

Between the Crime and the War Falls the Terror? Defining Terrorism in International Law

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On numerous occasions since the 1920s, the international community has unsuccessfully tried to define and criminalize "terrorism" in international law. Debate about defining terrorism is not merely a difficult technical enterprise, but engages fundamental political, ethical and ideological questions about who is entitled to use violence, against whom, and for what purposes - and indeed about who is empowered to make decisions which delineate the realm of legitimate political violence. A deceptively simple, intuitive approach is to assert, as did the British Ambassador to the Security Council's Counter-Terrorism Committee, that "what looks, smells and kills like terrorism is terrorism". Of course the problem is that different people have very different senses of smell - and some definitions of terrorism are very smelly indeed.

This seminar charts the key fields of controversy: (a) arguments for and against defining and criminalizing "terrorism" as a special international crime; (b) technical elements of an ideal definition; and (c) possible exceptions or exemptions to any definition ("freedom fighters"? "State terrorists" and military forces? unruly democratic protesters? "suicide bombers for humanity"? attacks on "non-innocent" civilians such as Israeli settlers?). Ultimately, it is suggested that strengthening transnational criminal law responses to terrorism, for all of its flaws, is infinitely preferable to vacating criminal law controls in favour of more militant or aggressive responses to terrorism; in short, an injunction to make crime, not war. The seminar also reflects on the role of academics in shaping legal responses to violence - from nay-saying "anaemic liberals" to "smug" civil libertarians who have become unwitting apologists for State power.