

NAZIONALISMI, STORIA INTERNAZIONALE
E GEOPOLITICA

COLLANA DI STUDI STORICI E POLITICO-SOCIALI

21

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Stato, nazione e nazionalismo sono categorie che nascono nell'alveo della modernità occidentale e caratterizzano la storia successiva anche del resto del mondo. Con la fine della Guerra fredda, tuttavia, nel dibattito scientifico di sovente sono state presentate come strumenti d'analisi superati dal tempo. A distanza di un quarto di secolo, la verifica empirica ci dice che, nonostante alcune trasformazioni, rimangono centrali nel vocabolario politico e si innestano all'interno di processi complessi che abbracciano anche le sfere dell'economia, della società e della cultura. La sovrapposizione con le contemporanee dinamiche di integrazione sovranazionale e di interdipendenza economica, infatti, non ne hanno segnato il tramonto. Piuttosto ne hanno favorito un'evoluzione che assume caratteristiche e contenuti specifici nei differenti quadranti geopolitici, rendendo inutilizzabile il concetto di "globalizzazione" e favorendo il ricorso a quello di "regionalizzazione".

La riflessione su questi temi non può prescindere da un'analisi storica delle componenti strutturali e contingenti che influenzano la formazione delle identità nazionali e da uno studio dei fattori politico-internazionali che ne determinano i percorsi e le trasformazioni. La collana, quindi, si pone l'obiettivo di analizzare tali tematiche attraverso un approccio multidisciplinare, che spazia dalla prospettiva della storia internazionale, a quella della geopolitica, passando per gli studi di relazioni internazionali e quelli sui nazionalismi.

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MICHELE BRUNETTI

**IN THE NAME
OF COUNTER-TERRORISM:
HUMAN RIGHTS IN THE AGE
OF THE WAR ON TERROR**

**A LEGAL ANALYSIS OF EMERGENCY POWERS
AND FUNDAMENTAL RIGHTS**



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*To Aurelio and Ludovico,
may you inherit a world where security is always governed
by the rule of law and respect for human rights*

The rule of law is tested not in times of stability, but in moments when security pressures challenge fundamental rights.

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INTRODUCTION

The human cost of terrorism has been felt in virtually every corner of the globe. The United Nations family has itself suffered tragic human loss as a result of violent terrorist acts. Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims.

In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights. Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.

In the years following the early 2000s, however, the measures adopted by States to counter terrorism have

themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres, have often been disregarded. Other States have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement.

The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems. Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society. Resources normally allocated to social programmes and development assistance have been diverted to the security sector, affecting the economic, social and cultural rights of many.

These practices, particularly when taken together, have a corrosive effect on the rule of law, good governance and human rights. They are also counter-productive to national and international efforts to combat terrorism. Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism.

This requires the development of national counter-terrorism strategies that seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law. It implies measures to address the conditions conducive to the spread of terrorism, including the lack of rule of law and violations of human rights, ethnic, national and religious

discrimination, political exclusion, and socio-economic marginalization; to foster the active participation and leadership of civil society; to condemn human rights violations, prohibit them in national law, promptly investigate and prosecute them, and prevent them; and to give due attention to the rights of victims of human rights violations, for instance through restitution and compensation.

This dissertation has been prepared with the aim of strengthening understanding of the complex and multifaceted relationship between human rights and terrorism. It identifies some of the critical human rights issues raised in the context of terrorism and highlights the relevant human rights principles and standards which must be respected at all times and in particular in the context of counter-terrorism.

More concretely, this work aims to:

- raise awareness of the impact of terrorism and counter-terrorism on the enjoyment of all human rights;
- provide a practical tool for practitioners dealing with terrorism, counter-terrorism measures and human rights;
- provide guidance on ensuring compliance with human rights when countering terrorism;
- illustrate specific human rights challenges in countering terrorism.

CHAPTER I

TERRORISM AND COUNTER-TERRORISM

1.1. Defining terrorism

Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims.

In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and universal “sectoral” treaties relating to specific aspects of it define certain acts and core elements. In 1994, the General Assembly’s Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes «criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes» and that such acts «are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them».

Ten years later, the Security Council, in its resolution 1566 (2004), referred to «criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act». Later that year, the Secretary–General’s High–level Panel on Threats, Challenges and Change described terrorism as any action that is «intended to cause death or serious bodily harm to civilians or non–combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act» and identified a number of key elements, with further reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004)⁽¹⁾.

The General Assembly has for decades been working towards the adoption of a comprehensive convention against terrorism that would complement the existing sectoral anti–terrorism conventions. As of 2026, no comprehensive definition has yet been adopted due to continuing disagreements among States.

Its draft article 2 contains a definition of terrorism which includes “unlawfully and intentionally” causing, attempting or threatening to cause:

(1) See *A more secure world: Our shared responsibility*, United Nations publication, Sales n. E.05.I.5.

- a. death or serious bodily injury to any person; or
- b. serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- c. damage to property, places, facilities, or systems [...], resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

The draft article further defines as an offence participating as an accomplice, organizing or directing others, or contributing to the commission of such offences by a group of persons acting with a common purpose. While Member States have agreed on many provisions of the draft comprehensive convention, diverging views on whether or not national liberation movements should be excluded from its scope of application have impeded consensus on the adoption of the full text. Negotiations continue. Many States define terrorism in national law in ways that draw to varying degrees on these elements.

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.

Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments,

undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the Human Rights Council⁽²⁾. Specifically, Member States have set out that terrorism:

- threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights;
- has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments;
- has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;

(2) See, in particular, Security Council resolutions 1373 (2001) and 1377 (2001); General Assembly resolutions 48/122, 49/185, 50/186, 52/133, 56/160 and 58/174, as well as its Declaration on Measures to Eliminate International Terrorism (resolution 49/60); Commission on Human Rights resolutions 2001/37 and 2004/44, Human Rights Council resolution 6/28 and its recent resolution on the protection of human rights and fundamental freedoms while countering terrorism (28 March 2008).