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Assessing Multilateralism and Mini-Lateralism in Light of the Comprehensive Convention on International Terrorism Deadlock

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Abstract

*The need for an all-encompassing, legally binding instrument that criminalises terrorism was realised in 1996 after the AFB Dhahran bombing. A combined effort spearheaded by India (motivated by the erstwhile surge in Kashmiri insurgency) at the United Nations General Assembly (UNGA) Legal (Sixth) Committee led to the establishment of an Ad-Hoc Committee tasked with drawing up and negotiating the said instrument: the Comprehensive Convention on International Terrorism (CCIT). In spite of the Ad-Hoc Committee having successfully developed three separate treaties on combating terrorism from 1997 to 2005, negotiations centred around the main CCIT text itself in the UNGA Legal Committee had stalled in 2013 leading to one of the most consequential challenges to the steadily emerging idea of UN-led multilateralism vis-a-vis the coordinated global battle against terrorism. A three-way deadlock had arisen out of the disagreement over the definition of terrorism (*The West v. Latin America v. the Organisation of Islamic Cooperation*), which continues to this day, thrusting all efforts into limbo. This article takes a look at this legal deadlock with the aim of investigating whether mini-lateral efforts, as opposed to multilateral efforts, have worked far better in formulating legal infrastructure that helps combat terrorism. The 'sectoral approach' as a bypass mechanism is also explored with the hope of chalking a fruitful exit from this deadlock. While plenty of legal exploration has been conducted on the CCIT itself, its consequences on geopolitics is a realm that remains vastly unexplored and this paper, sourcing not only legal but also policy-oriented literature, aims to bridge this gap.*

Keywords: *terrorism, multilateralism, mini-lateralism, CCIT, United Nations*

1.0 Introduction

The renewed role of the United Nations (UN) in the 1990s, as well as the establishment and re-emergence of institutions in the closing decades of the Cold War (Lavelle, 2020), set the stage for a new kind of conflict: a bureaucratic one. This bureaucratic conflict amongst the member states of the UN revolved around the need to combat terrorism in its entirety, in the same manner, that armed conflicts are tackled by the Geneva Conventions and its Additional Protocols (UN Secretary General's Note, 2004). The member states of the UN, a multilateral forum of the highest order, paradoxically posed the greatest challenge to multilateralism itself vis-à-vis the process of creating holistic legislation that ought to criminalize terrorism and eliminate political and legal grey areas regarding the

prosecution, extradition, coordination and thereby prevention of terrorism. This all-encompassing legal instrument in question is the draft Comprehensive Convention on International Terrorism (CCIT).

The subsequent paragraphs will firstly address the core challenges faced in the formulation of such a legal instrument thereby moving on to analyzing whether the sectoral approaches that have stemmed as a result ought to redeem faith in the idea of multilateralism and finally conclude with whether mini-lateral efforts in this regard have been comparatively successful or not.

While a plethora of definitions of multilateralism exists owing to its popularity as a concept in the world of International Relations (IR) scholarship, the combined works of Robert Keohane (1990) and John Ruggie (1992) provide a holistic connotation. Multilateralism can be understood as an arrangement of three or more states which aim to come together for the purpose of policy coordination or the execution of combined interests. In such a situation, the state retains its position as the central coordinating unit while engaging in diplomatic exchanges (Ruggie, 1992; Keohane, 1990). As opposed to this, mini-lateralism is a newly emerging concept in IR, which first appeared briefly in the work of Miles Kahler (1992) but witnessed a renewed interest in the aftermath of the 2008 Financial Crisis (Naím, 2009). While Naím's definition wholly encompasses the idea of mini-lateralism i.e., to gather the "smallest possible number of countries for the largest possible impact", an extension of the scholarship outlining the objectives of mini-lateralism ('delivering speed', 'ad-hoc flexibility' and 'innovative experimentalism') as opposed to the objectives of multilateralism (establishing structure, accommodating diversity and unifying ideologies) enables a working understanding of the concept (Anuar & Hussain, 2021). These are, thus, the definitions of multilateralism and mini-lateralism that this paper will adhere to for the purpose of this study.

2.0 The Fundamental Challenge

The most significant barrier to the conclusion of a multilateral treaty on countering terrorism is also the reason why such a treaty is of paramount importance in the first place: agreement on the definition of terrorism. This 'definition issue' has plagued the smooth functioning of the negotiation process in the UN Ad Hoc Committee on Measures to Eliminate International Terrorism (AHC) and the Working Group of the Sixth Committee of

the UN General Assembly, leading to an absolute stagnation in progress (UNGA Sixth Committee, 2018). A three-way deadlock has emerged wherein the Organization of Islamic Cooperation (OIC), the Latin American Non-Aligned Movement states and the liberal-democratic West (particularly the United States and the United Kingdom) have consistently failed to reach a compromise owing to collectivized political interests on what the definition ought to be. The issue emerged with the OIC putting forward their opposition to the original text proposed by India, calling for the exclusion of violent acts aimed at self-determination and in the context of national liberation movements to be excluded from the legal ambit of terrorism, as the OIC members are sympathetic towards causes like that of Palestinian liberation (Lederer, 2002). The Latin American states demanded that 'state-terrorism', specifically referring to the interventionist atrocities committed by states, be included in the definition (UNGA Sixth Committee, 2000). Contrary to this, the United States and the United Kingdom specifically wish to exclude acts committed by state militaries during peacetime from the ambit of the definition (Diaz-Paniagua, 2008), which is not surprising considering that the Bush Administration had gone as far as establishing The Hague Invasion Act in 2002 (Hameed & Dahlan, 2017).

This clash is fundamentally detrimental as it not only denigrates the idea of global coordination in an effort to eliminate terrorism and thereby protect human life but also strikes at the very roots of multilateralism. Owing to the fact that no legally binding instrument exists, states are forced to look inwards toward domestic legislation in order to combat terrorism, both within their borders as well as internationally, leading to the primacy of unilateral action (Saul, 2007). Alex Schmid's reading of Michael Howard's *What's in a Name? How to Fight Terrorism* points out the inevitable in such a situation, in light of the Bush administration's War on Terror, wherein he mentions that unilateral action stemming from the lack of a clear legal definition has led to states readily engaging in armed conflict as a solution to countering terrorism as compared to effectively implementing a system of criminal justice (Schmid, 2004). While scholars like John F. Murphy have accepted that no unity can be achieved in this regard and hence the effort towards achieving a definition must be done away with completely (Murphy J. F., 1986), a self-admission is portrayed as an ontological cry for help by the UN High-level Panel on Threats, Challenges and Change in 2004 contextualizes the urgency of a legal definition achieved through multilateral consensus

building, as opposed to an elaborate system of academic alternatives (UNGA, 2004).

3.0 The Sectoral Approach

While the inability to achieve consensus does seem like a failure of multilateralism on a *prima-facie* basis, the AHC was able to draft, adopt and enter into force three conventions which aimed not at defining and criminalizing terrorism itself but rather focused more on the paraphernalia surrounding terrorist activities like bombing, financing and the aspect of nuclear terrorism. These three treaties have garnered the support of 170, 189 and 117 state parties respectively and are still in effect (Guillaume, 2004). Since these conventions don't attempt at doing the observably impossible i.e., define terrorism but rather criminalize various sectors that either lead up to it or are a result of it, these have been referred to as the 'sectoral conventions' and the process of hammering them out has been referred to as the 'sectoral approach' (Hmoud, 2006), the negotiation and adoption of which have been milestones in multilateralism. It can also be said that this is in keeping with what John F. Murphy termed as 'alternative responses to international terrorism', which he further elucidates through the example of the International Civil Aviation Organization Conventions. Murphy states that the conclusion of the ICAO Conventions had eventually led to a steep decline in terrorist hijackings, with some obvious key exceptions (Murphy J. F., 1986). It must be made clear that Murphy deems a multilateral, treaty-based approach as an absolutely essential element in combating global terror. In fact, he also refers to other multilateral approaches like intelligence sharing and judicial assistance (*ibid*). What he takes an issue with, is the redundancy in being fixated upon a required definition as a pre-requisite for multilateral cooperation.

The reason why these conventions are termed as milestones in multilateralism is owing to their uniqueness, precision, relevance and the fact that they successfully entered into force. The AHC, containing the same member states and regional collectives which had proposed clashing amendments to the definition of terrorism, worked in tandem to ensure that these sectoral conventions made it past the ratification threshold. Amrit Rohan Perera lists a number of advancements that such multilateralism had led to. These include but are not limited to: compulsory harmonization between the legal architecture in the convention and domestic legal frameworks by state parties, the establishment and expansion of criminal

jurisdiction over the acts stated in the convention beyond the barriers of territoriality and nationality, the enforcement of an *aut dedere aut judicare* regime, mutual legal assistance between states and the re-characterization of the acts stated in the convention as ‘non-political’ in order to not fall into the trap of inaction due to ‘political offence-exceptions’ (Perera, 2020). What Perera does not mention, however, is another important advancement i.e., the residual acceptance of a definition of terrorism, in the context of preventing the financing of terrorism. While the crime of terrorism itself still does not have an accepted legal definition, states have collectively agreed to check and monitor financial entities like banks, trusts, charities and the like, in order to cut the cash inflow that fuels terrorist activities (Bantekas, 2020). Thereby, as far as the sectoral conventions are concerned, multilateral efforts have definitely triumphed. However, does that confirm the focus shift that Murphy has been advocating for all along?

The answer here is no. Even if multilateral efforts have proved to be effective in terms of criminalizing certain aspects of terrorism, the fact that the draft CCIT is still in limbo is still a major challenge to the ultimate triumph of multilateralism. Such a situation carries with it the question of why the main CCIT text is still important, even though major aspects of combating terrorism have already been covered in the sectoral conventions. Here, reference must be made to the Ten Factors study conducted by Dean C. Alexander and Yonah Alexander, which lists various conditions that ought to encourage terrorism in the future. In their study, they list the “absence of a universal definition of terrorism” as the primary factor (Alexander & Alexander, 2002), which Schmid interprets to be the slippery slope that perpetuates “Double standards of morality” which features as the fifth factor on the list (Schmid, 2004; Alexander & Alexander, 2002). Additionally, Boaz Ganor identifies six key phases of combating terrorism which remain unachievable if a definition is not formulated, of which phase two deals with international cooperation. Here, Ganor makes the argument that a definition is an absolute requirement in order to foster greater cooperation between states to ensure better implementation of relevant conventions (Ganor, 2002). Perera also puts forward the fact that the Draft CCIT is not only comprehensive and all-encompassing but takes into account damage to the environment, the credibility of a threat to commit a terrorist act and the denial of refugee status to suspects of terrorism (Perera, 2020).

4.0 Multilateralism vs. Mini-Lateralism

Thus, acknowledging that the halting of progress in concluding the Draft CCIT ought to be acknowledged as a major setback to multilateralism, attention must be turned towards mini-lateral measures, the examples of which exist in abundance. Bernhard Blumenau and Johannes-Alexander Müller's detailed study on this matter highlights the fact that regional arrangements like the Organization of American States (OAS), the Council of Europe (CoE) and the South Asian Association for Regional Cooperation (SAARC) and others have adopted and enacted legal frameworks, but the negotiation process has been no smoother than the that of its multilateral counterparts (Blumenau & Müller, 2021). However, as the conclusion of the study explicitly points out, the negotiation, adoption and implementation of mini-lateral measures, with their purposely narrow definitions of terrorism and a greater emphasis on criminalizing the acts of terrorism rather than the philosophical concept of terrorism itself i.e., the sectoral approach, has garnered far more success as compared to all-encompassing grand measures, like the Draft CCIT (*ibid*). In the post-9/11 scenario, while the UN struggled, even with an increased impetus towards concluding the Draft CCIT, the European Union (EU) negotiated and adopted the Framework Decision on Combating Terrorism (FDCT) comparatively swiftly, using the sectoral approach as far as decisions were concerned (Murphy, 2020). Similar usage of a sectoral approach can be noticed with regard to the Organization of African Unity (OAU) and its adoption of the Convention on the Prevention and Combating of Terrorism in 1999, which entered into force in 2002 (Ewi & Plessis, 2020). Therefore, it can be said that a case-by-case study of mini-lateral efforts simply furthers the conclusions of Blumenau & Müller's study i.e., regional organizations are far more effective at creating and implementing legal frameworks in the combat against terrorism.

5.0 Conclusion

Looking back at the arguments made, the cases upheld and the examples used, it can safely be concluded that multilateralism has a long way to go in terms of garnering support for a global, coordinated response to terrorism, so far the definition and a treaty regime is concerned. One important lesson that must be highlighted is the effectiveness of the sectoral approach in treaty-making, which may work even in the case of the Draft CCIT. Considering the fact that the Coordinator's Proposal to the CCIT has not garnered much consensus

(Perera, 2020), echoing the ghosts of the past efforts, a renewed inspection of the text from a purely sectoral perspective, aimed at the bare minimum consensus required ought to be rationally aimed for. A significant boost for multilateralism will reign simply with the aversion of the deadlock.

On the other hand, it is amply clear that regional arrangements have taken massive leaps in the same regard, paving the way for further mini-lateral cooperation and coordination in the near future. The CCIT issue thus aptly captures the state of geopolitics as it exists today. Not only does it expose the various ideological blocks and the stakeholders involved, but it also denotes the specifics of why they are ideological rivals in the first place. The fault-lines of modern geopolitics run between the neo-liberal economic giants (The West) who are pitted against an emerging Global South (The Latin America Bloc) and a communitarian collective driven by ideology (The OIC), and the failure involved in setting the terms of a treaty which tackles a problem of the global commons denotes the crux of geopolitical competition, extending it to other thematic spheres. The consequences of this are twofold: a further divided world along new ideological lines and the need for a serious re-think of how to conduct multi-stakeholder diplomacy. While multilateral efforts are ambitious and aim for sustainable long-term impact, achieving them and striking a balance amongst all available stakeholders may not be the strategy that ought to be assumed.

The international community must reflect on the past two decades that have gone by in an effort to re-analyze the optics through which the notion of anti-terrorism has been applied to various situations, in an effort to create inclusive methods of cooperation.

References

Alexander, D. C., & Alexander, Y. (2002). *Terrorism and Business: The Impact of September 11, 2001*. New York: Transnational Publishers.

Anuar, A., & Hussain, N. (2021). *MINILATERALISM FOR MULTILATERALISM IN THE POST-COVID AGE*. Singapore: S. Rajaratnam School of International Studies.

Bantekas, I. (2020). The international law on terrorist financing. In B. Saul, *Research Handbook on International Law and Terrorism* (p. 99). Northampton: Edward Elgar Publishing.

Blumenau, B., & Müller, J.-A. (2021). International Organisations and Terrorism. Multilateral Antiterrorism Efforts, 1960–1990. *Terrorism and Political Violence*, 6-11.

Diaz-Paniagua, C. F. (2008). Terrorism as a subject-matter for negotiation. In C. F. Diaz-Paniagua, *NEGOTIATING TERRORISM: THE NEGOTIATION DYNAMICS OF FOUR UN COUNTER-TERRORISM TREATIES, 1997-2005* (p. 61). New York: The City University of New York.

Ewi, M., & Plessis, A. D. (2020). Counter-terrorism and pan-Africanism: from non-action to non-indifference. In B. Saul, *Research Handbook on International Law and Terrorism* (p. 663). Northampton: Edward Elgar Publishing.

Ganor, B. (2002). DEFINING TERRORISM: IS ONE MAN'S TERRORIST ANOTHER MAN'S FREEDOM FIGHTER? *Police Practice and Research*, 3(4), 300-302.

Guillaume, G. (2004). Terrorism and International Law. *The International and Comparative Law Quarterly*, 53(3), 537-548.

Hameed, H. A., & Dahlan, N. H. (2017). The Hague Invasion Act And International Criminal Justice: The Attitude Of The United States Towards The International Criminal Court (ICC). *Journal of Law, Policy and Globalization*, 62, 91-92.

Hmoud, M. (2006). Negotiating the Draft Comprehensive Convention on International Terrorism: Major Bones of Contention. *Journal of International Criminal Justice*, 4(5), 1032.

Keohane, R. O. (1990). Multilateralism: An Agenda for Research. *International Journal*, 45(4), 731.

Lavelle, K. C. (2020). The Past and Future of Multilateralism. In K. C. Lavelle, *The Challenges of Multilateralism* (pp. 251-253). Yale University Press.

Lederer, E. M. (2002, January 23). *Annan Hopes U.N. Will OK Terror Treaty*. Retrieved from Midland Daily News: <https://www.ourmidland.com/news/article/Annan-Hopes-U-N-Will-OK-Terror-Treaty-7046898.php>

Murphy, C. C. (2020). The legal response to terrorism of the European Union and Council of Europe. In B. Saul, *Research Handbook on International Law and*

Terrorism (pp. 616-618). Northampton: Edward Elgar Publishing.

Murphy, J. F. (1986). The Future of Multilateralism And Efforts to Combat International Terrorism. *Columbian Journal of Transnational Law*, 88-99.

Naím, M. (2009). Minilateralism. *Foreign Policy*, 136.

Perera, A. R. (2020). The draft United Nations Comprehensive Convention on International Terrorism . In B. Saul, *Research Handbook on International Law and Terrorism* (pp. 122-123). Northampton: Edward Elgar Publishing.

Ruggie, J. G. (1992). Multilateralism: the Anatomy of an Institution. *International Organization*, 46(3), 561-598.

Saul, B. (2007). Defining ‘Terrorism’ to Protect Human Rights. In D. Staines, *INTERROGATING THE WAR ON TERROR: INTERDISCIPLINARY PERSPECTIVE* (p. 6). Sydney: Cambridge Scholars Publishing.

Schmid, A. (2004). Terrorism - The Definitional Problem. *Case Western Reserve Journal of International Law*, 36(2), 376.

UNGA. (2004). *Report of the High-level Panel on Threats, Challenges and Change*. New York: United Nations.

UNGA Sixth Committee. (2018). *Fight against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins*. New York: United Nations Press.

UNGA Sixth Committee. (2000). *Summary record of the 27th meeting*. New York: United Nations Press.

UN Secretary General's Note. (2004). *Report of the High-level Panel on Threats, Challenges and Change*. New York: United Nations Press.