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MB University, Serbia

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Medimurje University of Applied Sciences in Cakovec, Croatia



Book of Proceedings

127th esd Belgrade 2025

ECONOMIC AND SOCIAL DEVELOPMENT IN BIPOLAR AND MULTIPOLAR ENVIRONMENT

Editors:

Zivanka Miladinovic Bogavac, Nedjo Danilovic, Milos Stankovic, Sandra Raquel Alves



ISBN 978-953-6125-34-0



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May, 2025

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Title ■ Economic and Social Development in Bipolar and Multipolar Environment (Book of Proceedings)

Editors ■ Zivanka Miladinovic Bogavac, Nedjo Danilovic, Milos Stankovic, Sandra Raquel Alves

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Publishing Editor ■ Domagoj Cingula

Publisher ■ Design ■ Varazdin Development and Entrepreneurship Agency / MB University, Serbia / Faculty of Management University of Warsaw, Poland / Faculty of Law, Economics and Social Sciences Sale - Mohammed V University in Rabat, Morocco / Ecole Nationale de Commerce et de Gestion de Tanger - Abdelmalek Essaadi University, Morocco / GOVCOPP - University of Aveiro, Portugal / Medimurje University of Applied Sciences in Cakovec, Croatia.

Printing ■ Online Edition

ISBN ISBN 978-953-6125-34-0

The Book is open access and double-blind peer reviewed.

Our Books are available for download in a PDF format from the Economic and Social Development Conference website: <http://www.esd-conference.com>

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COMPARATIVE ANALYSIS OF THE PROBLEM OF DEFINING THE CRIMINAL OFFENSE OF TERRORISM IN INTERNATIONAL LAW

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ABSTRACT

The issue of defining terrorism as a criminal offense in international law raises numerous controversies, and recent efforts to reach a consensus remain challenging and complex. This article presents a comparative analysis of different approaches to defining terrorism within the framework of international legal order. Taking into account various documents and conventions, such as the UN Convention on Terrorism and General Assembly resolutions, the article analyzes the issues that arise in attempts to establish a globally acceptable uniform definition. The article also considers the differences between legal systems and the influence of political interests on the definition of terrorism, as well as the legal consequences stemming from various conceptual approaches. The primary aim of this paper is to examine the shortcomings of international law and propose potential solutions that could contribute to greater legal clarity and effectiveness in the global fight against terrorism.

Keywords: *terrorism, international law, definition of terrorism, criminal offense, legal comparison, legal systems, global consensus.*

1. INTRODUCTION

The first international conference for the unification of criminal law was held in November 1927, during which the principle of universal jurisdiction for certain crimes against international law was adopted. Article 6 of the Resolution lists seven acts that should be classified as crimes regardless of the country of commission or the nationality of the perpetrator, provided they were committed abroad. The fifth act refers to the intentional use of means that cause general danger (V. I Conference, 1929). This act was included in the list of crimes *du droit des gens* by the conference participants, even though the term "terrorism" was not explicitly used. With its three characteristic features—means, general danger, and intent—it would later become the foundation for defining terrorism at subsequent international conferences, where it would be treated as a terrorist crime (Jakovljević, 1997). Although the issue of terrorism was discussed within international organizations such as the League of Nations before World War II, it only became a central issue after the tragic terrorist attack at the 1972 Munich Olympic Games. At that time, a group of eight Palestinian terrorists stormed the Olympic village and took nine Israeli athletes hostage. During a rescue attempt by German security forces, all nine hostages and five of the kidnapers were killed (Milošević, 2009). The first UN resolution on terrorism was adopted in 1972.

After three years of work on clarifying the causes of this phenomenon and addressing its key issues, the second (1976) and third (1977) resolutions were adopted. These resolutions, however, did not fully resolve the issue of defining terrorism and drawing a clear line between terrorist acts and other prohibited actions (UN Document A/RES/48/122).

2. THE CONCEPT OF THE CRIMINAL OFFENSE OF TERRORISM IN INTERNATIONAL INSTRUMENTS

Terrorism is described as an act of violence carried out by groups or individuals, rather than actions by states against their citizens or other states, whether independently or with the support of certain organizations. This distinction aligns the definition of terrorism primarily with individual criminal acts, allowing for a contemporary formulation of terrorist criminality. Since this resolution, the United Nations has shifted focus from the state as a terrorist actor to terrorist groups as the main perpetrators of terrorist activity (Milošević, 2009). In the same year, a resolution was adopted that provided a modern definition of terrorism (UN Document A/RES/49/60). This resolution defines terrorism as: "a criminal act intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes, which is in any circumstance unjustifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature." Although this definition is not legally binding, it represents the first institutional definition of terrorism provided within the UN framework. The elements expressed therein reflect the triumph of viewpoints advocating for the classification of terrorism as an individual criminal act, primarily committed by terrorist groups rather than states. Furthermore, the subjective element of the offense requires the presence of *animus terrorandi*, and ultimately indicates a specific goal — the achievement of political demands by the perpetrators. Nevertheless, this definition of the criminal act is quite broad, as it categorizes as terrorism any act committed with the intention of instilling fear in the public or a group of people, provided it is committed with the aforementioned intent. The final part of the definition is more declarative and condemnatory in nature and should not be viewed as a constituent element of the crime. If interpreted as such, it could lead to confusion, as this formulation might be misinterpreted to suggest that acts are not terrorist if they can be justified by the listed reasons (Milošević, 2009). Within the UN framework, the International Convention for the Suppression of the Financing of Terrorism was also adopted, which, according to some authors, contains an implicit definition of terrorism. Article 2, paragraph 4 of this Convention defines terrorism as: "any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such 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" (Cassese, 2005).

3. INTERNATIONAL CONVENTIONS ON THE CRIMINAL OFFENSE OF TERRORISM

The issue of terrorism presents itself to international law as a matter of creating legal concepts and applying norms that would prevent certain terrorist acts and mitigate or eliminate their consequences on the relations between subjects of international law. International law has had to establish criteria by which certain acts, considered terrorist in nature, could be suppressed through joint action by states. The current structure of international anti-terrorism legal instruments consists of:

- universal agreements and conventions aimed at the prevention and suppression of international terrorism;
- instruments adopted at the regional level;
- declarations that have enabled a legal framework for international action on terrorism prevention and suppression in recent years (Đurić, 2008).

Whether by coincidence or design, the excessive freedom in interpreting international terrorism allows certain powerful states to define terrorism according to their current geopolitical needs. The aforementioned paradoxes are not accidental and reflect the official policies of those states. Globalization has already significantly transformed terrorism, and the importance of international conventions on terrorism is emphasized at various international forums that discuss the global frameworks of political action. This global framework implies the construction of international mechanisms for addressing problems posed by certain groups that use violence to achieve national, religious, or other objectives in situations where other forms of political struggle are not viable. To achieve effective coordination in understanding and combating terrorism, it is necessary to harmonize efforts at the global level through the adoption of various international conventions on terrorism. These conventions, which focus on behaviors, materials, and individuals, become relevant and represent a solid foundation for further legal elaboration on terrorism. Seven existing conventions prohibit specific types of conduct involving particular acts on airplanes, acts against civil aviation, maritime navigation safety or the safety of fixed platforms, as well as violence at civilian airports, aircraft hijackings, and bombings. These conventions criminalize certain behaviors at specific locations. One of these, the *International Convention for the Suppression of Terrorist Bombings*, criminalizes acts in public spaces that result in loss of life, injuries, or significant damage. The *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* prohibits actions against individuals essential to maritime safety (Taylor, 2003:205). Other categories of conventions focus on the protection of individuals and the handling of dangerous materials.

Two conventions prohibit actions against certain individuals to prevent hostage-taking and ensure the safety of internationally protected persons. Both documents apply to individuals—either civilians or personnel of national or international organizations. The protection of international personnel includes the criminalization and punishment of certain acts (e.g., murder, kidnapping, attacks). Acts against individuals and official premises are addressed by the same convention, with the location's importance defined in relation to the specific individual. A third group of conventions addresses specific materials: biological weapons and toxins, nuclear materials, plastic explosives, and chemical weapons (Taylor, 2003:206). The *Biological Weapons and Toxins Convention* prohibits states from transferring such weapons to any recipient. The *Convention on Nuclear Materials* criminalizes the unlawful possession, use, transfer, theft, and threats involving such materials. The *Convention on Plastic Explosives* does not introduce new offenses subject to prosecution or extradition but requires states to adhere to obligations within their territories. In contrast, the *Convention on Nuclear Materials* mandates prosecution or extradition of perpetrators as well as mutual legal assistance in judicial proceedings. Finally, the *Convention on Chemical Weapons* prohibits the development, production, acquisition, stockpiling, retention, transfer, and use of chemical weapons (Taylor, 2003:207). Sources of international anti-terrorism law are not limited to texts of "hard law." In addition to the conventions, it is necessary to mention a large number of *soft law* texts, including resolutions and other decisions adopted within the United Nations and by various regional organizations. By their scope and comprehensiveness, these often exceed the volume and substance of UN and regional conventions. The primary goal of the conventions is to establish a framework for international cooperation among states and to prevent or suppress international terrorism. All conventions are intended for international application, requiring the presence of an international element in the act committed. Terrorism conventions are aimed at creating a network of cooperation among states to ensure that all terrorists are located, prosecuted, and punished.

4. THE LEAGUE OF NATIONS

The frequency of attacks on prominent European figures prompted an initiative within the League of Nations to draft an international convention for the prevention and punishment of terrorism. The assassination in Marseille of the Yugoslav King Alexander, which involved foreign elements in the planning and execution of the crime, served as the catalyst for intensifying the drafting process of such a convention. At the request of the Yugoslav government, the Council of the League of Nations held a session from December 7 to 10, 1934. At the end of this session, on December 10, 1934, the Council adopted a resolution condemning the assassination in Marseille and emphasized that every state is obligated not to support or tolerate any terrorist activities on its territory that are politically motivated. The Council established a committee of eleven experts tasked with drafting a preliminary version of an international convention on the suppression of crimes committed for political terrorism. This committee met in May 1935 and again in January 1936. By October of that year, the committee's draft texts were accepted. On October 10, 1936, the Council of the League of Nations adopted a resolution emphasizing that every state must refrain from any interference in the political life of another state. It also expressed the opinion that the future international convention should include the following key elements:

1. Prohibition on any state allowing the preparation or execution of attacks on the life and freedom of persons involved in the operation of foreign public authorities and services within its territory;
2. The establishment of cooperation between states to ensure effective prevention of such attacks; and
3. Guarantee of punishment for terrorist attacks that contain an international element—whether in terms of the location of planning or execution, the nationality of the participants, or the victims involved (Jakovljević, 1997).

Through its resolution of May 27, 1937, the League of Nations Council convened an international conference on terrorism for November 1, 1937, in Geneva. This conference, held from November 1 to 16, gathered representatives from 35 countries. The first convention condemning terrorism was signed by 24 states, while the second convention, which proposed the establishment of an International Criminal Court to prosecute perpetrators of terrorist acts, was signed by only 13 states. These conventions never entered into force, as they were never ratified. It is assumed that ratification did not occur primarily because the very concept of terrorism was not defined with sufficient precision in the texts. Moreover, the fact that only 13 out of 35 states voted in favor of establishing the International Criminal Court illustrates the unwillingness of member states to delegate aspects of their national criminal jurisdiction concerning such crimes. The League of Nations' conventions on terrorism reflected the dominant forms of terrorist acts of that historical period, which mainly included assassinations—unsurprising given the colonial division of the world and the presence of foreign authorities in colonial territories held by major powers. Another major reason the conventions never came into force was the onset of World War II, which itself was triggered by dissatisfaction with the uneven distribution of colonial possessions—particularly by Germany, which felt wronged and excluded.

5. THE UNITED NATIONS ORGANIZATION

Modern issues of terrorism escalated in the context of conflicts in the Middle East, particularly those initiated by the Palestinian side. A wave of terrorist acts gained particular intensity during the 1960s and 1970s.

This form of terrorism was first manifested in assassinations of opponents on Israeli territory (such as the one in Lod), and at times through airplane hijackings (for example, the hijacking of a Boeing 707 operated by the American company TWA on the Tel Aviv–New York route, after takeoff from Frankfurt, when the aircraft was forced to land at the abandoned Dawson’s Field airstrip near Zarqa, five kilometers north of Amman). The subsequent Palestinian armed struggle spread to the territories of foreign states; one such case was the tragic attack on Israeli athletes during the 1972 Munich Olympic Games (Đurić, 2008). As previously mentioned, this event marked the beginning of a more intense effort to find ways to prevent and combat terrorism under the auspices of the United Nations—similar to how, many years later, the attack on the Twin Towers on September 11, 2001, would become a turning point in the fight against terrorism led by the United States and the United Kingdom. Before and after the wave of terrorist activity, the United Nations adopted numerous conventions on international terrorism. Over a period of four decades, 21 international anti-terrorism conventions were adopted—13 with universal scope and 8 with regional application (Đurić, 2008). Only a few of these conventions will be discussed in more detail here, as a full elaboration of all would constitute a study in itself. Two have been selected for closer analysis because they reflect trends in terrorist activity at the time of their adoption and remain highly relevant today: the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, and the *International Convention Against the Taking of Hostages*. The *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* covers the fundamental aspects of preventing and punishing acts of terrorist violence directed at individuals who, under international law, enjoy special protection. The Convention’s scope seems limited, as it applies only to offenses committed against a specific group of persons, even though such offenses are merely one form of international terrorism. Article 1 of the Convention defines the categories of persons entitled to special protection. According to paragraph 1(a) of this article, these include heads of state—including any member of a collective body performing the function of head of state under a nation’s constitution—heads of government, and ministers of foreign affairs (Jakovljević, 1997). The right to protection also extends to other officials and representatives of states, as well as members of their families. Article 2 is of particular importance to this analysis, as it lists the intentional criminal acts that must be prevented or punished and for which states are obligated to provide special protection to persons covered under Article 1. These offenses include murder, kidnapping, or other attacks against the person or liberty of protected individuals; violent attacks against official premises, private residences, or means of transport used by such persons, which may endanger their safety or freedom (Article 2, paragraph 1, subparagraphs a and b). Beyond specifying the criminal offenses of a terrorist nature, Article 2 is also significant because it introduces the principle of universality. This principle obliges all states parties to the Convention to consider the acts listed therein as crimes under their domestic criminal law, regardless of where they were committed (Jakovljević, 1997). As a result, each state party is obligated to prescribe appropriate penalties for these offenses, proportionate to their gravity. Notably, the Convention emphasizes the subjective element of intent—that is, the perpetrator’s awareness that the victim is an internationally protected person and their willingness or acceptance of the consequences of their actions against such a person. The *International Convention Against the Taking of Hostages* was adopted on December 17, 1979, by the UN General Assembly. Article 1 defines acts related to the crime of hostage-taking, thereby setting the Convention’s scope. According to Article 1(1), the crime of international terrorism by hostage-taking is committed by anyone who seizes or detains another person and threatens to kill, injure, or continue detaining them in order to compel a third party—such as a state, international organization, individual, or group—to do or abstain from doing something as an explicit or implicit condition for the hostage’s release (Jakovljević, 1997).

The Convention places particular emphasis on the hostage as the victim of the crime, focusing on their protection and relief. The importance of both conventions lies in their articulation of some general characteristics of international terrorism, such as: the personal security and freedom of individuals, specific criminal behaviors (murder, assault, kidnapping, unlawful detention, coercion), the passive subject (innocent victims), and the subjective element—intent. These United Nations conventions were primarily developed by the General Assembly, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), and the International Atomic Energy Agency (IAEA).

6. THE COUNCIL OF EUROPE

Since its establishment in 1949, the Council of Europe has been committed to promoting human rights, the rule of law, and pluralistic democracy, and is determined to fight terrorism, which fundamentally rejects these three values. The Council has been active in this area since the 1970s, but efforts intensified after the events of 2001. As a regional organization, the Council of Europe is committed to implementing UN Security Council Resolution 1373 (2001) by providing a platform for discussing regional standards and best practices, promoting their adoption, and offering assistance to member states to strengthen their capacity to combat terrorism. The Council of Europe's activities in the fight against terrorism are built upon three pillars: Strengthening legal measures against terrorism; Protecting core values; Addressing the root causes of terrorism. The Council has established two intergovernmental expert committees to coordinate their legal actions against terrorism: the Multidisciplinary Group on International Action against Terrorism (GMT), formed in 2001 to revise the European Convention on the Suppression of Terrorism (1977), and the Committee of Experts on Terrorism (CODEXTER), which replaced the GMT in 2003 to oversee the implementation of anti-terrorism activities identified by the GMT.

7. THE ORGANIZATION OF AMERICAN STATES (OAS)

During the 1960s and 1970s, a new form of international crime emerged—criminal acts directed against diplomats and officials of foreign countries. As Przetacznik notes, in just three years, over twelve incidents of kidnapping and violence against diplomatic personnel occurred in six regions of the Western Hemisphere, nine of which involved U.S. citizens (Przetacznik, 1973). These incidents sparked global concern and influenced the atmosphere within the Organization of American States (OAS). The Permanent Council of the OAS, in its resolution of May 15, 1970 (Resolution SP/Res. 5), condemned all acts of terrorism and kidnappings, classifying them as crimes against humanity. Earlier, the Inter-American Commission on Human Rights of the OAS General Assembly had also condemned terrorist acts committed for political or ideological reasons in its resolution of April 23, 1970 (OAS/ser. L/V/II.). Finally, on June 30, 1970, the OAS General Assembly, in its Resolution 4 (Res. 4/I-E/70), strongly condemned all terrorist acts as crimes against humanity. This resolution urged states to criminalize such acts in their domestic legislation and tasked the Inter-American Juridical Committee with drafting a convention on terrorism, kidnapping, extortion, and attacks against persons that have international implications. On February 2, 1971, this draft became the Washington Convention on the Prevention and Punishment of Acts of Terrorism as Crimes Against Persons and Related Extortion when such Acts have International Significance, also known as the American Convention on Terrorism. While the Convention addresses specific terrorist behavior, it does not substantially contribute to forming a general definition of terrorism.

However, it identifies key characteristics:

- The legal interests protected—life and bodily integrity;
- Specific actions—kidnapping, murder, and other violent attacks;
- The passive subject—individuals entitled to special protection under international law;
- The classification of such acts as ordinary crimes of international significance (Jakovljević, 1997).

A turning point in hemispheric cooperation against terrorism came with the September 11, 2001 attacks in New York and Washington, which galvanized Latin American governments to align their positions with those of the United States. It is also important to consider that, in 2000 alone, out of 247 recorded terrorist incidents globally, 28 occurred in Latin America—25 in Colombia, 1 in Peru, and 2 in Mexico. The U.S. administration requested Latin American governments to investigate possible roots of Islamic terrorism in the region, especially groups like Hezbollah, Islamic Jihad, and others suspected of having bases in several Latin American countries. The first step toward developing a new continental strategy for combating international terrorism was taken within the OAS. On September 21, 2001, the OAS Permanent Council adopted a Ministerial Resolution on Strengthening Cooperation in the Hemisphere to Prevent and Eradicate Terrorism (RC.23/RES.1/01). This was followed by Resolution RC.24/RES.1/01, titled The Terrorist Threat in the Americas, adopted at the XXIV meeting of the Ministers of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty). The Inter-American Committee against Terrorism (CICTE) was especially active, and on October 15, 2001, during a session in Washington, it adopted a special declaration on combating terrorism, emphasizing that the 9/11 attacks were attacks on all OAS member states.

From all this, it can be concluded that the OAS was forward-looking in developing international legal instruments from the 1970s onward. Today, the link between organized crime—especially drug trafficking in Latin America—and international terrorism is undeniable. Crimes such as kidnappings, assassinations of government officials, and bombings remain persistent across Latin America. In response, the OAS adopted the following anti-terrorism strategy:

- Disrupting terrorist organizations and preventing attacks;
- Isolating and banning the operations of suspicious groups;
- Controlling and disrupting communication channels between Latin American criminal-terrorist networks and terrorist organizations in the Arab world;
- Strengthening all capacities for fighting terrorism.

8. CONCLUSION

By analyzing the content of these international legal documents—particularly conventions and resolutions—it can be concluded that their defining feature is the element of *foreignness*: the offender fleeing abroad, the criminal act producing effects in a foreign country, or the victims being foreign nationals. This set of elements limits the number of states that can or should prosecute perpetrators of terrorist acts, and the protection of global international interests is achieved through the actions of affected states (Gaćinović, 2008). A notable characteristic of some conventions is that they offer *value-free* definitions of certain types of criminal acts—meaning they do not consider the motive of the offender. In this way, the conventions cover acts that could be committed without actual terrorist motives (e.g., political motivation or *animus terrorandi*, which is a fundamental component of terrorism). Such vague definitions further obscure the issue of defining terrorist activity itself.

This vagueness creates the possibility of selective, one-sided interpretations of what constitutes a terrorist act, opening the door for acts of terrorism to be labeled as ordinary crimes—and vice versa. Most conventions adopted under the auspices of the United Nations share the common feature of ensuring that the perpetrator is punished. However, they stop short of mandating uniform and obligatory extradition. This allows signatory states to preserve the right of asylum and avoid outcomes that may be considered unjust or unacceptable to their public opinion. International legal anti-terrorism documents still lack precision regarding the methods for combating international terrorism. Many were adopted only after terrorist attacks had already occurred, focusing on consequences rather than causes and motives, which are crucial for defining terrorist acts and implementing appropriate state measures against perpetrators or those who threaten violence. The effectiveness of existing anti-terrorism conventions can be assessed from at least two perspectives:

1. Some states have either not ratified these instruments at all, or if they have, they do not "seriously implement" them;
2. The rise of suicide terrorism challenges the core premise that conventions aid in identifying, arresting, and prosecuting perpetrators.

While good legislation is essential, so is effective enforcement. Unfortunately, both are often lacking in practice. For instance, the *Hostage-Taking Convention* was adopted back in 1979, but as of today, only 110 countries have ratified it, despite hostage-taking remaining a common tactic among terrorists. Even more contentious is the implementation of these conventions due to differing national interpretations of political violence, double standards, and an unwillingness to label an act as terrorism regardless of the perpetrator (Đurić, 2008). Clearly, establishing conventions with quasi-universal jurisdiction—and thus increasing the chances of apprehending and prosecuting terrorists—has not reduced violence. The assumption that awareness of the legal consequences and global jurisdiction would deter potential terrorists has become unrealistic, especially with the rise of suicide terrorism. The number of individuals who are inspired, trained, or manipulated into sacrificing their own lives to commit acts of terrorist violence continues to grow. The international legal documents analyzed here were intended to serve as a foundation for legal, political, and moral assumptions in countering modern terrorism. Unfortunately, this goal has not been met, largely because the ideological and political debates inherited from past eras—about whether terrorism is "useful" or "harmful"—have not been resolved. A consistent and relevant definition has yet to be established that can clearly delineate between terrorism, guerrilla warfare, sabotage, armed rebellion, and liberation struggles. Terrorist organizations can exploit these legal ambiguities to avoid being classified as "terrorists," thereby securing protection or exemption in specific legal or political contexts. Determining the exact number of terrorist organizations in the world is extremely difficult, as the situation is constantly changing. New groups may emerge or dissolve, and some may shift their goals or methods. Moreover, different countries and international organizations may apply varying criteria when classifying groups as terrorist. It is estimated that there are over one hundred active terrorist groups globally. These range from small local cells to large global networks like **Al-Qaeda**, **Islamic State (ISIS)**, **Hamis**, **Boko Haram**, and many others. These groups operate in various regions, including the Middle East, Africa, South Asia, Europe, and Latin America. Some have global ambitions and maintain connections with other radical organizations. So, although the exact number of terrorist groups is hard to determine, estimates suggest there are several hundred such groups worldwide, depending on the region and context (*Counter Terrorism Policing, UK, 2024*). The issues surrounding the effectiveness of anti-terrorism conventions are not unique—they reflect the broader limitations of international legal instruments. However, this criticism should not be taken as an argument against the need for universal anti-terrorist agreements.

On the contrary, it should motivate the creation of a **general convention on terrorism**, which would consolidate all existing conventions into one updated document—eliminating gaps and ambiguities—while still preserving the relevance of earlier instruments.

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