

The Dilemma of Balancing Security and Liberty in Lebanese Counter-Terrorism Legislation: A Comparative Constitutional Reading

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Abstract

International terrorism is manifested in any serious act of violence, or threat thereof, committed by an individual, whether acting alone or in concert with others, and directed against persons, organizations, or places, with the aim of undermining friendly relations between states or coercing them into making various concessions. Nevertheless, it appears evident that powerful states are reluctant to embrace an impartial definition of transnational terrorism, leaving the term as a political label employed selectively to characterize undesirable acts carried out by their adversaries on the international stage.

Against this background, this study examines the dilemma of striking a balance between security and liberty within Lebanese counter-terrorism legislation through a comparative constitutional analysis. It concludes that the Lebanese legislature has focused primarily on the security and financial dimensions of the phenomenon through Law No. 44/2015, with the aim of ensuring compliance with the standards and requirements of the Financial Action Task Force (FATF). At the same time, it has retained Law No. 19/1958, which is characterized by ambiguity and the absence of a precise definition of a terrorist act. This has resulted in security considerations being given precedence over constitutional safeguards. Accordingly, the study recommends the enactment of a comprehensive and unified law containing a clear definition of terrorism and subjecting exceptional measures to prior judicial review, with a view to restoring the balance between the requirements of protecting societal security and safeguarding the fundamental freedoms guaranteed by the Lebanese Constitution.

Keywords: Counter-terrorism; Balance; Security; Liberty; Lebanese Constitution; Principle of Criminal Legality; Judicial Review; International Standards.

معضلة الموازنة بين الأمن والحرية في التشريعات اللبنانية لمكافحة الإرهاب: قراءة دستورية مقارنة

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المستخلص

يبرزُ الإرهاب الدولي في أي عمل خطير من أعمال العنف، أو التهديد به، يرتكبه فرد، سواء كان يتصرف بمفرده أو بالتنسيق مع آخرين، وموجه ضد أشخاص أو منظمات أو أماكن، من أجل تقويض العلاقات بين الدول أو إجبارها على تقديم تنازلات مختلفة. ولكن يظهر بوضوح أنَّ الدول مترددة في تبني تعريف محدد للإرهاب العابر للحدود الوطنية، تاركة المصطلح كتسمية سياسية تستعمل بشكل انتقائي لوصف الأعمال غير المرغوب فيها التي يرتكبها خصومها على الساحة الدولية. ومن ثم، تتناول الدراسة مسألة إيجاد التوازن بين الأمن والحرية في التشريعات اللبنانية لمكافحة الإرهاب من خلال تحليل دستوري مقارنة. وتخلصُ إلى أنه، إستناداً إلى القانون رقم 44/2015، فقد أولى المشرع اللبناني الأولوية بالأبعاد الأمنية والمالية للظاهرة من أجل ضمان الالتزام بمعايير ومتطلبات مجموعة العمل المالي FATF. كذلك، احتفظ بالقانون رقم 19 لسنة 1958، على الرغم من أنه يتسم بالغموض وعدم وجود تعريف دقيق ومحدد للعمل الإرهابي. وبالتالي، الأمر الذي ساهم بإعطاء الإعتبارات الأمنية الأولوية على الضمانات الدستورية. وبناءً على ما تقدّم، توصي الدراسة بإصدار قانون شامل وموحد يتضمن تعريفاً واضحاً للإرهاب، ويخضع التدابير الإستثنائية للمراجعة القضائية المسبقة، بهدف إستعادة التوازن بين متطلبات حماية الأمن المجتمعي والحرّيات الأساسية التي يكفلها الدستور اللبناني.

الكلمات المفتاحية: مكافحة الإرهاب؛ التوازن؛ الأمن؛ الحرية؛ الدستور اللبناني؛ مبدأ الشرعية الجنائية؛ المراجعة القضائية؛ المعايير الدولية.

Introduction

International terrorism has become an international criminal phenomenon that threatens normal relations between states and constitutes a direct subversion of the domestic and global order, through the unlawful use of violence and the creation of an atmosphere of insecurity. Whether this terror results in a danger affecting human lives or fundamental freedoms, its purpose is to pressure a community or a state into altering its behavior regarding a particular issue, by committing acts which, in their general meaning, encompass all activities that undermine the security and stability of the international community. Such acts are considered a dangerous provocation to human sentiments and values, including assassination incidents directed against symbols of public authority, religious figures, members of diplomatic missions, or attacks on property through its destruction, the bombing of vehicles, economic institutions, and others. In this context, it is apt to state that Lebanon was among the first in the Arab world to enact criminal legislation, as its laws have contained provisions criminalizing and penalizing terrorist acts since their issuance in 1943⁽¹⁾.

It follows from the foregoing that international terrorism, at the dawn of the twenty-first century, constitutes an existential challenge targeting the political entity, its modern constitutional pillars, and the foundations of international peace and security, due to its connection to trans-continental networks that undermine not only innocent lives but also the social fabric and the constitutional structure of States. In confronting this danger, a governing duality has emerged in contemporary legal thought, manifested in preserving the legal personality of public authority within the security context, on the one hand, and safeguarding fundamental rights and freedoms as the essence of criminal legality, on the other. This is doctrinally expressed as the dilemma of sovereign peace versus liberty.

It is noteworthy that in the Lebanese Republic, this obstacle acquires a dual dimension. The constitution promulgated on 23 May 1926, particularly its amendments embodied in the National Accord Document of 1989 (Taif Agreement), occupies the apex of the legal hierarchy in accordance with the principle of the supremacy and sovereignty of the Constitution⁽²⁾. Moreover, Lebanon is bound under its Article 2 to a provision stating that ratified and duly promul-

(1) Pursuant to the spirit of Article 314 of the Lebanese Penal Code, *International Terrorism in Light of International Changes*, Ahmed Hussein Sweidan, Al-Halabi Legal Publications, 1st edition, 2005, p. 42.

(2) This principle is the governing reference for all authorities and legislations pursuant to Article 7 of the Lebanese Constitution, which stipulates that all Lebanese are equal before the law. However, the second chapter thereof defined the rights and freedoms of Lebanese, which remained unchanged, as the deputies believed they were complete and capable of keeping pace with new developments.

gated international treaties become part of Lebanese legislation, making it a party bound by a wide array of United Nations and regional counter-terrorism agreements, and Security Council resolutions issued under Chapter VII of the UN Charter, foremost among which are Resolutions 1373 (2001) and 2178 (2014), which mandate the criminalization of terrorist financing and the prevention of travel for the purpose of joining subversive organizations. However, this intersection between the domestic constitutional framework and international obligations gives rise to a fundamental problem, namely the absence of a coherent legislative clarification unifying the concept of terrorism in Lebanon. On the other hand, we find relatively broad definitions in United Nations instruments⁽¹⁾.

Notably, the jurisprudence of the Lebanese Constitutional Council, in its Decision No. 4/2005, established the principle of constitutional review of laws, and subsequently affirmed the necessity of strictly interpreting penal provisions. This places the legislature faced with the puzzle of how to formulate comprehensive regulatory rules specifically for counter-terrorism to address emerging threats, while simultaneously being sufficiently limited and constrained so as not to contravene the principle of *"nullum crimen, nulla poena sine lege"* (no crime and no punishment without a prior legal text).

In addition to the above, legal doctrine has deduced a situation where ordinary laws conflict in their objectives with the Constitution, necessitating the prevalence and preponderance of the spirit of the latter. However, if both are on the same legal footing, the problem of constitutional review theory ceases to exist, which in fact has enabled the legislature to breach the obligation of subordination to the supreme law of the state⁽²⁾.

According to a recent study on the human rights framework of terrorism in national legislation, we note that approximately fifty-three States have enacted counter-terrorism laws, particularly over the last decade, in order to overcome this phenomenon by addressing local needs and fulfilling the obligations undertaken by international regimes under universal and regional agreements⁽³⁾.

Hence, the importance of this subject stems from Lebanon's sensitive geopolitical position, which constitutes a challenge that imposes dual obligations upon it to counter terrorism without

(1) We mention, for example, the Arab Convention for the Suppression of Terrorism of 1998, meaning that this ambiguity creates tension between the requirements of effective criminalization and punishment imposed by the rules of international law, and the guarantees of a fair trial and public freedoms enshrined constitutionally pursuant to Articles 7, 8, 9, and 10, relating to equality, personal liberty, and freedom of opinion and expression.

(2) Burdeau. Hamon et Troper, **Droit Constitutionnel**, L.G.D.L. Paris, 1993, p. 75.

(3) Henkin, Pugh, Schacter, Smit, **International Law, Cases and Materials**, 2nd ed. (1986), 365 n.3, 631-636.

undermining the essence of the pluralistic democratic system constitutionally enshrined in the National Accord Document (Taif Agreement).

In addressing this subject, we will adopt an analytical, descriptive, and comparative approach, with a view to diagnosing the aspects of complementarity and contradiction between the provisions of the Constitution and Lebanon's international obligations, and presenting proposals to address existing legislative gaps in a manner that achieves the desired balance between security and freedoms in accordance with the criteria of "necessity and proportionality." This leads us to pose a fundamental question: To what extent does the Lebanese constitutional and legislative system provide a definition of the crime of terrorism that effectively integrates with the requirements of international law, and is it sufficient to create a balance between the imperatives of national security and the protection of public freedoms?

Accordingly, the following sub-questions arise from this problem:

1. Does the absence of a constitutional text lead to an expansion of the powers of the legislative and executive authorities, thereby threatening the principle of legality?
2. Does the jurisprudence of the Lebanese Constitutional Council, particularly Decision No. 4/2005, constitute a safe alternative to explicit constitutional principles, or do definitional gaps exist that impede effective counteraction?
3. How can the Lebanese legislature reconcile its international obligations under Security Council Resolution 1373 with the safeguarding of fundamental freedoms, in the absence of a constitutional provision regulating this complementary relationship?

Based on the foregoing foundation regarding the nature of the relationship between constitutional laws and the phenomenon of terrorism, and the importance of practical models that have highlighted the magnitude of constitutional challenges, addressing this issue requires a detailed and segmented approach. Accordingly, we have seen fit to divide this study into two main chapters. In the first, we will address the Lebanese constitutional framework for the criminalization of terrorism, by exploring terrorist concepts in light of constitutional provisions and analyzing the principle of criminal legality as a constitutional safeguard for the criminal act. As for the second chapter, we propose to dedicate it to the constitutional safeguards and judicial review of counter-terrorism laws, in order to assess the extent of the balance between the requirements of national security and the protection of fundamental freedoms.

Chapter One: The Lebanese Constitutional Framework as a Standard for Counter-Terrorism Legislation

First and foremost, we note that the foundational compact established among the Lebanese prior to the drafting of the 1926 Constitution, and which evolved over time until the adoption of the constitutional amendments in 1990, revolved around the reality of sectarian pluralism in both aspects discussed by Maurice Hauriou. This compact guaranteed numerous fundamental rights and freedoms, the scope of which expanded in conjunction with the reference made in its preamble to the Universal Declaration of Human Rights. The establishment of the Constitutional Council pursuant to Article 19 of the Constitution constituted a qualitative leap towards the achievement of the rule of law, as the Council adopted in its numerous and settled jurisprudence, following the example of its French counterpart, the principle of the “constitutional block” (*bloc de constitutionnalité*). It also affirmed the binding nature of this preamble and its possession of the same final and compelling force as international treaties, considering it an integral part of the Constitution and deriving its validity from the principle of the hierarchy of legal norms⁽¹⁾.

Lebanon chose a democratic parliamentary system, but its application has been weak and distorted due to the absence of political parties, national leadership, and the practice of political sectarianism, as well as the system’s lack of an effective accountability mechanism and its inability to secure justice, equality, and equal opportunities for all citizens. Should the Chamber of Deputies overstep certain boundaries and enact legislation contrary to the provisions of the Constitution, the Constitutional Council stands as a sentinel, given the foundational basis upon which the country’s legal system rests.

Nevertheless, we note that any exceptional legislation aimed at countering terrorism cannot be enacted in isolation from its provisions and principles, which must be characterized by stability, permanence, and immunity from personal interests, as they are general, abstract, and constitute governmental acts that do not fall within the jurisdiction of the Council of State⁽²⁾.

As a result of the principle of constitutional supremacy, constitutional laws differ from ordinary

(1) The first decisions that recognized the value of the constitutional preamble: Decision of the Constitutional Council No. 96/4 dated 7/8/1996 (Law No. 1996/530) dated 11/7/1996; Decision No. 2001/2 dated 10/5/2001 (Law No. 2001/295 dated 3/4/2001, merging and repealing (request to annul the second paragraph of the new Article (1) of Law No. 296 issued on 3/4/2001 aimed at amending certain provisions of the law implemented by Decree No. 11614 dated 4/1/1969, relating to the acquisition of real property rights in Lebanon by non-Lebanese).

(2) Issam Suleiman, *Interpretation of the Constitution and its Impact on the Constitutional System*, Constitutional Council, Yearbook 2012, Volume No. 6, p. 15. Edmond Rabbat, *Al-Wasit in Lebanese Constitutional Law*, Dar Al-Ilm Lil-Malayin, Beirut, 1970, p. 684.

laws in both subject matter and form, and this distinction entails that there can be no conflict or contradiction between them, given that the texts derived from the Constitution represent more stable models that cannot be repealed except by equivalent constitutional provisions. For this reason, it has been said that the Constitution is the supreme legal document established at a particular historical moment to define the nature of the political system, the identity of society and the state, and to embody the balance of forces prevailing at that moment⁽¹⁾.

As for constitutional justice, it has made its voice heard. From a doctrinal perspective, we find that the constitutional issue manifests itself clearly in the context of the security events witnessed in the southern region of Lebanon during the years 2023 and 2024. Security and judicial authorities resorted to applying the provisions of Counter-Terrorism Law No. 55/2015 in an expansive manner, which included the criminalization of acts described as supportive yet without precisely defining them in the legal text. This gave rise to a fundamental constitutional dilemma, namely the collision with the principle of penal legality implicitly enshrined in the Lebanese Constitution, which requires that criminalization and punishment be consecrated by a prior, clear, and specific text. This justifies the tension between the state's authority to protect national security in the face of the terrorist threat and its constitutional obligation not to infringe upon the essence of public freedoms, as well as the unwarranted extension of the scope of conviction in a manner contrary to the constitutional text⁽²⁾.

Accordingly, this chapter will address the concept of terrorism and the multiplicity of its definitions at both the international and domestic levels. It will then shed light on the manifestations of the constitutional vacuum in comparative Arab legislation, culminating in an exposition of the underlying reasons for the absence of a unified constitutional definition of this crime.

Section One: The Concept of Terrorism and the Challenges of Its Definitions at the International and National Levels

There is no doubt that the question of defining terrorism has occupied, and continues to occupy, a significant place in the thinking of international law scholars in general, and those specialized in studying its phenomenon in particular, to the extent that one could say the efforts expended in seeking a comprehensive and clear definition are no less than the initiatives undertaken to

(1) Antoine Massarra, *The Lebanese Constitution and its Applications*, Beirut, Dar Al-Nahar, 2015; Edgar Ghosn, *The Lebanese Constitutional System*, Dar Nawfal, p. 45; text of Article 2 of the Lebanese Constitution issued in May 1926, amended by the constitutional law issued on 21/9/2004.

(2) We note in this context that the Constitutional Council observed how public freedoms enshrined in Articles 7, 8, 9, and 10 of the Constitution are directly affected through penal provisions relating to terrorism, and thus emphasized the need for a strict interpretation of constitutional laws.

examine the mechanisms for combating it. Indeed, what is considered terrorism from one perspective is regarded as heroism and a struggle for freedom from another, which reflects one of the most prominent obstacles preventing the world's states from agreeing on a unified definition of terrorism⁽¹⁾.

Thus, as understood from the spirit and essence of its meanings, terrorism is the terror engendered by violence to achieve political objectives. Regarding the possibility of using the linguistic definition of terrorism as a basis for its terminological definition, and understanding it sufficiently, or deducing its elements and characteristics that distinguish it from other phenomena that may be associated or confused with it, a group of jurists supported this view and deemed that the concept in this regard should be derived from these foundations. Meanwhile, the pioneers of the opposing school of thought held that there is a discrepancy between the linguistic conception of terrorism and its terminological usage. From this contradiction, the greatest dangers of terrorism are born. Indeed, if we refer to the minutes of the trial sessions of a defendant accused of committing a terrorist act, it is not unlikely to find a confession in which he expresses pride in the charges and facts attributed to him⁽²⁾.

Because the clash between regimes and the law exists at both the domestic and international levels, the question of whether it is valid to apply the label of terrorism to certain acts of violence committed by the political authority within the state against citizens becomes important and pressing. In light of the international disagreement over its nature and scope, there is great apprehension regarding the prioritization of the existing state of affairs over what ought to be. This is embodied in the fact that the term "counter-terrorism" has become a cornerstone of procedures aimed at achieving political and strategic objectives, contrary to the substantive considerations grounded in general and abstract texts that address everyone equally. Indeed, many governing systems in various states have used this term as a pretext to suppress political

(1) The lack of legal clarity in one way or another leads to the impossibility of achieving stability in a definition based on a single framework for terrorism. It is well known that most Arab instruments are characterized by modernity due to not including this meaning before September 11, 2001, as they settled on the principle of national sovereignty which rejects the unified constitutional organization that mandates intervention in the internal affairs of the state, and thus restricts its privacy. United Nations Office on Drugs and Crime (UNODC) for the year 2019, *Assessment of Arab Legislation on Counter-Terrorism*, Vienna, UNOCT; Medhat Ramadan, *Crimes of Terrorism in Light of the Substantive and Procedural Provisions of International and Domestic Criminal Law, Comparative Study*, Dar Al-Nahda Al-Arabiya, Cairo, 1995, pp. 87-89.

(2) Abdel Aziz Mokhaymer, *International Terrorism with a Study of International Conventions and Resolutions Issued by International Organizations*, Dar Al-Nahda Al-Arabiya, Cairo, 1986, pp. 40-41. According to this logic, terrorism is the use of violence, force, or the threat thereof against innocents, civilians, or non-combatants in order to achieve political goals. Tomis Kapitan, "The rhetoric of terrorism and its consequences", *Journal of Political and Military Sociology*, No. 3, Summer 2002, p. 1.

opponents or citizens. At the international level, it has been adopted as a slogan raised by several major powers to wage wars and undertake military interventions against independent and sovereign states ⁽¹⁾.

We hasten to state that many governments have an inherent problem with defining terrorism and specifying it as a prerequisite for its criminalization and punishment. We find that some national laws have addressed it as a single crime, focusing on a substantive analysis of the terrorist's conduct, encompassing the specific nature of the acts committed, the methods employed, and the ultimate objectives pursued. However, to date, these penal legislations do not provide for a separate category for terrorist crimes; rather, they define terrorist activity through ordinary crimes mentioned in the penal codes, such as aggravating the penalties for homicide when committed for a terrorist purpose ⁽²⁾.

Consequently, the problem of politicization arising from the fundamental disagreement regarding the exclusion of national liberation movements and resistance to foreign occupation from the scope of criminalization in the interest of self-determination has reflected the impediment to the adoption of the draft Comprehensive Convention on International Terrorism since 1996. As long as the dilemma of a unified definition remains the greatest international obstacle to judicial cooperation and the extradition of criminals, domestic legislation will remain captive to generality and vagueness, which poses a risk to genuine democracy. This necessitates a legal framework that strips the determination of the meaning of terrorism of politics, and that equally ensures collective security and safeguards the fundamental freedoms of the individual ⁽³⁾.

(1) Mohamed Abdel Muttalib Al-Khashn, *The Definition of International Terrorism between Political Considerations and Objective Considerations*, Dar Al-Jami'a Al-Jadida, Alexandria, 2007, p. 129.

(2) In 1985, the Legal Advisor of the U.S. Department of State acknowledged before the Constitutional Committee of the U.S. Senate that his department did not wish to establish a definition of terrorism, whether domestic or international, and that the reason for this was Washington's policy at the time, which was based on its exclusive right to accuse and punish. Alaa El-Din Rashid, *The Problem in Defining Terrorism*, Dar Al-Nahda Al-Arabiya, Cairo, 2006, pp. 42-43.

(3) What should be noted is the wording of Article 314 of the Lebanese Penal Code (Legislative Decree No. 340 dated 1/3/1943), as its text came broadly, expanding the scope of criminalization at the expense of the principle of legality of crimes mentioned in Article 1 of the same law, which stipulates "no crime and no punishment except by a text," and the legal amendments to combat terrorism, such as Law No. 55 dated 11/4/2015, including the financing of terrorism pursuant to Article 316, cybercrimes, and travel for fighting (Counter-Terrorism Law of 2015) pursuant to Article 315. However, the Council of State considered in some of its decisions that this comprehensiveness may affect freedom of expression guaranteed under Article 13 of the Lebanese Constitution of 1926, and the Court of Cassation (2014), Decision No. 1 dated 15/1/2014, regarding the Tripoli bombings case. At the international level, UN General Assembly Resolution 51/210 of 1996 remains pending, but the international community has adopted 19 conventions that criminalize specific acts instead of a general definition. We mention, for example, the Hague Convention of 1970 on the Unlawful Seizure of Aircraft, and the International Convention for the Suppression of the Financing of Terrorism of 1999.

Sub-section One: Manifestations of the Constitutional Void in the Criminalization of Terrorism in Comparative Arab Legislation

Given that penal policies in modern societies aim to strike a balance between the freedom of the individual and society, embodied in the interest that both seek, the famous legal principle *"nullum crimen, nulla poena sine lege"* (no crime and no punishment without a prior legal text) is the guarantor of achieving this. It is not merely a national or domestic legal principle, but rather an international one centered on the concept, dimensions, and evolution of the idea of crime, particularly global terrorism. It protects suspects from arbitrary accusations and ensures them a fair trial, far removed from any political, religious, or ideological objectives that may often be present⁽¹⁾.

In the context of regional counter-terrorism efforts, Arab states have likewise taken numerous positive steps to curb the growing risks of terrorist acts and address them. The first of these efforts crystallized in the security strategy adopted by the Arab Ministers of the Interior in 1983, which stipulated the necessity of preserving the security of the Arab homeland and protecting it by adhering to noble moral and religious principles. This is evident from the influence of the Gulf Cooperation Council (GCC) states by the Arab Convention for the Suppression of Terrorism of 1998, which is considered the first to establish a definition of terrorism⁽²⁾.

As for the Treaty of the Organization of the Islamic Conference (OIC) on Combating Terrorism, adopted on July 1, 1999, we find its definition to be similar to, if not identical with, the Arab Convention. Arab states have not been immune to the acts of violence and sabotage that have affected countries worldwide, which has prompted them to issue numerous legislative texts to combat the phenomenon and curb its growth. At the forefront of these states is Lebanon, which has remained at the lowest level of treatment, and we will elaborate on this as follows:

First: Lebanon in the Face of Terrorism

Lebanon is considered a glaring example of a constitutional void. Returning to its Constitution of 1926 and its amendments, it becomes abundantly clear that there is an absence of a definition for the crime of terrorism with a view to establishing controls to combat it, as the Constitution sufficed with stipulating general principles. This compelled the Lebanese legislature to

(1) UN Security Council Resolution 1566 dated 8 October 2004; Mohamed Fathi Eid, **The Reality of Terrorism in the Arab World**, Naif Arab Academy for Security Sciences, Center for Studies and Research, Riyadh, 1999, p. 22.

(2) The Arab Convention for the Suppression of Terrorism, issued by a decision of the Arab Councils of Ministers of Justice and Interior at their joint meeting held at the headquarters of the General Secretariat of the League of Arab States on 22 April 1998.

address this issue through ordinary legislation. However, all these laws were enacted without a constitutional foundation defining the contours of the crime, rendering them vulnerable to challenge on grounds of unconstitutionality due to the inconsistency and duplication of texts without a unified vision. This is compounded by the expansion of the discretionary authority of judges, which threatens the principle of legal security. It would have been advisable for the Constitutional Council to activate its oversight role to establish legislative parameters within its foundational scope⁽¹⁾.

Second: Egyptian Legislation

It is evident from Article 86, as amended by Law No. 97/1992, that the legislator provided a loose and general definition of terrorism.

Third: The Algerian Constitution

Article 1 of Legislative Decree No. 92-03 on combating terrorism and subversion provided a definition that reflects the legislature's expansion in specifying acts of violence. However, it introduced a new text with numerous amendments pursuant to Order 95-11, which included more detailed and precise provisions.

Fourth: The United Arab Emirates

The Emirati legislature addressed the vacuum through Federal Law No. 7 of 2014, which is among the most precise Arab laws in defining terrorism and specifying its elements, as it was purely and firmly legislative in approach.

Fifth: The Republic of Iraq

It is considered one of the Arab countries least affected by the foundational vacuum, as the 2005 Constitution explicitly stipulated in Article 7 that: "Every entity or approach that adopts terrorism is prohibited."

Sixth: The Kingdom of Morocco and Tunisia

The treatment remained legislative. After the Moroccan Constitution of 2011 and the Tunisian Constitution of 2014, general texts regarding the protection of state security and public order were included, but without a constitutional definition of terrorism⁽²⁾.

(1) Lebanese Penal Code (1943), Legislative Decree No. 340, pursuant to Articles 314 through 320; Lebanese Counter-Terrorism Law (2015), No. 19/N; and the Lebanese Constitutional Council (2023), constitutional jurisprudence.

(2) We note in this context that Egyptian laws added a qualitative shift by enacting Legislative Text No. 94/2015, which detailed crimes and penalties. Be that as it may, and to put matters in perspective, we conclude that the

Subsection Two: Reasons for the Absence of Unified Constitutional Regulation of the Phenomenon of Terrorism and its Repercussions on the Principle of Penal Legality

Despite the widespread use of the term terrorism on a broad scale, there is no agreed-upon definition for it, owing to differing ideological factors and cultural and intellectual structures. There is no doubt that its organized crimes, in their various types and methods, now constitute one of the most serious threats to society and its stability both domestically and internationally. Confronting them is generally undertaken through the legal rules of criminal law in the vast majority of states. A comparative study indicates that many of them do not explicitly stipulate a specific offense as terrorism, but rather describe it as such through provisions that are not suitable for application to similar acts not covered by the text, while other laws content themselves with introducing texts relating to the expansion of arrest and detention powers under a special measure called the Counter-Terrorism Law, without defining the nature of terrorist acts. Nevertheless, most of these legislative systems were enacted on specific occasions in response to immediate circumstances, in haste and urgency, and are insufficient for effective radical treatment⁽¹⁾.

Unsurprisingly, most Arab states have been affected by the scourge of terrorism. They have enacted policies based on deterrence, employing methods adopted by their jurists as well as Western ones, such as France, Italy, and Germany, in dealing with the question of defining terrorism. Islamic law, which served as an entry point for repentance for those willing, provided for penalties ranging from execution to life imprisonment and enhanced imprisonment, in addition to confiscation, given the gravity of perpetrators of terrorist crimes and their ability

legislation of Arab states regarding terrorist crimes addressed, treated, and consequently defined through the stipulation of acts constituting the crime of violence and terror, which were characterized by generality, making the concept of terrorism comprehensive and distinct from its counterpart in Western states by adhering to the principle of territoriality and not applying international penal rules.

(1) The texts of Arab constitutions came devoid of explicit criminalization of terrorism, as their drafters believed that penal laws were sufficient, which made countering terrorism subject to decrees and administrative decisions that weaken the principle of “no crime and no punishment except by a text.” Consequently, the Arab Convention, by virtue of its Article 1, became an alternative reference to the constitution, with a flexible and elastic definition, so national legislations came loose and broad (Algeria: Article 87 bis; Egypt: Law 2015; Lebanon: Article 314 of the Lebanese Penal Code, as well as referral to the Court of Cassation as an exceptional court; Jordan: Anti-Terrorism Law 2006; and Morocco: Counter-Terrorism Law 2003). We also note that the stance of both the Egyptian and Lebanese legislators focused on the rule of protecting national security and left the details to Egyptian Law No. 94/2015 and 19/2019, and this is effectively what the Arab Convention for the Suppression of Terrorism stipulated, as Lebanon ratified its provisions but without amending its domestic legislation to align with them, considering them sufficient as a unified framework that obviates the need for a recurring constitutional text. Law No. 44 dated 15 October 2015, published in the Official Gazette, Issue No. 43 dated 22 October 2015; Penal Code No. 19 dated 15 December 1958, published in the Official Gazette, Issue No. 50 dated 18 December 1958.

to move quickly and evade justice. Today, we are witnessing increased powers granted to executive and judicial authorities, which prosecute terrorists before special bodies to ensure the expedited adjudication of pending cases, due to the difficulties encountered in implementing counter-terrorism principles when criminal conduct extends beyond the state's borders, including the presence of financiers and planners, or the escape of perpetrators after carrying out the intimidating operation, particularly in the absence of specific criteria for violence that would determine areas of cooperation between states through the extradition of criminals⁽¹⁾.

We conclude by stating that the interpretation of the Constitution by the Chamber of Deputies is inevitably influenced by the disagreements existing among parliamentary blocs representing political forces, whose interests may be conflicting. This leads to disputes regarding the interpretation of a constitutional text in a manner that does not reflect its genuine content. It has thus become necessary to seek solutions to this problem, in order to ensure the continued regular functioning of constitutional institutions and the preservation of the supreme national interest. The judge is bound to apply the law and respect the Constitution, which stands at the apex of the hierarchy of norms. However, when the legislative authority contravenes its provisions, and there is no explicit text specifying a mechanism to address this breach or a penalty for non-compliance, the judiciary finds itself in a genuine predicament: the lack of a constitutional basis enabling it to establish clear legal consequences. This creates a state of disorder that contributes to weakening the principle of the rule of law⁽²⁾.

We have realized the gravity of this phenomenon and its recurrence on the Lebanese scene, as the constitutional legislature did not establish a clear and specific definition of terrorist acts, unlike certain Arab and Western constitutions. There is a complete absence of constitutional provisions explicitly stipulating the nature of the crime or the protection of the state, except for the general phrases embodied in national security and public order. This fundamental gap was subsequently addressed through Counter-Terrorism Law No. 66/2016, yet it remained ordinary legislation subject to review by the Constitutional Council⁽³⁾.

(1) Hanaa Ismail Ibrahim Al-Asadi, *Terrorism and Money Laundering as One of its Sources of Financing (Comparative Study)*, 1st ed., Zein Legal Publications, 2015, pp. 585-586.

(2) Perhaps the best practical example that must be cited is the case of widespread arrests under Article 274 of the Lebanese Penal Code, which stipulates dealing with the enemy, and Article 314 relating to terrorism, and the referral of most files related to incitement or stirring sectarian tensions to military courts and the Court of Cassation, which deprived the accused of the guarantees of a fair trial enshrined pursuant to Articles 12 and 20 of the Constitution, and consequently the absence of precise legislation clarifying the crime of cyber terrorism, which has left investigating judges unable to distinguish without trial, as is the case with the criminalization of terrorism in 2026 under a law whose roots go back nearly eighty years.

(3) We note in this context that the Constitutional Council has not yet issued a specific decision regarding the

Section Two: The Governing Constitutional Principles in Countering Terrorism

Since its formation in its current form, the state has faced numerous challenges, perhaps the most important of which is the conflict between the state, as the governing apparatus, and its citizens, as the people subject to its authorities and rule. However, the essence of governance lies in the desire of the governed to set limits on the tyranny of rulers, or to restrict their authority, or to establish rules, principles, and legal provisions to constrain the actions of power and prevent its deviation. These foundations are known as constitutional law, which preserves the stability of government while simultaneously safeguarding the rights and freedoms of individuals. Achieving this balance requires maintaining the delicate space between the effectiveness of confrontation and ensuring the protection of freedom in the exercise of rights and democracy, from which enforceable laws emanate, giving rise to the supreme instrument embodied in the general constitutional framework⁽¹⁾.

Thus, we observe later that in Western societies, the contemporary constitutional movement was launched in the late eighteenth century and evolved through successive waves, whether through revolutionary movements or major world wars. In this context, when constitutional texts encompass the fundamental principles related to liberty and rights, laws become necessarily bound by them, such that if they exceed these bounds, they are subject to annulment by the Constitutional Court, along with the sanctions resulting from the defect, including the invalidation of decisions taken on their basis⁽²⁾.

Therefore, as long as counter-terrorism laws require the judge, the legislature, and the executive authority to adhere to constitutional legality, which imposes certain principles—the most important of which are the principle of constitutional supremacy, the principle of criminal legality, the principle of natural justice, and the principle of a fair trial—they are rightly considered among the important guarantees that ensure the achievement of a form of balance between the

2026 war, but it relied on its previous decision 4/2015, where it affirmed the principle of legality, pursuant to the text of Article 32 of the Lebanese Constitution, which does not permit expanding the powers of security agencies in arrest and raids, even in a state of war, without prior judicial authorization. It also stressed that the referral of civilians to the Court of Cassation should be implemented only for the minimum and the most serious crimes. If this indicates anything, it indicates the state's difficult choice: either freedoms or security. Accordingly, the Lebanese situation calls for a radical constitutional and legislative amendment.

(1) It is worth noting that there is an analytical survey study on democratic transition legislation in Egypt, post-revolution phase, prepared by the Legislative Research and Development Unit of the National Council for Human Rights, 2011, pp. 12-13.

(2) André Hauriot, *Constitutional Law and Political Institutions*, Al-Ahliyya for Publishing and Distribution, Beirut, 1974, Part One, p. 82; Mustafa Al-Ouji, *Human Rights in Criminal Proceedings with an Introduction to Human Rights*, Nawfal Foundation, no edition, p. 85.

public interest of society and the protection sought by individuals for their fundamental rights and freedoms.

Sub-section One: Problematics of the Deficiency of Explicit Constitutional Definition of Terrorism in Lebanon

It is established at the level of criminal organization, and the serious threats it poses that infringe upon public order, obstruct the state in fulfilling its duties, incite citizens to disobey its laws, and undermine the security, peace, and economic stability of local and international communities, that terrorist organizations now operate in a borderless world. They function as an international network in a flexible and swift manner, without relying on specific administrative measures, while law enforcement agencies are constrained to operate domestically, depending on specific and rigid legal procedures. This necessitates the globalization of criminal justice systems, granting the counter-terrorism process the authority to take preventive constitutional initiatives in cooperation with states or international bodies, centered on eliminating safe havens for these organizations by strengthening the rule of law⁽¹⁾.

In this regard, the Council of Arab Ministers of the Interior took the initiative to include Lebanon within the important subjects falling within its competence. The Chamber of Deputies ratified the Arab Convention for the Suppression of Terrorism and authorized the government to conclude it. The challenges require concerted efforts for comprehensive judicial, security, and informational assistance, thereby enhancing the capacities of constitutional concepts in confronting innovative methods of cyber-terrorism, bioterrorism, and others, as well as the extradition of prosecuted criminals and the execution of judicial rulings⁽²⁾.

(1) Lebanese law stipulated the term organized crime in Article 1, paragraph 2, of the Anti-Money Laundering Law No. 318/2001 – Combating Money Laundering – 20/4/2001 – Official Gazette – Issue 20 – 26/4/2001, p. 1562. Thus, in recent years, Lebanon moved from the position of the accused of non-cooperation in combating money laundering to the Egmont Group (the blacklist of the FATF), by assuming the presidency of the Financial Action Task Force for combating this phenomenon in the Middle East and North Africa, after having contributed primarily to its establishment.

(2) Modern Arab penal legislation on combating the financing of terrorism has come to be more expansive and comprehensive in terms of its forms and manifestations, as it was not limited to the provision of money only, or to the terrorist person, but rather considered any assistance provided to the terrorist entity, act, or heinous crime as financing, thus closing the gaps of legitimate access to financing terrorism under any name and in any form. Decision of the Arab Council of Ministers of Justice No. 249 dated 26 November 1997, and Decision of the Arab Council of Ministers of Interior No. 290 dated 5 August 1998.

It goes without saying that Lebanese legislation has been developed to monitor criminal activities through the enactment of laws consistent with what criminal legislation in many countries has adopted, particularly after the events of September 11 and the subsequent issuance of special laws to combat terrorism and its financing, especially given Lebanon's membership and active role in Interpol since 1947. However, it must be mentioned that security considerations were previously used as a pretext to infringe upon certain freedoms. This occurred despite the issuance of Counter-Terrorism Law No. 19/1958, where the Lebanese legislature sufficed with criminalizing certain acts without providing a precise definition. This created internal confusion that led directly to a collision with the principle of criminal legality. It addressed the criminal manifestations of terrorism rather than addressing its essence. Its texts described the terrorist crime while omitting its definition, and allowed the political and judicial authorities to expand the scope of criminalization to include acts that do not rise to the level of a terrorist act, which contributed to creating contradictions between provisions and difficulties in application⁽¹⁾.

Sub-section Two: Constitutional Pillars as Guarantees in Confronting Exceptional Counter-Terrorism Legislation

There is no doubt that the evolution of the concept of the democratic state and the delay in the adjudication of disputes before the judiciary have necessitated the creation of modern mechanisms to protect the rights of individuals in various fields in a swift and effective manner. When examining judicial bodies, it is found that the Constitutional Council is the authority entrusted with supervising the work of the legislative body, capable of preventing the excesses of the three branches of government (executive, legislative, and judicial authorities) and resolving disputes related to other matters. To complete this task, the Council of State (Conseil d'État) can fulfill its role through exercising its oversight over the performance of the government, which is presumed to respect the law whose constitutionality the Constitutional Council has already verified. This is in addition to the role of the ordinary judiciary as a protector of individual freedoms, which constitutes a legal bulwark against any exceptional expansion of criminalization. Foremost among these constitutional guarantees is the principle of criminal legality, which is

(1) It is worth noting that the most prominent aspects of deficiency did not stop at this point, but went beyond it to obstructing international judicial cooperation with states that require the existence of a clear definition of the crime in the law of the requesting state. This deliberate ambiguity and vagueness in legislation makes Law 19/1958 an interpretable and politicized tool, serving security considerations at the expense of rights and freedoms, and thus contradicts Lebanon's international obligations in the field of human rights, so that criminalization becomes contingent upon the judge's discretion and the circumstances of the case, rather than a prior and specific text, thereby threatening legal security and undermining the principle of predictability. Ali Kharis, *Lebanese Penal Code, Special Section*, Al-Halabi Legal Publications, Beirut, 2018, p. 420 et seq.

a subject of interest in international forums⁽¹⁾, as it also constitutes a fundamental commitment against granting judges unrestricted discretion in determining crimes, and prevents the attribution of the label of terrorism to acts not explicitly stipulated by the legislature.

In the face of this reality, the gap widens between concepts that may themselves be influenced by social, historical, and economic data, while the balance of political forces controls the drafting of the Constitution. This leads to circumventing the complexities of its texts through ambiguous constitutional means open to extensive interpretation. On the other hand, the principle of the separation of powers is considered a guarantee of rights and freedoms, as it fundamentally prevents the emergence of authoritarian regimes that practice repression and persecution. However, experience has proven that it does not alone constitute an absolute guarantee, unless it is coupled with strict oversight that should be provided by an independent, fair, and impartial judiciary that does not hesitate in rendering judgments, along with the principles of justice. The rule of law and the judicial system play a central role in promoting and protecting human rights, which occupy a prominent position in states subject to the decisions of constitutional institutions. Their protection has today become one of the prominent and distinguishing features of democratic systems, all of which revolve around one fundamental axis: human dignity, which is based on liberty and equality, embodied in the principle of a fair trial. This achieves a balance between the rules of criminalization and the punishment prescribed for a crime in a given society, which has controls according to the supreme hierarchy in the state that expresses the sovereignty of the nation. The nature of the relationship between constitutional justice and other authorities is contingent upon the extent to which they accept the idea of granting this constitutional body oversight powers that restrict and verify the conformity of their actions with the Constitution⁽²⁾.

(1) Despite the Constitutional Council's affirmation that the judiciary is the protector of individual freedoms, this is not stipulated in the Lebanese Constitution, as is the case in the French Constitution, which necessitates a provision that enshrines terrorism legally to become entrenched in minds and souls and to be practically translated in constitutional application. Constitutional Council Decision No. 4/2001 dated 29/9/2011, published in the Constitutional Council Volume 2001-2006, and according to the text of the second paragraph of Article 66 of the French Constitution, as well as Decision No. 2/99 dated 24/11/1999 (Lebanese Constitutional Council).

(2) Lebanese Constitutional Council, No. 1/2005 dated 6/8/2005. Accordingly, in reality, exceptional counter-terrorism legislation is not absolute, but rather is subject to constitutional controls that prevent it from confiscating rights and freedoms. The first of these limits revolves around necessity, which requires that exceptional measures may not be resorted to except in the presence of a real and imminent danger threatening state security, and they must be proportionate to the magnitude of the risks, otherwise they are considered an infringement on the principle of legality. The second is the factor of temporal limitation, meaning that exceptional law must be temporary and not permanent, and here lies the problem of Law 19/1958, which remains in effect without substantial review, making it susceptible to losing its exceptional character and transforming into a rule characterized by stable continuity. As for the third, it reflects the principle of respect for fundamental rights, so that exceptional legislation may not

Chapter Two: Lebanon's International Obligations in the Field of Counter-Terrorism

The principles of human rights entered Lebanese positive law in two stages. The first occurred when Lebanon acceded on 1 September 1972 to the two International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. The second materialized when the Universal Declaration of Human Rights became part of the Preamble to the Constitution. Consequently, the concept of fundamental freedoms emerged from the perspective of considering Lebanon bound by numerous human rights agreements, through its submission of periodic reports to the United Nations on the progress achieved and enshrined in the application and guarantee of the principles fused integrated within universal instruments within into the constitutional block⁽¹⁾.

It is widely acknowledged that recent experiences have demonstrated the extent of defects, contradictions, and gaps that mar the current formulation of the Lebanese Constitution, rendering it an ailing and outdated entity incapable of keeping pace with developments in public life. In terms of seniority, it is considered the oldest among the Arab constitutions still in force, but it has not been sufficiently revitalized by the Taif Agreement to derive therefrom a reinforced entity through proper practice or continued renewal in light of emerging concepts of citizenship, and consequently the duties of the state towards citizens in various fields, and thus the theory of supreme sovereignty in light of the growing presence of international legitimacy. Customs and treaties, until the nineteenth century, constituted the sole source of expression of the will of states in the field of public international law, when the majority of them began, some time ago, to incorporate in their domestic legislation certain international rules, granting them a status higher than their national laws⁽²⁾.

What is noteworthy is that the aforementioned counter-terrorism law cannot be understood in

infringe upon inalienable rights, such as the right to life, the risk of torture, and the right to a fair trial stipulated in the Lebanese Constitution (paragraphs C and T, as well as Articles 7, 8, 12, 14), and the International Covenant on Civil and Political Rights (Articles 4, 14); Ashraf Shams El-Din, *Constitutional Controls on Criminalization and Punishment Provisions in the Jurisprudence of the Supreme Constitutional Court*, published in the journal issued by the Supreme Constitutional Court of Egypt, Issue 13, 2008, p. 31.

(1) Based on what was stipulated by the law implemented by Decree No. 3855 dated 1 September 1972, and by virtue of paragraph (b) of the preamble of the Constitution, through Law No. 18 dated 21/9/1990, and decisions of the Lebanese Constitutional Council dated 18 September 1995, 7 August 1994, and 10 May 2001.

(2) We have seen, based on what international jurisprudence has affirmed and what courts have adopted, that UN resolutions and declarations can be added as a supplementary source to the sources of public international law stipulated in Article 38 of the Statute of the International Court of Justice (Advisory Opinion on the Western Sahara case, and the Namibia case). Brierly, *Le fondement du caractère obligatoire de droit international*, RCADI, 1928, pp. 467-552.

isolation from the international context in which it emerged and developed. Terrorism by its nature is a cross-border crime, and the international community early recognized that confronting it requires unified legislative cooperation. In this regard, Lebanon's engagement as a founding member of the United Nations and a party to most international and regional agreements concerning terrorist issues⁽¹⁾ raises a fundamental problem concerning the extent to which the Lebanese legislature has aligned with these obligations when enacting Law No. 19/1958 and its amendments. Has it succeeded in reconciling the requirements of collective security imposed by international instruments with the constitutional guarantees and human rights enshrined in the Lebanese Constitution?

Accordingly, this chapter aims to review two sections. The first addresses the efforts of the United Nations against terrorism, while the second focuses on the aspects of complementarity and contradiction between constitutional laws and international treaties.

Section One: United Nations Efforts against Terrorism

Given that the word "terrorism" appears in no provision of the United Nations Charter from its inception to the present day, we find that the Organization has passed through two phases of power balance: the bipolar phase that began at the end of the Second World War and ended with the dissolution of the Soviet Union in the early 1990s, and the unipolar phase that began from the date of the dissolution of the Soviet Union and continues to the present. Accordingly, examining the measures adopted to combat terrorism within the framework of the United Nations becomes of paramount importance, especially since its responses before the events of September 11 were mostly reactions to specific terrorist incidents, which usually ended in condemnation and denunciation, and in some cases with the imposition of sanctions. Nevertheless, the principle of the right to self-determination was enshrined in the core of its Charter, and successive resolutions of the General Assembly and various international instruments have affirmed the right of peoples to liberate themselves from all forms of colonialism, and indeed to eliminate it definitively⁽²⁾.

In the absence of a comprehensive international convention encompassing all states of the world that defines the crime of terrorism and establishes measures to eradicate it or at least to

(1) Charter of the United Nations, Articles 4(2) and 51; and the International Convention for the Suppression of the Financing of Terrorism, adopted by the UN General Assembly in 1999, ratified by Lebanon under Law No. 675 dated 11/12/2004.

(2) Sami Gad Abdel Rahman Wasel, *State Terrorism within the Framework of Public International Law*, Al-Ma'arif Establishment, Alexandria, 2003, p. 233. The United Nations initiated these resolutions with Resolution 1415, issued by the General Assembly on 14 December 1960.

narrow its circle of risks, it was natural that international efforts to combat terrorism would be characterized by fragmentation, which is the case of regional organizations that hastened to adopt conventions to combat what they considered terrorism threatening the interests of their members. It is noteworthy that all instruments issued in the past were expressions of local will that emerged in a specific country, and were incorporated into legislation or constitutions that enshrined human rights and public freedoms. This means that these rights have national roots embodying principles, values, creeds, and philosophies that have accumulated and interacted across generations, leaving echoes in intellectual and political circles⁽¹⁾.

Sub-section One: International Conventions against Terrorism and Lebanon's Position on Ratification and Reservations

This study represents a critical reading of the essence of the problematics of legality and Lebanese participation in the Arab world. In order for effective protection of human rights to be achieved and to transcend what the domestic legal system can provide, there must be an endeavor to this effect within a regional grouping of states, to avoid problems that arise in the global arena, such as the criminalization of terrorism, which has not yet reached the rank of a peremptory norm in customary international law. However, the prohibition of acts constituting terrorism, such as targeting civilians, torture, and hostage-taking, are binding principles. This void was resolved by Security Council Resolution 1373, which imposed on all states general obligations relating to counter-terrorism⁽²⁾.

It is of paramount importance to review what the international community has sought to criminalize specific manifestations of terrorism through 19 international conventions and protocols, following the clarification of the first report submitted by states to the Committee established under Resolution 1373 (2001) pursuant to paragraph 6 thereof. Foremost among these is Leb-

(1) Perhaps the reason for this lies in the fact that the text of the Charter expresses a clear Western-centric tendency, reached by mutual consent between the two existing blocs at that time. Nevertheless, the Universal Declaration of Human Rights retains psychological value, as it constitutes support for the desired goal, serves as a reference, and allows for the exposure of human rights violations committed in many countries, such as torture and violence... (Preamble to the UN Charter according to the first, second, and fifth paragraphs, Article 1 thereof, Chapter IX (Articles 55-60), as well as Chapter X dedicated to the Economic and Social Council pursuant to Articles 61, 62(2), 68, up to 72).

(2) As long as there is no unified definition of terrorism binding on Arab countries and Western states, we cannot speak of its criminalization under the principle of "peremptory norm (jus cogens)" in customary international law, which cannot be violated by a bilateral treaty, even if not ratified, due to its connection to public order (Article 53 of the Vienna Convention on the Law of Treaties 1969). The International Court of Justice and the International Criminal Court have not considered terrorism as an independent international crime, unlike the prohibitions on targeting civilians, hostage-taking, and the obligation to combat the financing of terrorism and deny safe havens, which has become a general international obligation thanks to Security Council Resolutions 1373 and 1267.

anon, which submitted its statement on 13 December 2001, wherein paragraph 2 stated that “Lebanon is committed to distinguishing between terrorism and the right of peoples to resist occupation,” relying in this regard on the United Nations General Assembly resolution and the Arab Convention for the Suppression of Terrorism. It referred the Committee to Law No. 318 issued on 20 April 2001, and to the decision of the Governor of the Banque du Liban No. 3818 issued on 18 May 2001⁽¹⁾.

As for Articles 1 and 2 of the aforementioned law, they can be placed within the framework of deterrent legislative policy, which does not necessarily prevent the occurrence of the crime of money laundering and consequently the financing of terrorism. Therefore, we find that the Lebanese legislature, in Article 4 thereof, obliges institutions not subject to the Banking Secrecy Law issued on 3 September 1956, to maintain special records of transactions whose value exceeds the amount determined by the Banque du Liban in the regulations it establishes pursuant to Article 5 thereof. It appears clearly from what the high-level panel concluded in a major critique of international counter-terrorism efforts that it reached two highly significant conclusions. The first equated terrorism with counter-terrorism measures in violating human rights and the rule of law, while the second considered that limiting counter-terrorism efforts to military and security measures has led to populations not joining in achieving this objective. Subsequently, the Security Council issued numerous resolutions in this framework, where the role of regional organizations did not exceed the limits of contributing to the implementation of the responsibilities entrusted to the Committee established under Resolutions 1373 (2001) and 1267 (1999)⁽²⁾.

In any case, we deduce from the foregoing that the existence of both regional and universal protection is legally possible and practically advisable. Accordingly, it is imperative to men-

(1) UN General Assembly Resolution No. 51/46 issued on 19 January 1991. United Nations, Security Council, *Letter dated 13 December 2001 from the chairman of the security council committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the president of the security council*, 13 December 2001, S/200/1201. www.un.org/en/sc/ctc/resources/1373, visited on 12/8/2026. We note in this context that the Anti-Money Laundering Law No. 318 was enacted by the Lebanese Parliament before the issuance of Resolution 1373, but subsequently, on 20 October 2003, the Lebanese legislator amended this law, adding some paragraphs to it, in compliance with its contents.

(2) United Nations, General Assembly, Sixtieth Session, Official Records, “Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, Follow-up to the outcome of the Millennium Summit, Uniting against terrorism: recommendations for a global counter-terrorism strategy, Report of the Secretary-General,” 27 April 2006, Document No. A/60/825; and the Fifty-ninth Session, UN Documents, “Follow-up to the outcome of the Millennium Summit, A more secure world: our shared responsibility, Report of the High-level Panel on Threats, Challenges and Change.”

tion the agreements concluded with a view to combating terrorism, which we summarize as follows:

1. Conventions for the protection of civil aviation, such as the Hague Convention of 1970 and the Montreal Convention of 1971.
2. Conventions for the protection of persons, such as the Convention on the Protection of Diplomats of 1973 and the Hostage-Taking Convention of 1979.
3. Post-September 11 conventions, such as the International Convention for the Suppression of the Financing of Terrorism of 1999, which Lebanon ratified by Law No. 675 dated 11 December 2004.

The fundamental question remains: Did Lebanon suffice with officially ratifying the anti-terrorism treaties, or did it amend its domestic laws to align with their core spirit?

It is established that Lebanon has engaged in most of these conventions, yet it entered reservations on some of them. At the regional level, it ratified the Arab Convention for the Suppression of Terrorism concluded in Cairo, which faced criticism regarding its broad definition of terrorism and the absence of human rights guarantees. This raises a problem for the Lebanese legislature as to how to strike a balance between its obligation to implement this agreement and its constitutionally enshrined principles.

Thus, based on the maxim that knowledge of the law is half the battle, it becomes abundantly clear to us that Lebanese laws have been characterized by a duality of standards, through their recognition and endorsement of most instruments, against a domestic legislative shortfall represented by the failure to amend Law No. 19/1958 to align with international developments. Lebanon thus stopped at the threshold of issuing fragmented special legislation rather than restructuring the basic counter-terrorism law in a manner consistent with its international and constitutional obligations⁽¹⁾.

Sub-section Two: Approaches of the General Assembly and Security Council Resolutions Mandating the Criminalization of Terrorism

It is important to conduct a detailed legal review through which we highlight the measures

(1) It seems clear the extent to which Law 19/1958 contradicts Articles 7 and 8 of the Constitution, as Lebanon has remained unable to radically amend the penalties contained in its texts to keep pace with the seriousness of newly emerging international crimes. It did not include clear mechanisms for global cooperation, which means that there is a merging and unification within the basic counter-terrorism law, alongside a clear legislative fragmentation through its special laws, such as Law No. 318/2001. Nabil Al-Isfahani, "The Position of the Arab League on Human Rights," *International Politics*, Year 11, Issue 39, January 1975, pp. 32-33.

taken by both the General Assembly and the Security Council in the context of their confrontation with terrorist crimes at the international level. Examining the nature of the measures adopted by these two organs is more than necessary in determining the features of United Nations efforts in counter-terrorism.

Since they are two separate organs where the degree of binding force of each of their resolutions differs from the other, it is of paramount importance to distinguish between the pivotal role played by each in this context.

In the framework of conducting a nearly comprehensive survey of numerous reports and studies completed by the General Assembly, and its supervision of various relevant conventions under a procedural and legislative role issuing general and abstract laws in the form of non-binding recommendations, we observe that it has linked counter-terrorism with addressing its causes, considering that eliminating the motives of terrorism would contribute to appropriate treatment in preventing and suppressing international terrorist operations⁽¹⁾.

In fact, the General Assembly initiated the drafting of a set of international conventions combating certain forms and manifestations of crimes of a terrorist nature. Among these thirteen known instruments, its Sixth Committee succeeded in drafting an international convention for the suppression of terrorist bombings, and another for curbing acts of nuclear terrorism. However, the draft comprehensive international convention on terrorism remains unfinished due to the divergence of states' views regarding its Article 18, concerning the definition of the scope of terrorism⁽²⁾.

There is no doubt that for the Security Council to exercise its powers in the matter of counter-terrorism, it must be faced with a terrorist act that is likely to breach international peace and security. In the 1980s, the Security Council adopted three resolutions specifically on hostage-taking, against the backdrop of increasing kidnapping incidents, such as those involving the Italian ship (Achille Lauro) and the Russian diplomats in Beirut⁽³⁾.

(1) The General Assembly has affirmed its adoption of this proposal and its implementation in successive resolutions. The beginning was with: (1) Resolution No. 40/61, issued on 9 December 1985, paragraphs 5, 7, 8, and 9; and UN General Assembly Resolution 49/60; Resolution 51/210 dated 17 December 1996; Resolution No. 2625; and the Convention relating to the Status of Refugees, pursuant to Articles 1, 2, 32, and 33 thereof, concluded in Geneva on 28 July 1951, and the Protocol of 1967 attached thereto.

(2) It is well established that the most significant resolution is 56/5693 adopted by the General Assembly on 27 November 2001, as it came approximately two months after the events of 11 September 2001, specifically paragraph 16 thereof, and relates to measures to eliminate international terrorism as a matter of urgency.

(3) The Council's competence in this regard derives from its mandate to maintain international peace and security, pursuant to Articles 39, 41, and 42 of the UN Charter. It issued Resolution No. 579 dated 18 December 1985, in which it considered hostage-taking and kidnapping as manifestations of international terrorism, as well

It is evident that the Security Council, after the events of September 11, 2001, abandoned the old rule and adopted a new principle, namely that every international terrorist act is necessarily a threat to international peace and security. Although it had previously resorted to Chapter VII before that date, when it imposed sanctions on Libya, Sudan, and Afghanistan in the context of counter-terrorism, following the events of that day, it likewise invoked Chapter VII, not merely to impose or reinforce sanctions it had already required on certain entities, but to obligate States to undertake a series of measures—of course referring to Resolution 1373 (2001)—in addition to dozens of resolutions that can be broadly distributed into three groups⁽¹⁾.

The first group revolves around the activation of Resolution 1377, which the Council issued on 12 November 2001, by which it requested all states to take urgent measures to implement Resolution 1373 fully, and requested the Counter-Terrorism Committee to take into account, when monitoring its implementation, the best practices, laws, and relevant international standards pertaining thereto⁽²⁾.

The second group requires the prevention of non- state groups from acquiring, manufacturing, or possessing weapons of mass destruction⁽³⁾.

The third group is manifested in the activation and tightening of sanctions imposed on the Taliban and Al-Qaeda, while the fourth is embodied in the measures to be imposed on individuals involved in terrorist activities, in accordance with paragraph (9) of Resolution 1566 (2004).

as Resolution No. 618 dated 29 July 1989, and subsequently Resolution No. 638 dated 31 July 1989. However, we wish to point out the duality that reflects the Security Council's failure to adopt uniform standards in combating one of the manifestations of terrorism, as it did not decisively and firmly determine that the crimes of kidnapping and hostage-taking constitute a terrorist act, which may negatively affect the deterrence strategy for such criminalization.

(1) United Nations, Security Council, Resolution 1269 dated 19 October 1999; Resolution 1368 (2001), paragraph 1 thereof; Resolution 748 dated 31 March 1992; and Resolution 883, in which the Council decided to renew and tighten sanctions against Libya; Resolution 1054 dated 26 April 1996, concerning the letter addressed to the President of the Security Council from the Permanent Representative of Ethiopia to the United Nations regarding the surrender of persons suspected of the attempted assassination of the President of the Arab Republic of Egypt in Addis Ababa on 26 June 1995; Resolution 1214 dated 8 December 1998 concerning the situation in Afghanistan; and Resolution 1267 dated 15 October 1999.

(2) United Nations, Security Council, Resolution 1457 dated 20 January 2003; and Resolution 1516 dated 20 November 2003, concerning combating threats to international peace and security resulting from terrorist acts; and Resolution 1440 dated 24 October 2002, concerning threats to international peace and security resulting from terrorist acts.

(3) United Nations, Security Council, Resolution 1540 dated 28 April 2004, concerning the non-proliferation of weapons of mass destruction; and Resolution 1566 dated 8 October 2004.

Section Two: Aspects of Complementarity and Contradiction between Constitutional Laws and International Treaties

Constitutional provisions, as everyone knows, occupy the supreme position in the legal systems of States, and consequently require observance by all, including the legislature. Likewise, the judge is required to apply them, through the special mechanisms established by the Constitution to ensure respect for it and to refrain from applying legislative laws that contravene it in text and spirit. Since the rights of individuals are natural and inherent in human beings and not subject to restriction according to the view of the entire international community—such as the right to recognition of legal personality, the prohibition of slavery, the prohibition of inhuman or degrading treatment or punishment, the right to life and dignity, the non-expulsion of a citizen from his country or deprivation of the right to return thereto, the non-refoulement of political refugees to territories of States where their life or liberty would be at risk, the right to freedom of belief, as well as the minimum guarantees for the accused, such as having their case heard by a fair court enabling them to defend themselves, and other common rights of humanity, whether under conventions or through declarations⁽¹⁾.

The most serious violations have continued to be represented by the degradation experienced by human beings wherever they are, through the displacement of thousands of families in internal and external migrations, from the absence of public freedoms to the exacerbation of daily transgressions, the imposition of political and intellectual surveillance on individuals, the increasing and blatant confusion between the State and the single party, the generalization of political and legal arbitrary measures, overt discrimination between citizens, and collective repression and punishment. Legal guarantees and means of national redress continued to be wasted through the expanded referral of civilians to military courts and exceptional tribunals, the prohibition of partisan political activity, while freedom of opinion and expression came under pressure from governments and extremists, and freedom of the press and publication was shackled⁽²⁾.

As for the formula of human rights that has imposed itself even on multinational corporations in the context of the globalization of the market economy, as well as the transcontinental oil company “Shell,” which announced that it would give priority to its investment rights, despite

(1) Theodor Meron, “On a Hierarchy of International Human Rights”, *American Journal of International Law*, vol. 1 (1986), pp. 1-24.

(2) Burhan Ghalioun, *The Arab Committee, The State against the Nation*, Beirut, Center for Arab Unity Studies, 1993. Arab states always affirm the right of every people to self-determination and the principle of non-alignment, but in reality they grant the West military bases to serve its interests. Article 1 of the International Covenant on Economic, Social and Cultural Rights, and on Civil and Political Rights.

all this, we observe that practical practice speaks otherwise⁽¹⁾.

Sub-section One: The Mechanism for Integrating International Instruments into the Lebanese Legal System

Domestic courts are generally concerned with the implementation of treaties affecting the rights and freedoms of individuals. However, the attention given by courts to this matter raises several issues. Jurists have questioned whether the administrative court treats conventions as domestic laws and exercises its judicial oversight over governmental measures relating to their implementation, which leads us to ask about the position of the national judge regarding treaty obligations that conflict with prior and subsequent domestic laws. Pursuant to the principle that international treaties duly ratified and promulgated acquire the force of law in the country, we should not elaborate on this logic because there is a fundamental difference between a charter and legislation that expresses the will of the national legislature, which the judge is empowered to interpret, whereas an agreement expresses the wills of multiple states, and it is difficult to allow such interpretation. Even with respect to treaties regulating the private rights of individuals, the primary objective of their conclusion is to unify the legislation and regulations of the contracting member states, not to leave their fate to be determined by conflicting judiciaries in each state⁽²⁾.

In Lebanon, jurisprudence has affirmed that the international legal system cannot be consoli-

(1) Khaled Al-Hroub, "A Partial Late Awakening," *Al-Hayat*, 6/5/1997. It is well known that the first paragraph of Article 7, pursuant to the UN Declaration on Social Progress and Development issued by the General Assembly on 11 December 1969, states: "The rapid increase in national income and wealth and their equitable distribution among all members of society constitute the basis of all social progress and must therefore be a primary concern of every state and government." Based on the above, Arab experts estimated the volume of Arab investments in the West in 1984 at US\$333 billion, of which 57% were in the United States and Britain, and the remainder in four other countries: France, Germany, Italy, and Japan, while investment in Arab countries amounted to no more than US\$15 million, which cannot be freely withdrawn because all of them are subject to freezing by the West at any time – if this indicates anything, it points to the greatest disgrace the Arabs have brought upon themselves.

(2) The French Council of State has affirmed that national courts are competent to apply treaties but do not have the authority to interpret them, on the basis that treaty application is considered a governmental act or an act of sovereignty emanating from the executive branch, by virtue of its discretionary powers, and thus is not subject by its nature to judicial review, in addition to the approach based on the principle of separation of powers. However, French jurisprudence itself recognized, in certain special cases, the Council of State's ability to carry out the task of reviewing governmental actions relating to the application of treaties. G. Burdeau, *Les engagements internationaux de la France et les exigences de L'état de droit*, AFDI, 1986, pp. 837-856. Nevertheless, this approach has been criticized by another group of jurists, given that the national judge has the right to interpret a treaty that has the force of law, and consequently it falls within his competence to interpret national legislation – a point noted by the courts of the United States. Nguyen Quoc Dinh, *La jurisprudence française actuelle et le contrôle de la conformité des lois aux traits*, AFDI, 1975, pp. 857-887.

dated unless states apply the agreements they have concluded in full good faith and give them priority in application when they conflict with domestic law. It has emphasized that the text of an international agreement prevails and takes precedence over any legal text, on the basis that the State's duty is to respect its obligations, and consequently it cannot breach the provisions of a treaty through its unilateral will, even if it concerns domestic public order⁽¹⁾.

Nevertheless, Lebanon's participation and accession are insufficient to guarantee respect for human rights, as there is no substitution in domestic laws for the provisions contained in these instruments, which are rarely respected. This is evidenced by numerous violations concerning cases of torture, ill-treatment, arbitrary detention, and poor prison conditions, which indicate the state's failure on several occasions to comply with its obligation to submit reports to the various monitoring bodies responsible for the effective implementation of international treaties.

Thus, any intervention by the international community in any matter related to human rights violations in a state is considered a clear violation of its sovereignty. However, the evolution of concepts on the international scene regarding the priority of protection has created the problem of integrated public responsibility. Is the question of populations expressing their fundamental freedoms and determining their destiny a national or international matter?

In this regard, we can say that the Lebanese Constitution did not explicitly address the rank of international treaties, and ambiguity prevailed until the issuance of the Council of State Decision No. 124 dated 23 January 1959, which established the general rules governing, to this day, the relationship between international law and domestic law. Consequently, understanding the mechanism of integration in Lebanon cannot be achieved in isolation from this historic decision, which codified Lebanon's openness to international law and transformed a political commitment into a binding judicial obligation. Therefore, any discussion of rebalancing security and liberty under special legislation must involve calling upon the Lebanese judiciary to boldly apply the principle of the supremacy of international treaties over traditional penal provisions⁽²⁾.

(1) Decision of the Civil Court of Cassation (Fourth Chamber) issued on 25/1/1994, N.Q.L., First Issue of 1994, p. 47. This is what the French legislator stipulated when it affirmed the superiority of the treaty over domestic laws. In the United States, however, the rules contained in a treaty are treated as law, but the federal legislature always retains the ability to enact a law contrary to its spirit; in such a case, the courts are obliged to apply the subsequent legislation that contradicts it, pursuant to the rule that a new law abrogates the old one.

(2) The importance of the facts and the principle established by Decision No. 124/1959 emerges in cases concerning a conflict between a legislative decree and an international treaty, where the Council ruled that international treaties ratified in accordance with constitutional procedures and published in the Official Gazette have the force of law and supersede legislation that contravenes them, whether later or earlier than their conclusion,

Sub-section Two: Restoring the Balance between Security Requirements and the Protection of Freedoms in the Lebanese Legal System (Legislative and Judicial Treatment)

The issue of human rights and fundamental freedoms is among the most important and sensitive topics, arising whether independently or as part of the question of democracy, as an essential element of the new international order. Effective participation today is a necessary component for the citizen of this era, whose identity is determined by a set of rights, including freedom of thought, expression, assembly, the establishment of parties, trade unions, and associations, participation in decision-making and public office, in addition to the right to education, work, equality, and equal opportunities. Foremost among these is the right to choose rulers, monitor them, and remove them. The suppression of the citizen distances them from their homeland and facilitates foreign intervention, which may serve as a means to justify the phenomenon of terrorism through its suppression at the expense of the protection of absolute rights and freedoms, which cannot be a pretext for impunity⁽¹⁾.

In truth, security without liberty is tyranny, and liberty without security is chaos. Any legislation addressing terrorist acts must choose one of two tests: either necessity or proportionality, to achieve a lofty goal that has resulted from the accumulated struggle of populations and is embodied in religions, beliefs, and international instruments. We live in an interconnected, non-isolated world in light of the information revolution, global communications, and protection mechanisms of the United Nations, which have become an existing reality despite the adoption of double standards and selectivity by hegemonic States that continue to breach and target specific political systems through blatant methods and violations. The Lebanese experience has proven that reliance on legislation that is 68 years old to confront twenty-first-century terrorism constitutes a breach of the principle of balance⁽²⁾.

Therefore, Lebanon's respect for its international obligations requires it to promptly initiate

so that the judge must apply them even if they override a domestic legislative text (Articles 52, 53, and 4 of the Lebanese Constitution; the democratic guarantee for the implementation of the integration process away from the dilemma of reservations, lack of direct effect, and consequently the loss of judicial culture). (Decision of the Lebanese Council of State No. 124 dated 23/1/1959, *Collection of Decisions of the Council of State*, Year Four, p. 15).

(1) Riyadh Aziz Hadi, *The Third World Today: Issues and Challenges*, Baghdad, Dar Al-Shu'un Al-Thaqafiyya Al-Amma (General Cultural Affairs House), 1997, p. 40.

(2) The Lebanese Constitution explicitly enshrined this balance through Article 2, which stipulates Lebanon's commitment to the UN Charter and the Universal Declaration of Human Rights. However, on the other hand, it stipulated in Article 7 the principle of equality, freedom of expression pursuant to Article 13, freedom of the press pursuant to Article 14, and the inviolability of the home pursuant to Article 15. Nevertheless, Article 2/65 simultaneously authorized the Council of Ministers to take the necessary measures to safeguard state security, which granted it a margin of discretion in cases of imminent danger.

the modernization of its legislative arsenal, in addition to activating the role of judicial oversight as the ultimate guarantor of rights and freedoms. This is achieved through the strict interpretation of penal provisions in application of the principle that “doubt is interpreted in favor of the accused,”* and consequently the rejection of any security measure not based on a clear legal text. This necessitates the issuance of a new unified counter-terrorism law consistent with international standards, excluding political and trade union activity, in addition to criminalizing emerging acts such as financing, recruitment, and the use of the internet, but under judicial guarantees aimed at granting the detained accused the right to exercise the right to self-defense by appointing a lawyer. This would enable the adoption of a smart positive balance policy in building a secure future that guarantees the independence and immunity of the state from all aggression, where the approach to maintaining public order and the enjoyment of freedoms revolves around the supreme public interest, akin to the principle of “no harm nor harassment”* in alignment with the principle of criminal legality⁽¹⁾.

(1) The Counter-Terrorism Law of 19/1958 granted the executive authority broad powers in arrest, investigation, and wiretapping, and used broad, expansive phrases such as “facilitating” and “support” without providing adequate judicial safeguards, which led to encroachment on individual freedom of expression – a point explicitly noted by the UN Counter-Terrorism Committee in its 2016 report on Lebanon. It also did not criminalize acts of terrorist financing, recruitment, and electronic incitement, despite Lebanon’s commitment to these measures under Law No. 675/2004 and its ratification of the Convention for the Suppression of the Financing of Terrorism, which created a legislative vacuum. It failed to provide a precise definition of terrorism, leaving the door open for loose interpretations that infringe upon freedom of opinion and assembly constitutionally enshrined, and this contradicts Lebanon’s obligations under the Arab Convention for the Suppression of Terrorism of 1998, which stipulated the exclusion of legitimate acts. This was addressed by Law No. 44/2015, which successfully dealt with the financial aspect of counter-terrorism and achieved Lebanon’s compliance with international standards. However, it undermined the principle of restoring balance because it addressed the symptom rather than the cause, leaving the definition, guarantees, and rights subject to an old law, making security intervention more generalized and prevalent than judicial protection.

Conclusion

There is no doubt that the human being is the most precious thing in existence, and the peoples are the masters of the country that is their homeland. These two civilizational concepts have been established in many states for a long time. Accordingly, we conclude from this study that the dilemma does not lie in the conflict between security and liberty, but rather in the method of legislative treatment. Only balanced laws are capable of protecting society from terrorism without transforming into a tool for undermining the rights that the Constitution seeks to preserve and enshrine in compliance with international requirements.

From the foregoing, we have reached a number of conclusions and recommendations, which we will present as follows:

First: Conclusions

1. Interpretations and motives for the growth of the phenomenon of terrorism have differed. Some emphasize that international competition and conflict have contributed to feeding and developing this phenomenon, while others maintain that it is a natural occurrence that can emerge in any society influenced by various factors, such as the political, economic, social, religious, and ideological environments. Consequently, it is necessary to examine certain facts that help understand these causes and clarify their causes, and then find solutions through constitutional principles. Lebanese legislation suffers from a genuine dilemma: it enshrines the principle of protecting national security through exceptional laws, while simultaneously neglecting the activation of the guarantees stipulated in Articles 7, 8, and 13 of the Lebanese Constitution, which contributes to undermining the principle of balance.
2. It has become evident that Lebanon succeeded on the financial front through Law No. 44/2015, but remained lagging in the human rights dimension, as Law No. 19/1958 still adopts an elastic definition of terrorism that contradicts the principle of criminal legality, when compared to international standards and the legislation of certain regional states.
3. The predominance of security logic at the expense of freedoms has not achieved the desired objective. The absence of prior judicial review and the expansion of military jurisdiction have produced security-oriented rather than balanced legislation.
4. The Lebanese legislature has treated counter-terrorism as an immediate approach to confronting the danger, without adopting a comprehensive legislative strategy that simultaneously takes into account the requirements of security and the protection of public freedoms.

Second: Recommendations

1. Issuance of a unified counter-terrorism law containing a precise constitutional definition of the terrorist act, and repealing the ambiguous provisions of Law No. 19/1958, in order to ensure compatibility with the Constitution and the International Covenant on Civil and Political Rights.
2. Subjecting all measures restricting freedoms, such as wiretapping and arrest, to prior judicial review, and restricting the jurisdiction of military courts exclusively to crimes affecting the institution.
3. Establishment of an independent constitutional body tasked with monitoring the constitutionality of counter-terrorism laws and their impact on rights and freedoms, and submitting periodic reports accordingly.
4. Adoption of the principles of necessity and proportionality as the sole criteria for any restriction on freedoms in counter-terrorism laws, so that restrictions are imposed only to the extent necessary to achieve security.

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