

Legal rules to combat terrorism in Iraq

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Abstract

The phenomenon of terrorism is the most important challenge facing successive Iraqi governments after the events of 2003, the impact of the problem has increased due focus of the media in various aspects of the problem as it has become a threat to all humanity, the Intellectual and religious extremism considered among the most important sources of violence and terrorism, so the intellectual terrorism is being exploited by militant groups which committed the worst crimes by its name and turned from small groups into militias possessing heavy and sophisticated weapons.

The Iraqi legislations related to the phenomenon of terrorism shows that Iraq has followed most of the national legislation of the countries around the world. So the Iraqi Constitution contained provisions prohibiting terrorism. the Iraqi legislator also adopts the pro-Iraqi trend to issue a special and independent law, where the National Assembly issued the anti-terrorism law No. 13-2005. and followed by the legislation authority in Kurdistan of Iraq, where it issued the law against terrorism No.3- 2006.

Index terms- terrorism, Iraqi security, law against terrorism, constitution.

Introduction

The qualitative development of armed groups in Iraq and their association with extremist militias in neighboring Arab countries have increased their impact and effectiveness which clearly worked to stir up sectarian, ethnic and political problems Which put great pressure especially on the national security in Iraq, and the Arab countries in general. the events of September 11, 2001 considered as the main shift in the development of national counter-terrorism legislation However, the Iraqi situation represents a special and unique case in this regard. These events have led to increased accusations the Iraqi government - at the time - to support international terrorism, which was one of the reasons it was said to justify Occupation in 2003. In other words, the turning point in the position of the Iraqi legislation regarding terrorism has been affected after the occupation on 2003.

Before starting to analyze the legal rules governing the problem of terrorism in Iraq, we should find the meaning of terrorism, define it and its important, so the definition of the concept of terrorism raised a wide debate in both domestic and international jurisprudence. The dispute has also spread to international and regional organizations that have tried to address its meaning and distinguish it from the various concepts that it mixes with. Prompting some lawmakers to demand that the definition of terrorism be left out and only to address its aspects. 1

However, jurisprudence has been divided into two directions to define terrorism

The first focuses on the material aspects and the activity in which the crime is committed, Thus limiting terrorism to a limited number of crimes within narrow limits without recognizing the aims behind the crime.

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So, Terrorism is a group of violent acts issued by an illegal group against individuals or state authorities to force them to conduct certain acts or to change the constitutional and legal systems of the state.³

Therefore, one of the drawbacks of this view is that it defines terrorist crimes by certain acts depending on violence, Therefore, this definition cannot be adopted because there are many acts of terrorism free from the element of violence such as the spread of epidemics, water poisoning and information terrorism.

The second trend is moral, which requires political goals and objectives as the ultimate goal of terrorist action ⁴

Therefore, this trend is spreading fear to reach its political goals whatever its kind. So, it can be defined as the coordinated use of violence or threat to achieve political objectives.

the trend focus on the political goal leads to equalization of terrorist crime with political crime, which is not true due terrorist activities may be aimed to political, religious or racial purposes by using methods of intimidation among individuals and groups.

In Iraq we can say that the Iraqi legislation did not deal with the term terrorism before the issuance of Law No. 13 of 2005, except many items of Penal Code No. 111 of 1969⁽⁶⁾

Therefore, we note that there is no specific description of the terrorist act, with the assertion that the Iraqi government's position consist to consider these texts as a part of the criminalization system, which aims to protect the internal and external security of the state.

After the promulgation of the Anti-Terrorism Law No. 13 of 2005, the Iraqi legislator decided to resolve the issue of the definition of terrorism, as expressly stated in the article1((Any criminal act committed by an individual or an organized group targeting an individual or group of individuals or institutions, official or unofficial, has caused damage to public or private property in order to disrupt the security situation, stability or national unity, or to instill terror, fear and panic among people or to provoke chaos to achieve terrorist ends)).

When attempting to analyze the definition of Iraqi law, the following observations may be made:

- 1- The Iraqi legislator trying to enumerate a series of crimes that are considered terrorist and avoid setting a specific definition of terrorism because of the difficulty of defining a specific definition of terrorism which may restricts the judiciary and can lead to the exit of many crimes outside the scope of terrorist crimes.
- 2- The Iraqi legislator tried to show that the goal of terrorism is to disrupt the security situation or stability or national unity or to provoke chaos.
- 3- The Iraqi legislator tried to expand the scope of the definition to include any activity characterized by the act of terrorism, including public and private property, which means achieving any result to be a terrorist act.
- 4- The Iraqi legislator equated individual activity with collective activities as a criminal act.

Causes of Terrorism

- 1- Economic reasons; Economic deprivation and increasing class disparities among the groups of society, with the increasing number of unemployed and the increasing proportion of people living below the poverty line, have led terrorism to becoming one of the means of trade in Iraq and in the world where it is managed by many secret organizations, companies, institutions and even governments to provide Some political and economic gains.
- 2- Political reasons; The deteriorating political situation and the political problems in Iraq play a major role to creating extremist terrorist groups that carry out their criminal operations against civilians and the armed forces.
- 3- Nationalist reasons; The lack of national solidarity within society, lack of social justice or deprivation of political, religious or social rights are considered reasons for the occurrence of violence and terrorism, especially in the case of monopoly of power by the hands of a certain

category and denial of the other groups where the phenomenon of terrorism as the expression of a sense of injustice.

- 4- Social reasons; Terrorism is a kind of social disease because the social transformations and the accompanying changes in social values in return for the decline of spiritual values and feelings of injustice, despair and hatred leads to psychological deviation that tends to violence and crime and is fueled by deterioration of living and unemployment which working to support the phenomenon of terrorism.

Types of terrorism

There are many forms of terrorism as most countries avoid defining a certain definition of this term to cover all forms of terrorism. We will trying to explain the main types that most countries suffer from which are found in the various laws and constitutions:

- 1- Ideological terrorism A type of terrorism targeting violators in religion, doctrine and creed.
- 2- Racial terrorism practiced by states or organizations and governmental institutions against other races.
- 3- The economic terrorism practiced by the rich countries against the poor countries with a view to their exploitation and ensuring their economic dependence.
- 4- The government terrorism practiced by the repressive apparatuses against the people, which includes the killing of kidnappers targeting prominent figures or citizens of other countries.
- 5- Individual terrorism by an individual or a group for personal gain without containing other dimensions where practiced within the state or outside.(7)

Iraqi legislation against terrorism

There is no doubt that penal legislation is an important and effective tool to combat terrorism, The issuance of anti-terrorism laws is necessary to deal with the volatile situation around the world, in addition to the obligation to comply with UN Security Council Resolution 1373, known as the Counter-Terrorism Decision of 2001, which includes a large number of preventive measures that States should follow at internal level. (8)

The executive organs in the countries play a key role relates to the drafting of terrorism legislation and laws, which is intended to expand the definition of terrorism, thus extend the concept to cover non-proscribed activities(Protest, demonstration, etc.), which is contrary to the principle of legality, or to participate in groups and organizations that are considered by Governments to be terrorist, which constitutes a violation of the right of meeting, and authorize the police and the security unlimited powers to detain suspected terrorists for indefinite periods and obtain information that violates the right to a fair trial and the prohibition of torture. In this section, we will briefly present the development of Iraqi anti-terrorism legislation Through the distinction between two stages: the first is the stage before 2003 and the second stage Subsequent thereto.

- Stage before the enactment of the Anti-Terrorism law.

This was characterized by the fact that the Iraqi legislator dealt with terrorist crimes under the Penal Code No. 111 of 1969. (9) The term "terrorist offenses" was mentioned in Article 21, which enumerated crimes that were not considered political crimes, even if they were committed by political means, It follows that the perpetrator does not enjoy the political advantages enjoyed by the perpetrator of the political crime Including commuting the death penalty to life imprisonment and not depriving the perpetrator of civil and political rights,

The Iraqi Penal Code also criminalizes some acts that it considers to be terrorism and determined the punishment such as (A person who intentionally committed the intent to prejudice the independence, unity or territorial integrity of the country or to join an anti-Iraq group that does not have the status of a combatant shall be sentenced to death) 10

And (A person who attempted by force or violence to overthrow the republican system of government or to change the constitution of the state or the form of government shall be punished with life or temporary

imprisonment. The penalty shall be death if the crime is committed by a gang that used explosives or firearms)11

(Any person who for a criminal purpose has commanded a section of the armed forces, a military point, a port or a city, shall be punished by death or life imprisonment for inciting them from the Government or continuing military command contrary to the orders of the Government) 12

(Anyone who instigates an armed provocation shall be punished with temporary imprisonment, life imprisonment or execution) 13

(Anyone who is intended to provoke civil war or sectarian strife shall be punished with life imprisonment by arming the citizens or carrying them to arm themselves against each other or by urging the fighting. The penalty shall be death if the target is done) 14

(Anyone who destroys, or damages buildings, public property, electric power stations, transportation ways, places of public meetings or any public buildings have paramount importance in the national economy with a view to overthrowing the regime shall be punished by death or life imprisonment.) 15

(Anyone who establishes or organizes or administers in Iraq an association, body or organization of any kind of an international character or branch without permission shall be punished with imprisonment.)16

In fact these articles have been legislated to Combating acts of terrorism directed against the internal and external security of the state and overthrowing the regime by force and confronting the numerous terrorist organizations that receive support and support abroad to committed many acts of terrorism against Iraq and its citizens.(17)

- Stage after the enactment of the Anti-Terrorism law.

Since 2003, there has been an increase in armed violence as a result of the deterioration of post-occupation conditions and the infiltration of external elements to participate in armed resistance As a result, Iraqis have been subjected to kidnappings and sectarian violence has escalated. to cope with escalated violence, the Coalition Provisional Authority(CPA) has issued a series of orders aimed to reduce the terrorism level, such as;

- Coalition Order No. 3 of 2003, which imposed sanctions on unauthorized possession of weapons.18

- Coalition Provisional Authority CPA Order No. (14) of 2003 on the prohibited media activity that misused the media to encourage violence or weaken public security.19

- 3. Coalition Provisional Authority CPA Order No. (25) of 2003 on the confiscation of assets used for committing or obtaining specific crimes, such as crimes related to natural resources or the environment, including transport or shipment, such as aircraft and others.20

- Coalition Provisional Authority CPA Order No. 1 of 2004 issued the National Safety Act, which defined the procedures which impose a state of emergency when terrorist acts endanger the lives of the Iraqi people. 21

- Coalition Provisional Authority CPA Order No. 13 of 2004 establishing the Central Criminal Court In Iraq where resources are concentrated on issues related to terrorism, organized crime, government corruption, destabilization of democratic organizations and processes.22

- State Transitional Administration Law.

The Interim Iraqi Government respects and implements Iraq's international obligations to prevent the proliferation, development, production and use of nuclear, chemical and biological weapons and to prevent their development, manufacture, production and use of equipment, materials, technology and delivery systems. 23

-The Iraqi permanent constitution of 2005.

For the first time, the Iraqi constitution contains legal provisions that clearly criminalize terrorism, Where it decided to prohibit any entity or approach that adopts racism, terrorism, atonement or sectarian cleansing, or Incites, preaches, praises, or promotes²⁴

The State is committed to combating terrorism in all its forms and to protecting its territory from being a headquarters, an empire or an arena for its activity ²⁵

Political asylum is not granted to an accused of international or terrorist crimes, or to anyone who has harmed Iraq.²⁶

The State shall ensure compensation for the families of martyrs and those injured as a result of terrorist acts.²⁷

- Anti - Terrorism Law in Iraq

Given the increasing number of terrorist attacks and the threat to the lives and lives of citizens in Iraq, the need for a special and independent anti-terrorism law was urgently needed, the law includes a definition of "terrorism" and a list of a number of "terrorist" acts as well as crimes affecting State security, penalties and final sentences, the law is distinguished by a set of characteristics that can be explained by that ;

- the penalties in this law are aimed at achieving two main objectives, namely deterring individuals from not committing any terrorist acts and allowing repentance or exemption That the penalties provided for in this law are aimed at achieving two main objectives, namely deterring individuals from not committing any terrorist acts, and allowing repentance or exemption to reduce the consequences of terrorism in case that it occurs.

- the law is devoid of procedural rules contrary to similar laws against terrorism, because the legislator preferred security to human rights.

- The law was consistent with the Arab Convention on Human Rights, where a special system was established to compensate victims of terrorism. ²⁸

Conclusions.

By reviewing the Iraqi laws that dealt with the concept of terrorism, we can develop a set of conclusions;

-The absence of a clear definition of terrorism at the level of most countries, which hinders efforts of international cooperation because of the multiplicity of the concept of terrorism for the affected countries.

-Lack of seriousness in addressing the causes of terrorism, -Iraqi laws are weak in identifying sources of funding for terrorism and lack the means and mechanisms that limit the access of funding to terrorists.

-There is no distinction between terrorist crimes and crimes affecting the security of the State, leading to non-discrimination between the two categories of crimes.

-Lack of a clear and specific mechanism for compensating victims of terrorism who have been exposed to physical and psychological pain due to terrorist operations.

-The weak role of the audio and visual media in the fight against terrorism, which is reflected negatively on uncovering the reality of terrorist acts.

Recommendations.

-To work to find a clear definition of the concept of terrorism and to reduce long phrases that are taken many interpretation.

- Trying to find an appropriate solutions to avoiding or reducing the causes of terrorism, notably unemployment, poverty, ignorance, religious, sectarian or national intolerance.

- To seriously curb terrorist funding by fighting illegal activities such as smuggling, human trafficking, drugs and weapons trading, which are a major source of funding for terrorist groups.
- To work on establishing clear legal provisions to compensate victims of terrorism and their families to alleviate the physical and psychological pain they have suffered.
- To activate the media of all kinds by highlighting the disadvantages of terrorism and preventing and prosecute the emergence of persons and institutions that promote and support terrorism.

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