state relations (Domingo, 2010). Therefore, state sovereignty emerges as a problematic yet constitutive element of international law (Kelsen, 1981) in the pursuit of global and universal ambitions. As a way of reimagining Kelsen's pyramid of norms, the hierarchical structure (*Stufenbaum der Rechtsordnung*) would not place the State but the human itself at its foundation as the source of all law (*fons omnis iurius*), representing the fundamental norm (*Grundnorm*) that in turn provides validity and unity to the legal order as a whole (Domingo, 2010).

Given this conceptual rethinking, the prospect of establishing a normative minimum within the international legal order appears desirable for ensuring a minimal level of legal coherence across national jurisdictions, whereas reaching a definite consensual agreement upon a universal definition of terrorism remains unrealistic as long as security continues to be imagined primarily through national rather than globally defined frames. This limitation is rooted in the architecture of inter-state relations at the core of both IR theory and the international legal order, where the State persists as the primary subject and possessor of sovereign authority.

Ideal-theoretical approaches therefore highlight how the lack of a universal definition of terrorism and the persistence of state-centered designation practices produce normative incoherence. An envisioned global legal order could address and potentially overcome the normative shortcomings of legal pluralism, embedded in the current sovereignty-rooted framework of the international legal order. By providing authoritative

normative guidance and effective supranational enforcement mechanisms, it could meet cosmopolitan demands for global justice by securing universal jurisdiction, safeguarding human rights, and thereby ensuring overall normative coherence within the legal order.

CONCLUSION

The lack of a universal definition of terrorism reveals normative tensions in the aspirations of the international legal order, as it attempts to reconcile competing legal norms internationally while leaving room for legal pluralism and state sovereignty in its foundational architecture. Without a definitional consensus on what the 'international public enemy' (Sire, 2024b) consists of, this reveals a fundamental normative contradiction between an international order that designates, condemns, and fights acts of international terrorism as a threat to humanity, while systematically enabling incoherent global counterterrorism regimes and human rights violations in the name of nationally defined matters of security.

Whereas both non-ideal theory and political realism acknowledge existing structural boundaries imposed by the architecture of the international legal order within which the international community operates, insights from the discipline of International Criminal Law (Margariti, 2017) highlight the tension with state sovereignty. Linking the development of international (criminal) law to cosmopolitan ideas suggests that ideal theory in IPT could in fact provide a more suitable theoretical framework than initially assumed for assessing the lack of a universal definition of terrorism. Combining ideal and non-ideal perspectives would allow to give greater weight to a cosmopolitan, ideal-theoretical evaluation of legal universalism, beyond treating it merely as a normative benchmark but instead recognizing it as a genuine aim to be pursued within the state-centric predisposition of the international legal order.

While the analytical framework of this work is primarily rooted in normative political philosophy and IPT, it draws selectively on empirical evidence to illustrate the normative charge of terrorism definition and designation. CAIR, particularly those in CSS and CTS, illustrate how political and public discourses construct the state-centered, security-based label of 'terrorism' and carry out performative functions as explained by Speech Act Theory. This produces inconsistent practices in global counterterrorism governance, resulting in normative incoherence within the international legal order.

This partial reliance on empirical findings reflects a broader, still-evolving debate within IPT about the relationship between normative ideals and empirical social science: Whereas classical ideal-theoretical approaches treat moral principles as valid independently of political realities, more recent developments in IPT advocate for a closer engagement with empirical research, enabling a more systematic and evidence-based

assessment of how far international political and legal practices fall short of the normative principles of global justice at the core of IPT. Future research could combine normative political philosophy with qualitative and quantitative analysis in empirical social science (e.g. qualitative discourse analysis of UNGA/UNSC debates, or mixed-methods studies of national vs. UN listing regimes) to further support the normative-philosophical claims and to assess more systematically how (in-)coherently international counterterrorism discourses and practices operationalize terrorism definitions.

The interdisciplinary scope of this work could be extended by drawing more extensively on theories of public communication, linguistics, and the sociology of terrorism. Such perspectives would shift the focus from foundational debates in international legal theory toward a more targeted assessment of the international legal norms surrounding the (lack of a universal) definition of terrorism. From the perspective of comparative public and criminal law, a diachronic comparison could trace developments in (counter-)terrorism governance within a given legal system over time, while a synchronic comparison could examine how different legal systems simultaneously operationalize, enforce, and coordinate converging or diverging practices in the absence of a universal definition of terrorism. Taken together, these philosophical, historical, sociological, and empirical findings could stimulate and enrich an ideal-theoretical debate on whether a universal definition of terrorism is morally desirable, given its broader normative implications for the international legal order.

Once it is morally established whether a universal definition of terrorism is desirable, further normative reflections could examine specific definitional alternatives. These could include proposals already debated internationally or definitions used in national, regional, or supranational counterterrorism regimes. But if legal pluralism turns out to be the lasting standard of the international legal order, this poses a serious challenge to the credibility of the universality of human rights and of international legal norms more generally. Because sovereign states hold irreconcilable positions, a universal agreement on the definition of terrorism seems unlikely. As a result, global counterterrorism regimes are bound to remain inconsistent, which in turn weakens the credibility, legitimacy, and overall normative standing of the international legal order.

Given terrorism's central importance to international, collective, and human security, either a post-Westphalian form of a global legal order would need to emerge to provide for supranational enforcement mechanisms to ensure consistent universal application of legal norms; or the international community must

accept normative shortcomings within the current pluralistic state of the international legal order and manage national divergent counterterrorism practices while striving to uphold global justice within a system of sovereign states.

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