



International

Legal instruments

for Fight Against

Terrorism

Zigmund

FREUD

Albert
EINSTEIN

SOCIAL VIOLENCE

CONFLICT

**SUPPRESSION/
REPRESSIONS**

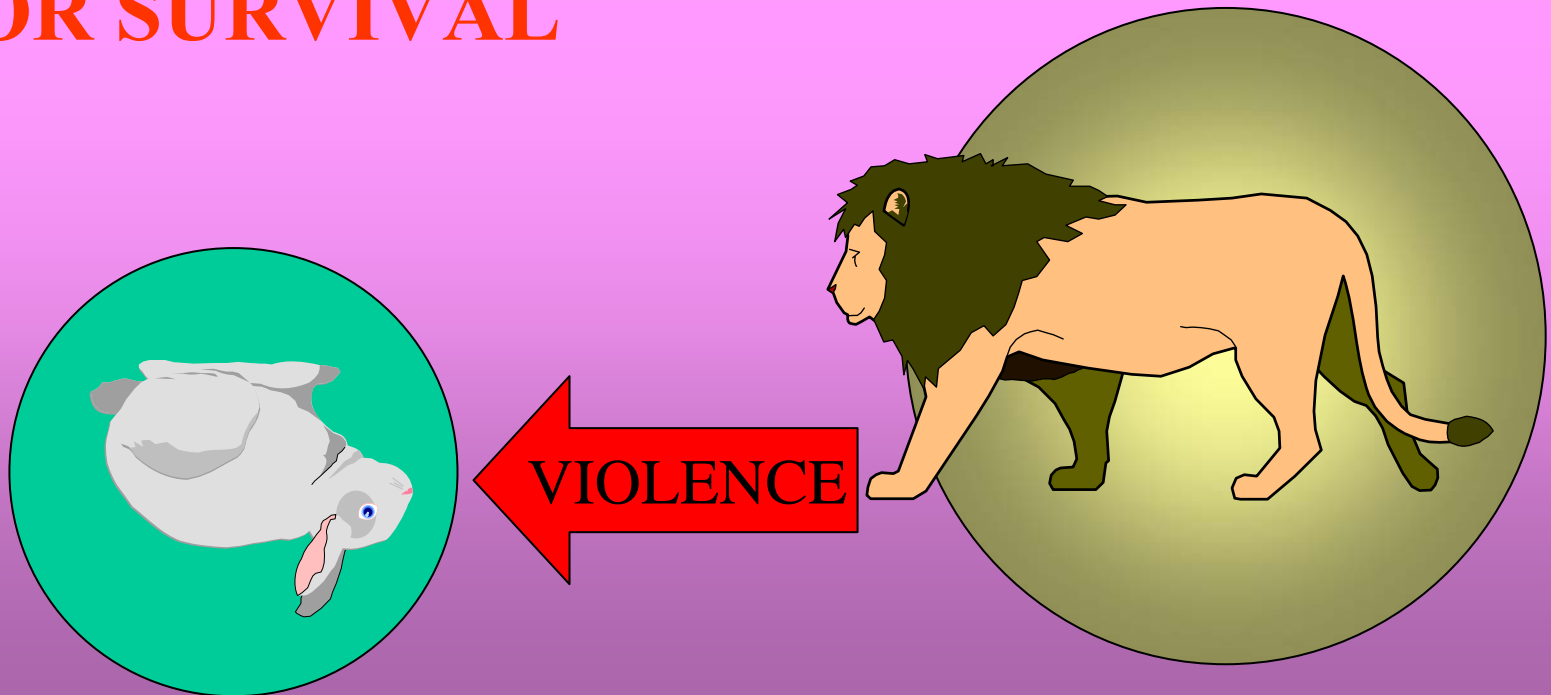
TERRORISM

REVOLUTION

WAR

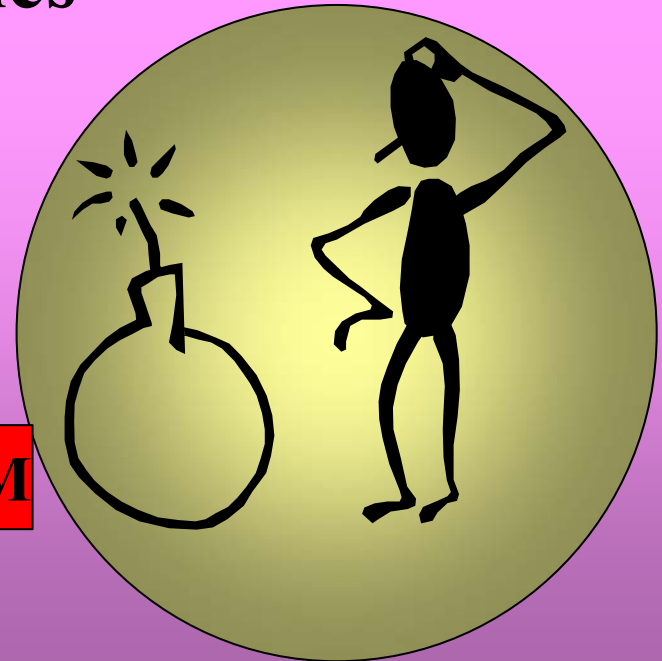
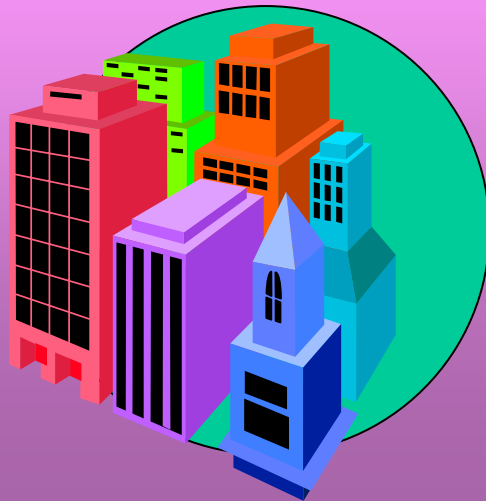
**AGGRESIVENESS -
IN-BUILT CHARACTERISTIC
OF A (HUMAN) NATURE**

**LIFE IS A SOCIAL STRUGGLE
FOR SURVIVAL**



VIOLENCE, WAR, TERRORIZING ARE A KIND OF CONVERTED INSTINCT BEHAVIOUR

**Don't suppress natural aggressiveness,
but de-form and re-shape it
through culture, morale, politics**



HUMAN NATURE
is a main cause of social violence

Freudism,
neo-freudism,
social darvinism,
socio-biology

SOCIAL NATURE

**is a main cause of
social violence**

Behaviourism,

Marxism, Leninism, Trotskyism,

National liberation ideologies,

system analysis in political science

TECHNICAL (MAN-MADE) NATURE

**is a main cause of terrorism
and future wars**

**Post-industrialism theories,
technological determinism,
most of future studies**

Legal Regulation of Violence

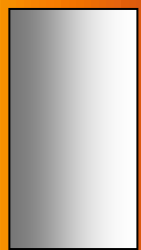
United Nations
Charter and
conventions

Law of War and
Humanitarian Law

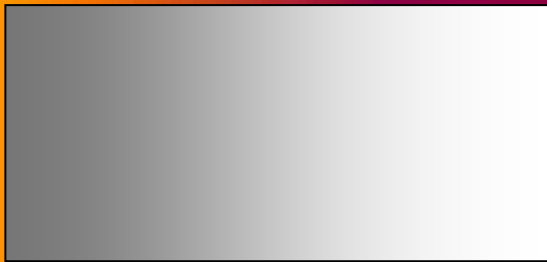
Regional
conventions

National Laws

450,000,000 registered crimes up to 2006



For every 1% of
population growth



5% growth in registered
crime rate

International Criminal Court

Statute:

«...regret that no generally accepted
definition
of the crimes of terrorism [...] could be agreed upon»

International Criminal Court

International Criminal Court



Ideally:

International Criminal Court

with *universal jurisdiction*

and

universal definition

of terrorism

**Fight
against International Crime**

**International
Anti-Terrorists Activities**

**Preventing
WMD Terrorism**

Terrorism - all **criminal acts**
directed **against a State**

and intended to create a state of terror
in the minds of persons, group or general public



League of Nations Convention (1937)

Anti-Terrorism LAWS

~~1937 - Geneva Anti-Terror Convention
(League of Nations)
signed by 24 states~~

UN - 12 (or 16, or 19) Conventions
and Protocols

Council of Europe and EU -
7 Framework documents

United Nations

1972 - UN *ad hoc* Committee to define terrorism

since 1980s - UN Special Rapporteur on Terrorism

1970s-2000s - 12 «old» plus 4 «new» UN Conventions

1992 - UN Crime Branch Report

United Nations

1992 - A.Schmid's short Definition
in UN Crime Branch Report:

**Act of terrorism =
= Peacetime Equivalent
of a War Crime**

(deliberate attacks on civilians,
hostage taking,
killing of prisoners)

United Nations

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United Nations

President Bush's wording

«War Against Terror»

de-facto redefines terrorism

as a *war crime*

and both terrorism and anti-terrorism as

«*acts of war*».

(Legally counter-productive:

then Laws of War apply,

and captured terrorists are POWs)

United Nations

**1999 - 2006 - above 20 UN SC Resolutions
and GA Resolutions
on terrorism**

Anti-Terrorism in UN



UN GA



Anti-Terrorism Resolution

51/210 (1999)

**“Measures to eliminate
international terrorism”**

Anti-Terrorism in UN



United Nations

1999 - 2007 - UN SC and GA Resolutions

2001 - UN Counter-Terrorism Committee

**2004 - UN High Level Panel Report
on Threats, Challenges and Change**

**UN Sixth Committee: Draft of
Comprehensive Convention
on International Terrorism**

UN «academic» definition:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby the direct targets of violence are not main targets and serve as message generators

United Nations

*Instrumental,
practical*

(and at the same time *legal*)
definitions -

in 12 «old» UN Conventions

*(Not comprehensive.
Work at narrow sector)*

UN Anti-Terrorism Conventions

(AIR)

Tokyo

1963 Convention on Offences and
Other Acts Committed on Board
of Aircrafts

Hague

1970 Convention on Suppression of
Unlawful Seizure of Aircraft

UN Anti-Terrorism Conventions

Montreal (AIR)

1971 Conventions on Suppression of Unlawful Acts Against the Safety of Civil Aviation

Montreal

1988 Protocol on Suppression of Unlawful Acts of Violence In Airports

UN Anti-Terrorism Conventions

(SEA)

1988 UN Law of the Sea,
provisions on Piracy

Rome

1988 Convention on Safety of
Maritime Navigation

1988 Protocol on Safety of Fixed
Continental Shelf Platforms

UN Anti-Terrorism Conventions

(HOSTAGES)

New York

1977 Convention on Crimes
Against Diplomatic Agents

New York

1979 Convention Against
the Taking of Hostages

UN Anti-Terrorism Conventions

(BOMBS)

Montreal

1991 Convention on Marking
of Plastic Explosives

New York

1997 Convention on Suppression
of Terrorist Bombings

UN Anti-Terrorism Conventions

(WMD)

Vienna

1979 Convention on Physical
Protection of Nuclear Material

IAEA Protocols

2005 Convention on Suppression of
Acts of Nuclear Terrorism

UN Anti-Terrorism Conventions

(Anti-Criminal)

1999 Convention on Suppression
of Financing of Terrorism

2000 Convention on Fight Against
Organized Crime

Anti-Terrorism Laws

Dec. 2000

Palermo Convention
on Fight Against
Transnational Organized Crime

+

Protocols **128 states**

Protocol on International Terrorism
lacking

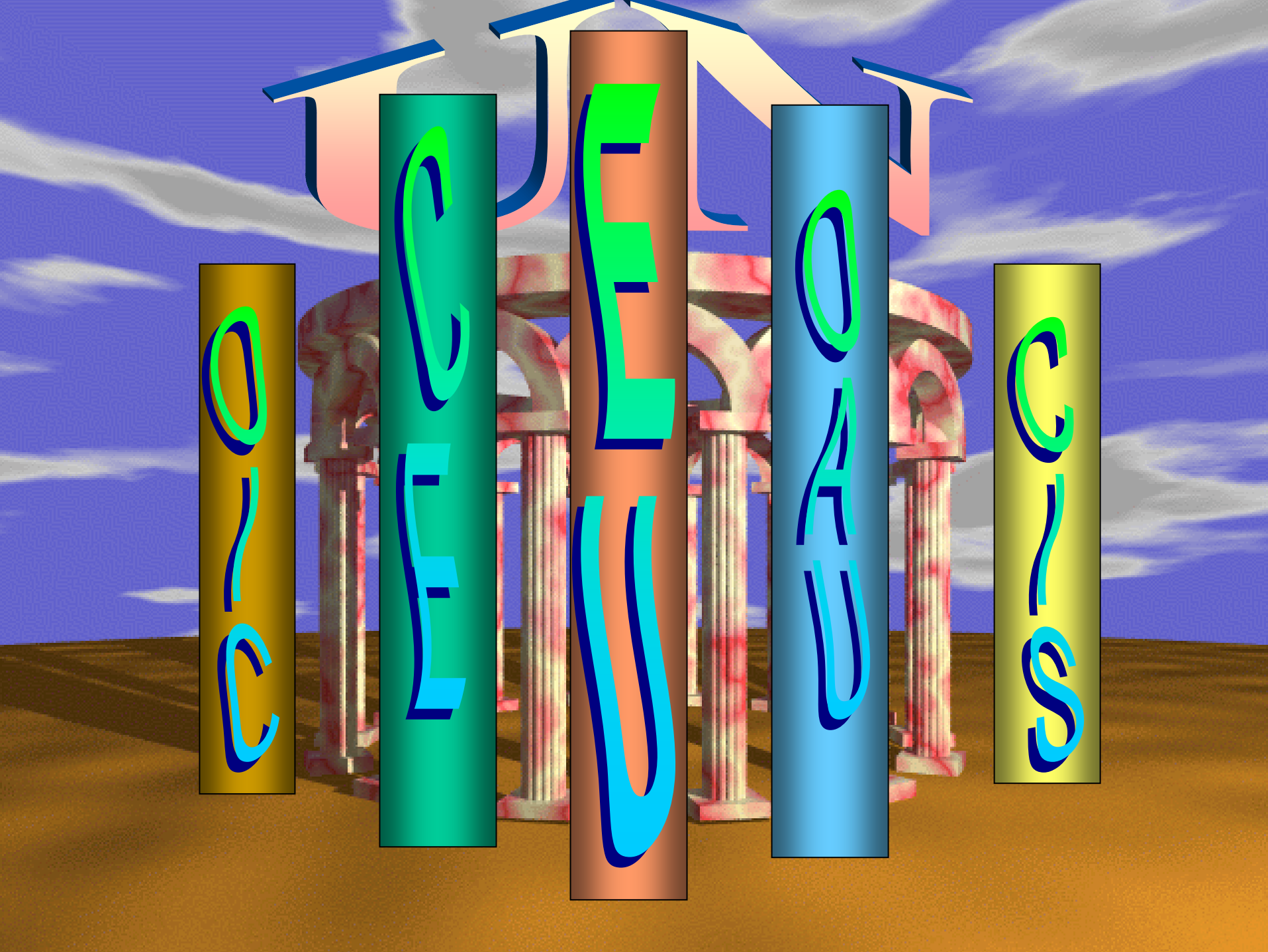
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**Organization of
African Unity (OAU) =
=African Union (AU)**

Africa

**OAU Convention on the Prevention
and Combating of Terrorism**

Algiers, 1999



CIS = Commonwealth of Independent States

CIS Efforts

**1999 CIS Treaty on Cooperation
in Fight Against Terrorism**

**2000-2003 CIS Program on Fight Against
International Terrorism and Extremism**

**2004 CIS Model law on
Suppression of Financing of Terrorism**

2006 Model Law On Combating Terrorism

Organization Islamic Conference

OIC Convention on
Combating International Terrorism
Ouagadougou, 1999





European Regional Framework Documents on Terrorism

1977

European Convention

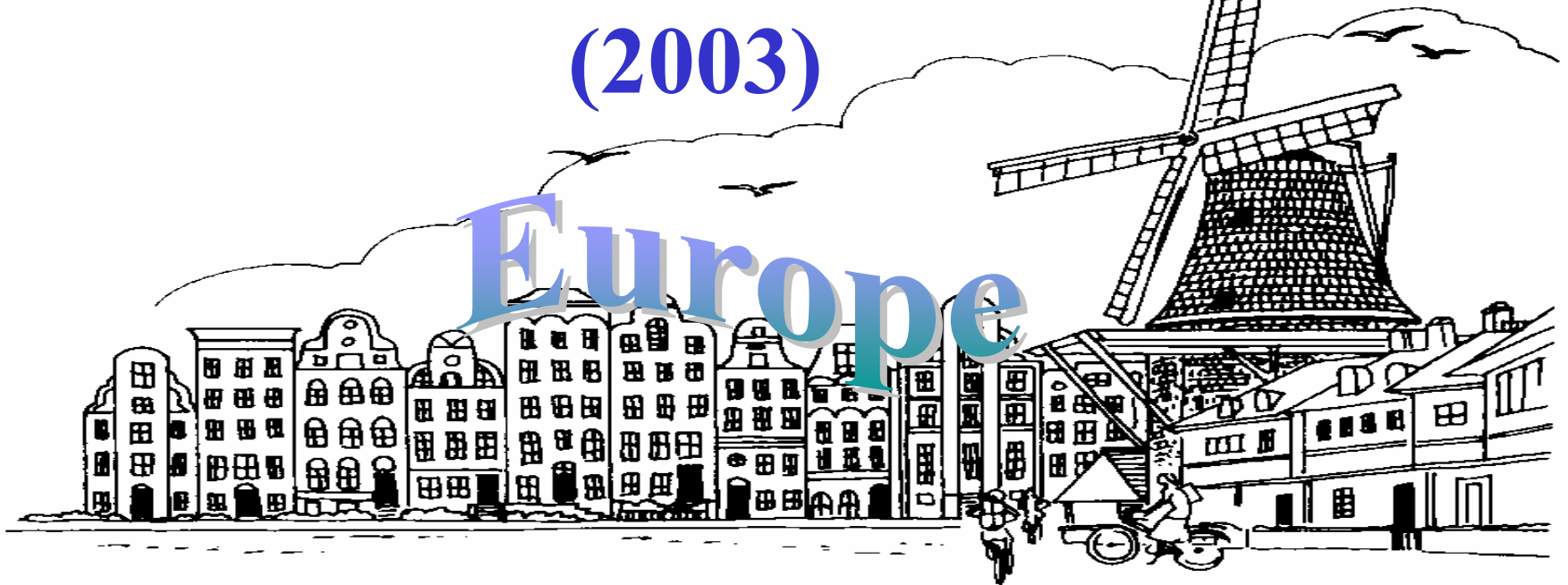
on Suppression of Terrorism

Council of Europe
1978

European Convention
on Control over
Possession and Acquisition
of Small Arms

European Convention on the Suppression of Terrorism (Strasbourg, 1977)

Protocol to European Convention (2003)



**European Union Commission:
Framework Decision on
Combating Terrorism (2001)**

**Council of Europe Convention
on the Prevention of Terrorism
(Warsaw, 2005)**




EU Council of Ministers of Justice and Interior in 2001:

«Terrorism constitute offences intentionally committed by an individual or a group against one or more countries, their institutions or people, with the aim of intimidating them and **seriously altering or bestroying the political, economic, or social structures of a state**».

*(Protests of about 200 lawyers accross EU:
definition covers trade unions, anti-globalists, etc.)*

European Parliament in 2001:

«Terrorism constitute offences intentionally committed by an individual or a group against one or more countries, their institutions or people, with the aim of intimidating them and seriously altering or destroying ~~the political, economic, or social structures of a state~~». ...the fundamental freedoms, democracy, respect for human rights, civil liberties and rule of law on which our societies are based»



**Euro-Mediterranean Summit
November 2005:**

**Euro-Mediterranean
Code of Conduct
on Countering Terrorism**

*failure - non-binding
Chairman's statement
instead*

**Definitions of Terrorism
in National
(Domestic)
Laws**

A photograph of the Elizabeth Tower (Big Ben) in London, with the text "British Terrorism Act 2000" overlaid on the right side. The tower is illuminated, and the sky is a clear, pale blue. The text is in a bold, black, serif font. The tower's intricate Gothic architecture is visible, including the clock face and the spire. The background shows the silhouette of the Houses of Parliament.


**British
Terrorism Act
2000**

A photograph of the Elizabeth Tower (Big Ben) in London, with the text "Use of threat to influence the government or intimidate the public for the purpose of advancing a political, religious or ideological case" overlaid on the image. The text is in a bold, black, serif font and is centered on the right side of the image. The background shows the tower and the Houses of Parliament under a clear blue sky.

**Use of threat
to influence the government
or intimidate the public
for the purpose of advancing
a political, religious or
ideological case**



**Involves serious violence
against a person,
damage of property,
risk to the health or safety
of the public,
or interfere with or seriously disrupt
an electronic system**

A photograph of the Elizabeth Tower (Big Ben) in London, with the text 'Law is ex-territorial: refers to any government, any person, any action inside or outside UK' overlaid in the center. The tower is illuminated in a golden light, and the sky is a clear, pale blue. The text is in a bold, black, serif font, with the first part in blue. The background shows the intricate Gothic architecture of the tower and the Palace of Westminster.

Law is ex-territorial:
refers to *any* government,
any person, *any* action
inside or outside UK



Federal Law on
Fight Against
Terrorism
1990s

Law on
Countering of
Terrorism
2006



Law on Suppression of Terrorism

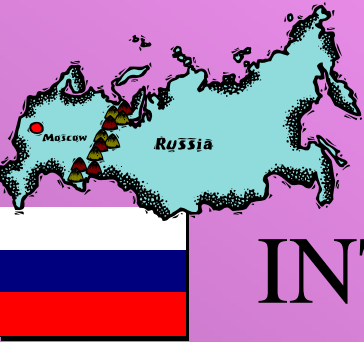
LAW REGULATES:

- Terrorist activity

(organization, planning, preparation, realization of a terrorist act, creation of a terrorist structure, supply of weapons and WMD materials)

- Support of terrorism

(recruiting, training, supplying arms, smuggling over border, providing refuge, financing, propagating, supplying documents)

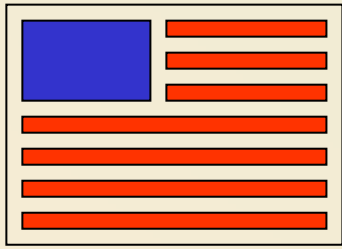


Law on Suppression of Terrorism

INTERNATIONAL TERRORISM

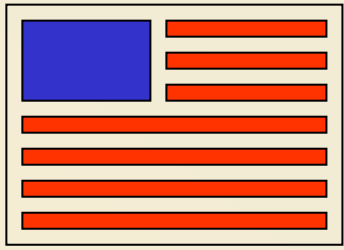
defined:

- 1...on the territory of more than one state
- 2...harmful to interests of more than one state
- 3...by citizens of one state to victims from another state
- 4...by citizens of one state on the territory of another state
- 5...acting on the territory of states to which neither terrorist nor victim belong.



US National Security Strategy

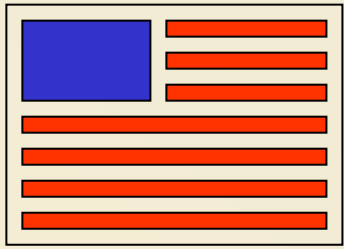
«...Premeditated,
politically motivated
violence
against innocents»



USA Patriot Act section 802:

«...acts dangerous to human life that are a violation of the criminal laws of the USA or of any State and intended:

- 1.to intimidate or coerce civilian population
- 2.to influence the policy of a government
- 3.to affect the conduct of government by mass destruction, assassination, or kidnapping»



US National Counter-Terrorism Center NCTC:

« Terrorist act is...

1. premeditated,
2. perpetrated by a subnational or clandestine agent,
3. politically motivated,
4. violent,
5. against non-combatant target»

Terror-ism and
Anti - terror-ism
as «-ISMS»

meaning
repetition,
expansion,
over-exaggeration,
conversion of a concrete case
into a social phenomenon

**Legal regulation
of anti-terror activities
is also required!**

Terror

**Anti-Terror
Campaign**

Episode 1:
International
use of
violence



Episode II:
Interference
in Civil War

Theories of «Legitimaste Violence» and «Just Wars»:

- * Religious Crusades
- * Revolutionary Necessity
- * Extended Self-Defense
- * Collective UN Response
- * Humanitarian Intervention

Legitimizing Formulas for International Intervention :

Humanitarian Intervention

**Pre-emption as self-defence
against terrorism**

**Counter-Proliferation
of WMD**

Pre-emptive Coercive Regime Change

**Terrorism is a violation of
STATE MONOPOLY
ON USE OF VIOLENCE (force)
within nation-state**

**State terrorism is a violation of
United Nations monopoly
on use of violence (force)
on international arena ?**

**«Legitimizing Exceptions»
from Terrorism:**

Organization of African Unity (OAU):

***struggle for liberation or
self-determination
waged in accordance with
international law**

**«Legitimizing Exceptions»
from Terrorism:**

Organization of African Unity (OAU):

***armed struggle against
colonialism,
occupation,
aggression,
domination by foreign forces**

«Legitimizing Exceptions» from Terrorism:

Organization of Islamic Conference Convention:

- *People's struggle including
armed struggle against
foreign occupation,
aggression,
colonialism,
hegemony,

**«Legitimizing Exceptions»
from Terrorism:
Organization of Islamic Conference
Convention:**

**...aimed at liberation and
self-determination
in accordance with principles of
international law**

«**Limiting** Exceptions»
from Terrorism:
OIC Convention:

*...None of terrorist crimes
shall be considered
POLITICAL CRIMES

**That solves problem
of extradition**

«**Limiting** Exceptions»
from Terrorism:
OIC Convention:

Not political crimes, **EVEN IF
POLITICALLY MOTIVATED:**

* Terrorist acts against
kings, heads of states,
their spouses,
ascendants and descendants

«**Limiting** Exceptions»
from Terrorism:
OIC Convention:

**Not political crimes, EVEN IF
POLITICALLY MOTIVATED:**

*** Terrorist acts against
crown princes, vice-presidents,
ministers**

«**Limiting** Exceptions»

from Terrorism:

OIC Convention:

**Not political crimes, EVEN IF
POLITICALLY MOTIVATED:**

*** Terrorist acts against
Ambassadors, diplomats**

«**Limiting** Exceptions»
from Terrorism:
OIC Convention:

Not political crimes, **EVEN IF
POLITICALLY MOTIVATED:**

* Murder, or robbery by force,
destruction of public property,
even of other states

«**Limiting** Exceptions»

from Terrorism:

Pakistani President P.Musharraf:

«Core of all terrorist activity is
POLITICAL and
NOT RELIGIOUS...

Thus there is no such a thing
as a religious

Muslim terrorism»

«**Limiting** Exceptions»

from Terrorism:

Pakistani President P.Musharraf:

«TERRORISM FLOWS
FROM EXTREMISM...

But extremism is a *state of mind*,
while terrorism is *action*
and is to be confronted with force»

Practical application of laws on terrorism:

2005 – PAKISTAN

**operation of Pakistani military
in Wazitistan**

(North West Border Province):

700 arrested as terrorists,

above 180 of them

sentenced by court to prison

as terrorits

Guantanamo:

600 fighters captured in Afghanistan
and accused in terrorism

represented more than **30** states and nations,
including

Saudi Arabia, Yemen, Pakistan,

UK, Sweden, France,

Tunisia, Jordan,

Bangladesh, Iraq,

Russian Federation and

Central Asian states

Among foreign mercenaries exterminated or captured during the counter-terrorist operation in Chechnya there were citizens of

**Algeria, Afghanistan,
United Kingdom, Egypt,
Jordan, Iraq, Yemen,
Saudi Arabia, Quwait, Lebanon,
United Arab Emirates, Pakistan,
Syria, USA, Tajikistan,
Tunisia, Turkey, Ukraine**

Elements of Law

Motive:

The act is politically, religiously or ideologically motivated

(USA, Canada, UK)

Terrorist act is motivated by selfish material interests

(most national laws, OIC, «old» UN Conventions)

Elements of Law

Purpose:

To influence government policy

(USA, EU, Russia, South Africa, India, Azerbaijan, Mozambique)

Threaten national security

(EU, Canada, Algeria, Egypt, South Africa, India)

Elements of Law

Purpose:

To dicturb public order

(France, EU, Russia, Canada,
Algeria, Azerbaijan, Egypt)

Target honour, freedoms,
territorial integrity,
political unity,

sovereignty

(Org Islamic Conf)

Elements of Law

Target:

Persons, population, people
(all definitions)

Civilians, Non-combatants
«Innocents»
(US NSS)

Cultural heritage
(OAU)

Elements of Law

Target:

Property (all definitions)

Public property,

National resources,

International facilities,

Environment

(Organization Islamic Conference, OAU)

Electronic networks (UK)

Elements of Law

Factor of Fear:

Fear, horror, «terrorizing» as
intermediate factor
between violence
and purpose

(almost all definitions)

(not in US laws, not in UK,
not in South African law)

Elements of Law

Perpetrators:

Individuals only

(France, Azerbaijan, Egypt,
South Africa, Mozambique)

Individuals and sub-national
groups (EU, Russia, India, etc.)

International groups (UN)

Elements of Law

**Time
condition:**

Terrorism is terrorism only
in time of armed conflicts

(Columbia)

Elements of Law

**Widening
definition -
new offences:**

Act of terrorism ...

...and recruitment

...and training

...and financing

...planning and elaboration

...and (failed) attempt

Elements of Law

**Widening
definition -
new offences:**

Act of terrorism ...

...and participation as and
accomplice

...and directing others to
commit act of terror

...and preparation

...planning and elaboration

Elements of Law

**Widening
definition -
new offences:**

Council of Europe:

...and public provocation

...and recruitment

OAU Convention:

...and promotion, sponsoring

...and contribution to, aid,

...and incitement,, conspiracy

... and encouragement

... and procurement

Terrorism is the use
or threatened use of force
designed to bring about
political change

Terrorism constitutes
the illegitimate use of force
to achieve a political objective
when innocent people
are targeted

Conclusions

System of legal instruments (conventions, laws) created before 2001 (mainly in 1970s-1990s) is reasonably sufficient in criminalizing individual captured terrorists

- *But it is hardly applicable to:*
 - Organizations and networks
 - States using terrorist methods
 - Radical political movements
 - Suicide terrorists

Conclusions

After 9/11, 2001 new group of legal instruments has been quickly created.

- *It expanded anti-terrorism legislation to*
 - *New areas, like WMD terrorism*
 - *New subjects, like non-state actors*

But application of counter-terrorist sanctions to states which sponsor terrorism still remains a prerogative of Chapter VII UN SC decisions which are highly political and ideological

Conclusions

Trend in modern anti-terrorism legislation:

“horizontal expansion (widening)”

of notion of terrorism

(to cover not only terrorist act itself,

but financing, preparation, propaganda and wide bunch of surrounding activities)

Conclusions

Trend in modern anti-terrorism legislation:

From **PUNISHMENT** to **PREVENTION**
(sanctions in advance against organizations, states, financial institutions, publishers, etc., like lists of prohibited “terrorist organizations”)

But ultimate formula of

PREEMPTIVE REGIME CHANGE

evokes contradictions

Conclusions

Trend in modern anti-terrorism legislation:

“global unification” of notion of terrorism
(legislation in European Union, African Union,
CIS, Organisation Islamic Conference becomes
closer to each other and less contradictory
in definitions and approaches)

Conclusions

Anti-terrorist legislation in Islamic countries (Pakistan, Afghanistan, UAE, Egypt, etc.) is developed sometimes better and in more practical details than in some Western states.

Trials and sentences “for terrorism” are constantly and practically working in Islamic countries (though often misused for political purposes).

Conclusions

TREND:

Counter-terrorist activities and campaigns
(inside states and internationally)

lead to irregular unlawful activities, crimes
and violations of people's rights

MISSING:

**Strict legal regulation of counter-terrorist
activities of a State**

TREND:

Large Counter-terrorist campaigns of strong states tackle terrorists not through **justice** system, but through **military** and **police** operation

Goal is not to bring terrorist to a Court, but to eliminate (kill) him

Two sets of legal instruments:

Traditional

MICRO - anti-terrorism

Crime-

investigation – suspects - proofs

court trial - law

- sentence - punishment

Two sets of legal instruments:

MACRO – counter-terrorism
(international scale)

War campaigns against
large political suspects
(states, regimes, movements)
labeled as terrorists or terror
sponsors.

Merge of political and security goals

”UNIVERSAL” problems:
a problem for ALL or MOST countries,
but can be tackled locally by each state

”GLOBAL” problems:
a problem for ALL
international community,
that can be resolved only through
coordinated efforts of ALL states

TERRORISM

**is rather "UNIVERSAL"
than "GLOBAL" problem:**

**manifestations, roots, causes
of the universal problems vary
from society to society,
from region to region.**

Solutions must vary as well.

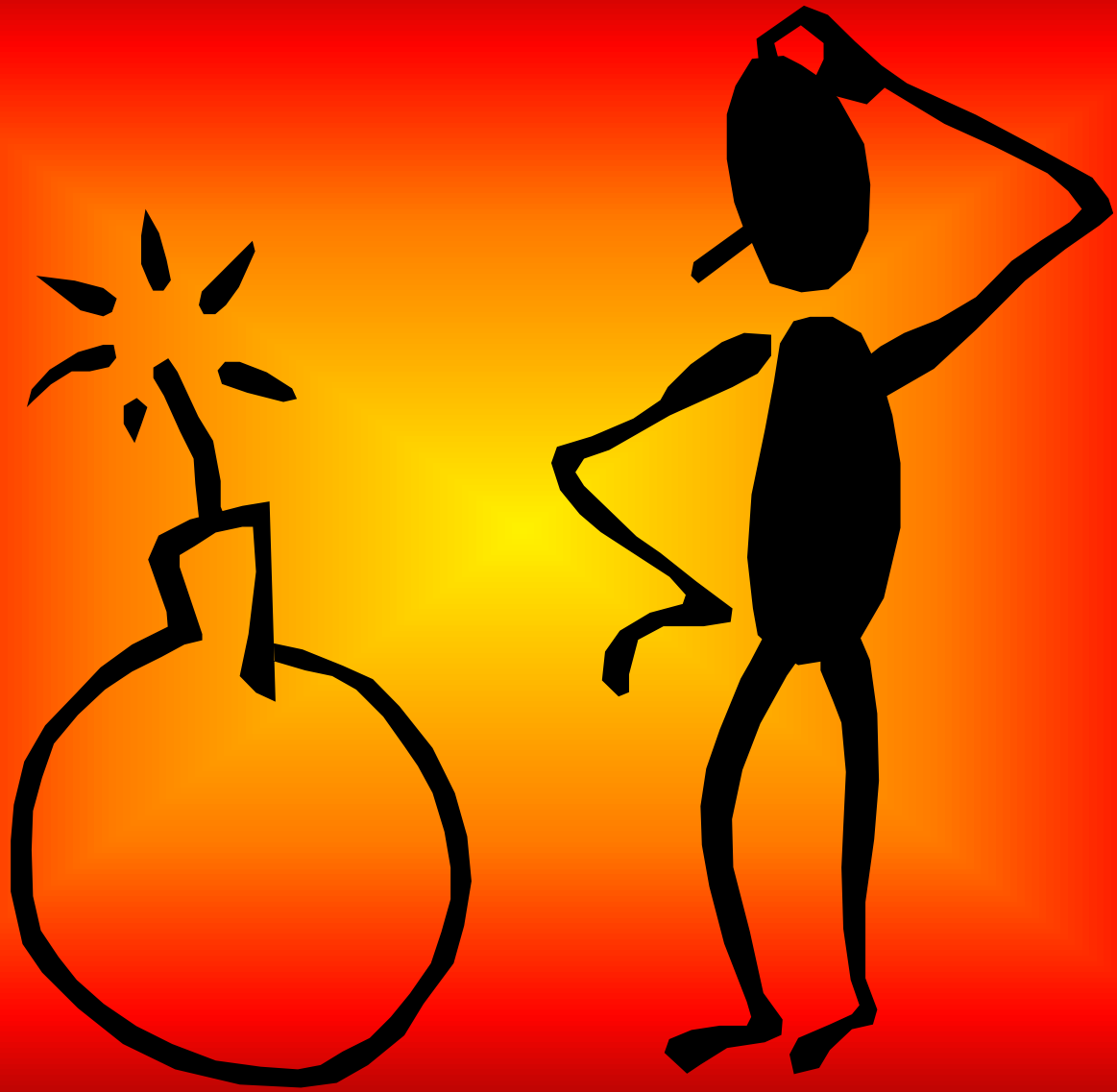
Modern “TERRORISM”
is an “umbrella notion”
or “basket notion”
filled with various phenomena,
which are different in nature
and require different responses,
different legal instruments

That parts of “TERRORISM Basket”
which in principle are
manageable by legal means,
already are covered by respective
nat’l or int’l laws or conventions
which require only
minor or technical adjustment
and modernization

Further universalization
of anti-terrorist laws and notions
(*one commonly recognized definition,
one comprehensive convention*)

**IS HARDLY POSSIBLE
AND NOT NECESSARY**

Here a Law meets its limits –
political interests of the states





New Phenomenon

Violence + Globalization =

Threat of total extinction

of a human species

New Phenomenon

MEGA-Terrorism

(Above 1,000 deaths,
defined by W.Lacquer, USA)

SUPER-Terrorism

(Defined by A.Arbatov, Russia)

Above 10.000

~1800 tons

nuclear warheads

of separated HEU

~500 tons of

plutonium

700 tons declared excess

(1/3 of weapons stock)

**In military use -
enough fissile material
to assemble up to
100.000 nuclear weapons**

**in civilian sector -
enough
fissile material to create up to
30.000 weapons**

**70.000 tons
(70.000.000 kg)
of CHEMICAL WEAPONS
in Russia, USA, India, Korea
(to be destroyed under CWC)**

**1980 – Convention on Physical Protection
of Fissile Materials**
(needs an upgrade)

IAEA numerous regulations, protocols

**2005 – UN Convention against
Nuclear Terrorism**

- **Use of force on behalf of world community becomes a field for conflict of great powers' interests**
- **International force is used not in a self-defense and not only against aggression**

Trends:

- International Community
interferes more often and broader**
- From Interference into interstate wars
towards interference into
internal conflicts
and overthrowing regimes**

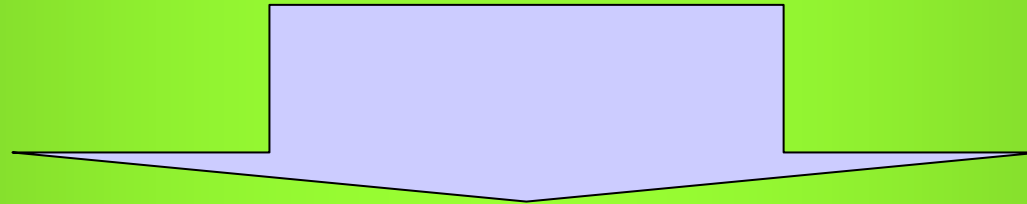
International Community

IS RESPONSIBLE

for democracy and human rights
inside its member-states
and for international stability.

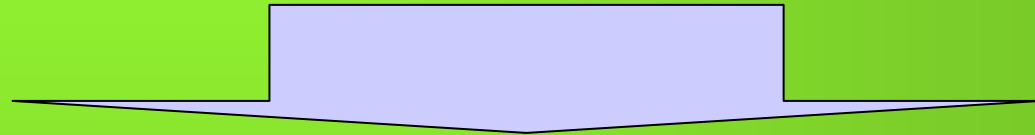
But who judges and
who executes ?

”UNIVERSAL” problems:
a problem for ALL or MOST countries,
but can be tackled locally by each state



”GLOBAL” problems:
a problem for ALL
international community,
can be resolved only through
coordinated efforts of ALL states

**Limitation and regulation
of violence in social and political life
is a universal problem of all societies**



**Elimination of WAR
and of the threat of extinction
of human species
resulting from escalated violence
is a GLOBAL problem
requiring GLOBAL co-operation !**

NUCLEAR ARSENALS:

Equivalent of 30.000.000 tonnes of TNT

USA

11000 strategic

7000 tactical

1991

11000

USSR

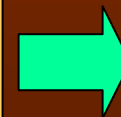
15000-17000 tactical

<3000

Russia

2000-4000

2006



Arms Limitation and Disarmament Treaties

~~NPT~~

~~ABM~~

~~CTBT~~

NWFZ

SALT-1

SALT-2

IMF

START-1

~~START-2~~

~~TactNW~~

CFE

CWC

~~BWC~~

~~NWC~~

Largest Terrorist Challenges in Russia

- Explosions of residential apartment buildings in Moscow and Volgodonsk
- Capture of hundreds of hostages in the Dubrovka Theatre in Moscow
- Capture of above 1000 children as hostages in Beslan
- Thousands of individual or group terrorist acts in Chechnya and North Caucasus

WAR IS NATURAL
(Theories of natural causes of violence)

PACIFISM
(Theories of unnatural essence of war)

HUMAN NATURE
is a main cause of war

SOCIAL NATURE
is a main cause of war

TECHNICAL (MAN-MADE) NATURE
is a cause of terrorism and future wars

Regulation of state violence in UN Charter:

collective coercive response

Self-defense

Chapter VII

Article 51

Peace Enforcement

**Chapter VII
Regional use
of force**

1. Aggression

2. Threat to int. security

**Soft Interference
Chapter VI**

Peace-keeping

Largest Terrorist Challenges in Russia

- Explosions of residential apartment buildings in Moscow and Volgodonsk
- Capture of hundreds of hostages in the Dubrovka Theatre in Moscow
- Capture of above 1000 children as hostages in Beslan
- Thousands of individual or group terrorist acts in Chechnya and North Caucasus