

## The objective limits for implementing the UN Resolution 1373 concerning combating terrorism

الحدود الموضوعية لتنفيذ القرار الأممي 1373 المتعلق بمكافحة الإرهاب

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### abstract:

It is clear from the UN Resolution N: 1373 that the issue of human rights has become the primary culprit, since it did not distinguish between the armed struggle operations and the terrorist acts, as it is devoid of any concept of terrorism, which makes it difficult for the states to distinguish between the terrorist acts and the acts of resistance, which leads us to this question: Do the states have to implement the Resolution 1373 literally? Or, do they have to take into account abiding by a Restraints to guarantee the removal of human rights from the accusation circle?

**Keywords:** resolution , dualism, treatment, terrorism , struggle, international

### Résumé:

Il ressort clairement de la résolution 1373 de l'ONU que la question des droits de l'homme est devenue le principal coupable, parce q' elle n'a pas fait la distinction entre les opérations de lutte armée et les actes terroristes, comme elle est dépourvue de tout concept de terrorisme, ce qui rend difficile pour les États de distinguer les actes terroristes des actes de résistance. ce qui nous amène à cette question : Les États doivent-ils appliquer la résolution 1373 littéralement? Ou tenir compte le respect des réglementations garantissant la sortie des droits de l'homme du cercle d'accusation?

**Keywords:** Résolution, duplication, traitement, terrorisme, lutte, international

## ملخص:

يتضح من القرار الأممي رقم: 1373 أن مسألة حقوق الإنسان باتت المتهم الأول، كونه لم يميز بين عمليات الكفاح المسلح والأعمال الإرهابية، كما أنه خلا من أي مفهوم للإرهاب، مما يصعب على الدول مسألة التمييز بين الأفعال الإرهابية وأعمال المقاومة، مما يدفعنا لهذا التساؤل: هل يتوجب على الدول تنفيذ القرار 1373 حرفياً؟ أم تراعى في ذلك التقيد بضوابط تضمن خروج حقوق الإنسان عن دائرة الاتهام؟

الكلمات المفتاحية: القرار - ازدواجية- المعاملة- الإرهاب- مكافحة - الدولي.

## Introduction:

The Security Council resolution 1373 issued after the 9/11 attacks of 2001, it is one of the most famous and dangerous resolutions on terrorism, which has made it more important and binding than all international resolutions and treaties on combating terrorism to that date. On the one hand, it was adopted under the Chapter VII of the Charter of the United Nations, making it an argument for those addressing. On the other hand, it is a basis for its executors, and it is the legitimate corner of many military interventions in many countries on the pretext of combating terrorism.

Returning back to the measures taken in this resolution, inspired by the Security Council resolution 1368 of 12 September 2001, on the same occasion, the Security Council condemned those attacks as a horrific terrorist acts and considered them a threat to international peace and security. He called upon all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of those terrorist attacks. The council also stressed that those responsible for assisting, supporting or harboring the perpetrators, organizers and sponsors of such acts would be responsible, and called upon the international community to redouble its efforts to prevent and suppress the terrorist acts. It expressed its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001 and to combat terrorism in all its forms in accordance with its responsibilities under the Charter of the United Nations.

If we see the real reasons behind those events, it is clear that the question of human rights has become the first one, since this decision did not distinguish between the armed struggle and the terrorist acts, despite its reference to the principle established by the General Assembly in its October 1970 Declaration (2625 D-25). The Security Council, in its resolution 1189 of 13 August 1998, affirmed that the latter had given the right to armed struggle for colonized people against its colonizer by all means, this time; however, the Security Council has condoned this right, the resolution 1373 has no reference to the

obligation of States to protect the human rights during their wars on terrorism, above all the right of colonized peoples to self-determination.

The same resolution also neglected any indication or inclusion of any concept or definition for terrorism so that the international community can determine the elements of the terrorist crime and punish the perpetrators in accordance with the requirements of the international legitimacy. This has led international law scholars today to call for the separation of the terrorist acts and the resistance actions in order to ensure that the two are not confused, and that the right of people to resist colonialism by all available means as stipulated in various UN resolutions, is one of the settings that help to implement the resolution 1373. Let alone the rest of the rights to be protected and observed in any circumstances and at any time, as stated in the International Bill of Human Rights.

**Proposed hypotheses:**

1- combating any act described as illegal, particularly terrorist, at the national or international social level requires the knowledge of what it is before punishing its perpetrators.

2- The intent of the commission of acts is the focus when adapting the acts into terrorist acts

3- Taking into account the reasons for the commission of the terrorist acts that may bring them out of the circle of this adaptation.

4- The basic principle in combatting terrorism is that it is on equal footing, regardless of the perpetrator of the terrorist act is, when the same conditions and the same physical acts exist.

**The Study objectives:** The objectives of this study are to:

1- address the background of the Security Council's adoption of the resolution 1373 very quickly and without regard to any legal considerations.

2- List the international legal rules established by the various international agencies, to preserve the issue of the international peace and security, thus creating objective controls for the same purpose, but in the area of counter-terrorism.

3- Identify the shortcomings that may be deliberate by some international groups to achieve goals contrary to the global public order under the pretext of fighting terrorism; it has led to the establishment of duplication of treatment at the international level.

In light of the deliberate negligence of the drafters of this resolution to any controls, we have seen that it is necessary to raise the following problem: Do members of the international community have to apply the Resolution 1373 to its fluency? Or take into account in its implementation, the need to adhere to a set of borders in a way that guarantees the removal of human rights from the accusation circle?

In order to answer this problem, we have estimated that it is necessary to follow the analytical study through the process of reviewing the various legal texts and the aforementioned resolution, in order to reach the realities of international practices aimed at its implementation. Was it in absolute compliance or observance of some limits? By dividing our research into two spats, as follows:

- the necessity to adjust the concepts to determine the target for control.
- The need to distinguish between terrorist acts and acts of resistance.

### **1-the necessity to adjust the concepts to determine the target for control:**

The Sheikh of Islam Bin Timiya in said: (God supports the just state, even if it is an infidel, and does not support the unjust and oppressive state, even if it is a believer), this statement, which reflects the reality of the ongoing struggle between the victory of belief and the victory of justice. Although reason dictates that common belief is the basis for establishing the correct justice, but by reference to the measures taken in resolution 1373 relating to the war on terrorism, we feel that this decision has ignored to respect the human rights, for which various international bodies and all peoples who have been persecuted and colonized for decades have fought for. Above all, the right of peoples under injustice and occupation to fight and resist for their political and economic self-determination as a well-established doctrine, no one can never be deviated from, and to bring these resistance actions out of the cycle of terrorist acts that justice requires fighting against by all means, as the resolution in question has embodied. This is so that we can reflect the interrelationship and the similarity between the acts of armed struggle and the terrorist violence as a principle of the administration of justice at the international level. Hence, the case requires knowledge of the concept of each them, legal basis, both in terms of definition and in terms of control:

#### **1.1. The concept of the right of resistance to self-determination:**

The right to self-determination is a legal right in positive international law with regard to an internationally protected status beyond the jurisdiction of the internal law of the State. There is no rule in contemporary international law that prevents the inhabitants of the occupied territories from carrying out acts of national resistance, armed or unarmed<sup>1</sup>. This made it a national duty by the modern international jurisprudence, considering that it is the citizens' right to revolt against the occupation authorities and that their national duty forces them to resort to resistance. This duty is imposed and is bound to be carried out in accordance with their continuing relationship of loyalty to their occupied State. We will therefore address the meaning of the right to self-determination,

through which the definition of armed resistance and its inherent right to the International Bill of Human Rights are defined as follows:

**1.1.1. Definition of the right to self-determination:**

The jurisprudence has differed over the definition of the right to self-determination, including the right to armed resistance, which is one of the means used to achieve this purpose, from the point of view of the conflicting parties, if whether they are international or civil, and we will therefore review some definitions as follows:

**a. The idiomatic definition of the right of self-determination:**

The right to self-determination at the internal level according to Western jurisprudence means "the right of every society to establish its necessary political institutions, with a view to ensuring its existence and development in accordance with respect for its special characteristics, which distinguish it from other societies"<sup>2</sup>. The right to self-determination at the external level is also defined as: The right of peoples to determine their international status, and whether they wish to establish an independent State. They also have the right to renounce independence and to prefer some form of association with another State or to associate themselves with another State<sup>3</sup>.

On the external front, it means "the right of every people occupying a particular territory to determine their status freely within the international community"<sup>4</sup>.

**b. the legal definition of the right to self-determination:**

The African Charter on Human and Peoples' Rights defined the right of self-determination as: (Every people has the right to exist and every people has an absolute and inalienable right to self-determination and it can freely determine their political status and ensure their economic and social development as freely as they choose)<sup>5</sup>.

The General Assembly resolution 2625 of 1970, regarding the Declaration on principles of international law concerning friendly relations and cooperation among States, has defined it as: (The right of peoples to freely determine their political status without outside interference, to freely pursue their economic, social and cultural development, and every State has to respect this right in accordance with the provisions of this Charter)<sup>6</sup>.

Both previous definitions agree on the right of colonized peoples to determine the nature of their political, economic and social system with free will, without any foreign interference, and away from all coercion or external pressure exercised by foreign forces; Without reference to those practiced by authoritarian regimes, which means that the right to self-determination is devoted to those people in their struggle against occupation and colonialism.

**a. Definition of armed resistance for self-determination:**

Armed resistance is one of the methods used if not the only way to achieve the right to self-determination, as a result of the colonial countries often denying the right of the occupied peoples to referendum and, if they so wish, brutally fighting them. The armed resistance is defined as: "The legitimate use of all means, including armed force, to prevent aggression, eliminate occupation and colonialism, achieve independence and eliminate the injustice with armed force, as a legitimate political objectives, is consistent with the international law and supported by the Islamic law"<sup>7</sup>. The right of peoples to armed struggle against colonial and racist regimes was emphasized in the general assembly's guidelines the fundamental Principles of the Legal Status of the combatants fighting the colonial and foreign domination, and authoritarian racist regimes. which enabled national liberation movements to have the legitimate right to use the force in their struggle against colonial powers, foreign domination and ethnic regimes that deny their right to self-determination, and their struggle in such cases is therefore very legitimate<sup>8</sup>.

It is clear from the foregoing that some of the armed resistance operations are limited to those armed actions by individuals or organizations against a foreign enemy, while others are extending them to armed actions by peoples with their regular armies that protect the power and authoritarian regimes. The second view may be prevailing in the international jurisprudence and law.

### **1.1.2. Legal entrenchment of the right to armed resistance to self-determination**

If we look at history, the right to armed resistance against occupation is a principle of positive law concerning military legislation governing the revolutions and wars<sup>9</sup>, and it is accepted and supported in the history of States, excluding it from every other adaptation that inflicts it with terrorist acts. As it is approved by many UN regulations and resolutions, as well as many international agreements and conventions, perhaps the most prominent of them are what we will address as examples:

#### **a. in the General Assembly resolutions:**

Since the establishment of the United Nations, it has worked to address the question of decolonization by recognizing the occupied peoples' natural right to resist the occupier for the purpose of determining their political and economic destiny and achieving their national independence under article 1, paragraph 2, of its Basic Charter<sup>10</sup>. In many of its regulations, which are a picture of its decisions, we will summarize the most important of them:

**A.1. the General Assembly recommendation No. 1514** issued on 14 December 1960 concerning the declaration on granting independence to the colonial countries and peoples, following the failure of the Trusteeship System<sup>11</sup>.

**A.2. the General Assembly Resolution No. 2625** of (24/10/1970), related to declaring the Principles of International Law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations<sup>12</sup>.

**A.3. the General Assembly resolution 3314** (Twenty-ninth session) of: 14/12/1974, on the definition of aggression, which stated that "not in this definition... that prejudices the right of peoples who are subject to colonial or racial regimes or any other forms from foreign domination, in the struggle for self-determination, freedom and independence, as approved by the Charter of the United Nations ", It was the same as the UN regulation on the legal status of the national liberation movement's fighters<sup>13</sup>.

**B. in international conventions:**

From the early to the end of the twentieth century, the international community has worked to conclude a numerous international conventions aimed at recognizing the right of peoples to self-determination, including:

**b.1. The 1907 Hague Convention:** This Convention defined the people standing

Against the enemy, provided that they openly carry bear arms and respect the laws and customs of war<sup>14</sup> .

**b.2. The 1945 Charter of the United Nations:** One of its main purposes is to: "develop friendly relations among nations on the basis of respecting the principle of the equal rights among peoples and to have the right to self-determination"<sup>15</sup> .

**b.3. The 1949 Geneva Conventions:** which considered the legitimate fighters, including the fighters of the national liberation movements, prisoners of war, in case they were in the grip of the enemy<sup>16</sup>, as a natural result of the recognition to the great role played by the armed popular resistance during the Second World War against the Nazi occupation<sup>17</sup>. Although it did not consider the wars of the national liberation movements as international wars, which led many scholars and States to demand the re-description of these wars, as a war of an international nature could be envisaged without two States, the law of war does not require the warring parties to be States, even if the armed conflict is within the territory of one country<sup>18</sup>. This was achieved during the discussions of the diplomatic conference held in Geneva between 1974-1977, on the revision and the amendment of the Geneva Act of 1949, where the will of the majority won through the vote on article 1, paragraph 4, of the additional first protocol of 1977. Thus, the wars of liberation became wars of an international nature<sup>19</sup>.

**b.4. the first Additional Protocol of 1977:** Among the provisions in it, this protocol applies to armed conflicts fought by peoples against colonial domination, foreign occupation and against racist regimes, in the exercise of

the right of peoples to self-determination as enshrined in the Charter of the United Nations, and the declaration on the principles of the international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations, it took a broad definition to the concept of armed forces, including the fighters of the armed resistance groups, by reducing the severity of the four traditional conditions, or not requiring their full availability, because it is difficult for the resistance movements to comply with all those conditions, in front of forces that are superior in equipment and number. Strict compliance with these conditions constitutes the end of any military resistance that may be directed against the occupation forces<sup>20</sup>.

**b.5. The African Charter on Human and Peoples' Rights of 1981:**  
which stipulates that "Oppressed colonized peoples have the right to free themselves from the shackles of domination and to resort to all means recognized by the international community<sup>21</sup>.

**b.6. In the two International Covenants for Human Rights of 1966:**  
In the first common article between them, which stated that all peoples have the right to self-determination<sup>22</sup>.

### **1.2. The concept of terrorism:**

The first thing we point out is that the Security Council resolution 1373 on counter-terrorism was devoid of any definition for terrorism, leaving each country with the power to develop a concept of terrorism in accordance with its criminal policy and internal legal framework<sup>23</sup>.

On one hand, if the enemy, or the criminal, are not identified, how can we fight the first, or punish the second, and on the other hand, how can we distinguish between what is individual terrorism and what is State terrorism, or that the latter cannot practice terrorism, and for all of that. It is imperative that we search the true meaning of this word as in the language and then idiomatically, in order to be able to arrive to the concept of state terrorism, and then, and then go over the legal basis for combating terrorism before the issuance of Resolution 1373 as follows:

#### **1.2.1. The definition of terrorism**

The concept of terrorism has been intertwined with a several terms, making the identity of this phenomenon unavailable to all, especially those States that are the subject of the law, and cannot be a source of the law, which reflected negatively on the issue of combating terrorism. Its manifestations also diversified, so that the question of its definition is almost one of the highest demands. However, despite all this, the explicators did not hesitate to develop a set of definitions that converge in its meaning between the language and the idiomatic, even the national and the international legal systems are not without them, as we will see :

##### **a. The terrorism in the Languages:**



The term "terrorism" in the English language derives from the Latin word "terror" which means terror and panic, from which terrorism is the use of violence, fear, intimidation, like murder and bombing, especially for political purposes<sup>24</sup>. It has an equivalent in all Indo-European languages; initially it signifies fears or severe anxiety, which is often met by an obscure, unfamiliar, and largely unpredictable threat<sup>25</sup>.

In French, the origin of the term Terreur is the word "fear". Terrorism is the systematic use of violence to achieve a political objective, with a view to bringing about political change<sup>26</sup>.

On the other hand, the dictionary of the general international law provides a general definition that indicates that international terrorism will be "an unlawful act of serious violence committed by an individual or group of individuals. Whether they acting individually, or with the consent of the State, encouraging, or supporting it, against persons or properties in pursuit of an ideological objective, and possibly endangering international peace and security"<sup>27</sup>.

**b. The terrorism idiomatically:**

The definition of terrorism varied among researchers and specialists, including the jurist Raymond Aaron, who believes that: "it is considered a terrorist act, that is, a violent act carried out, in general by an individual or a non-State group, for almost always a political purpose, against targets that are distinguished, with limited means, resulting in a state of terror, the psychological effects of which outweigh the physical consequences resulting from such action"<sup>28</sup>.

While a group of high-ranking figures, headed by the Secretary-General of the United Nations in 2004, defined it as "any act committed with the intent to cause death or a serious injury to civilians, or non-combatants, which by its nature or context is intended to intimidate the population or force a government or an international organization to act"<sup>29</sup>. This definition has been supported by France, and a Western scholar also defined it as: (An act or a series of targeted violence, intended to create a widespread feeling of fear, panic or awe, which often randomly targets people and places without discrimination, This fear or panic, may provoke victims to react with instinctive, involuntary reactions, and without any sense of self-defense.)<sup>30</sup>

It was also defined as "any violent act that attempts to defeat an enemy not by targeting his means of action to neutralize or destroy him, but by trying to create a terrorist effect directly on the enemy's will. Terrorism is a strategic shortcut, and trying to make the long and tired economy necessary to destroy the means of the enemy's action"<sup>31</sup>.

as a final definition, terrorism is a cycle of planned and highly publicized violence that deliberately targets non-military objectives, in order to create a

climate of fear and insecurity, to terrify the population and influence the decision-makers in order to modify the decision-making processes (compromise, negotiation, payment, liberalization, and suppression) Thus, meeting a predetermined objectives (political, economic, criminal)<sup>32</sup>

It appears that the majority of definitions, emphasize that the distinctive feature of a terrorist act is the creating of fear, although they differ about the motives, some of them reject the terrorist act, regardless of the underlying causes, and some distinguish between the legitimate reasons, which are targeting fighters, and other reasons leading to the commission of these acts labelled as a terrorist acts.

**c. The definition of terrorism in international conventions:**

The 1999 International Convention for the Suppression of the Financing of Terrorism in article 2/b, defined it as: "Any act intended to cause death or a serious bodily harm to any person, not directly involved in hostilities in the event of an armed conflict, when such an act is intended to intimidate the population or to compel a Government or an international organization to do any act"<sup>33</sup>

The United Nations, in its definition of terrorism in 2005, has taken the same wording as "a hostile tendency as an act aimed at causing death or causing serious bodily harm to any civilian or non-combatant, with the aim of intimidating the population or forcing the government to take any action or refrain from doing so"<sup>34</sup>.

The Security Council, however, has defined the terrorism as: "Any criminal act against civilians with the intent to cause death, serious injury or hostage-taking in order to create terror among people or coerce a government or an international organization to do or to refrain from doing something, and all other acts that constitute an abuses within the scope of international treaties related to terrorism, and according to their definition, it cannot be justified by any political, philosophical, ideological, ethnic or religious consideration"<sup>35</sup>

**d. The definition of State terrorism:**

Terrorism varies according to the method used to commit terrorist acts, directly or indirectly, and varies depending on the medium in which it is practiced, or by the perpetrators, which may be internal or external, or it may be from the act of the individual or the State's, which according to some jurisprudence, is considered as one of the most serious forms of terrorism on the international relations, and one of the greatest threats to international peace and security. The utmost of which is the violation international legitimacy. The latter, has been most closely linked to the concept of terrorism and the fight against it.

State terrorism or official terrorism is defined as: " State policy planned and implemented to combat social conflicts by illegal means, to paralyze or

destroy political or ideological opposition, destroy armed opposition and/or justify suspension of constitutional guarantees, to establish exceptional States and violate human rights.

The internationalization of State terrorism consists, inter alia, of sending agents to other countries to commit attacks, supporting terrorist logistics operations in other countries, assassinating foreign figures, and condoning indiscriminate air attacks that terrorize the population."<sup>36</sup>

In Arabic jurisprudence, it is defined as: (The group of acts by the State against individuals, groups or States, without legal or legitimate justification, it can be implemented by the State itself or by individuals or groups affiliated with it. It is practiced internally against the groups opposing the regime, or externally against the policies of hostile States or groups, with the aim of imposing a certain direction on a State in a particular situation, for the self-interest of another State, by unlawful means, which collectively constitutes a form of severe pressure or coercion against its political will, Without such pressure or coercion reaching the point of an armed war in a comprehensive or limited form)<sup>37</sup>

According to the precious definitions, State terrorism is, in our opinion, any violent conduct by a person of international law, internally or externally, against a group of individuals or a State, without a right recognized by the international law, and by the use of all traditional or modern means, direct or indirect. For achieving objectives, whatever the motivation are, it causes terror, or endangers the life, safety or the security of individuals or groups, fixed or mobile interests and vital institutions within or outside the territory of the State, including outer space and the risk-high sea.

#### **e. The Position of the Algerian legislature on the definition of terrorism:**

The Algerian legislator has included according to Ordinance No. 95/11 dated 02/25/1995 amending and supplementing the decree 66-156 of 6/8/1966, which includes the penal code a fourth bis section, entitled "offenses described as terrorist or subversive acts". Article 87 bis defines terrorism as: "A terrorist or subversive act in the sense of this matter is considered to be any act that targets the security of the State, the national unity, the territorial integrity, the institutional stability and their normal functioning."<sup>38</sup>

#### **1.2.2. The international efforts to combat terrorism:**

The international efforts aimed at combating the phenomenon of terrorism, have varied since the early beginnings of the second half of the twentieth century, and before the Resolution 1373, the concerned with research, and they were divided between those concerned with maintaining air safety and those concerned with preserving maritime safety, without denying the

international community its efforts Aiming to protect some sects of personalities, as well as those that prohibit the use of some weapons, leading to regional efforts exerted in this regard as follows:

**A. The international conventions to combat terrorism against air safety<sup>39</sup>:**

With the beginning of the second half of the twentieth century, the international community intensified its efforts to combat the terrorist activities directed against the international aviation peace, as these efforts led to the conclusion of the following conventions:

**a.1. The 1963 Tokyo Convention** on the offenses and certain other acts committed on Board aircraft<sup>40</sup>.

**a.2. The 1970 Hague Convention** for the Suppression of the unlawful seizure of aircrafts (hijacking)<sup>41</sup>.

**a.3. The Montreal Convention of 1971:** for the Suppression of unlawful acts against the Safety of Civil Aviation<sup>42</sup>.

**a.4. Protocol of 1988:** for the suppression of the unlawful acts of violence at the airports serving the international civil aviation, supplementing the 1971 Montreal Convention<sup>43</sup>.

**B. The international conventions to combat terrorism against maritime safety<sup>44</sup>:**

The international protection transcended the airspace to the maritime domain through the conclusion of several conventions, including the following scope:

**b.1. The convention on the high seas of 1968.**

**b.2. The 1988 Rome convention** for the suppression of unlawful acts against the safety of maritime navigation in connection with the terrorist activities on Board ships<sup>45</sup>.

**b.3. The 1988 Rome Protocol** for the Suppression of the unlawful acts against the fixed platforms located on the Continental Shelf; and on the terrorist activities against fixed installations in maritime areas<sup>46</sup>.

**b.4. the convention of the Law of the Sea** of 1982.

**b.5. The London Protocol of 2005** concerning the suppression of the unlawful acts against the safety of fixed platforms located on the continental shelf<sup>47</sup>.

**C. The international conventions against terrorism against a certain groups of persons<sup>48</sup>:**

The international community has been concerned with providing protection against the terrorist acts against certain persons, namely:

**c.1. The 1973 United Nations convention on the attacks against senior government officials and diplomats** concerning the prevention and

punishment of crimes against internationally protected Persons; including diplomatic agents<sup>49</sup>.

**c.2. The 1979<sup>50</sup>United Nations convention against the taking of Hostages.**

**c.3. The Geneva Conventions of 1949**, and the two additional protocols thereto of 1977.

**c.4. The World Forum on human rights 2004.**

**D. The international conventions on protection against certain weapons<sup>51</sup>:**

International protection against terrorist activities has included the prevention and prohibition of the use of certain types of weapons and materials to the extent of their great danger to human life:

**d.1. The Vienna convention on the physical Protection of the Nuclear Material.** 1980, on the prevention of the illegal possession and use of Nuclear Material<sup>52</sup>.

**d.2. The Montreal Agreement**, of 1991 on the distinction of plastic explosives for the purpose of Detection<sup>53</sup>.

**d.3. The New York convention for the suppression of terrorist Bombings** of 1997<sup>54</sup>.

**d.4. The New York International convention for the suppression of acts of Nuclear Terrorism**, 2005<sup>55</sup>.

**d.5. The 1997 United Nations international convention against terrorist bombings** and suicide attacks of 1997.

**E. Regional anti-terrorism conventions<sup>56</sup>:**

The efforts of some international groups to follow the same framework in combating terrorist activities at the regional level have led to the conclusion of these following conventions:

**e.1. The 1971 American Convention against Terrorism** (The Washington Convention)<sup>57</sup>.

**e.2. The European Convention for the suppression of Terrorism** of 1977<sup>58</sup>.

**e.3. The 1986 Convention of Non-Aligned countries** on combating Terrorism.

**e.4. The Arab Anti-Terrorism convention** of 1998<sup>59</sup>.

**e.5. The 1999 Organization of the Islamic Conference convention against Terrorism.**

**e.6. The Organization of the African Unity convention** on the prevention and combating of Terrorism, 1999<sup>60</sup>.

**e.7. The 2001 Shanghai Convention** on the Suppression of Terrorism<sup>61</sup>.

**e.8. The 2004 Gulf Cooperation Council (GCC) Convention on combating Terrorism<sup>62</sup>.**

Let us conclude that any fight against terrorism, regardless of the means and methods used, it cannot succeed in light of the different views on the concept of terrorism itself, and so will the national societies and the international coalitions if they do not know whom they are fighting. This enemy, which can infiltrated their own forces, and overcome and defeat any resistance, and can attract the sympathy of the peoples as the right-holder or cause-owner, and therefore, the international community must accelerate the unification of its concepts on the adoption of a specific definition for the terrorism in order to identify its enemy, And end the peoples' sympathy with these groups and organizations adopting terrorism

The determination of a meaning for terrorism allows the identifying of the terrorist crime pillars and the legal nature of this crime<sup>63</sup>. If it is national, when all the elements that form it meet in the territory of one state thus, it is a subject to the internal penal law of that state; If the terrorist crime is a global crime when its elements are scattered in a several states, it thus requires a global solidarity to punish the perpetrators wherever they are arrested, by bringing them to justice, or extraditing them to the requesting State, even though the crime is international. It must be attached to the Rome Statute as a result of its gravity by amending this Charter to allow the punishment of its perpetrators before the International Criminal Court, or for the punishment of its perpetrators in a special international tribunals, although this type of international justice has become criticized on one hand. On the other hand, blocking the continuous use of armed force under the pretext of fighting terrorism, so that the pretext of terrorism is being used out-of-place, that is if the international will is really aimed at eliminating this phenomenon, but if the purpose of resisting terrorism is to prolong its life, and to work for spreading it through the countries of the globe. Then the matter is different.

## **2.The need to distinguish between the terrorist acts and the acts of resistance**

The international harassment of the national liberation movements following the adoption of UN resolution 1373, has led the real resistance fighters to commit an unbalanced acts and actions that are inconsistent with the international norms, as the feeling that the doors have been closed in front of them for the sake of their rights has grown, and thus those resistance fighters lose their loyal and sympathizing support. Such a situation represents a major challenge to the national liberation movements, as it represents a major setback to the principle of the right of peoples to self-determination. How can they work reflect this right, which is one of the collective rights enshrined in the international law, and they are simultaneously the subject of a constant pursuit

by the major powers and the subject of a great media distortion by those powerful countries.

Although everyone knows that resistance is an act permitted by all the divine laws and the human rights principles, which makes it immune from to its own accusation as a criminal case, and on the contrary. Some have attached the crime of terrorism to the popular resistance movements in order to hide the real terrorism that manifests itself in the occupation of the land, the expulsion of people, the displacement, the dislocation, and the control and manipulation of people, therefore the need to distinguish terrorism from armed resistance appears as follows:

**2.1. The legal recognition of the distinction between the acts of resistance from terrorism:**

The international law and jurisprudence have recognized the acts of resistance for self-determination, and have exempt it from any suspicion of a terrorist acts in many respects, both in terms of legality and in terms of the motives and objectives that we will address in the following sections:

**2.1.1. The Recognition of the legality of the acts of resistance:**

The Geneva Conventions of 1949 and their additional Protocols of 1977 and the Hague Convention of 1907, as well as the international resolutions, as we have already referred to, the legality of the right to armed resistance for a political and an economic self-determination. In keeping with these charters, resistance acts are legitimate and have the right to use armed force in its struggle to determine its own destiny, and to fight in such cases, which is legitimate and just, and based on the international legitimacy, and it even fulfil the purposes sought by the United Nations, As one of the kinds of wars of self-defense<sup>64</sup>.

**2.1.2. The recognition of non-international liability for the acts of resistance:**

The armed resistance movements have always had an honorable patriotic motive, which is the engine for the establishment of the resistance and its continuation. Thus, there is no international responsibility for the acts of the armed struggle for the right to self-determination towards the individuals or the movements that engage in such acts, as long as they remain within the framework of this legitimate struggle. In addition, the motive for the resister is a living conscience that always stems from the motive of loving the homeland and life, and preserving its values and traditions. Therefore, he is not a thief, a bandit or a mercenary. As is the case for the terrorist, while in the terrorist groups the motive is far from the national motive, they usually act as an instrument for carrying out unjust schemes that come from a mad mind driven by a vengeful soul full with a bloody desire to seize, destroy, and kill, which requires the international responsibility to confront these criminals<sup>65</sup>.

### **2.1.3 The recognition of the legitimacy of the resistance's objectives:**

The objectives of the armed struggle practiced by the national liberation movements are, on one hand, are of a global character, it is clearly demonstrated in the support of and recognition by the international organizations, and in granting them some international rights, the most important of which is the legitimacy of their actions and armed struggle, the right to seek and receive the international aid from all international persons, their right to diplomatic representation. As for the objectives of international terrorism crimes is also universal, but global in denunciation, opposition, and deterrence of such brutal crimes against the humanity. On the other hand, the armed resistance operations are carried out against a foreign enemy who imposed its presence by military force, the terrorist targets vary in terms of choosing the place inside and outside society, inside and outside the country<sup>66</sup>.

#### **2.1.3. In terms of purpose:**

The purpose of terrorism is to achieve political and material interests and gains, or to blackmail the other using the most heinous forms of human behavior. The terrorist act is illegal, condemned and reprehensible because of its bloody methods for achieving the factional and the specific goals, which are unacceptable to the common and the right-thinking mind<sup>67</sup>. The purpose of the armed resistance is national, namely, to expel the occupation and the decolonization<sup>68</sup>.

### **2.2. Recognition of the different nature of the resistance**

**acts:**

The armed resistance to self-determination is very different from the terrorist acts, even if they are met in the manner of violence as a means, but in nature, there is a difference between the acts of the resistor and the acts of the terrorist, let alone the extent and the strategy of both. As we will show:

#### **2.2.1. Their difference in scope:**

The actions of the armed struggle have a greater scope, they are long lasting and include a multiple and a varied objectives, strike the enemy's military depth, and work to achieve a real material loss, contrary to the rapid and successive terrorist attacks, and have the greatest impact. Which is the work of gangs that trained in concealment, so it does not have the morality of the fighter, and does not abide by the military rules, while the work of the resistance is governed by the international law and operates under a military controls<sup>69</sup>.

#### **2.2.2. Their differences in nature:**

Armed resistance acts are of a popular nature, that is, they enjoy a popular support, as for the terrorism, it is a reprehensible and abhorrent act that all the people reject, and does not extend to patriotism in any way, and it does not have any acceptance from the people, it is rather denounced. The violence used in



the armed struggle is also a means of achieving the liberation from the occupying power and restoring the land to its rightful owner. As for the goal of the violence used in the crimes of the international terrorism, it is to spread terror and panic inside the people without consideration the location of this violence or its nature, in order to take an action or refrain from it, by a particular State or an international group, which is internationally prohibited by the General Assembly resolution 3034 of 18 December 1972<sup>70</sup>.

### **2.2.3. Their differences in strategy:**

The armed resistance acts are a part of a comprehensive and diversified strategy to achieve one goal, expelling the occupier, and so it includes all kinds of activities to achieve this end, such as the political, publicist, boycotting and disobedience, in which most of the people participate. This resistance may be civil, but terrorism is a crime-based act that does not adopt any comprehensive strategy, it is rather about achieving a certain goals in itself, such as kidnapping, assassination or attacks of a bloody random nature, and it is not intended as a mobilization or popular one. It is not specific to the occupied territory, but it moves through the countries wherever there is an easy target is found<sup>71</sup>.

It is clear from the above, and according to the opinion of most of the jurists, that the international community, within the framework of the United Nations and its General Assembly, tends to adopt the illegality of the acts of international terrorism, while emphasizing the legitimacy of the use of force in the armed struggle for the colonized peoples under a foreign occupation, in order to exercise their right to self-determination. However, this right is restricted to the non-use of force against innocent and unarmed people, especially women, children and ordinary citizens.

### **2.3. Reasons for the mixing the acts of resistance with terrorism:**

Almost all researchers agree that there is a confusion or a silence about mixing the concepts of terrorism, confusing the concept of a legitimate national resistance against the occupation with the concept of terrorism, and that the resistance is portraying terrorism or the silence about discrimination and these moral paradoxes of the so-called the "new world order". That is based on breaching of value, behavior and relationships systems while claiming to maintain them.

The countries with the Interest have also consistently mixed terrorism as a crime, at the international and the domestic level, with the right to a legitimate resistance, because this mixing serves the interests of these occupying countries that control the resources of the people, exploiting the presence of the element

of the common violence between the crime of terrorism and the armed resistance, the reasons behind this mixing are<sup>72</sup>:

- The weakness of the political system of some countries, which led to the failure of forming cohesive national groups around a strong civilizational project and the incompleteness of a many institutions.

- The failure of the political governments to express the interests of their people, and their inability to achieve these interests, in parallel with the presence of groups that do not believe in the values of citizenship and the coexistence based on tolerance.

- The manifestation of a political elements and coalitions that offended the real resistance, which led to disrupt the work of this resistance, and affected the role of the moderate international and regional organizations and institutions, which have failed to do anything, and their role was limited to the condemnation and the denunciation.

- The world's immersion in the so-called war on terror, which led some countries to exploit this circumstance and call the noble resistance that, opposes their interests as terrorism.

- The global public opinion is kept away from the core issues and other unresolved matters outside the solutions, and their owners are perceived as terrorists, and the countries that implement the policy of terror and occupation are defending their right to defend themselves.

It is important to remember that ending the tragedies of the liberation wars, and the horrors of terrorism, can only be achieved by dealing objectively with the origins of these issues, by ending injustice and its causes on peoples, by ending its tragedies and suffering, and by doing justice for the vulnerable based on right, justice and dignity. Avoiding the duplication in dealing with the principles of the international law, which is evident, especially if we know that the first to apply the principle of self-determination, and the right of peoples under occupation to resist the colonialism, is the West itself.

Describing the resistance of the terror, resulting from the measures of suppressing the peoples aspirations as an international terrorism, can only be interpreted as an attempt to defend an untimely international and social relations, and to diminish the just and legitimate struggle of the oppressed peoples for the freedom and independence; And against all forms of control-based relations, denial of rights and obstruction of this struggle.

### **Conclusion:**

Although the terrorist phenomenon is not the product of the events of September 11, 2001, but it rather dates back to decades ago, the international community has dealt with it with stagnation and indifference. Its conclusion of a several international agreements and conventions regulating how to deal with this phenomenon has remained as frozen texts, because not all the members of

the international community have ratified its provisions, which made it lose a lot of effectiveness, but after the bombings that shook the United States of America. The international community condemned these explosions and called upon its members to confront the terrorist phenomenon, and work to punish the perpetrators of these explosions. The international community was not aware that such bombings were taking place in some countries, particularly Algeria, especially under a new international order that prevailed the world, characterized by the fall of the socialist pole and the domination of the United States of America over the international decision-making centers, and making them confined in the American will. Namely the United Nations body with all its organs.

Following these events, the Security Council adopted the resolution 1373 (2001), called the war on terrorism resolution, through which it articulated a new strategy based on the implementation of the law of force in the face of the force of law, by excluding any peaceful option to deal with such events. Moreover, the speed of making this decision reflected the American will, through which the will to retaliate against the perpetrators of these explosions swiftly and we have reached some conclusions, including:

- 1- This resolution does not take into account many of the issues set forth in the rules of the international law, including the principles and objectives of the United Nations.
- 2- The drafters of this resolution have not bothered to search for a definition for terrorism; this would free the hands of its authors to adapt any events as terrorist acts, which will give them the right to intervene militarily whenever they want.
- 3- Granting a kind of legitimacy to the actions of the colonial powers against the occupied peoples, which were described as state terrorism. Even those acts carried out by the national liberation movements and the armed resistance men were described as terrorist acts, thus the texts of those resolutions that glorify them in favor of the war on terrorism were overturned, which cost the issue of protecting and respecting the human rights a lot, and even became the subject of accusation; as the main reason and motivation for terrorism throughout the world.
- 4- What characterizes this decision and gives a great importance, is the fact that it unleashed the ruling regimes, particularly those described as a dictatorship, which has led to a various forms of persecution against its people or other peoples, under the pretext of combating terrorism, this led to the commission of many crimes against its opponents and endangering the international security. From there, the mechanisms that the great powers pursue in confronting terrorism are based on the excessive use of the armed force, this makes it lose much of its effectiveness, that is in many cases the

second cause after the persecution to provoke the terrorist acts and in many regions of the world.

\* The international community should therefore not fully comply with the American will and implement the Security Council resolution 1373 with a sense of justice and equality, through the following recommendations:

-The need to address the underlying causes behind the spread of the terrorist phenomena such as poverty, persecution, racial discrimination, foreign occupation and the control over the natural resources of the underdeveloped countries, in addition to legitimizing the actions of some dictatorships in dealing with their opponents. This has resulted in serious human rights violations under the pretext of combating terrorism within the national societies and the entire international community, which has negatively affected the international peace and security.

- The international community must commit itself to defining terrorism in order to ensure that the elements of the terrorist crime are determined, and giving a certain degree of respect to the protection of the human rights, during combat operations, and adopting mechanisms to respect them, and to refrain from applying the resolution 1373 to absolutely as stated.

- The international community must establish a set of limits to the implementation of the above-mentioned resolution, thereby ensuring that those acts described as terrorist acts are distinguished from those carried out by the national liberation movements and the armed resistance men against the foreign occupation with the aim of self-determination.

- Intensifying the international cooperation in the field of combating terrorism in order to ensure that the international criminal justice is achieved, on an equal basis, against all the perpetrators of the terrorist acts, whether individuals or States, in particular those acts described as State terrorism, which are more serious than those committed by the individuals.

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