

Dear delegates,

My name is Daphne Farmaki and I am a student in the Law school of the University of Athens. I will have the honour of serving as the President of the Legal Committee during this year's 8th session of Arsakeia-Tositseia Schools Model United Nations. I would initially like to express my joy for you deciding upon the Legal Committee as it is one of the most interesting and demanding committees of the United Nations and will provide you with the great opportunity of understanding international law as well as of putting the effort to practice it.

My duty as your Chair is to assist you in your efforts to comprehend the issue prior to the Conference, organise your research, draft resolutions during the lobbying procedure and finally, discuss them in the Committee. The aim of this Study Guide is to provide you with basic information concerning the topic of the legal aspects of negotiations between terrorists and states, a very demanding issue. It should be used as a starting point, which alongside with your country's policy, history and your general research on the topic will lead to your successful drafting of quality resolutions as well as to your fruitful contribution to the debate in general. Please keep in mind that in no case should you solely rely on this Study Guide. Nevertheless, it is crucial that you go over the ATS Rules of Procedure as well since lack of it can impair you from participating during debate time. Should you, however, need any further assistance, please do not hesitate to contact me on my email address: daphne.farmakis@me.com or my Facebook account : Daphne Farmaki.

I expect to see well prepared delegates with knowledge on the topic and willingness to participate so as to experience interesting and fruitful debate. I am looking forward to meeting you all.

Kind regards,
Daphne Farmaki



Committee: Legal

Issue: The legal aspects of negotiations between states and terrorists

Student Officer: Daphne Farmaki

Position: President

“The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing”

United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288, annex)

INTRODUCTION

Terrorism constitutes a widely known intentional and indiscriminate practice of violence targeting individuals or governments as a means to cause terror and destruction and finally, accomplish political, religious, financial or other aims. As a matter of fact, the international community has not decided yet upon a definition of the term terrorism and which acts exactly fall under this category. As a result, countries are left to define themselves who can be characterised as terrorist, which often leads to violations of human rights and international law in general.

The term terrorism was firstly used during the French Revolution to describe Maximilian Robespierre's regime and gained popularity mostly in the 20th century because of Ronald Reagan's presidency, the Beirut barracks bombings (1983) as well as the 9/11 attacks (2001). Types and motivations of terrorism are varying. However, it is indisputable that the cost of each attack has been felt all around the globe. Not only individuals and governments have suffered from losses because of terrorists' actions, but international organisations as well -United Nations themselves- have experienced violent terrorist actions.

Terrorism has devastating consequences regarding the enjoyment of fundamental human rights, such as those of life, liberty, physical integrity and safety. Furthermore, its costs expand in the social and political sector as well since terrorism has the power to destabilise governments, to jeopardise security and threaten civil society and its development. International human rights law obliges

states to protect and respect human rights. Therefore, protection of human rights such as security, liberty, etc. as well as reassurance of their enjoyment lead governments to adopt certain measures to combat threats to human rights. Terrorism, as already mentioned, constitutes one of the most devastating threats to human rights creating the obligation of states to take the appropriate measures to tackle its consequences. Member States of the United Nations have noted that terrorism “threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardises fundamental freedoms, and aims at the destruction of human rights, has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilises legitimately constituted Governments, has links with transnational organised crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery, has adverse consequences for the economic and social development of States, jeopardises friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development, Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.”¹

Therefore, it is vital for States to come up with solutions to tackle the issue. Negotiations are often considered as the best means to solve international disputes. Albeit, many -mostly western- states, following Reagan’s pledge to never negotiate with terrorist groups, have the policy of not negotiating with terrorists, especially during hostage crises, while others tend to pay ransom to terrorist organisations creating, thus, opposing tactics and tension. The most important argument against negotiations is the rule of law. Negotiations with terrorists legalise their existence and make it seem as if democracies give in to the power of violence and fear. Many questions arise from the practice of negotiating with terrorists, such as: how can one negotiate with terrorists without jeopardising the rule of law and the political system and how can any government minimise the risk of setting devastating precedents. Sociologist Max weber defined the state as “ as human community which holds the claim for legitimate use of force within a given

¹ Fact Sheet No. 32, “Human Rights, Terrorism and Counter-Terrorism”, Office of the United Nation, High Commissioner for Human Rights

territory”.² As a result, some claim that negotiating with terrorists legalises their practice to intervene and influence politics with violence and puts barriers to the state’s claim for legitimate use of force. However, others argue that negotiations with terrorists can often be a necessary evil since human lives and liberty are practically more important than the theoretical reassurance of the rule of law. In addition, they can serve as the first steps towards peace agreements leading to final solutions to problems with terror groups and they are preferable to other alternatives such as torture of terrorists, death penalty or even armed conflicts.

With the globalisation of terrorism and the expansion of its threats in all sectors, governments face more than ever in human history the dilemma of how to manoeuvre in these situations: to negotiate or not to negotiate?

DEFINITION OF KEY TERMS

Terrorism

Although terrorism is widely known as the practice of violence in the pursuit of mainly political aims, international law hasn’t provided a clear definition which compounds its legality and other aspects. A comprehensive definition has been attempted by the international community in many legal documents, some of which attempt to include core and vital elements and acts. In the resolution 49/60 by the General Assembly, it is stated that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes”³, while the Security Council, in its resolution 1566 (2004), refers to terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act”⁴. In fact, the General Assembly is now working towards the adoption of a anti-terrorism convention, which shall include a clear definition of terrorism and what falls under it, but there have been expressed many ambivalent views concerning the application of the convention on national liberation movements and other details.

² Max Weber, *Politics as a Vocation*, 1919

³ Fact Sheet No. 32, “Human Rights, Terrorism and Counter-Terrorism”, Office of the United Nation, High Commissioner for Human Rights

⁴ “..”

Negotiation

“International negotiation is a process of power-based dialogue intended to achieve certain goals or ends, and which may or may not thoroughly resolve a particular dispute or disputes to the satisfaction of all parties. International negotiation can be bilateral or multilateral, public or secret, and can involve differing forms of negotiation among states and non-state civilian actors, as well as with anti-state actors, such as individual terrorists and terrorist organisations. Negotiation aimed at conflict management seeks to limit or minimise tensions and disputes as much as possible, without necessarily changing the status quo or the relations of power, values, and interests between the disputing parties. Negotiation aimed at conflict transformation seeks to go beyond the status quo to transform relations of disputed power, values, and interests in a more “positive” and less controversial direction although largely expecting a number of disputes and differences to remain. Conflict resolution is generally seen as an even longer-term process that attempts to find a common and complete agreement among the differing parties despite their differing values, interests, and power relationships.”⁵

Hostage

“A hostage is a person or entity which is held by one of two belligerent parties to the other or seized as security for the carrying out of an agreement, or as a preventive measure against war.”⁶ It is a common practice of terrorist groups to hold hostages in order to achieve their aims threatening as such governments. A widely-known historical example is the Iran hostage crisis, after Iranian students took over the U.S embassy in Tehran holding hostages 52 American diplomats and citizens for 444 days from 1979 to 1981.

BACKGROUND INFORMATION

Historical background

Terrorism constitutes a widely discussed problem which not only has resulted in tragic human loss but has also jeopardised peace and security all around the globe.

⁵“International Negotiation and Conflict Resolution - International Relations - Oxford Bibliographies - Obo.” *Oxford Bibliographies - Your Best Research Starts Here - Obo*, 21 June 2018, www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0006.xml.

⁶ “Hostage.” *Wikipedia*, Wikimedia Foundation, 5 July 2018, en.wikipedia.org/wiki/Hostage.

It aims at the destruction of democracy and the rule of law so as to promote demands connected to the reason of existence of each terrorist group. Because of the threats it poses to human rights, to civil society, to the territorial integrity of states but also because of its links with organised crime, money laundering etc, it is indisputable that states try with every means possible to tackle its consequences and roots. It is both a right and a duty of states to prioritise protection of individuals and ensure the enjoyment of fundamental human rights. In order for governments, however, to cope up with such conditions, some argue that the path of negotiations should be followed on any case. Others, per contra, have insisted that a non negotiation policy should be adopted by every state.

Some of the most significant examples of non negotiations policies are those of the United States, Japan and the United Kingdom. Albeit, even the United States -with its so famous pledge against negotiations with terrorist groups during Reagan's administration- has been heavily criticised for selling weapons to Hezbollah in order for them to free seven American hostages. In this way, the United States interfered in the Iran- Contra affair, a political scandal, which consisted in the sale of armament to Iran -which was subjected at that time to arms embargo- as well as to the funding of the anti systemic group Contras in Nicaragua. US betrayed its people's trust and negotiated with terrorists against what has been promised and underlined officially. Another incident occurred in may 2014, when the U.S government under Obama's administration negotiated and agreed upon the release of Sergeant Bowe Bergdahl in exchange for five Taliban in Guantanamo being accused of not following in that way the non negotiation policy, officially adopted by the U.S.

While some countries accept the significance of negotiations and their assets, others underline their costs as far as legitimacy and the rule of law is concerned. History has shown that both sides are right to an extent. It has also shown that some advocate against negotiations, while they negotiate secretly. It has also shown that hostage crises require adequate treatment. More examples will be examined thoroughly in the following section.

Hostage negotiations

Kidnappings have always been part of the tactic of many terrorist groups in order to threaten states and satisfy their demands. Since around 1990, terrorist kidnappings have increased with nearly 2,000 people having been taken hostages in the last decade. Some argue that terrorist groups were lead to this tactic as an

alternative way of fighting and revenge taking after the offensive operations of the United States in response to 9/11 against Al-Qaeda and its affiliates mostly in Iraq and Afghanistan. Others underline that hostage taking and kidnapping has become a significant business as far as income sources are concerned. Most governments have adopted the position that “one should not deal with the devil without the risk of losing one’s soul” while others view negotiations and ransom paying during hostage crises as the necessary evil.

During the hostage crisis in Lebanon, president Reagan underlined that “Freedom, democracy and peace have enemies. They must also have steadfast friends. The United States gives terrorists no rewards and no guarantees. We make no concessions. We make no deals”. Although the “no deal” doctrine wasn’t really implemented on every case - e.g Iran-Contra affair-, the official government under Obama’s administration collaborated with the private sector to track down hostages in denial of negotiating with terrorists to free the victims. Especially nowadays, when the ISIS, Boko haram etc. kidnappings become more frequent and gain popularity through the beheading videos on media, the issue of negotiations comes again in question.

Western countries have indeed agreed and signed many legal documents (such as a recent Group of 8 agreement, United Nations Security Council Resolutions) in order to stop the ransom paying to terrorist groups. Nevertheless, some European countries continue to be some of the most significant ransom payers. France (30 million euros were given in exchange for four French citizens held in Mali and \$3,2 were paid in ransom for the release of a family of seven held by Boko Haram during Hollande’s administration), Spain, Germany, Italy and Switzerland among them. In fact, specifically Al-Qaeda and its partners have received since 2008 at least \$125 million for hostages exclusively by European governments.

Significant examples of hostage taking are the Lebanon hostage crisis (104 mostly American and western European hostages during the Lebanese civil war to discourage retaliation by U.S, Syria or other powers against Hezbollah), the 2015 Bamako hotel attack in Mali (170 hostages held by Al -Mourabitoun in cooperation with Al-Qaeda), the 2002 Moscow theatre hostage crisis with 850 hostages held by Chechens, the Iran hostage crisis (52 American hostages were held for 444 days from 1979 to 1981 resulting in a diplomatic standoff between USA and Iran), while other examples include aircraft hijacking.

Legal aspects

One significant legal document is the UNSC resolution 2199 passed on 12 February 2015 underlining the condemnation of terrorist kidnapping for ransom reaffirming that “Member States should actively prevent terrorists from benefitting directly or indirectly from ransom payments or from political concessions during kidnapping and hostage-taking incidents committed by terrorist groups”. It is important to note that the resolution does not prohibit governments from negotiating with terrorists. It prevents them, however, from giving in to the demands of terrorists, specifically ransom payments and political concessions. Although the document’s binding effect is limited, its soft law impact is to be emphasised. It stresses the importance of the requirement from states to adjust their domestic laws so as to criminalise and punish terrorist acts in general.

Why negotiate?

Negotiations constitute a possible solution to a problem and therefore, are preferred by many to other alternatives. Most governments refuse to negotiate with terrorist and resort in tension with terrorist groups. They prefer certain counter-terror measures, which often include violence causing more violence. However, many historical dissidences could have been avoided if the parties in power chose to negotiate with terrorist groups. For example, Batistas’ refusal in Cuba to negotiate with opposition groups lead to many guerrilla attacks and assassinations. One should keep in mind that terrorist groups are groups of people using several methods to pursue their demands and bring attention to certain issues. By negotiating with them one gives them the attention needed and possibly avoids further tension. Furthermore, it is important to note that practically one should try to do anything possible to save lives and avoid mass destruction and assassinations. Negotiations are sometimes the necessary evil which governments have to face in order to protect their citizens. Last but not least, it has been proved that negotiations with terrorist groups can sometimes lead to peace agreements. For example, skyjacking of U.S airlines stopped after an agreement with Cuba in the 1970s, hostage of Americans in Beirut stopped through negotiations in the 1990s while even

the kidnapers in Iraq in 2005 demanded from the American government to open a dialogue with the Iraqi resistance.

Why not?

Most people and states argue that negotiating with terrorists is wrong and unlawful. The main legal argument is the lack of legal enforcement for terrorists. Terrorists exist outside the legal order, cannot be controlled by the state and practically cannot be considered of being under the jurisdiction of the state. It may be true that states follow specific domestic and international laws and restrictions concerning their behaviour towards terrorist groups. Nevertheless, these rules and laws, are not binding and on any case, not followed by terrorist groups. So, for some negotiating with terrorists implies the acceptance of the legitimacy of the latter. Quoting Henry Kissinger “legitimacy implies the acceptance of the framework of the international order by all major powers”. By negotiating with terrorist and thus, recognising their existence within a socially constructed system of norms and values, one undermines the rule of law and accepts another use of force within the territory of a state implying that the ‘monopoly of the use of force’ is not so much of a monopoly. Finally, there is also a moral dimension to the issue. As Neumann summarises, governments believe that “democracies must never give in to violence, and terrorists must never be rewarded for using it”. So, how can a state be considered as powerful, when it seems as if it gives in to use of force and the threats of a small group of individuals trying to pursue their demands?

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

United States of America

As already mentioned, the United States are among the countries which stand strongly against negotiations with terrorists. Both during Reagan’s, Bush’ es and Obama’s administration significant efforts were made to officially stop negotiations with terrorists. Albeit, some scandals such as the Iran-contra affair prove that the pledge against negotiations was not really implemented. The US has been involved in many hostage crises such as the Lebanon and Iran hostage crises and has witnessed many terrorist attacks with the most significant being the 9/11 World

Trade Centre bombing. Officially the government stands against negotiations, specifically on hostage crises, and has made effort to collaborate with private corporations to track down terrorists and hostages. It has been, however, accused of secretly cooperating with terrorists resulting in political tension.

Israel

Israel has a long history of prisoner swaps with terrorist organisations. In 1993 negotiations between Israel and the Palestinian Liberation Organisation (PLO) took place although the PLO officially continued their terrorist practice and intensively denied Israel's right to existence. In fact, it is widely known that Israel traded 4,700 detainees for six Israeli soldiers to the PLO. In 2011, another prisoner exchange took place, wherein Israel released 1,027 terrorist for just one Israeli soldier, Gilad Shalit, held by Hamas.

Japan

Recently, in January 2011, the Islamic State of Iraq and the Levant demanded \$200 million to Japan's government for the release of hostages Haruna Yukawa and Kenji Goto. Albeit, Japan refused to give in to the demands and the two hostages were beheaded.

Spain

In 1987 the separatist group ETA killed 21 shoppers in the Hipercor bombing. It has to be the deadliest attack in ETA's history with 21 killed and 45 injured people at the Hipercor shopping centre on Avinguda Meridana, Barcelona, Spain. Six months after this car bomb attack, the Spanish government negotiated officially and openly with the ETA members.

European countries

Most European countries including France, the United Kingdom, Germany, Switzerland etc. have a history of negotiating with terrorists, even secretly. The United Kingdom held a secret communication with IRA even after the 1991 Downing Street mortar attack while it, nowadays declares a non negotiation/ransom paying policy. France has been shown to have paid millions to terrorist groups for the

release of citizens multiple times. The New York Times has researched and found that at least \$125 million has been given to Al-Qaeda and its affiliates for hostage taking since 2008 by mostly European states.

TIMELINE OF EVENTS

Date	Description of Event
During 1985-1989	Reagan administration tried to free seven American hostages being held in Lebanon by Hezbollah by selling them weapons
1988	Spanish government negotiates with the ETA
1991	The British government held a secret back channel to the Irish republican army
1993	Secret negotiations of the Oslo accords with the Palestine Liberation Organisation (PLO)
2006	Hamas released Israeli soldier Gilad Shalit in exchange for 1,027 prisoners held by Israel
Since 2008	New York Times investigations showed that Al-Qaeda has received at least \$125 million for kidnappings mostly by European governments
May 2014	U.S government released sergeant Bowl Bergdahl in exchange for five Taliban prisoners in Guantanamo
January 2015	Hostages Haruna Yukawa and Kenji Goto were beheaded because of the refuse of Japan to respond to ISIL's demand of \$200 million for their release

UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

- 1979 International Convention against the Taking of Hostages
- 1997 International Convention for the suppression of terrorist bombings

There has been no specific legal document concerning negotiations.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

There has not been an official attempt to solve the issue of negotiations specifically. While the United Nations have adopted a counter-terrorism strategy and many legal documents concerning the actions of terrorist groups have been discussed and signed, there has not been a bilateral agreement on whether to negotiate or not. Maybe resolution 2199 could be considered as a document referring to the issue of negotiations as it underlines the importance of the costs of ransom paying and therefore, negotiations to some extent as well. Its legal impact, however, is not directly of great significance since it is not binding. However, it stresses some important points as far as soft law⁷ is concerned and could be considered as a starting point to reach a consensus on how to tackle the situation of negotiations bilaterally.

POSSIBLE SOLUTIONS

States should decide themselves whether they will follow a negotiation policy or not. However, a bilateral approach to the issue should be addressed on an international level in order for the global community to be ready to face international threats as far as terrorism is concerned.

The legal committee should discuss the legal aspects of negotiations and ensure that governments when negotiating still have the monopoly of force in their territory. Negotiating should not be seen as giving in and accepting the power of a group of individuals. Delegates should discuss and suggest solutions on the terms of negotiations, the circumstances under which they take place, the involving parts as well as the kind of demands to which the governments should respond. In

⁷ "Soft Law." *Wikipedia*, Wikimedia Foundation, 16 July 2018, en.wikipedia.org/wiki/Soft_law.

addition, it is of great magnitude to note that different kind of threats require and should receive different kind of handling as well. Therefore, it is useful to categorise terrorist groups and their demands and discuss on that level how each kind of threat should be tackled. For example, political terrorist groups and religious ones should be handled differently since their demands are not as dangerous or easily-fulfilled.

Transparency and accountability are on any case some points that should be underlined. Governments should make public their willingness to negotiate or not and not act differently behind closed doors. It is of utmost importance that states cooperate as far as terrorism is concerned because terror in one country has an impact on others as well. Cooperation requires a publicity of the will and the plans of the other and therefore, states should follow a transparency and accountability status concerning their actions against or in negotiation with terrorist groups.

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2018

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