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The Jurisprudence of Violent Extremism and Terrorist Attacks in International Law

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Abstract

International law is under pressure on how to deal with the alarming monumental increase on acts of violent extremism, terror acts and terrorist attacks on the global space. Acts of violent extremism, terror acts and Terrorist attacks appear to be taking diverse forms and shape in a manner that makes identification of such acts problematic and cumbersome. What is more worrisome is the general permutation that what was hitherto considered acts of violent extremism, terror acts and terrorist attacks can no longer be classified as acts of violent extremism, terror acts and terrorist attacks because of the dynamic nature of law and society. Equally alarming is the technologically driven sophistication and complexity of the present-day acts of violent extremism, terror acts and terrorist attacks. This paper seeks to examine and demonstrate the contemporary developmental challenges associated with the fluid concept of violent extremism, terror acts and terrorist attacks in international law. It unveils the contemporary jurisprudential relevance in the criminalization of acts of violent extremism, terror acts and terrorist attacks under international law. This work further attempts to analyze the contemporary evolution of the concept of acts of violent extremism, terror acts and terrorist attacks in international law and the general discourse on the call for criminalization of all acts of violent extremism, terror acts and terrorist attacks. It equally seeks to analyze the modern jurisprudence of acts of violent extremism, terror acts and terrorist attacks as conventional crimes and terrorism as international infractions. One enthralling challenge is the intriguing complex nature, interpretation, definition and systemic concerns of the concepts of acts of violent extremism, terror acts and terrorist attacks under universal jurisprudence in international law. What is however generally accepted is the fact that acts of violent extremism, terror acts and terrorist attacks in all their ramifications are counter-productive to the peace, stability and security of the international community.

Keywords

International Law, Criminalization, Violent Extremism, Terrorist Attacks and Universal Jurisprudence

1. Introduction

The devastating international crimes of acts of violent extremism, terror acts, as well as terrorist attacks have continued unrelenting, more vigorous and determined despite uncommon, consolidated efforts to reduce their spread and curtail their ravaging and cruel impact on the developmental advancement of society. What has largely triggered the colossal conversation on violent extremism, terror acts and terrorist attacks globally is the guidelines and advisories to States to concertedly reform and develop their legalized and conventional structures in the aftermath of the horrific and devastating September 2001 attacks on the United States and other dehumanizing international terrorist attacks (Luban, 2008). The conversation is on the apt but fluid understanding of the traditional and modern definition and interpretation of acts of violent extremism, terror acts and terrorist attacks as well as the consequential stimulation arising from the differences in international criminal law societal acumen and discernment. One notable development is the phenomenal mutative and evolving manner the concept of international acts of violent extremism, terror acts and terrorist attacks are now being discussed as international crimes (Ibid). The presentation of acts of violent extremism, terror acts and terrorist attacks as international crimes is not only phenomenal but impressive both as an escalating and liberal development of international criminal law and in view of the progressive attention the concepts have extracted in the wake of the events of September 2001 and its corrosive destruction to the United States and other countries. One way to deal with these destructive crimes, as well as reduce their spread, is for the global community to take measures to deal with the perennial problem of the lack of enforcement of anti-violent extremism laws (Ibid).

2. The Modern Dynamics of Acts of Violent Extremism and Terror-Barbarity

The barbarity associated with the concepts of acts of violent extremism, terror acts and terrorist attacks are overwhelming. These related words have humongous differing understanding and meanings as well as divergent configurations in international law (Pichard, 1998). What this means is that there is no globally adopted definitive perception, cognizance and definition of these phrases in international law. Contemporary debate clearly suggests that there is deficient internationally coordinated and patterned anti-violent extremism and terrorism measures, sanctions and judicial decisions in the campaign and fight against acts of violent extremism, terror acts and terrorist attacks (Ibid). This fluid disputation encom-

passing the exposition, interpretation and elucidation of these phrases is the uncoordinated and cloddish legal structure and the politicization of the usage of the terms acts of violent extremism, terror acts and terrorist attacks following the destructive 2001 September terrorist attacks. In addition to the foregoing is the divergent and ambiguous viewpoints that the terms, acts of violent extremism, terror acts and terrorist attacks are without any corresponding legal bearing and applicability. This is a safe way of referring to permutations some scholars consider utterly illegal (Ibid).

It is simply inconceivable and to say the least lack of understanding the rationalization as to whether there is any need to define the terms acts of violent extremism, terror acts and terrorist attacks. No thanks to the fact that there are legion of definitions, some are in the toga of superfluity. It is therefore not surprising that there is no globally adopted clarification, exposition and definition of the terms acts of violent extremism, terror acts and terrorist attacks just like other fields of law.

The imperative requirements for the criminalization of conduct and acts under international law especially criminal law include the principle of legality which opines that there is no crime without law. What this means is that, one can only discuss the criminalization of conduct or act in any criminal jurisdiction if the act or conduct being alleged is satisfactorily and distinctly defined and its concepts as well as its conceptualization is not shredded in ambiguity. Again, the international community is unanimous as to the desirability of need to clearly define these concepts (Mégret, 2018).

However, the interrogation that bothers on the need to have a unanimous definition of act of violent extremism, terror acts and terrorist attacks may not be advisable and expedient. It is not the gamut and plethora of different definitions that have exacerbated and even reduce the efficacy of concerted efforts to combat these crimes. The multiplicity of definitions is predicated on the multitudinous and sometimes compounded legal instruments set up by different governments for diver purposes and applications. It is tenable to argue that the varied definitions are only designed to serve as microcosm definitions meant to solve specific issues at specific times. Therefore, States attempt to talk about definition of acts of violent extremism, terror acts and terrorist attacks in their different laws may be attributed to varied plethora of reasons and circumstances (Ibid). This quagmire does not stop States from embarking on concerted effort as well as establishing adequate mechanisms to deal with acts of violent extremism, terror acts and terrorist attacks because their spread does not understand the geographical borders of States. In other words, in spite of the superfluous and unwarranted discourse created from the controversy surrounding the unanimity in the exposition and clarification of the terms and concepts, States are bound to take coordinated measures to accept issues surrounding how, when, and where to arrest suspects, detain or even extradite persons accused of engaging in these crimes to strengthen the global fight against acts of violent extremism, terror acts and terrorist attacks

(Ibid).

Instead of dissipating energies on galvanizing universally accepted definitions, contemporary jurisprudence places emphasis on steps that are meant to engender the desired disproportionate discourse and provide a better understanding of the concepts of these crimes. No matter the quantum of disagreement on the intricacies of the concepts of these crimes, it cumulatively has varied elements, despite the fact that the substance of some of these elements is less controversial and ambivalent than that of others because of the unintended fluidity surrounding its understanding (Ibid).

For instance, when objective elements are considered (Ibid), there is some generally accepted consideration on the conducts and acts that should be seen as acts of violent extremism and terror, which generally speaking includes, extermination, willful murder, mass killing, bombing, hijacking, etc. These acts are only excusable when they are carried out through permissible and legally authorized means and methods (Ibid). Intent and motive are considered opinion-based elements and must be substantiated for any act or conduct to be taken as international acts of violent extremism (Ibid). These are generally accepted measures (Ibid). The concept of intent aligns with the probability of the commission of any criminal offence. What this means is that the acts or conduct must be done with an expressed and precise objective in mind. This amounts to unleashing terror amongst a specified population or obliterating the elemental structure of a State as the sole objective of the act itself. The concept of motive as a requirement for any criminal conduct must not be considered as a personal end in itself but must be predicated on the lenses of political, cultural, opinionated, liturgical, peremptory, or religious sensibilities (Ibid). This does not mean that an individual cannot commit a terrorist act alone without any underprop, partnership and collusion with any terrorist group (Ibid). A conduct or act would be classified as acts of violent extremism or terror acts if it was stimulated or influenced by a crystalized set of ideas that motivated the individual to collaborate with a group which is reputed for carrying out similar terrorist attacks. The varied and sometimes ambiguous definitions of acts of violent extremism, terror acts and terrorist attacks have been exacerbated by a fluid and vague exposition and elucidation of these elements in the forms of national legislations, soft law and conventions formats (Brubacher, 2004).

3. The Correlation of International Law and International Violent Extremism

There appears to be a fluxional and gaseous correlation between international law and international acts of violent extremism, terror acts and terrorist attacks. Despite the fluid dilemma homologous with the conversation on any concordant acceptability of the concept of international acts of violent extremism, terror acts and terrorist attacks, there is unanimous understanding of general denunciation and criticism by the international community in line with the admoni-

tion by international law (Ibid). This contemporary developmental and revolutionary measure was realized on the substructure of the previously existing established legal custom, conventions and treaty pacts and norms of international law, which identified such acts as violent extremism, terror acts and terrorist attacks. It also gave gargantuan premium to the transformation and progression of original norms and rules, which ultimately came about in a large international legal documents, materials, records and instruments which strengthen the war against international acts of violent extremism, terror acts and terrorist attacks (Ibid).

One key point of concern is the ambiguity associated with the definition of international acts of violent extremism, terror acts and terrorist attacks in line with the issue of their criminalization. Obscurity still exists as to who is criminally liability for the alleged act done, concerns on jurisdiction, obligations by States and other global players and entities, the required level of international collaboration and backing from state actors in criminal matters (Ibid). The foregoing methodology and mechanism are premised on the taxonomy of the type of act that has been criminalized by international law (Ibid). It may be very safe to describe these acts as international crimes since they constitute acts that endanger global peace, prosperity, stability and security (Ibid).

Acts of Violent Extremism as Convention Crimes

There are specific conducts, even though such acts are considered as serious crimes of international concern, no international criminal liability is accorded to them because the exclusive control and authority of the States has been violated in line with some specific provisions of certain treaties. The general implication of these treaty-based conventions give States parties the duty to criminalize certain acts as treaty crimes which make them criminal offences under their own local laws. Even when such acts are being probed, tried and convicted persons are being punished, state parties are enjoined to demonstrate uncommon cooperation (Turchin, 2012). In other words, state parties can also try, prosecute and input criminal liability on the basis of treaty-based conventions.

Many conventions called to discuss ways of dealing with acts of violent extremism consider acts of international violent extremism, terror acts and terrorist attacks as treaty-based convention crimes (Ibid).

In line with various conventions against acts of violent extremism, terror acts and terrorist attacks, State parties now have a legal commitment and charge to maintain authority and control over the suspects staying within their jurisdictions (Ibid). The contemporary action against every form of violent extremism and terror acts demands that State parties institute and commence legal action against individuals in courts of competent authority. Despite the power of State parties to extradite such people, the duty to prosecute remains sacrosanct, hallow and inviolable. Many conventions in contemporary times now specifically indicate clauses that enable prosecutions to be done in conformity with the standards of local laws

in situations where repatriation is not done or turned down. Such a proviso may hinder and interfere with the effectual application and enforcement of conventional duty as a result of national standard modifications and variants on their obligation to prosecute (Ibid). Nevertheless, the States have sacred obligation to properly investigate such a case with all sincerity of purpose in line with a minimum standard of uprightness, candor and openness (Ibid). What this means is that any arbitrary, unmethodical and indiscriminate prosecution premised on capricious and anti-democratic permutations can derail the focus, target and objective of the convention, which may amount to a violation of States' obligations under international law (Ibid).

There are equally very teething issues that affect the effectual application and enforcement of the anti-terrorist and violent extremism conventional system, which include (Ibid): the scanty ratifications or accessions by States to the conventions, which drastically affect the attainment of its objective and purpose; the scanty operation of the pacts; and the pervasiveness of too many flaws, shortcomings and technicalities in the interpretations and workings of conventions. The devastating events of the year 2001 September have triggered and occasioned discussion within the international community for a more pragmatic, thorough and panoramic international architecture, configuration and apparatus for the war against acts of violent extremism, terror acts and terrorist attacks (Ibid). The good news is that there is a novel approach and some of these shortcomings have been addressed in the new conventions, even though more collaborative and coordinated plans should be put in place to tackle concerns of a unanimous definition of international acts of violent extremism and its horizon of application. Aggressive work is still needed in the area of complimentary international contribution, partnership and coordination in the circumvention, prevention, repression, and prosecution of the crime of violent extremism, terror acts and terrorist attacks (Ibid). One key development is to extend and broaden the authority and control of the International Criminal Court to include offences that bother on international violent extremism, terror acts and terrorist attacks.

4. International Authority and the Oscilation of the Crime of Violent Extremism

This segment of the paper dissects the variability of the acts of violent extremism, terror acts and terror attacks via the microscope of the length of jurisdictional authority, which is deeper and more panoramic than that structured and designed by conventional systems. The revered principle of universality obligates and compels States to apply their jurisdictional authority to try and prosecute crimes regarded as repulsive and distasteful to the global community, even though there is yet no consensus on the crimes that are categorized under international all-inclusiveness. Notwithstanding the foregoing, there is some form of accord on the proposition that international acts of violent extremism are a subdivision of crime of aggression, war crimes and crimes against humanity (Andreas, 2004).

This paper now goes further to address the seeming dissension and disputation as to whether acts of violent extremism, terror acts and terrorist attacks are crimes of aggression, war crimes or crimes against humanity. The starting point is to note that while war crimes are a categorization confines to armed hostilities, a similar inference cannot be made of crimes against humanity and crimes of aggression (Ibid). Another point of discourse is whether acts of violent extremism, terror acts and terrorist attacks during armed conflict are exclusively enfolded in international criminal law and international humanitarian law (Ibid). The point is that these acts are disallowed and proscribed in international or local circumstances. These laws equally criminalize acts and actions of violent extremism, terror acts and terrorist attacks by providing that during armed hostilities, such orchestrated attacks on civilians and other protected persons with the key motive and objective of inducing and propagating terror, may amount to war crimes. The fact that the Rome statute of the ICC does not group and categorize acts of violent extremism as one of the war crimes is not problematical since the list of the prevailing rules of legal custom or traditional law is uncompleted in the statute.

The question that needs our attention is when can acts of violent extremism, terror acts and terrorist attacks constitute crimes against humanity whether such are committed in the time of peace or war time? Provided that these acts are taking part in an ingrained, systematized and coherent pandemic attack against a civilian populace, and as far as the offender is aware of his direct or indirect involvement, cooperation and participation in the said widespread or systematic attack, such acts will amount to crimes against humanity (Ibid).

The Kinetics of the Law of Nations and the Acts of Violent Extremism, Terror Acts and Terrorist Attacks

This part of the paper discusses the dynamics of international acts of violent extremism, terror acts and terror attacks as crimes under the law of nations. Many global conventions and treaties have outlined and created wide designed global anti-violent extremism legal regimes even though it is still a subject of debate whether such legal structure can have the requisite consequences and effect on those States that have not endorsed and accepted treaties outside the consideration of customary law (Ibid). Despite the foregoing legal hypothesis and postulation, there are still a lot of arguments that suggest the fact that conventional principles and rules are regarded as an offshoot of the prevailing customary international law that is still under constant transmogrification and development. One precept that promptly resonates is the principle of repatriation or prosecution which will not require further discussion here (Ibid). One argument is the need to consider treaties that are homogenous based on universal jurisdiction and criminal liability (Ibid). Certain specialized conventions could also be considered as declaratory instruments that are meant to establish universal jurisdiction which is taken as a support for customary law by the international community (Ibid).

There is some form of agreement on the apropos on the imperative for an effectual mechanism in the war against global acts of violent extremism, terror acts

and terrorist attacks, even by global and regional political institutions and blocs like the UN Security Council or the General Assembly, and even States with regard to the customary law principle of universality. One novel necessary move is to take or consider international acts of violent extremism, terror acts and terrorist attacks as crimes under the law of all nations. The only drawback with regard to this postulation is the lack of universal accord on the definition of the concept of violent extremism, terror acts and terrorist attacks. This is notwithstanding, the divergent and dissonant rationalization that under international customary law there seems to be unanimity on the definition of violent extremism, terror acts and terrorist attacks as international crimes which is still going through some form of advancement, evolution and progression (Ibid). This does not suggest that the issue of the universality of international acts of violent extremism, terror acts, and terrorist attacks even in international customary law, is without challenges. Some of these include the disharmony in jurisdictional matters, the variance in the standards of prosecution from State to State as well as the challenges emanating from the complaints of just, legitimate, non-discriminatory and impartial trial and prosecution of suspects (Ibid).

5. The Development and Progression of International Acts of Violent Extremism, Terror Acts and Terrorist Attacks after 2001 September

Despite the fragile success recorded, the international community continues to grabble with the pervasive task and difficulty on the war against acts of violent extremism, terror acts and terrorist attacks (Macdonald, 2017). The concerted and frontal response by the international community to the brutal attacks of September 2001 against the United States of America was prompt and vigorous (Ibid). The swift and expeditious messages of condemnation and displeasure by regional bodies in the aftermath of the attacks on the government and people of the USA showed seriousness attached to the war against acts of violent extremism. One commendable response was received by the European Council, which expressed its disapprobation and resentment on 21 September 2001, at its extraordinary meeting (Ibid).

The proclamations and pronouncements by the international community for a more determined war against acts of violent extremism, acts of terror and terrorist attacks via such bodies like United Nations and others lays credence to a unanimous fight against such crimes. One core proclamation was the consideration at identifying groups or people accused of committing acts of violent extremism anywhere in the world, including their collaborators. This gives credence for a consideration of a coherent and systematic gathering, compiling and dissemination of relevant data amongst member States in the fight against acts of violent extremism, terror acts and terrorist attacks. Steps should be taken on how to proactively enforce all extant international conventions and treaties on acts of violent extremism, terror acts and terrorist attacks as well as detecting, tracking, ascertaining and

dismantling factual sources of the funding of violent extremism (Ibid). This includes fighting terrorism and seizing all assets and blocking all funds known and traced to terrorist institutions and establishments. This action is meant to preclude such finances from being accessed by people or groups who may use it for violent extremism goals and intentions, such as keeping an eye on the mobility of money and other activities that tend to suggest the illegal utilization and transfer of money. Steps must be taken to heed the various calls to widen the exposition, elucidation and interpretation of the concept of money laundering and its activities in line with relevant provisions of international law.

5.1. Global Attempts at Ending the Financing and Other Related Trends of Acts of Violent Extremism, Terror Acts and Terrorist Attacks

There have been renewed calls on ways of ending violent extremism, terror acts and terrorist attacks. Contemporary calls are now directed at urgent need by States to include financing (Galbraith, 2009) of acts of violent extremism, terror acts and terrorist attacks as grave criminal offences. States are equally enjoined to have the necessary political will to bring to book perpetrators of acts of violent extremism, terror acts and terrorist attacks to guarantee international peace and security. These calls are especially extended to national judicial authorities and such related bodies to support substantive justice and avoid every form of technical justice (Ibid). This is in addition to calls for a radical restructuring of terms of criminal sanctions meant to restrain acts of violent extremism, terror acts and terror attacks and meeting out well contrived sanctions to serve as appropriate deterrence (Ibid).

The underlying consideration and disputation are that the current criminal penalties for acts of violent extremism, acts of terror and terrorist attacks are unreasonable and asymmetrical to serve the desired intention of the punishments for crimes committed (Ibid). States need to develop a robust and efficient border control system and mechanism to deal with the consequences of acts of violent extremism, terror acts as well as terrorist attacks and curtain the circumstances which aid and abet the support and recruitment into acts of violent extremism, acts of terror and terrorist attacks in the world (Ibid).

5.2. A Call for a Legal Framework on a Robust Counter Violent Extremism, Terror Acts and Terrorist Attacks by States

Apart from the tacit approval and adoption of the Convention for the Suppression of the Financing of Terrorism in 2004, many countries have adopted the global anti-violent extremism, terror acts or terrorist attacks conventions. Unfortunately, there are still many countries that do not still have a robust and well organized legal framework as well as an organic regime for an effectual and productive fight against violent extremism, terror acts and terrorist attacks (Damaska, 2008) Some of the anti-violent extremism, terror acts and terrorist attacks laws by some countries are either fragile or too structurally deficient (Ibid). Even some of the robust measures put in place for the purposes of fighting violent extremism, terror acts

and terrorist attacks adopted by some countries in their Criminal Codes and systems need to be structurally evaluated, reviewed or and applied (Ibid). It is important that these laws should also contain relevant provisions that criminalize any form of financing and sponsorship of acts of violent extremism, terror acts and terrorist attacks by States, individuals or organizations under whatever outlook and frame.

6. Conclusion

It is now common discourse that international acts of violent extremism, terror acts and terrorist attacks have monumentally evolved and are more diametrically ferocious. International peace and security are the victims of every form of international violent extremism and terror acts (Ibid). This paper submits that a more holistic and radical illegalization of every form and substance of acts of violent extremism, terror acts and terrorist attacks must be put in place to reduce this alarming scourge. These seemingly avoidable impediments and controversies surrounding jurisdictional definitions and processes are counter-productive in the overall fight against international acts of violent extremism, terror acts and terrorist attacks. This paper submits that the divergent and sometimes controversial academic and legal permutations on the fluid pre-eminence of taking into consideration of international acts of violent extremism, terror acts and terrorist attacks as crimes based on treaty-convened conventions, as opposed to considering them as crimes of conventional and traditional international law with universal primacy of criminal authority and control, only attract nominal consequences. This submission is considered sacrosanct based on the seeming unwillingness of States to agree on a globally acceptable definition of international acts of violent extremism, terror acts and terrorist attacks.

There appears to be concerted efforts by States to design and organize future international covenants premised on the many international conventions, rules, treaties and principles, which mandate States under international law to investigate, arraign and prosecute persons who carry out grave atrocity crimes (Bash, 2007). What is not clear is whether the international community, especially the Security Council of the United Nations, would unanimously take steps to call for any convention that will consider enforcing any jurisdictional radical change to allow international judicial bodies to prosecute atrocity crimes like acts of violent extremism, terror acts and terrorist attacks without attempting to directly or indirectly exercise a veto against such laudable development.

The phenomenal events of September 2001 and other horrific global experiences have galvanized the international community to appropriately respond to these horrifying occurrences. Thanks to such a radical prompt response by the European Union after the September 2001 attack. Equally commendable was the joint anti-terrorist fight by EU member States despite the fact that it took a long time to resolve their initial problems of reaching consensus (Luban, 2004). What is left for Member States to do is to make a responsible and responsive commit-

ment to enforce major generally agreed obligations. A core commitment that is still needed is for member States to synchronize and integrate their domestic enactments and regulations for the sole objective and goal of regularity and conformity in their fight against acts of violent extremism, terror acts and terrorist attacks. However, it is commendable that the international community is making frantic efforts by putting in place an enduring mechanism to fight all forms of acts of violent extremism, terror acts and terrorist attacks that impede global peace and progress (Mégret, 2002).

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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