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**Terrorism in the perspective of international law**  
**Le terrorisme dans la perspective du droit international**

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**ABSTRACT:**

Terrorism is a phenomenon stemming from confinement, repression, and ideological radicalization. This has prompted numerous international and regional organizations to outlaw it and penalize its perpetrators. However, before this, these organizations did not have a unified definition for terrorism, leading to differences of opinion. Nevertheless, this did not prevent them from establishing various mechanisms and means to combat it, as evidenced by conferences and meetings at the United Nations.

With global developments, especially concerning modern technologies, criminal groups have devised new methods of terrorism, compelling many international and national organizations to enact relevant legislation to combat these acts similarly.

Amid international unilateralism and international interactions, some major powers have initiated what are called preemptive strikes, claiming they constitute legitimate defense based on Article 51 of the United Nations Charter. However, despite this, these actions have faced strong criticism from the international community as being perceived as lacking a solid legal foundation according to their perspective.

**key words:** terrorism, international community, new forms of terrorism, counterterrorism, preemptive war.

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**Introduction:**

Since the creation of the universe, God has granted humans all the powers to use everything they find to satisfy their desires without causing harm to the surrounding nature. However, gradually, they began to deviate from the nature that God had established for them, adopting inappropriate means and methods to achieve their objectives.

Among these means and methods is the commission of crimes, regardless of their type. History tells us that the first crime on Earth was deliberate murder committed by Cain against his brother Abel, as mentioned in divine scripture: **"His soul prompted him to kill his brother, so he killed him and became one of the losers."**<sup>1</sup>.

The seriousness of these crimes increased, evolving from a phenomenon limited to a specific category and particular regions to become a concern for many countries and communities affected by them. With the multiplication and accumulation of perpetrators of these acts, it became imperative for the international community and national societies to unite in a common front to confront them, reduce their danger, or even eliminate them.

By the end of the 20th century and the beginning of the 21st century, the international community became increasingly interested in what is called the phenomenon of terrorism in all its forms and types. This created a kind of terrorism phobia or growing fear of criminal acts against individuals and countries. This interest prompted many legal experts, researchers, and experts in psychology and sociology to delve deeply into this phenomenon, identifying its causes and motivations, citing its outcomes, and proposing solutions from their perspectives.

"In attempting to find solutions to this phenomenon and combat it, many international and regional organizations, as well as states, have sought to conclude binding international treaties and agreements for the international community aimed at combating terrorism, using peaceful and military means on many occasions.

However, in return, we find that there are those who provide legal and moral justification for military actions, depending on the circumstances surrounding the act and the motivations of the perpetrators and the objectives aimed at by their actions, especially resistance.

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<sup>1</sup> Surah Al-Ma'idah, verse 30

This has been adopted by many international law and international criminal law experts to provide legal legitimacy to these actions, without them bearing any international or ethical responsibility when questioned.

However, a highly significant question remains, which is the confusion between a terrorist act and an act of resistance. The latter may not align with the interests of some countries (especially those practicing colonialism), leading them to label this act as terrorism rather than resistance. What is most concerning is that terrorist acts can be associated with certain religions, especially Islam, which makes any action taken by a Muslim, even if it has legal and legitimate justification, considered a terrorist act subject to sanctions.

As part of our efforts to shed light on this subject, it was necessary to present balanced perspectives between the legal framework of armed action (resistance) and ideological fanaticism that influences the religious and intellectual context of the perpetrator of the crime.

All of this has led us to raise a fundamental issue: has international law succeeded in defining the concept of terrorism? Has it been able to establish a legal framework to combat it at all levels? How does it consider new forms of criminality as terrorist acts?

## **THE FIRST TOPIC: DEFINITION OF THE CONCEPT OF TERRORISM IN INTERNATIONAL LAW AND ITS LEGITIMACY FOR COMBAT**

Today, the world no longer discusses a term as much as it discusses the term "terrorism." This vague word, which each party tries to interpret and judge according to its personal preferences, beliefs, and to what extent it has suffered its ravages.

Terrorism continues to be a factor of insecurity worldwide, and its terror and fear remain widespread to this day. While many researchers, legal experts, and psychologists have attempted to provide a definition, explanation, reasons, and consequences of terrorism, they have not succeeded because any attempt to analyze this subject stems from the ideological or economic background of the person and the extent of interest in its confrontation.

### **First Requirement: Considering Terrorism as an International Crime**

If there is no unified and precise definition of terrorism among legal experts, sociologists, and psychologists, has this also led to our inability to formulate a clearer and more precise definition of terrorism in international law?

#### **Firstly: General Definition of Terrorism**

Definitions have proliferated and diversified to the point where researchers in the field of terrorism have found more than a hundred terminological definitions in publications dealing with the terrorist phenomenon. These definitions vary, diverge, increase, and agree.

Some focus on defining terrorism by its "method" or "mode of operation," considering terrorism neither a philosophy nor a movement but rather a method or means to achieve the political aspirations of an isolated and frustrated group, realizing it has no hope of achieving what it wants except through terrorizing and misinforming the majority and its institutions. Others concentrate on the objectives, means, or causes, each focusing on what falls within their area of interest<sup>1</sup>.

During a meeting of Arab experts in Tunis from August 22 to 24, 1989, the concept of terrorism was defined as follows: "It is an organized act of violence or threat of violence that incites terror or fear through acts of murder, aggression, hostage-taking, airplane hijacking, explosive bombs, etc., creating a state of terror, chaos, and disorder..."<sup>2</sup>

**Secondly:** The Concept of Terrorism from the Perspective of International Organizations

In this context, the best approach we can use to define terrorism is to mention the various definitions of terrorism developed by international organizations.

### **1 -United Nations Definition:**

There is no unified definition of terrorism, although declarations, resolutions, and "sectoral" international treaties have outlined some of its distinctive characteristics and essential elements. In the absence of an internationally recognized definition of terrorist acts, the United Nations High Commissioner for Human Rights invites states to draw inspiration from the essential elements of terrorist acts as defined in Security Council Resolution 1566 (2004) and the model definition developed by the Special Rapporteur. Terrorism, in its minimal sense, includes the intimidation of the population, governments, or compelling them through threat or violence, death, serious injury, or hostage-taking.<sup>3</sup>

Acts of terrorism have been widely condemned by the United Nations. The General Assembly adopted Resolution 2551 on December 12, 1969, condemning the hijacking of civil aircraft flight paths and expressing increasing concern about illegal interventions in the international civil aviation movement. In December

<sup>1</sup> Abdul Rahman Al-Maturudi, an examination of the concept of terrorism and its stance in Islam, without edition number and publication year, the book is published on the website of the Saudi Ministry of Awqaf, page 13.

<sup>2</sup> Ahmed Youssef Al-Tall, Terrorism in the Arab and Western Worlds, first edition, 1998, Publications and Publishing Department, Amman, Jordan, page 13.

<sup>3</sup> Website of the Office of the United Nations High Commissioner for Human Rights, Terrorism and Violent Extremism, <https://www.ohchr.org>.

1972, General Assembly Resolution 3034 established a special committee on international terrorism, divided into three subcommittees: the definition committee, the committee to identify the causes of terrorism, and the committee to determine measures to prevent terrorism. In 1985, Resolution 40/61 urged all states, individually and in collaboration with other countries and United Nations bodies, to contribute to the gradual elimination of the underlying causes of international terrorism. By Resolution 49/60 in 1995, the General Assembly expressed deep concern about the increasing acts of terrorism motivated by intolerance and extremism observed in many regions of the world.<sup>1</sup>

### **2 -Organization of European States:**

The European Agreement did not establish a normative definition of terrorism but instead listed crimes considered acts of terrorism, excluding them from political crimes that States parties should not include. These crimes are mentioned in Article 1 and include the following:

- Acts set out in the 1970 Hague Convention on the Suppression of Unlawful Seizure of Aircraft.
- Serious crimes against persons protected at the international level.
- Crimes involving the use of explosives, artillery shells, automatic weapons, and deceptive parcels.
- Attempting to commit any of the preceding crimes and contributing to their commission<sup>2</sup>.

### **3 -League of Arab States:**

The League of Arab States reached an agreement to combat terrorism after Arab interior ministers ratified this agreement on April 22, 1998. The agreement contained a definition of terrorism in Article 1, paragraph 2, which stated that terrorism is "any act of violence or threat of violence, regardless of its cause or objectives, carried out within the framework of an individual or collective criminal plan, aimed at spreading terror among people or intimidating them through harmful acts, endangering their lives or security, causing damage to the environment, public or private facilities, public or private property, occupying, seizing, or endangering any national resources."<sup>3</sup>

### **Thirdly: The Content of Terrorism as an International Crime**

<sup>1</sup> Nadiya Aoulmi, International Terrorism and Its Combating Problem in Light of the September 11, 2001 Attacks, Graduation Thesis for the High School of Judiciary, Sixteenth Batch: 2005 - 2008, page 27 in paraphrase.

<sup>2</sup> Kamal Al-Din Imrani, Organized Crime and Terrorism (Comparative Study), Journal of Jurisprudence and Law, Seventeenth Issue, March 2014, page 98.

<sup>3</sup> Kamal Al-Din Imrani, Organized Crime and Terrorism (Comparative Study), Journal of Jurisprudence and Law, as mentioned earlier, page 98.

The first attempt to define terrorism as an international crime dates back to 1937 when the first international convention on terrorism was adopted<sup>1</sup>. However, it did not enter into force.<sup>2</sup>

Terrorist crimes acquire the quality of international crimes when they infringe upon interests protected by international law or the international community or when they are directed against a particular state, individuals, or property in multiple countries. According to the report of the Committee of Experts from the International Committee for the Unification of Criminal Law, international qualification is present in the following situations:

- 1 When disturbances are caused in international relations.
- 2 When the effects of the offense extend to several regions of a single state.
- 3 When the perpetrators are refugees abroad.
- 4 When the preparation of the crime took place in another state.

In conclusion, terrorism represents, in many cases, one of the forms of international crimes for the following reasons:

- 1 The effects of terrorist acts generally do not confine themselves to a single state but often cross national borders (in terms of methods used and resulting violence).
- 2 The principle of territoriality often does not align with the legal adaptation of terrorist crimes because the international agreement for the suppression of bombings states in its Article 3 that "this agreement does not apply if the crime is committed within a state, and the alleged perpetrator of the crime and the victims are nationals of that state."
- 3 These acts are often committed with the support, tolerance, or approval of a specific state, directly or indirectly, in pursuit of certain objectives.
- 4 The phenomenon of terrorism concerns the entire international community and can be considered one of the primary factors threatening international peace. The victim of a terrorist act should not be viewed from a personal standpoint but from a human perspective. This type of crime affects the human conscience as a whole.<sup>3</sup>

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<sup>1</sup> The text is based on considering terrorism as an international crime in the 1937 "Geneva" Convention for Combating Terrorism, whether committed by a state, allowed by it, or tolerated by it, whether in times of peace or war.

<sup>2</sup> Ammar Taysir Bajboj, *International Cooperation in Combating Crimes of Terrorism*, for the Doctor of Laws degree, 2010, Cairo University, Faculty of Law, Department of Criminal Law, page 193.

<sup>3</sup> Ammar Taysir Bajboj, *International Cooperation in Combating Crimes of Terrorism*, as mentioned earlier, page 195.

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## **Second Requirement: The Legal Framework for Combating Terrorism in International Law**

Given the divergences regarding a unified definition of terrorism, it was imperative to create a general framework accepted by all. This framework had to define acts that could be considered terrorist acts, hence the diversity of international agreements defining such acts.

### **1-League of Nations Agreements:**

During the first conference for the unification of criminal law in Warsaw in 1927, political terrorism was included among international crimes. During the third conference held in Brussels in 1930, it was confirmed that political terrorism consisted of crimes contrary to the social organization of all countries in the world. During the fourth conference in Paris in 1931, crimes involving explosive bombs and other similar explosive threats, capable of causing loss of human life and significant property damage, were included as terrorist acts aimed at destroying political institutions in society through the use of violence. During the fifth conference in Madrid in 1933, looting, destruction, and the use of violence were classified as crimes of political terrorism.<sup>1</sup>

### **2-International Agreements on Combating International Terrorism and the Security of International Civil Aviation:**

Hijacking of aircraft as a crime among international acts of terrorism is prohibited by three global international agreements and one protocol, namely the Tokyo Convention of 1963, the Hague Convention of 1970, the Montreal Convention of 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, annexed to the Montreal Convention of 1988.<sup>2</sup>

### **3-European Agreement:**

The European Agreement on the Suppression of Terrorism was signed in Strasbourg, France, in 1977, and entered into force on August 3, 1978. This agreement emerged within the framework of the Council of Europe to eradicate international terrorism, which had afflicted Europe in the early 1970s. The objective of this agreement, containing sixteen articles preceded by an introduction, was to establish appropriate measures and apply them effectively on the ground to prosecute perpetrators of terrorist acts and prevent them from enjoying impunity.<sup>3</sup>

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<sup>1</sup> Hadj Reda, Resistance and Terrorism in International Law, a dissertation for the Master's degree in International Law and International Relations, University of Algiers 1, Faculty of Law - Ben Aknoun -, academic year 2009/2010, page 108.

<sup>2</sup> Ali Lounisi, Mechanisms for Combating International Terrorism: Between the Effectiveness of International Law and the Reality of Individual International Practices, Doctoral Dissertation in Law, Mouloud Mammeri University, Tizi Ouzou, academic year 2012, page 103.

<sup>3</sup> Hadj Reda, Resistance and Terrorism in International Law, as mentioned earlier, page 114.

#### **4-Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomats:**

The International Law Commission, at its twenty-fourth session, in response to the request contained in General Assembly Resolution 2780 (XXVI) of December 3, 1971, took up the study of the question of the protection of the person and the integrity of diplomatic officials and other persons entitled to special protection under international law, as well as the preparation of draft articles on the prevention and punishment of crimes committed against these persons.<sup>1</sup>

The Convention consists of 20 articles; Article 1 defines the person enjoying international protection, while Article 2 lists the acts to be repressed. From these articles, it is clear that the Convention distinguishes between assaults directed at the physical integrity or freedom of diplomatic agents and assaults that harm property and could endanger these individuals.<sup>2</sup>

#### **THE SECOND TOPIC : NEW METHODS IN (TERRORIST) ARMED ACTION BETWEEN INTERNATIONAL CRIMINALIZATION AND LEGAL FRAMEWORK**

Terrorist acts have not been limited to pre-existing traditional methods but have sought to invent innovative methods and means to prove their existence and influence public opinion on one hand, and to achieve political and economic gains on the other. However, some states have used these methods to justify armed actions against other states and organizations under the guise of self-defense.

#### **First Requirement: Establishing the Element of Aggression in New Forms of Terrorist Acts**

The commission of criminal acts against the interests of states or individuals could establish the terrorist nature of these acts, subjecting them to charges and legal prosecution. However, the question remains as to the extent to which the element of aggression is realized in these acts and the legal basis for their criminalization at the national and international levels.

##### **1. Cyberterrorism:**

The media has enabled the creation of international networks facilitating communication via the Internet, allowing terrorists and other groups to use new information technologies for organizational purposes, the dissemination of information, or even the division of tasks in the organization of these terrorist operations.<sup>3</sup>

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<sup>1</sup> Samira Bashi, The Role of the United Nations in Combating International Terrorism (In Light of the New Transformations of the Concept of Legitimate Defense), Master's Thesis in Law Branch: International Human Rights Law, Mouloud Mammeri University - Tizi Ouzou Faculty of Law, Academic Year 2009, page 117.

<sup>2</sup> Samira Bashi, The Role of the United Nations in Combating International Terrorism (In Light of the New Transformations of the Concept of Legitimate Defense), as mentioned earlier, page 118.

<sup>3</sup> Samira Bashi, The Role of the United Nations in Combating International Terrorism (In Light of the New Transformations of the Concept of Legitimate Defense), as mentioned earlier, pages 45-46.



In this field, there is what is called the "darknet" or "dark web,"<sup>1</sup> a space often used by many criminal organizations for suspicious transactions, often in a criminal context, where various substances, including drugs and all kinds of prohibited weapons, are sold, as well as child trafficking for sexual exploitation. Furthermore, there are special rooms where electronic components and hard-to-find circuits on the regular market are sold, used to manufacture extremely dangerous bombs that are internationally prohibited.

The term 'cyberterrorism' first appeared in the mid-eighties, encompassing the concept of 'the Internet.' This period represents a challenge to defining 'terrorism' through the study of the researcher on the phenomenon of terrorism involving the use of technology, as well as defining the role of computers and the Internet in terrorist activities. Since then, the term 'cyberterrorism' has become widespread, merging our fears of the online space and terrorism, two major challenges of this century.<sup>2</sup>

The first convention concerning cybercrimes was signed<sup>3</sup> on November 23, 2001, in Budapest, with 45 European states and 17 non-European states as of October 5, 2014.

**Firstly**, the convention defines computer crimes in the second section as crimes against the confidentiality, integrity, availability of data and computer systems, ranging from unauthorized access to unlawful interception, data alteration, system alteration.

**Secondly**, computer-related crimes: forgery-related crimes, cheating-related crimes.

**Thirdly**, content-related crimes: crimes related to child pornography.

**Fourthly**, crimes related to copyright and related rights violations: crimes related to copyright infringement.

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<sup>1</sup> The Darknet or Dark Web is a term referring to parts of the internet that cannot be accessed. This can be due to the absence of internet links to the content at those addresses or because that content is automatically generated. For example, with databases that change infrequently, search engines may have difficulty indexing them. The term Darknet can also refer to a set of network links that use non-HTTP protocols but are on the public internet, created in a closed and secretive manner among trusted parties. This type is usually used for peer-to-peer file sharing or other purposes between peers.

<sup>2</sup> Abdel-Nour Baji and Malak Nassima, Cyberterrorism: Between the Globalization of Crime and the Necessity of Combating It, *Journal of Legal Studies and Research*, Volume 7, Number 2, 2022, page 67.

<sup>3</sup> The Budapest Convention on Cybercrime, also known as the Budapest Convention on Cybercrime or the Budapest Convention, is the first international treaty to seek to address cybercrime and computer crimes (cybercrime) by coordinating national laws, improving investigative techniques, and increasing cooperation between countries. It was drafted by the Council of Europe in Strasbourg, France, with active participation from observer countries in the Council of Europe: Canada, Japan, the Philippines, South Africa, and the United States.

**Fifthly**, additional liability: attempt, complicity, incitement, and institutional responsibility pursuant to Article 12.<sup>1</sup>

## **2. Environmental Terrorism:**

At the first United Nations conference held in Stockholm, Sweden, in 1972, the environment was defined as "the set of natural and cultural conditions that can affect living organisms and human activities." The international congress on environmental education held in Tbilisi, Georgia, in October 1977 defined it as "the framework in which man lives, from which he derives the elements of his life such as food, clothing, and water, and in which he maintains relationships with his fellow beings."<sup>2</sup>

The head of the Terrorism Response Branch at the Federal Bureau of Investigation (FBI) defined environmental terrorism in his testimony before Congress in 2022 as: "the use or threat of criminal violence against innocent victims or property by an environmentally oriented group, intending to achieve political goals related to the environment." Others describe environmental terrorism as acts of terrorist violence primarily directed against the environment.

This term first appeared after the invasion of Iraq by U.S. and allied forces in 1991 following the occupation of Kuwait. Following this invasion, Iraqi forces spilled massive amounts of oil into the Gulf waters, and about two weeks later, Iraqi President Saddam Hussein ordered the destruction of about 1,200 Kuwaiti oil wells, causing nearly six hundred of them to ignite.<sup>3</sup>

In France, Law No. 686/92 of July 24, 1992, which includes a chapter on terrorism in the fourth book titled "Crimes against the Nation, State, and Public Security," comprises Articles 421/1 to 422/5 addressing terrorist acts, responsible individuals, the sanctions imposed on them, and grounds for exoneration or sentence reduction. This law introduced a new crime, environmental terrorism, defined by Article 421/1 of the French Penal Code as follows: "An act shall be considered a terrorist act if it involves the introduction into the atmosphere, soil, or

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<sup>1</sup> The Research and Studies Complex of the Sultan Qaboos Academy for Police Sciences in Nizwa, Oman, *Cybercrime in Gulf Society and How to Confront It*, General Secretariat of the Cooperation Council for the Arab States of the Gulf, 2016, page 24.

<sup>2</sup> Mujahid Tawfiq and Abbasah Tahir, *The Environmental Terrorism Threat to State Security and Its Criminalization in Comparative Criminal Legislation*, *Journal of Scientific Research in Environmental Legislation*, Volume 05, Issue 02, page 204.

<sup>3</sup> Ahmed Mohammed Wahban, *The Phenomenon of Terrorism Between Its Traditional Forms and Its Modern Patterns (A Comprehensive Study)*, Saudi Political Science Association, Saudi Arabia, 2015, page 65.

waters, including maritime waters under national jurisdiction, of any substance likely to endanger human health, animals, or the environment."<sup>1</sup>

In Algeria, under Ordinance No. 11/95 of February 12, 1995, amending and supplementing the Penal Code, Algerian legislation followed the French example in criminalizing environmental terrorism. Article 87 bis of the Algerian Penal Code states that "constitutes a terrorist or subversive act, within the meaning of this ordinance, any act aimed at the security of the state, national unity, territorial integrity, the stability of institutions, and their regular functioning by any means listed below: ... - the introduction or release into the atmosphere, soil, or waters, including maritime waters falling under national jurisdiction, of a substance likely to endanger the health of humans, animals, or the environment."<sup>2</sup>

### **3- Intellectual Terrorism:**

Intellectual terrorism is an activity aimed at corrupting beliefs or behaviors using moral means, posing a threat to public security. Another definition considers it a form of ideology that does not recognize respect for others' opinions and denies them the right to freedom of expression and belief, prohibiting minds and freedoms from expressing themselves on the grounds that it contradicts a particular culture, belief, doctrine, or opinion.<sup>3</sup>

The modern concept of intellectual extremism and its overlap with other themes have made it difficult to establish a comprehensive definition of intellectual extremism. It is indisputable that the current concept of intellectual extremism requires an attempt to find a clear and precise definition linked to the notion of intellectual security and its relationship with crime. Among the definitions of intellectual extremism is one that considers it a deviation from ideas, concepts, or perceptions compared to the dominant and binding norms, values, and beliefs in society.

In other words, it is thought that does not respect religious rules, traditions, customs, and dominant and binding social systems for individuals in society.<sup>4</sup>

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<sup>1</sup> Hasna Kajji, Environmental Crime with a Terrorist Dimension (Article 3-128 of Law 03.03 Concerning Combating Terrorism), Journal of Multidisciplinary Studies in Economics and Social Sciences, Number 05, May - July 2017, page 106.

<sup>2</sup> Mujahid Tawfiq and Abbasah Tahir, as mentioned earlier, page 207.

<sup>3</sup> Haidar Mua'ta, The Concept of Intellectual Terrorism in Islamic Thought and Western Mentality, Al-Kufa Studies Center Journal, Number 41, 2016, page 182.

<sup>4</sup> Hamza Al-Muayyad and Mukhled Al-Zu'bi, "Terrorism and Extremism" The Concept, Motivation, and Ways of Confrontation, The Arab Journal for Scientific Publishing, Issue Twenty-Three, Release Date September 2, 2020, page 7.

Intellectual terrorism manifests through persecution, pressure, and violence against those who differ in opinion, whether individuals or groups, in order to silence them. Terrorism is a means of achieving deviant goals. Some experts argue that although terrorism is a practical action, it is actually an expression of the reality of the thinking adopted by terrorists.<sup>1</sup>

**Intellectual terrorism has several facets, including:**

1. Intolerance, which is the refusal to recognize the opinions of others by extremists who focus on public issues and persist in their point of view.
2. Violence in interactions with others and aggressiveness in expression.
3. Disregard for human lives and property.<sup>2</sup>

**Second Requirement: Preventive War (Legitimate Defense) or Violation of the Principle of Sovereignty?**

The emergence of the term 'legitimate defense' in international law has given a kind of legal legitimacy to military operations against the aggressor. However, with the evolution of conflicts between states and organizations, the concept of 'preventive war' has emerged, and some have considered it a form of legitimate defense. Is this really the case?

**1. The Concept of Preventive War:**

The concept of a preventive strike or preventive war and its many synonyms is not new in international politics. Some trace it back to before the mid-last century. Proponents of this approach believe that the Japanese attack on Pearl Harbor in 1941<sup>3</sup> falls under the category of a preventive strike, as Japan sought to diminish American power by striking at the heart of its economic vitality, which was fueled by that vital port.

Others consider the tripartite aggression against Egypt in 1956 as a preventive war or defensive strike on behalf of France and Britain, who saw the nationalization of the Suez Canal by Egypt under President Gamal Abdel Nasser as

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<sup>1</sup> Ghufran Faiq Ibrahim, Criminal Protection of Intellectual Security, Journal of Legal and Political Sciences, Volume Eleven - Number One - Part One - 2022, page 323.

<sup>2</sup> Hamza Al-Muayyad and Mukhled Al-Zu'bi, as mentioned earlier, page 12.

<sup>3</sup> It was a surprise air raid carried out by the Imperial Japanese Navy on December 7, 1941, on the United States Pacific Fleet at its naval base in Pearl Harbor, Hawaii. This event altered the course of history and forced the United States to enter World War II.

a direct threat to their security and interests, justifying a preventive strike to restore things to their original state without prior notice.<sup>1</sup>

Preventive war refers to a state's initiative to attack another state without notice because it considers the latter a threat. The goal of this state, when using military force, is to preserve its international standing on the one hand and eliminate elements that threaten its control or serve other interests on the other hand.<sup>2</sup>

## 2. Preemptive Defense:

This refers to the actions of a state or several states launching military attacks when they are convinced or have reason to believe that one or more other states are going to militarily attack them. This idea grants states the right to use military force before being militarily attacked on their territory or against military forces under their authority outside their territory, based on the argument that the current world is full of weapons threatening the security and existence of states, such as long-range and medium-range ballistic missiles, nuclear weapons, etc. This right to preemptive defense was once considered an established international norm.<sup>3</sup>

## 3. Distinguishing Between Preventive Strikes and Preventive War:

Military science experts provide examples of differentiation between the two types of strikes. For instance, the Japanese attack on Pearl Harbor in 1941 is considered a preventive strike because Japan launched an attack to anticipate any potential American attack. On the other hand, the war waged by Israel against Egypt during the tripartite aggression in 1956 is considered a preventive war to prevent Egypt from making an arms deal with Czechoslovakia. Similarly, the destruction of the Iraqi nuclear reactor (Osirak) in 1981 by Israel was a preventive strike to prevent the development of Iraqi nuclear capabilities. Examples of preventive wars are based on the presumed intentions of a future attack.<sup>4</sup>

The idea of "preventive war" is considered illegitimate in public international law, according to Article 51<sup>5</sup> of the United Nations Charter, which requires the use of legitimate defense, involving an imminent threat and the use of armed force,

<sup>1</sup> Yasser Qutaishat, "Preemptive Strike" as a New Strategy in International Relations, Opinions on the Gulf website, December 1, 2009, <https://www.araa.sa/>

<sup>2</sup> Latifa Mnadi Al-Kaabi and Sarah Ali Al-Salbi, The Legitimacy of the Use of Force in Light of International Contemporary Practices, Tajsir Journal, Volume One, Number Two, Qatar, 2020, page 68.

<sup>3</sup> Imam Ben Ammar, Preventive Wars in American Strategic Thought - A Case Study of Iraq -, Dissertation submitted to obtain a Master's degree in Political Science and International Relations, specialization: International Relations and Strategy, Faculty of Law and Political Science, Department of Political Science, Mohamed Khider University, Biskra, academic year 2007/2008, page 32.

<sup>4</sup> Yasser Qutaishat, as mentioned earlier.

<sup>5</sup> Article 51 of Part Seven of the United Nations Charter states that "Nothing in this Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under this Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

rather than simply anticipating a threat. The decisions of the Nuremberg Tribunal, which tried war criminals from World War II, reinforced this idea.

As a result, these principles have become norms for determining the legitimacy of actions on the international stage.<sup>1</sup>

It's worth noting that the interpretation of Article 51 remains controversial. Nonetheless, Article 51 does not oppose a preventive war against Iraq or any other sovereign state. However, the legitimacy of such action requires meeting the conditions of necessity and proportionality. While the rules of international law governing preventive war remain in effect, the main difficulty lies in determining cases where the necessity condition is met.<sup>2</sup>

Proponents of the theory of preventive war believe that Article 51 is subject to customary international law, which allowed preventive and defensive actions against imminent threats mentioned in Article 51. Furthermore, the expression "inherent right" means that this article did not create this right but only recognized it. It serves as a revealer or confirmer of the right to legitimate defense rather than a source of its creation. Therefore, this text does not limit or hinder this right based on the fact that customary international law is one of the main sources of international law. Thus, the recognition of customary international law regarding the legitimacy of preventive defense makes it a legitimate action, even if it is not explicitly mentioned in written international law, including the United Nations Charter.<sup>3</sup>

In September 2002, President George W. Bush issued a document titled the "National Security Strategy of the United States." The preamble stated that the United States would take appropriate measures to stop growing threats before they fully formed. This speech has only one meaning, namely that the United States has adopted a new strategy in its international relations since the date of this document, focused on preventive strikes in the event of a threat to its national security, in accordance with this document. Therefore, the United States has adopted a new approach in its international relations based on deterrence.<sup>4</sup>

It is noteworthy that Article 51 sets forth a restriction "to the use of armed force" as one of the most serious forms of aggression. If preventive or defensive actions were to be included among its exceptions, it would have been specified in a

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<sup>1</sup> Mohamed Saadi, Preventive War and Preemptive War in Public International Law, Law Journal, Volume 1, Issue 1, January 3, 2010, page 95-96.

<sup>2</sup> Mohamed Saadi, as mentioned earlier, page 96-97.

<sup>3</sup> Saud Mohammed Saad Al-Tamimi, Legitimate Defense in Light of Contemporary International Practices, This thesis is submitted in fulfillment of the requirements for the degree of Master of Laws in Public Law, Qatar University, January 2021 AD / 1442 AH, page 85-86.

<sup>4</sup> Mohammed Yunus Yahya Al-Saigh, The Bases of the United States on Preemptive War, Al-Rafidain Journal of Law, Volume (11), Number (40), Year (2009), page 243.

separate article or included in Article 51 of the Charter. The issue was not left to interpretation or legal debate. Therefore, the most likely interpretation of this article implies a restrictive rather than broad interpretation in the case of the use of armed force, with a specific exception under a legal provision.

This viewpoint leads to the conclusion that the United Nations Charter has ruled on the non-legitimacy of resorting to armed force as a preventive, defensive, or preemptive measure. They consider this as a major act of aggression in international law, authorizing the opposing state to take all necessary defensive measures to counter it, including the use of armed force, until the Security Council takes the necessary measures to repel the aggression and restore international peace and security.<sup>1</sup>

Noam Chomsky, an American thinker, comments in his book "Imperial Hubris" page 21 on the new action:

The concept of preventive war dear to Mr. Bush has revealed its true nature: it is simply the possibility of free aggression against whomever we want, it is the arbitrary and dangerous aspect of this doctrine.<sup>2</sup>

### **Conclusion :**

The international community has worked towards the conclusion of international agreements prohibiting terrorist acts, their financing, promotion, or support in any way. International organizations, notably the United Nations and the Security Council, have attempted to create legal frameworks to combat terrorism and cut off its sources through their military and judicial mechanisms. However, this often remains unenforced due to intentional or unintentional ambiguity between terrorism and resistance based on international conventions and customs.

With differences in opinions and definitions regarding terrorism, variations arise in how to combat or legislate against it. This is clearly evident in the international and national legal framework, where opinions differ regarding the definition and forms of terrorism, as well as the deterrent sanctions imposed on its perpetrators. However, in contrast, many countries characterize the notion of terrorism as acts of resistance (such as resistance in Gaza or the military actions of Hezbollah in southern Lebanon). This represents nothing more than a restriction on the activities of resistance regarding its legitimate military actions, while simultaneously expanding the rights of the occupant to take all military measures against it.

Regarding legitimate defense, the international community has developed what is called preemptive strikes, although they lack legitimate legal foundations and are often used without considering the consequences and sometimes without respecting the principles of necessity and proportionality. How can a state justify

<sup>1</sup> Saud Mohammed Saad Al-Tamimi, as mentioned earlier, page 94.

<sup>2</sup> Mohamed Saadi, as mentioned earlier, page 101

a strike against another state based on unconfirmed information regarding potential attacks by that state? This reflects the reality of American interventions in Iraq, Afghanistan, and Sudan. In contrast, when Russia intervened in Ukraine (which constitutes a flagrant violation of international law), it relied, as it claimed, on the principle of legitimate defense after becoming aware that Ukraine was attempting by all means to create a situation threatening Russia's existence. Here, the international community faces a blatant contradiction by not recognizing Russia's right to military action and denying its right to legitimate defense.

**Research Results:** The conclusions drawn from our research are as follows:

- Terrorism is a global phenomenon, and the international community must cooperate to combat it through all possible means.
- The definition of this phenomenon has not been established according to a single approach, but concepts and definitions have multiplied.
- The international and national legal arsenal to combat terrorism remains ineffective if not applied in practice.
- It is necessary for international organizations to update terrorist modus operandi, as well as develop new deterrent mechanisms adapted to the new forms of terrorism.
- The ambivalent view of the international community regarding the use of resistance in its struggle against the enemy generates a dual perception of criminal actions undertaken by actors in this resistance.
- The terms "preemptive strikes" or "preemptive war" are expressions born out of the legal vacuum left by the United Nations, neither authorizing them, prohibiting them, nor explicitly condemning them.

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