
THE LEGAL IMPACT OF THE LACK OF A THEORETICAL DEFINITION OF TERRORISM TOWARDS RIGHTS ENSHRINED IN THE CHARTER OF THE UNITED NATIONS

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Abstract: *The present study aims to investigate the legal dimensions of legislative inertia towards the concept of terrorism over international legal rules. The study has revealed that the legislative inertia regarding the definition of terrorism has led to the right of legitimate defence to be stripped from its objective basis and restricting the powers of the State to practise manifestations of its sovereignty. The study has concluded that the absence of a specific definition for terrorism has made the right of self-determination lose its legal and executive power and has led to confusion between political terrorism and the right to self-determination.*

Keywords: *Terrorism Definition, Legal Inertia, Legitimate Defence, Non-Intervention, Self-Determination*

INTRODUCTION

Terrorism is considered as the clearest manifestation of political violence in the field of human relations, and there is a consensus that terrorism represents the largest threat to national security and international peace. In addition, it represents human rights violation and exposes the innocent to danger. In spite of great international concern to prevent and combat terrorist acts and increasing UN activities in the scope of canonising terrorism in a binding international treaty, these efforts have not produced a specific theoretical and objective concept of terrorism. Such a concept has been widely debated due to its alignment with political and ideological considerations, in addition to beneficial interest considerations. For these reasons, the concept of terrorism is experiencing legislative inertia, represented by the lack of an international binding treaty to define it theoretically and objectively.

The legal dimensions of legislative inertia require that theoretical supposition is supported with actual presumptions and legal evidence which affirm the presence of the impact over non-intervention rule, and the right to legitimate defence and self-determination. Therefore, this study aims to evaluate the legal dimensions of legislative inertia towards the concept of terrorism over international legal rules. It intends to analyse and scrutinise the capability of the legal impact of legislative inertia concerning terrorism, and its effects on countries' legislative rights. It deliberates the role of legislative inertia in the creation of new legal standards governing the behaviour of the State in external relations. It also discusses personal evaluation factors in identifying the concept of terrorism. Accordingly, the study analyses new types of intervention under the pretext of combatting terrorism, on the basis of the legal articles of international treaties.

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The study has adopted a legal and objective analysis of the legal dimensions of legislative inertia towards terrorism due to the absence of a theoretical definition and the identification of terrorism within binding international treaties. Therefore, the methodology of the research requires the study of UN Charter articles and related international treaties, in order to realise the indicators of legislative inertia and its impact on the rights contained in the international legal system. The debate over the definition of terrorism has emerged as a result of intellectual and political differences, and advantageous considerations related to ideological, legal and pragmatic perspectives for States to have a definition, which will sustain their interests in having an objective, political and legal concept. From this legal fact, a situation of legislative inertia has emerged towards the concept of terrorism as it has no unique entity and has thus far been integrated with highly regulated and codified international crimes. The analysis focuses on the cause and effect relationship between legislative inertia concerning the concept of terrorism and its effect on the right to self-determination. It also pays attention to non-intervention in the internal affairs of countries and the right of legitimate defence.

I. THE LEGAL EFFECTS OF THE ABSENCE OF A THEORETICAL DEFINITION ENshrINED IN ARTICLE 51 OF THE CHARTER OF THE UNITED NATIONS

This part has focused on studying international acts by a state, in the light of legislative inertia, and relying on the right of legitimate defence to fight against terrorism. Such acts are considered a violation of this right, because it is a personal evaluation to consider what would be within the range of terrorism, in addition to the absence of a legal basis on which to exercise the right, which is the existence of actual assault.¹

It can be observed from recent cases of intervention in the name of fighting terrorism based on the right of legitimate defence, that the absence of a specific definition of terrorism has led the states involved, to use the concept of terrorism as a basis for exercising their right of legitimate defence. They use this, despite the absence of legal grounds and terms defined in Article 51 of the Charter of the United Nation. It makes Article 51 lose its legal power and turns it into a tool to engage in actions to fight against terrorism. This has led to the removal of the requirement for proportionality between acts of aggression and acts of defence and the decline in observance of the purpose of the right enshrined in this study. The result is that all the legal value of the text of article 51 is wasted, stripped of its content and the reasons for its existence. Legislative inertia with regard to terrorism has led to using terrorism as a basis for the use of force in the absence of the legal foundations for the right.

¹ In the aftermath of attacks of 11th September, the United States tried to develop a right of preemptive self-defense – despite the absence of legal grounds defined in Article 51 of the Charter of the United Nation – on the basis of the threat of weapons of mass destruction and global terrorism. In September 2002, President Bush declared that: “you can’t distinguish between al Qaeda and Saddam when you talk about the war on terrorism. They’re both equally as bad, and equally as evil, and equally as destructive”. Moreover, he presumed that the “danger is that al Qaeda becomes an extension of Saddam’s madness and his hatred and his capacity to extend weapons of mass destruction around the world”. See RECORD, J. The Bush Doctrine and War with Iraq. *Parameters*. 2003, Vol. 33, No. 1, p. 10.

The absence of a theoretical definition for the concept of terrorism has resulted in the use of physical force without the occurrence of an assault, and to the unrestricted use of the right of legitimate defence. Moreover, some States have attributed the character of terrorism to acts, when they wanted to intervene against other States with the use of physical force. However, Article 51 of the Charter explicitly defines legal standards, which permit the use of the right of legitimate defence. The Article stipulates that armed assault is required as a basis for exercising defence actions.

Armed assault is an assault necessarily issued from a State, whether directly or indirectly.² Although this condition is not clearly imposed by Article 51 of the Charter, international practice considers it to be implied by this article when it deals with an exception to the principle of prohibition of the use of force in international relations. On the other hand, acts of international terrorism can be acts of States, groups or individuals. Hence, it should be committed by a State or attributable to a State to consider an act of international terrorism as an armed assault.

According to the provisions of the Charter, the legitimate right of defence is not absolute without restriction; rather, it is restricted to the extent necessary to repel the assault against the State. Therefore, it appears to be a special form of self-protection; and it is a temporary right linked to the Security Council taking the necessary measures to repel the aggression.³ The status of legislative inertia has led to the absolute use of this right without any limitation depending on a state of necessity that is not actually realised.

In short, studying the nature of legitimate right of defence in the light of legislative inertia requires the researcher to be guided in general by what has been settled in jurisprudence, and to extrapolate actual events of the intervention in this issue. It can be abstracted from these facts that the right of legitimate defence has been used in accordance with special and extended criteria based on fighting terrorism. Therefore, it can be stated that the absence of specific criteria for what falls within the definition of terrorism has led States to use the legitimate right of defence to justify their attacks against other States, and to establish new rules based on personal independence to determine what must be done in order to fight terrorism. Certain acts have been subject to 'terrorisation', and the term unlawful assault has been used to carry out acts of aggression accompanied with the use of physical force. This novel concept of the right of legitimate defence is based on the element of probability and depicts that the assault may not actually be in place, or it may even occur at a near or distant time from a specific or unspecified person. Based on the above concept, in the current situation, the mere possibility of terrorist incidents creates a situation which has been used to justify the use of the legitimate right of defence. Therefore, the actual occurrence of a terrorist act is no longer required in order to give rise to the right.

What can be concluded from the text of Article 51 of the Charter is that it establishes limits on the right in a way that must not be surpassed, in order to maintain legal conduct.

² SWEDAN, A. H. *International Terrorism in the Light of International Variations*. Beirut: Halabi Legal publications, 2014, p. 24.

³ KHDIR, R. The Right to Self-Defence in International Law as a Justification for Crossing Borders: The Turkey-PKK Case within the Borders of Iraq. *Russian Law Journal*. 2016, Vol. IV, No. 4, pp. 67–69.

Also, derogation or non-compliance with this Article results in a situation, which is similar to that which occurs when a State does not rely on a proper right to act, and the goal of the legal system to realise a social function through the legitimate right of defence will not be achieved. Hence, the use of physical force under the pretext of the legitimate right of defence now has a subjective character. Some States establish the criterion of assault and the motive is the use of legitimate right of defence.

This legal reality has led to a legislative gap in the provisions regarding the legitimacy element in Article 51, thereby stripping it of its fundamentals. In effect, this means resorting to force to battle terrorism, without compliance with a legitimate basis, to achieve the desired goal, that is; the legitimisation of the actions of a State under the pretext of deterrence must not violate the interests of another State. It is concluded that the absence of a theoretical definition of terrorism in a binding international convention has diminished the concept of the legitimate right of defence in the following dimensions:

First: Legislative inertia about the concept of terrorism has led to the lack of an internationally agreed social character for which this right has been established. There is a lack of conformity between the intent of the conduct and the international social purpose of the right. The use of terrorism is being used to legitimise an act, even though this act is not compatible with the Charter's social function, which is determined by the objective of the right to eliminate the assault.

Second: Legislative inertia has led to the use of intentional behaviour that does not rely on any right, to carry out unnecessary acts where there has been no immediate and real assault to justify the execution of the legitimate right of defence, as it does not prevent immediate danger. The absence of a theoretical definition of the concept of terrorism has led some States to manipulate the existence of material circumstances to justify the use of the right, despite the fact that it does not exist.

Third: The removal of legal restrictions and limitations on exercising the right of legitimate defence. Some countries have preferred to advance their interests by exercising certain material acts without taking into account the availability of the right in the first place, and the conditions and restrictions presumed when exercising the right. This act takes place due to the legislative inertia about the concept of terrorism.

Fourth: Stripping the right of legitimate defence from its objective basis and giving preference to the personal side as a basis for the legality of an act.

II. THE LEGAL EFFECTS OF THE ABSENCE OF A THEORETICAL DEFINITION OF THE CONCEPT OF TERRORISM ON THE PRINCIPLE OF NON-INTERVENTION ENRICHED IN ARTICLE 2(7) OF THE CHARTER OF THE UNITED NATIONS

Article 2(7) of the Charter of the United Nations contains the legal basis for the right of the United Nations to intervene in the internal jurisdiction of Member States in connection with the provisions of Chapter 7. Here, the main aims are to protect the global

sovereignty of the State from interference in the absence of substantive conditions specified in the text of Article 39.⁴

The general principle in the drafting of Article 2(7) is that the sovereignty and internal jurisdiction of the State must be respected by the United Nations and its organs, with the exception of interference in the internal jurisdiction of Member States. This result is based on the sequencing of the protected interest in the text of the article: “Nothing in the present Charter shall justify to the United Nations ... but that principle is without prejudice to the measures of repression contained in Chapter VII.” This sequence in the text of Article 2(7) links the immunity of internal jurisdiction to the right to intervene in a legal text combining two interests:

First interest: The interest of Member States to respect their sovereignty and internal jurisdiction from any interference that does not comply with the provisions of the Charter.

Second interest: The special interest in achieving peace and international security by recognising the legitimacy of intervention in accordance with the provisions of Chapter VII.

The question here is whether terrorism falls within the scope of the legality of intervention, and thus allows for intervention in the internal jurisdiction of the State and the imposition of legal obligations on it.⁵ Article 2(7) does not provide sufficient evidence on the process of separation between international jurisdiction and internal jurisdiction. It does not specify a standard of differentiation to reveal whether terrorism is an international public affair which represents a general international interest, or whether fighting it is an internal affair of Member States.⁶

On December 9, 1981, the General Assembly of the United Nations adopted resolution 103 (D-36) on the inadmissibility of interference in the internal affairs of States, resulting from a serious international situation. This situation took place due to the use or threat of force, aggression and direct and indirect interventions, occupation, and the threat to sovereignty and independence. The main aim was to overthrow the government of a State,⁷ the potential impact of all these forms of aggression on the political independence of States, the freedom, and permanent sovereignty of people over their natural resources. The resolution also pointed out the need to put an end to all aggression and every use of

⁴ Article 2(7) contains a restriction on the organs of the United Nations in respect of its functional powers under the Charter, which allows it to intervene if the conduct of the State is proved as a violation of the provisions of Article 2(4) of the Charter. This restriction is a mandatory guarantee that jurisdiction is based on material facts to determine recourse to the text of Article 39.

⁵ ABED EL-AZIZ, S. *The Iraqi Invasion of Kuwait: Legal Study in the Light of State Theory in International Law*. Cairo: Dar al-Nahda al-Arabiya, 1991, p. 10.

⁶ For further details on the analysis of the text of Article (2 paragraph 7) see AISHA, R. *International Organizations: A Theory and Practical Study*. Cairo: Dar al-Nahda al-Arabiya, 1967, p. 89. MUHAMMAD ALI, I. *Al-Wajeez in International Organizations*. Cairo: University Book House, 1982, p. 256. HASSAN, C. *United Nations Principles and Organizational Characteristics*. Cairo: Institute of Research and Studies, 1990, p. 206.

⁷ Recently, some parties assumed that the export of a political system, or the change of a regime, is not forbidden by Article 2(7): for example, the 1998 US Iraq Liberation Act, which encouraged the United States “to support efforts to remove the regime headed by Saddam Hussein from power in Iraq and to promote the emergence of a democratic government to replace that regime.” However, this is still not a very common view. Likewise, humanitarian intervention seems to have pressed forward in recent years but is still contested. WOOD, M. Non-Intervention: Non-interference in domestic affairs. In: *Encyclopedia Princetoniensis* [online]. [2019-04-16]. Available at: <<https://pesd.princeton.edu/?q=node/258>>.

military contingent, Special Forces or mercenaries against sovereign States, to enable the people of those States to choose their political, economic, and social system without foreign interference or control. They confirmed the need for full respect for the principles of non-interference in the internal and external affairs of States. Interference, whether direct or indirect, is considered to be contrary to the principles of the Charter of the United Nations.⁸ Moreover, the resolution added that the principle of non-intervention covers the following rights: right of sovereignty, political independence, territorial integrity and the national unity of each State, the right of self-determination, the right of permanent sovereignty over the natural resources of States, and the right of access to information. It was further explained that the obligations imposed by the principle of non-intervention on the States, is to refrain from resorting to the use of force or the threat of force. Obligations also include refraining from any military intervention, subversion, military occupation, or any other form of intervention, whether military, economic or political, directly or indirectly, whether against one or several States. In addition, there must also be a commitment not to provoke internal unrest in another country, banning biased propaganda against a State, and prohibiting military alliances aimed at interfering in the affairs of States. However, this resolution did not explicitly mention terrorism, which had repercussions on the limits of national jurisdiction in accordance with Article 2(7).

It should be noted that the limitation contained in Article 2(7) of the Charter is twofold; while, on the other hand, it prohibits the United Nations from interfering in matters that are in the internal jurisdiction of Member States and implicitly prohibits the interference of States in the affairs of each other. On the other hand, it liberates Member States from the obligation to bring those internal issues to the attention of the international organisation. However, the facts of the intervention prove that there are no limits to conducting acts under the pretext of fighting terrorism, thus limiting the State's exercise of its sovereignty and mixing the criteria that separate international from national jurisdiction.

The question that arises here is whether it is permissible or inadmissible to interfere in the internal jurisdiction of Member States under the pretext of combating terrorism or imposing legally binding obligations. It can be noted from the numerous resolutions adopted by the General Assembly that there is no objective criterion for determining whether an issue is considered to be within the national jurisdiction of a State or under international jurisdiction.⁹ Therefore, there is no special criterion defining the nature of terrorism, considering it to be under international jurisdiction. By extrapolating realistic

⁸ From these principles, which are closely related to each other, are the principle of equality between States, the principle of State sovereignty and the principle of non-intervention. These principles are the pillars of public international law and the basis upon which international relations are based. Intervention is illegal pursuant to Article 2(1), of the Charter of the United Nations, if it forms a violation of the principle of the sovereign equality of States and a breach of Article 2(4).

⁹ MOFID MAHMOUD, S. *International Organizations*. Cairo: Dar al-Nahda al-Arabiya, 1998, p. 225. These principles, which are closely related to each other, are the principle of equality between States, the principle of State sovereignty and the principle of non-intervention. These principles are the pillars of public international law and the basis upon which international relations are based. Intervention is illegal pursuant to Article 2(1), of the Charter of the United Nations, if it forms a violation of the principle of the sovereign equality of States and a breach of Article 2(4).

examples of intervention, it appears that States have used the absence of a theoretical definition of the concept of terrorism as a basis for interference in internal affairs. This leaves a cause for the imposition of international obligations that does not stem from the Charter's provisions, by using the pretext of fighting terrorism in the absence of a legal basis to interfere in domestic jurisdiction.

If the international legal regime in the matter of non-intervention is determined by the exception in the text of Article 2(7), and if it also establishes a right to intervene where terrorist operations are present, or to impose international obligations on States that are supposed to be under the provisions of the resolution; such interference must be through the rules governing the relationship between this system and Member States represented by the Charter of the United Nations. The link between the Member State and the rules that govern it in the Charter of the United Nations is demonstrated by the exercise of jurisdiction within the limits of the delegation granted to use that force necessary to maintain international peace and security, in accordance with the sovereignty, internal jurisdiction and rights of the Member States. Based on this, the legal basis for intervention is to achieve the fundamental objective of maintaining international peace and security, and such interference must be exercised within the legal framework established for it and within its substantive limits.

Examples of intervention in the name of fighting terrorism internationally indicate that this interference is not associated with the sole legal justification in the text of Article 2(7),¹⁰ nor has there been any international agreement to allow State intervention in other States affairs under the name of fighting terrorism. Moreover, international conventions for protecting human rights do not include more than the subordination of the control of international bodies which monitor the implementation of international human rights obligations. Likewise, it is not allowed to replace these means for the treatment of terrorist operations by another. The Charter of the United Nations, in turn, brings together the interest of Member States and the right of United Nations organs to intervene in a single text aimed at establishing a proper balance between intervention and non-interference in order to achieve the Charter's purpose in maintaining international peace and security and protection of the sovereignty of the State. The exception in the text of Article 2(7) could be explained in another way. In that, it is unlawful to impose general international obligations to combat terrorism in order to achieve personal and utilitarian interests of some States because of the absence of a legal basis which justifies its exercise of the right to intervene.

Hence, the absence of a theoretical definition for the concept of terrorism has had an influence on the text of Article 2(7), namely; the principle of non-intervention, in the following ways:

First: The restriction of the tools and powers of the state with regard to practising the manifestations of its sovereignty.

Second: The creation of new legal standards governing the behaviour of the State in external relations.

¹⁰ AL-JAZEERA. Turkish parliament's decision to intervene in northern Iraq for "Fighting terrorists", 2007.

Third: The expansion of the scope and forms of recourse to the text of Article 39, which limits the scope of State protection established in the text of Article 2(7).

Fourth: The creation of new legal standards governing the personal relationship between the authorities of the State and the citizen within the framework of the State.

III. THE LEGAL EFFECTS OF THE ABSENCE OF A THEORETICAL DEFINITION OF THE CONCEPT OF TERRORISM ON THE PRINCIPLE OF THE PEOPLE'S RIGHT TO SELF-DETERMINATION ENSHRINED IN ARTICLES 1(2)/55 OF THE CHARTER OF THE UNITED NATIONS

Legislative inertia about the concept of terrorism has legal effects on the right of self-determination, as the latter has lost its legal power in addition to having created a state of legal and substantive separation for the pillars of this right, the use of this right in contradictory applications, the mixing of criteria which distinguish terrorist acts, the means of struggle for the entitlement to this right, and deviation from the concept of this right from its legal and material nature as established in the relevant international conventions and Charters.¹¹

The people's right to self-determination is one of the fundamental principles upon which contemporary international law is based,^{12,13} and one of the important bases on which States' commitment to prevent and fight crimes of State terrorism is founded. It also consolidates the right of people under occupation and colonialism to struggle and resort to armed combat. Colonial powers, racist regimes and foreign occupation all constitute a flagrant violation of the right of peoples to self-determination, as they commit many international crimes and crimes of State terrorism against oppressed people under their control. On the other hand, people under occupation may resort to acts of terrorism against colonial Powers and the occupying Power, as a form of resistance, leading to an expanding cycle of violence and terrorism between States.¹⁴ There is no doubt that States' respect for the principle of people's right to self-determination is an important step towards preventing and fighting State terrorism. However, legislative inertia about the concept of terrorism has made the right to self-determination lose its special characteristic, in addition to the absence of the criteria that distinguish between exercising this right and terrorism.

The effect of legislative inertia regarding the concept of terrorism extends to the right of self-determination in terms of the absence of the legal criteria for distinguishing between terrorism and armed struggle and considering terrorism as a standard for describing the means used to reach the right of self-determination, including armed struggle, as

¹¹ AL-YAZIJI, A., SHEKRI, M. A. E. *International Terrorism and the Current World Order*. Beirut: Dar Al Fikr Publishing, 2016, p. 70.

¹² ABDEL EL-AZIZ MOHAMED, S. *The Legal Framework for Human Rights*. Cairo: Dar al-Nahda al-Arabiya, 1989, p. 73.

¹³ SHUKRI, M. A. E. The Concept of Self-Determination in the United Nations System. *Journal of Arab Issues*. 1980, 17, p. 158.

¹⁴ SALAH AL-DEEN, A. *Armed Popular Resistance in Public International Law*. Cairo: Dar al-Fikr al-Arabi, 2009, p. 47.

illegitimate. Therefore, the absence of a specific definition of the concept of terrorism has led to confusion between terrorist movements and national liberation movements that aim at exercising the right of self-determination. The articles of the Charter of the United Nations governing this right have been emptied of their content and purpose. Some States have consistently and deliberately confused terrorism and the right of self-determination and have described struggle operations that aim to achieve the right of self-determination, as terrorist operations. Here, the absence of a theoretical definition for the concept of terrorism has led to these operations being described as political terrorism.

Because of the strong influence of terrorism, the right of self-determination has retreated. This was confirmed by an international legal formula, with the issue of several resolutions by the General Assembly¹⁵ and the Security Council, and statements made by the heads of some States. This was to the effect that there is no justification for terrorist acts under any circumstances, whether they are political, ideological, racial, or religious, or any other considerations that were taken in order to justify the terrorist acts.¹⁶

In spite of the fact that the right to self-determination is stated in the United Nations Charter,¹⁷ legislative inertia has led to novel variation about the nature, content, scope,

¹⁵ On 18 December 1972 the General Assembly adopted the resolution 3034, which linked the affirmation of the legality of the struggle for national liberation with the study of the problem of international terrorism. The resolution is the draft submitted by African/Asian countries. It was approved by 76 countries and opposed by 34 countries, with 16 countries abstaining. The resolution stated, “The General Assembly, Deeply perturbed over acts of international terrorism which are occurring with increasing frequency and which take a toll of innocent human lives, Recognizing the importance of international cooperation in devising measures effectively to prevent their occurrence and of studying their underlying causes with a view to finding just and peaceful solutions as quickly as possible, Recalling the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations:

1. Expresses deep concern over increasing acts of violence which endanger or take innocent human lives or jeopardize fundamental freedoms;
2. Urges States to devote their immediate attention to finding just and peaceful solutions to the underlying causes which give rise to such acts of violence;
3. Reaffirms the inalienable right to self-determination and independence of all peoples under colonial and racist régimes and other forms of alien domination and upholds the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and the relevant resolutions of the organs of the United Nations;
4. Condemns the continuation of repressive and terrorist acts by colonial, racist and alien régimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms;
5. Invites States to become parties to the existing international conventions which relate to various aspects of the problem of international terrorism...”

¹⁶ About the distinction between terrorism and armed struggle and the actions of national liberation movements, see ALJEHMANI, T. *The Concept of Terrorism in International Law: Critical Comparative Study*. Damascus: Horan Publishing House, 2005, p. 91.

¹⁷ Art 2(1) of the Charter of the United Nations provides that one of its purposes is: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. Moreover, Article 55 of the Charter of United Nations has restated the importance of friendly relations and the principle of the equal rights and self-determination of peoples. It expresses the UN’s role in social and economic growth and its role in solving international economic, social, and health problems, besides its role in enhancing international cultural and educational cooperation and protecting human rights and fundamental freedoms. See MAYA, A. *The Right to Self-Determination in International Law: Scrutinizing the colonial aspect of the right to self-determination*. Master Thesis, University of Göteborg, 2006, p. 17.

and legal nature of this right. While one group of jurists may see the text about this right in the Charter as just a confirmation of the existence of this principle in international law, and so this right is not affected by the absence of a specific definition of terrorism, another group might emphasise that this principle emerged with the advent of the Charter and is binding only on State Members of the United Nations. As such, it could become one of the general principles of international law to bind all States through United Nations applications. Based on this, there is no legal link between terrorism and the right of self-determination, as each one has a legal system with its own foundations and characteristics. There is, therefore, no legal overlap. In this context, it can be said that the absence of a specific definition of terrorism can in no way restrict the right of self-determination derived from the Charter of the United Nations.

However, the reality shows deliberate confusion between terrorism and legitimate resistance in pursuit of the right of self-determination. This leads to a diminution of the legal value of this right and the nullification of the legal characterisation and standards separating legitimate and illegal acts of terrorism. It subsequently, establishes a state of contradiction between the United Nations resolutions about armed struggle and the concept of terrorism. The legitimacy of resistance is then no longer derived from the resolutions of the General Assembly and the relevant international conventions, which provide it with a legal basis. Nevertheless, the resolutions do not include this resistance in the category of terrorist movements. This, in turn, leads to giving precedence to political considerations over legal considerations in the issue of characterising whether it falls within the scope of terrorism or legitimate resistance. Therefore, legislative inertia leads to a situation of legal overlap between the right of self-determination and the concept of terrorism. As a result, there is confusion between the concept of the right of self-determination and the concept of terrorism.¹⁸ Some States have taken the absence of a theoretical definition of terrorism as legal grounds for intervention under several names. Moreover, this inertia functions as a violation of the principle of the right to equality and the right of self-determination, as stated in the Charter of the United Nations, as well as a violation of the relevant resolutions of the General Assembly.

CONCLUSION

From the foregoing information and analysis, it is concluded, that the absence of a specific definition for terrorism has made the right of self-determination lose its legal and executive power and has led to confusion between political terrorism and the right to self-determination. It has removed the limits that distinguish a terrorist

¹⁸ To remove ambiguities between acts considered as the exercise of the right to legitimate struggle and terrorism, see AHMED RIFAAT, M. *Legal Differences between Armed Struggle related to the right of Self-Determination and International Terrorism*. Al Kuwait: Conference Papers Book, Part II, 1987, p. 536.

action¹⁹ from the struggle to achieve independence²⁰ and to dispose off colonialism and occupation. Thus, the absence of a specific definition of terrorism has given rise to the substantive aspect of terrorism being represented by any act carried out as part of a political struggle which involves the use of violence to achieve this right on the mental (*mens rea*) element of the terrorist act. What we mean by this perception is that, there is a separation between the legal and substantive sides of the right of self-determination. The legislative inertia regarding terrorism results in the absence of a legal basis in which to separate the subjective and objective aspects of the right to self-determination, as there are no criteria which distinguish them. The current global approach is to describe violent militant actions as if they were terrorism, regardless of their purpose or the legal framework for their use.

Generally speaking, this study has improved awareness of the dangerous effect of the absence of a theoretical definition of terrorism to justify international law norms violation. The study affirms that the legislative inertia regarding the definition of terrorism has led to the right of legitimate defence to be stripped from its objective basis and restricting the powers of the State to practise manifestations of its sovereignty. It has also led to confusion between terrorist movements and national liberation movements practising the right of self-determination. These facts necessitate an effective international community response, which can be summarised as follows:

Amending Article 51 of the Charter of the United Nations and providing for the right of States to legitimate defence when the territory of a Member State is under attack, with the obligation to inform the Security Council and the United Nations Office of Counter Terrorism prior to taking any action;

Identifying the meaning of the internal jurisdiction of the States mentioned in Article 2(7) of the Charter of the United Nations, to avoid aggression against the sovereignty of States;

Affirming the right of peoples to self determination, as enshrined in the UN Charter, and their right to bear arms against colonising powers as an imperative necessity to independence and the return of looted rights, with the aim of achieving the public and national interests;

Activating the role of the International Court of Justice in clarifying ambiguous terms in the Charter of the United Nations, especially those which could lead to intervention in the internal jurisdiction of Member States;

Enacting an internationally binding treaty which defines terrorism precisely, both theoretically and objectively, and clarifies the difference between internal and international terrorism.

¹⁹ In spite of all the resolutions adopted by the United Nations, it has not reached a precise definition of the concept of terrorism, but, after an urgent call by some countries, including Arab States, to convene an international conference to define the concept of terrorism, resolutions no. (40/61) and (149/42) were issued in 1987. By resolution (40/61), the United Nations condemned acts of terrorism. As for the definition it says "The effectiveness of the struggle against terrorism can be broadened by a generally agreed definition of international terrorism." The whole issue of terrorism was included in the agenda of the General Assembly when it convened in September 1989, wherein we conclude from the United Nations emphasis on a generally acceptable definition that could be the cornerstone of the fight against terrorism. Then this struggle can deal in a satisfactory manner with terrorism.

²⁰ For more details, see: ABDEL AZIZ ABU-ASKHEILA, M. *Legal and Political Differences between the Concepts of the Right of Peoples to Armed Struggle for Self-Determination and International Terrorism*. Al Kuawit: Conference Papers Book, Part II, 1987, p. 536.