

# DEFINING TERRORISM IN INTERNATIONAL LAW

BEN SAUL

OXFORD  
UNIVERSITY PRESS

# Contents

<i>Table of Cases</i>	xvii
<i>Table of Treaties and Other Instruments</i>	xxiii
<i>List of Abbreviations</i>	xxxi

## **INTRODUCTION: CONCEPTS OF TERRORISM 1**

<b>1. REASONS FOR DEFINING AND CRIMINALIZING TERRORISM</b>	<b>10</b>
A. Introduction	10
B. Nature of International Crimes	11
1. Grave conduct of international concern	11
2. International element	13
3. The 'international community'	14
4. Legal politics and political laws	16
C. International Criminological Policy	17
1. Criminological purposes of criminalization	17
2. Vengeance and the problem of evil	20
3. Trivialization and misuse of terrorism offences	23
4. Avoiding duplication of coverage by existing laws	24
5. Multiplicity of charges and convictions	26
D. Terrorism as a Discrete International Crime	27
1. Terrorism as a serious human rights violation	28
2. Terrorism as a threat to democratic governance?	35
3. Differentiating public from private violence	38
4. Terrorism as a threat to international peace and security	45
5. Controlling Security Council measures	48
E. Elements of a Definition of Terrorism	57
1. Approaches to a definition of terrorism	57
2. Elements of a definition	59
F. Conclusion	66
<b>2. DEFENDING TERRORISM: JUSTIFICATIONS AND EXCUSES FOR TERRORIST VIOLENCE</b>	<b>69</b>
A. Introduction	69
B. Common Justifications for Terrorism	71
1. General Assembly's study of causes	71
2. Jus ad bellum: self-determination movements	75

3.	Jus in bello: self-determination movements	76
4.	Human rights limits on permissible means	78
5.	Other politically just causes: Rebellion	81
C.	Criminal Law Defences to Terrorism	94
1.	Self-defence	96
2.	Duress/Necessity	98
D.	Circumstances Precluding Group Responsibility	105
1.	Self-defence	107
2.	Necessity: Knowing the law	109
E.	'Illegal but Justifiable' Terrorism	116
F.	Discretion and Law: Never Negotiate with Terrorists?	120
G.	Conclusion	128
<b>3.</b>	<b>TERRORISM IN INTERNATIONAL AND REGIONAL TREATY LAW</b>	<b>129</b>
A.	Introduction	129
B.	Transnational Criminal Law Treaties	130
C.	Treaties of Regional Organizations	142
1.	Organization of American States: 1971 and 2002 Conventions	145
2.	Council of Europe: 1977 Convention, 2003 Protocol, and 2005 Convention	147
3.	SAARC: 1987 Convention and 2004 Protocol	152
4.	League of Arab States: 1998 Convention	154
5.	Organization of the Islamic Conference: 1999 Convention	156
6.	Organization of African Unity: 1999 Convention and 2004 Protocol	157
7.	Commonwealth of Independent States: 1999 Treaty	159
8.	Shanghai Cooperation Organization: 2001 Convention	160
9.	European Union: 2002 Framework Decision	162
D.	Attempts at Definition in Treaty Law 1930-2005	168
1.	1920s and 1930s Unification of Criminal Laws	169
2.	1937 League of Nations Convention	171
3.	1954ILC Draft Code of Offences	176
4.	1991 and 1996 ILC Draft Code of Crimes	178
5.	1998 Draft Rome Statute	180
6.	2000—Draft Comprehensive Convention	184
E.	Conclusion	190

<b>4. TERRORISM IN CUSTOMARY INTERNATIONAL LAW</b>	<b>191</b>
A. Introduction	191
B. UN General Assembly Practice	191
1. 1970 Declaration on Friendly Relations and 1965 Declaration	193
2. The Munich Olympics and the 1972 US Draft Convention	198
3. Resolution 3034 (XXVII) (1972)	199
4. Summary of Assembly practice	213
C. UN Security Council Practice	213
1. Legal implications of Council resolutions	214
2. Council resolutions before 1985	216
3. Hostage-taking in the 1980s	217
4. Assassinations in Lebanon: 1989 and 2005-06	219
5. Plastic explosives 1989	222
6. Iraq 1991-2005	222
7. Libya 1992-2003	226
8. Presidential Statements 1992-94	228
9. Sudan 1996-2001	228
10. Kosovo 1998-99	229
11. Kenya and Tanzania 1998	230
12. Afghanistan, the Taliban, and Al-Qaeda 1998-2005	230
13. Terrorist attacks of 11 September 2001	233
14. Terrorist acts 2002-05	240
15. Terrorism in the Middle East 2002-05	244
16. Thematic resolutions 1999-2005	245
17. A working definition in 2004	247
18. Incitement, justification, and glorification of terrorism 2005	248
19. Summary of Council practice	249
D. Judicial Decisions Defining Terrorism	250
1. International decisions	251
2. National decisions	253
E. National Terrorism Legislation	262
1. National criminal laws on terrorism	263
F. Conclusion	270
<b>5. TERRORISM IN INTERNATIONAL HUMANITARIAN LAW</b>	<b>271</b>
A. Introduction	271
B. Early Developments 1919-38	271
C. Second World War and Aftermath 1939-48	278

1. State practice during the war	278
2. Legal efforts to confront terrorism during the War	282
3. 1945 Nuremberg Charter	284
4. Nuremberg International Military Tribunal	285
5. National post-war trials	287
D. 1949 Geneva Conventions and 1977 Protocols	290
1. Measures of terrorism: 1949 Fourth Geneva Convention	291
2. Developments in the 1950s and 1960s	291
3. Spreading terror among civilians: 1977 Protocols I and II	293
4. Acts of terrorism: 1977 Protocol II	295
5. General considerations	296
E. International Criminal Tribunals since 1993	300
1. Terrorism in tribunal statutes	300
2. The <i>Galic</i> case in the ICTY	301
3. The meaning of 'terror' in <i>Galic</i>	303
F. Individual Criminal Responsibility for Terrorism	305
G. Customary Crimes of Terrorism in Armed Conflict	306
H. US Military Commissions and Terrorism	309
I. No Separate Category of Terrorist	311
J. Conclusion: Proving Terror, Avoiding Duplication	312
<b>CONCLUSION: THE PROMISE OF RESTRAINT</b>	<b>314</b>
<i>Bibliography</i>	321
<i>Index</i>	365