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The Conventionality Control of the Definition of Terrorism and its Consequences in the National Legal System

Conventionality Control Of The Definition Of Terrorism And Its Consequences In The Brazilian Legal Order

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Summary

The terrorist threat has become present throughout the globe. Previously confined to certain corners of the world, it is now present and relevant in the policies of various countries, not only as a national threat but also transcending the borders of sovereign states and affecting all human and state relations. Therefore, this article aims to analyze the definition of terrorism conferred by Law No. 13.260/2016 and whether the same criterion is used internationally, as well as whether a possible incident in Brazil could be framed not only by its legal definition but also by the definitions set forth in international treaties to which the country is a signatory.

The methodology used was qualitative, highlighting the bibliographic survey and literature review. The article is structured by understanding the phenomenon of terrorism, followed by the national definition of terrorism, analyses of treaties on the subject to which Brazil is a signatory, the confluence of the national model in terms of conventionality control, followed by final considerations.

Keywords: Conventionality Control. Definition of Terrorism. Criteria regarding organization and action.

Abstract

The terrorist threat has become present throughout the globe. Previously confined to certain corners of the world, it is now present and relevant in the policies of various countries, not only as a national threat but also transcending the borders of sovereign states and affecting all human and state relations. Therefore, this article aims to analyze the definition of terrorism conferred by Law No. 13.260/2016 and whether the same criterion is used internationally, as well as whether a possible incident in Brazil could be framed not only by its legal definition but also by the definitions set forth in international treaties to which the country is a signatory. The methodology used was qualitative, highlighting bibliographic research and literature review. The article is structured by understanding the phenomenon of terrorism, followed by the national definition of terrorism, analyzes of treaties on the subject to which Brazil is a signatory, the confluence of the national model in the context of conventionality control, followed by final considerations.

Keywords: Conventionality Control. Definition of Terrorism. Criteria regarding organization and action.

INTRODUCTION

Throughout history, the concept of terrorism has undergone numerous transformations.

Depending on the context in which it was embedded, it could take on forms that marked the

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revolutionary, extremist, or intolerant manifestations of the time; therefore, it is an arduous task to

To conceptualize the concept of terrorism in a labeled way, since such a phenomenon has a basis.

Its historical and cultural significance is so vast that no single definition can adequately encompass all of its facets.

varieties (Laqueur, 2003).

Terrorism is a multifaceted issue that has always been present throughout history. It causes

Fear, destruction, and irreparable losses. One of its facets is extreme violence; terrorism seeks...

to spread panic, and above all, to impose their ideologies around the globe, whether through the use of

The indiscriminate use of force or a highly persuasive discourse is the focus of this research.

This is relevant because, with the increase in attacks around the world, it is crucial to understand the...

The importance of this phenomenon and its consequences for the national legal system. Therefore,

The central question of this research is: Can conventionality control be used to resolve the

Is the definition of terrorism in Brazil obscurantist?

In this sense, the overall objective of this article is to seek the definition of terrorism conferred by...

Law No. 13.260/2016, and verify if the national criterion is the same as that used internationally.

The specific objectives are: a) to seek to encompass how a possible incident in Brazil is capable of

to conform not only to its legal definition, but also to the definitions set forth in the treaties.

international agreements to which the country is a signatory; b) verify whether these criteria are aligned with the

international definitions, since Brazil is a signatory to treaties and conventions that deal with

combating terrorism; and (c) confirming whether these treaties establish general principles for combating terrorism.

to terrorism on a global level.

Therefore, it is essential to analyze whether the definition of terrorism foreseen in Brazilian legislation is correct.

It encompasses all the characteristics and elements present in the international definitions. This will guarantee

that the country complies with the standards established in the international community, and

assimilation of the same in the context of conventionality control, as well as considering the

The importance of international cooperation in combating terrorism, as this is fundamental to...

To prevent acts or attacks, especially in an increasingly interconnected world.

1. METHODOLOGY

The methodology used comprised a qualitative approach, highlighting the

A bibliographic survey and literature review will be conducted, as the bibliography that has been compiled will be analyzed.

public, especially that of scientific articles, journals, legislation and international treaties.

This will initially address the historical phenomenon of terrorism up to the arrival of the world

contemporary, in which the national definition of terrorism will be verified, subsequently it will be

An analysis was made of the treaties on the subject to which Brazil is a signatory, in order to

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to verify the convergence of the national model in the context of conventionality control, followed by Final considerations.

Given the nature of the research, which is primarily documentary, it was not necessary to adhere to...

Ethical and legal issues arise, since there was no interference with human sources.

Furthermore, the bibliographic references adopted for the research were compiled with the assistance of...

The research tools Google Scholar, Scopus, and SciELO helped in gathering references. current and relevant. The internet sources cited and referenced in the article are... available as per the respective links presented in the reference listing.

2. The Phenomenon of Terrorism

When examining cross-border phenomena such as terrorism, one must bear in mind... because threats cannot always be known upfront since:

The postmodernist influence has relativized the usefulness of traditional political cartography for reflect in all your expression the threats and risks that can be observed in the scene contemporary international, whose dominant notes are dynamism and heterogeneity. (Bartolomé, 2014, p. 139)

Consisting of the erosion of the fleeting dichotomy between exterior-interior, enemy-ally, making it difficult to generalize threats and distinguish between them within internal spheres and external, since its transactional dynamics end up breaking the concept of on a horizontal plane. state borders. Therefore, it is necessary to understand what the threats are and how they affect these areas. They act in order to devise both preventive and repressive coping methods, because "putting Names to what hurts us helps us defend ourselves" (Montalbán, 1999, p.15).

Defining terrorism is extremely difficult, since it is constituted by a This phenomenon is of transnational proportions and influences environments in different ways; there is still no... international consensus regarding the limits of its conceptualization.

The first years after Christ are traced as the origins of the phenomenon of terrorism (63-73 AD) with the action of the Sicarii (Laqueur, 2003), who used very violent methods to expel The Romans in Palestine, for example, carried out public assassinations to force moderate Jews to oppose the occupation and the Romans to withdraw (Maskaliunaite, 2002). Let's look at Hudson. (1999, p. 12):

Beginning in 48 BC, a sect of Jews called the Zealots carried out campaigns. terrorists to force an insurrection against the Romans in Judea. These campaigns included the use of assassins who infiltrated cities controlled by the Romans and stabbed them Jewish collaborators or Roman legionaries, armed with a sica (dagger), kidnapped members of The Temple Guard personnel would either demand ransom or use the poison on a large scale. The Zealots' justification for killing other Jews was that the deaths demonstrated the

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consequences of the immorality of collaborating with the Roman invaders and that the Romans did not They could protect their Jewish collaborators.

Another milestone in this phenomenon occurred in the 18th century, during the time of the Revolution. France, under the leadership of the revolutionary Robespierre, during which France underwent a turbulent period known as the "Reign of Terror," a phase marked by persecution. Religious and political conflict, wars, and executions by guillotine. The origin of the term "Terror" dates back to the period... in which the Committee of Public Safety took control of the country (Hoffman, 1998).

The word terrorism was coined by the Jacobin revolutionaries because of their actions. in radical ways (Coelho, 2011) that used it positively to demonstrate their counterattack to the regime's opponents (Laqueur, 2003). According to Cronin (2002), the terrorist acts committed against French citizens, along with the revelation of the tragic fates of Counter-revolutionaries in Robespierre's courts, such as executions by guillotine in public squares. Public events had a significant impact on the population, creating a climate of terror in the streets. French.

Furthermore, the end of the 19th century was marked by a phase of intellectual movement, and the beginning of the 20th century was marked by the rise of industry and capitalism; these movements culminated... Changes throughout the structure of society, but also, stimulated the reaction of terrorist groups. who were opposed to the new ideas of the Enlightenment, democracy and nationalism, according to (Laqueur, 2003). Therefore, there was a greater expansion of the practice of terrorism. From the perspective of these groups, the acts of Terrorists had the power to intimidate and remove rulers from power.

Therefore, after World War I, which was triggered by the assassination of the heir... The removal of Archduke Ferdinand from the Austrian throne, caused by the terrorist group Black Hand, is now possible. to identify the influence of foreign governments on terrorist activities in other countries (Laqueur, 2003). In 2003, it is noteworthy that at this stage terrorism ceased to be seen merely as a movement. According to Hoffman (2006), revolutionary means it is characterized by the existence of bases in other parts of the globe, through the use of time bombs, transportation systems, and brutal actions. committed to achieve their goal.

Terrorism emerged as a method of confrontation, primarily during conflicts. disputes between the capitalist and socialist blocs resulted in the creation of various organizations. terrorists who were funded by two powers, on one side was the United States of America, on one side, the capitalist bloc, and on the other, the Soviet Union, the socialist bloc (Hoffman, 2006).

The war between the blocs triggered a global fight against terror. An example of this is the Al-Qaeda organization, led by Osama Bin Laden, which initially It was funded by the United States, however, it later turned against the US government. American, and carried out the attack against the Twin Towers, a symbol of September 11, 2001.

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American supremacy. This attack altered how people perceived security and...

international relations.

From the 1980s to the present day, according to Field (2009), terrorist groups have already

They were not driven by a set of negotiable political demands, but rather by fanaticism.

Religious. Religion becomes a major theme and motivation for the ideology of terrorism, especially in

The region where the Middle East is located, for example, Gush Emunim, which carried out attacks.

against Palestinian civilians in the West Bank (Hoffman, 2006).

The New Terrorism Theory, as defined by Hoffman (2006), envisions religious belief.

as one of the main elements of the disputes. Furthermore, the new terrorism has undergone changes in the era.

The information age, under cybernetic influence, has caused changes in the way we act.

of these terrorist organizations, both in their mode of combat and in the way they execute their attacks.

recruitment. The terrorists no longer imposed their will directly through the armed forces, but through

Conversely, in the information age, the primary weapon is persuasion and altering beliefs.

target audience on topics related to commitment to the cause (Kydd and Walter, 2006).

Nowadays, it's no longer necessary to travel to the Middle East to be influenced by...

The ideologies preached there have been facilitated by access to the internet; for example, there is...

if the armed group Islamic State, which has used social media to spread its ideologies

and to recruit soldiers for the cause of the "Holy War," which spread terror and fear throughout the world.

Thus, terrorism works not only because it instills fear in target populations, but because it does

with governments and individuals responding in ways that aid the terrorist attack.

In this way, the change in the nature of terrorism, as well as the transformation, was captured.

of the ultimate goals. Over the years, the progression of the revolutionary power became apparent.

For the method of confrontation in war, and in the contemporary world, fanaticism has emerged.

religious and the manifestation of radical ideologies preached through cyber means, acting

in order to recruit followers around the globe.

3. NATIONAL DEFINITION OF TERRORISM

The Brazilian Constitution of 1988 includes in its article 4 the repudiation of terrorism and...

racism, as well as reinforcing this repudiation by enshrining terrorism as a crime in Article 5, item XLIII.

This crime is not eligible for bail and is not subject to pardon or amnesty, *verbatim*:

XLIII - the law will consider the practice of [the following] as crimes that are not subject to bail and are not eligible for pardon or amnesty.

torture, the illicit trafficking of narcotics and related drugs, terrorism, and those defined as

heinous crimes, for which the instigators, the perpetrators, and those who, being able to prevent them, are held responsible.

them, if they omit; (BRAZIL, 1988)

However, the Constitution does not regulate or define the crime of terrorism, nor does it provide any information.

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The classification of individuals or groups involved in this crime.

In 1990, the Law on Heinous Crimes (Law No. 8,072) equated terrorism with heinous crimes.

given the heinous nature of the crimes, the legislator attempted to foresee similar mechanisms of repression, such as the impossibility of... amnesty, pardon and clemency, in addition to the impossibility of release on bail.

In 2013, Law No. 12,850, which deals with the repression of organized crime, established in its Article 1, §2, item II, defines what constitutes a terrorist organization; however, the wording of this article was... amended in 2016 by Law No. 13.260, which provides "to terrorist organizations, understood as those aimed at carrying out legally defined acts of terrorism." This is how it was defined. terrorist organization.

On March 16, 2016, Law No. 13,260, known as the Anti-Terrorism Law, emerged as a way to address the outcry from the Brazilian and international community, considering that in this That year, Rio de Janeiro was chosen to host the Olympic Games, and there had been constant... threats of attacks against the population. According to Terenzi (2016), the Anti-Terrorism Law emerged under the This was a requirement of international organizations, which forced Brazil to implement the law, under penalty of sanction.

Until then, the rule governing this matter was Law No. 7,170/1983, which, in the words of Lasmar (2015) argued that this law would be controversial because it did not provide for a penalty corresponding to the seriousness of the act. It did not actually define what terrorism was, therefore, the legislator had to use analogy to... To define terrorist conduct, Law 13.260/16 was created with the aim of providing this definition.

Regarding this crime, Article 2 of the aforementioned law defines the practice as follows:

Article 2. Terrorism consists of the practice by one or more individuals of the acts foreseen in this... article, for reasons of xenophobia, discrimination or prejudice based on race, color, ethnicity and religion, when committed with the purpose of provoking social or widespread terror, exposing the danger to persons, property, public peace or public safety. (BRAZIL, 2016)

Still in article 2, the legislator specifies which acts are considered terrorism, *verbatim*.
literally:

§ 1. The following are acts of terrorism:

- I - to use or threaten to use, transport, store, carry or possess explosives, gases toxic substances, poisons, biological, chemical, nuclear or other substances capable of to cause damage or promote mass destruction;
- II – (VETOED);
- III - (VETOED);
- IV - to sabotage the operation or seize, with violence, serious threat to a person or using cybernetic mechanisms, for total or partial control, even if in a way temporary, means of communication or transport, ports, airports, stations railways or roads, hospitals, health centers, schools, sports stadiums, facilities public or local facilities where essential public services, generation facilities or power transmission, military installations, exploration facilities, refining and oil and gas processing and banking institutions and their service network;

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V - to attempt against the life or physical integrity of a person:

Penalty - imprisonment for twelve to thirty years, in addition to the penalties corresponding to the threat or the violence. (BRAZIL, 2016)

Law 13.260/16, in addition to defining terrorism and its acts, also addresses...

Investigative and procedural provisions, as well as a reformulation of the concept of a terrorist organization.

However, according to Aita (2017), the Anti-Terrorism Law does not mention terrorism crimes.

established in the international instruments of CICT/2002.

According to the Folha de São Paulo newspaper, the UN criticized the approval of the Anti-Terrorism Law. through a note from the Office for Security Affairs of the United Nations High Commissioner for Refugees United Nations for Human Rights, stating that the definitions are too vague and imprecise, which It does not comply with international human rights standards (Aita, 2017).

It should be noted that there is a lack of reference to terrorism offenses as defined in the legislation. International cooperation can result in gaps in the approach to and effective combating of this form of crime. A clear and precise definition of terrorism crimes is fundamental to guaranteeing the protection of rights. human resources, as well as to facilitate international cooperation in the fight against terrorism.

4. ANALYSIS OF TREATIES ON THE SUBJECT TO WHICH BRAZIL IS A SIGNATORY

Brazil, as a country whose foreign policy principles include sovereignty, asserting that all states have the authority to govern themselves within their borders, Autonomy, being able to make decisions without the control or influence of other States and without intervention, arguing that, as a rule, there should be no interventions in other States (Brazil, 1988), it is organized in order to strengthen diplomatic relations and not act in a belligerent manner towards the other states.

However, in a VUCA world, the need for states to adapt to uncertainties is also... Given the risks stemming from a multipolar world order, statesmen are required to... Convergence of actions against actions that have become odious and execrable anywhere in the world. (Martins, 2022). In this way, the aim is to diversify commercial and political partnerships, strengthening ties with various countries (Cervo, 2008), but mainly seeking regional integration with its Latin American neighbors and countries of the Global South politically through the South-South Cooperation model. South (Pinheiro, 2004).

With this international policy goal in mind, Brazil became a signatory from 1970 until... 2009, of several treaties that aim to create a joint action front, on the plan international treaties to suppress terrorist threats. These are the treaties that Brazil has ratified:

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Table of Treaties against Terrorism and References (Brazil)

Order	Treaty / Convention	Year (Original)	Reference in Brazil (Promulgation Decree)
1	Tokyo Convention	1963	Decree No. 66,520/1970
2	Hague Convention	1970	Decree No. 70.201/1972
3	Montreal Convention	1971	Decree No. 72,383/1973
4	Convention on Agents Diplomats	1973	Decree No. 3,167/1999
5	Convention on Hostages	1979	Decree No. 3,517/2000
6	Physical Protection of Materials Nuclear	1980	Decree No. 95/1991 (and Amendment: Decree 11,246/22)
7	Montreal Protocol (Airports)	1988	Decree No. 2,611/1998
8	Maritime Convention (SUA)	1988	Decree No. 6,136/2007
9	Protocol on Fixed Platforms	1988	Decree No. 6,136/2007
10	Montreal Convention (Explosives)	1991	Decree No. 4,021/2001
11	Terrorist Bomb Attacks	1997	Decree No. 4,394/2002
12	Terrorist Financing	1999	Decree No. 5,640/2005
13	Nuclear Terrorism	2005	Decree No. 9,967/2019 (Approved in 2016)

(Own work)

This shows the importance that the repression of terrorist acts has from a legal perspective.

Internationally, since of the ratified treaties, 4 (four) deal with attacks on civil aviation,

2 (two) on hostage-taking and diplomatic agents, 2 (two) on nuclear materials and terrorism

nuclear, 2 (two) on explosives, 1 (one) on offshore platforms and 1 (one) on financing.

to terrorism.

However, although the acts to be repressed are established, there is no
 No international treaty drafted to date stipulates what would be considered
 Terrorism. There is a certain apprehension within the international community about establishing a standard, given that
 given that many countries have relations with groups that, by some countries, may be considered
 terrorists. Therefore, to circumvent these political-axiomatic obstacles, an approach was chosen.
 Nuclear, that is, stipulating actions that may be considered terrorist, but not stipulating specific groups.
 In this way, a minimum of international consensus was achieved with the aim of suppressing such actions.
 since everyone agrees that, for example, blowing up planes is not good, as well as groups holding
 nuclear technology.

5. The Confluence of the National Model in the Area of Control of CONVENTIONALITY

Within the framework of the Brazilian legal system, a relative convergence with the
 international model for suppressing "terrorist acts" as stipulated in treaties
 international. However, since Brazil has a history of not being the scene of terrorist attacks,

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The legislator's vision ends up being obscured by international events that have a

A very strong psychological burden.

Thus, Law 13.260/2016 presents in §1 of article 2 several elements of the type that converge with those repressed in the international arena, protecting people, criminalizing the use of explosives and aircraft sabotage, among other things (Brazil, 2016). Therefore, in the context of Air Traffic Control...

According to conventional principles, criminal prosecution could proceed without any problem.

However, the question that remains unclear is precisely why article 2, paragraph 1...

It adds the elements of reason and purpose to the core elements of the type found in the paragraphs of § 1. Such elementary requirements add the need for the act to be considered terrorism to

The reason for "xenophobia, discrimination or prejudice based on race, color, ethnicity and religion" and the purpose of "to provoke social or widespread terror, endangering persons, property, public peace or others."

"public safety" (Brazil, 2016). Therefore, for the legal system, the mere occurrence of public safety is not sufficient.

For any of the actions foreseen, it is necessary that they be accompanied by the reason and purpose

In this way, Brazil adds to what is stipulated in the treaties something that the community itself...

The international investigation did not want to bring up the terrorist purpose and reason. This will not cause legal problems, but political problems that could strain Brazilian diplomatic relations.

In the age of globalization, we are witnessing a convergence of illicit networks with groups

terrorists who increasingly rely on crime to sustain themselves, while criminal groups use

Terrorist tactics to dominate their areas of operation. Traditionally, organized crime was considered a national public safety problem and was being addressed by law enforcement authorities state and local (Fernandes, 2012).

Meanwhile, terrorist and insurgent groups were considered armed groups with political objectives, including regime change, that directly threatened the sovereignty of nation-state. These illicit actors actively seek out governance gaps and vulnerabilities. socioeconomic factors and weaknesses of character as openings to conduct their nefarious activities and to expand their power and influence throughout the world (Jamieson, 2001). With globalization, groups Terrorists and criminals internationalized their support and operations, brokering alliances. formidable and present complex transnational threats that jeopardize security and prosperity throughout the world.

Demands like this cannot be resolved through a policy of improvisation and, Due to this imperative need, planning and management, as well as the use of current tools for fulfilling any demand becomes a basic requirement.

It wasn't just the Cold War that ended with the events of September 11th, but also the old Balance of Power Diplomacy. Although the conflict between the US and the USSR ended in 1989 with the collapse of one of its key players, the analysts and the

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international decision-makers continued to behave as if the world remained the same.

divided between two conflicting superpowers (Teixeira, 2009). With the aftermath of September 11th, it became-

It is evident that there is a need for the foreign policies of the remaining superpower and the others.

Intermediate powers are undergoing substantial revision. There is a need to think and develop.

More seriously, an interactional order that doesn't consider state powers, but rather the actors.

supranational and other entities that may influence the global power landscape.

FINAL CONSIDERATIONS

There is a vast gap regarding a single definition of terrorist acts in the current context.

Globally, national definitions are shaped by individual experiences with terrorist attacks.

Because Brazil is not a stage for these terrorist attacks, it does not have a definition that corroborates this.

Despite its needs, however, the focus shifted to addressing a national outcry related to the Olympics.

The approach of neo-terrorism is that it is a transnational phenomenon, different from traditional terrorism.

It was a traditional system that had a national base, a hierarchical structure, and a selective target. It constituted,

from a strong philosophical base – which can be theocratic, political or hybrid – a fluid structure, a

Variable geometry of means and procedures, and an indiscriminate target. Such a change of nature...

Which one needs to be faced needs to be understood. Beyond a mere internal matter, it has become...

of a much more complex transnational nature, requiring a more demanding response, more

complex and more integrated.

Therefore, in the context of conventionality control, the issue will not be about

The group may not be classified as terrorist, but the focus will be on the act committed and its significance.

It fits into one of the facts that the treaties are regulating.

Thus, it is possible to foresee that the treaty may supersede some legal criteria of

exclusion of "terrorism" as a political purpose that Brazilian law disregards, as well as

To remove from the legal framework the rationale and purpose that Brazilian law requires. The Courts should...

Superiors should frame national law within the framework of International Treaties, separating the purpose.

...and the reason for an exclusive analysis of the action taken, not seeking to define what terrorism is, but

Yes, suppress the stipulated actions until Brazil develops legislation that conforms to the treaties.

rectified by him, and let's not forget international politics.

Therefore, it is essential that Brazil aligns itself with international definitions of

terrorism, with the aim of strengthening its actions in combating this serious threat nationwide.

and international. The comparative analysis between national legislation and international treaties is

fundamental to the effectiveness of the measures adopted and to international cooperation in this context.

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