PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: TERRORISM ALLEGATIONS AND HUMAN RIGHTS CHALLENGES

What Is 'Terrorism'?

There is no universally accepted definition of terrorism in international law, despite long-standing efforts within the United Nations (UN) to coalesce on a definition. This is reflected in the UN's continued engagement, including a 2026 call for inputs by the Special Rapporteur on counter-terrorism and human rights to inform a report to the Human Rights Council on defining terrorism and related concepts. While a broad consensus has emerged that it involves criminal violence intended to intimidate a population or coerce a government or international organisation, this understanding has not crystallised into a binding, comprehensive definition due to persistent political disagreements, particularly over state violence and self-determination struggles. In the absence of consensus, guidance has been drawn from UN Security Council Resolution 1566 (2004), which characterises terrorism, at a minimum, as acts involving the intentional use or threat of violence—such as causing death, serious injury, or hostage-taking for the purpose of intimidating a population or coercing a government.

Instead, international law adopts a fragmented, 'sectoral' approach, regulating specific acts such as hijacking or terrorist financing through treaties, rather than defining 'terrorism' as a single crime. As a result, the primary legal regulation of terrorism lies at the domestic level, where states enact their own definitions and offence, leading to divergent frameworks. This is reinforced by UN Security Council Resolution 1373 (2001), which obliges States to criminalise terrorism within national law without providing an autonomous international definition and threshold, thereby producing diverse legal frameworks across jurisdictions that are sometimes inconsistent with one another regarding what constitutes terrorism.

Are Acts Carried Out in the Context of National Liberation, and Self-Determination Excluded from 'Terrorism'?

While international law does not recognize a general exclusion from the definition of terrorism based solely on claims of national liberation, or self-determination, it distinguishes acts based on context and conduct. While the right to self-determination provides the legal and moral justification for struggles against colonial domination, alien occupation and racist regimes, national liberation embodies the collective struggle to realize that right.

The right to self-determination carries the clearest international legal recognition. It is enshrined in Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as Articles 1(2) and 55 of the UN Charter. Armed struggles against colonial domination, alien occupation, or racist regimes in the name of self-determination may also fall within Article 1(4) of Additional Protocol I to the Geneva Conventions. Where such violence is directed at military objectives and complies with international humanitarian law (IHL), it does not constitute an unlawful attack under IHL. However, the applicability of IHL does not necessarily preclude the application of terrorism law. In non-international armed conflicts (NIAC), non-state armed groups may be designated as terrorist organizations under domestic or international counter-terrorism frameworks, with both IHL and terrorism law applying concurrently. An exception exists in certain counter-terrorism instruments through 'armed conflict exclusion clauses' which are designed to exclude conduct already regulated by IHL. For example, Article 19(2) of the International Convention for the Suppression of Terrorist Bombings, excludes the activities of armed forces during an armed conflict, as governed by IHL, from the scope of the Convention.

However, the recognition of self-determination under international law comes with strict limitations on the means by which self-determination and national liberation may be pursued. Beyond the narrow framework of self-determination recognized under international law and the regulation of armed conflict by IHL, international law

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remains largely silent on any right to rebel. While rebellion may be morally or politically justified, its legality is primarily governed by domestic law and, where applicable, IHL.

Thus, the invocation of self-determination and national liberation does not place indiscriminate violence beyond the reach of terrorism law. UN General Assembly Resolution 49/60 (1994) and the Global Counter-Terrorism Strategy (A/RES/60/288) also confirm that terrorism is unjustifiable regardless of motive. The decisive distinction, therefore, is not the cause being pursued but the conduct employed. Thus, indiscriminate violence against civilians is never excluded even when invoked in the name of self-determination or national liberation.

What General Human Rights Challenges Arise in the Context of Terrorism and Counter-Terrorism Measures?

Terrorism itself gives rise to serious human rights challenges, as it directly targets the fundamental rights of individuals and communities. Acts commonly associated with terrorism, including indiscriminate violence, hostage taking, and attacks against civilians, violate core protections such as the right to life and security of person (see also here).

In response, counter-terrorism measures raise equally serious human rights concerns, particularly where States prioritise security over rights protection. This is because States may rely on measures such as mass surveillance, restrictions on freedom of expression, reliance on 'classified' evidence, arbitrary detention, and prolonged pre-trial detention to respond to terrorist threats or attacks. Such measures often extend beyond suspected terrorists to those merely associated with them, imposing restrictions on the basis of guilt by association. In the context of armed conflict, such individuals with no direct involvement in terrorist activity should not automatically be labelled as legitimate targets under IHL.

Even where terrorist violence occurs in the context of an armed conflict and triggers the application of IHL, international human rights law (IHRL) continues to apply concurrently, with the right to life remaining protected rather than displaced. While many human rights protections under instruments such as the International Covenant on Civil and Political Rights (ICCPR) may be limited in times of emergency, this is permissible only where it is strictly necessary and proportionate as provided under Article 4. However, States have at times invoked a state of emergency on the basis of terrorism to justify extensive limitations on rights, including fair trial guarantees, and access to legal aid and the use of military courts. Such measures risk exceeding the limits permitted under international law and undermining due process guarantees.

More critically, counter-terrorism measures may also affect rights from which no derogation is permitted. The prohibition of torture and ill-treatment, recognised as absolute (*jus cogens*) under the Convention Against Torture (CAT), is particularly vulnerable in counter-terrorism contexts, especially during interrogation, detention, and extradition of terrorism suspects. Under Article 4(2) of the ICCPR no derogation is permitted from core rights, including the right to life in Article 6 and the prohibition of torture or cruel, inhuman or degrading treatment or punishment in Article 7. In practice, however, these protections have been undermined where States adopt narrow interpretations of what constitutes torture. An example of this includes the 'Torture Memos' issued by the United States Office of Legal Counsel after the 11 September 2001 attacks, which enabled the use of 'enhanced interrogation techniques' by domestically 'legalising' an erosion of even absolute rights.

More broadly, contemporary counter-terrorism practice demonstrates a trend towards expanding legal mechanisms for addressing terrorism in EU, with foreign terrorist fighters increasingly being prosecuted for both terrorism-related offences and core international crimes.

What Specific Challenges Arise Regarding Terrorism Allegations and Refugee Protection?

Terrorism allegations present particular human rights challenges in refugee protection because they lie at the intersection of national security concerns and the protection of individuals fleeing persecution. International law

addresses these cases through a layered framework, in which exclusion under refugee law coexists with protection against refoulement under international human rights law.

Under the 1951 Refugee Convention individuals who have committed serious international crimes or non-political crimes may be excluded from refugee status pursuant to Article 1F. Although terrorism is not expressly defined in the Convention, certain acts that domestically constitute 'terrorism' may fall within Article 1F.

However, the application of these exclusion provisions is complex. While the Convention protects those persecuted for political activities, terrorism allegations often assert political motives. This requires careful distinction between acts that constitute legitimate political activity and those amounting to non-political heinous crimes. The UN High Commissioner for Refugees has consistently stressed that exclusion of a person meeting the definition of 'refugee' under the Convention is an exceptional measure, requiring a restrictive interpretation and clear evidence.

The Convention also enshrines the principle of non-refoulement in Article 33(1), prohibiting the return of individuals to places where they face persecution. Nevertheless, the Convention allows limited exceptions under Article 33(2) where there are 'reasonable grounds' to regard an individual as a danger to national security or the individual has been convicted of a serious crime.

Nevertheless, beyond the Convention, international human rights law (IHRL) provides additional, and in some respects, almost absolute protections against removal. Articles 6 and 7 of the ICCPR and Article 3 of the CAT explicitly prohibit extradition or expulsion to a real risk of torture or other irreparable harm. This protection admits no exception as affirmed by the European Court of Human Rights in Soering v the United Kingdom. This is widely regarded as reflecting customary international law and, in relation to torture, recognized as a peremptory norm (jus cogens).

Thus, even where a person is excluded from refugee status or falls within an exception to non-refoulement under the Convention, States may nevertheless be prohibited from returning that individual under IHRL. In practice, this creates a persistent legal tension: individuals may be denied refugee status on security grounds yet remain protected from removal, resulting in their continued presence in the host State, often through detention or prosecution, without formal refugee status.