

The elements of the crime of biological terrorism in Iraqi law and human rights law

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Abstract:

This research aims to analyze the elements of the crime of biological terrorism in Iraqi law and link them to human rights law standards and principles. The goal is to understand how national legislation addresses this highly dangerous type of crime, which threatens the rights to life, health, and collective security. The research is significant because it tackles a modern and complex subject that intersects criminal law and international human rights law. It highlights the need for precise legislation that balances protecting society with ensuring that fundamental rights and freedoms are not violated when combating this type of crime. The research employs a descriptive-analytical and comparative approach, examining Iraqi legal texts related to biological terrorism crimes and comparing them with established principles of the international human rights system. It also analyzes the extent to which punitive and preventive measures align with these principles. The research arrives at a set of findings that confirm the existence of legislative gaps in defining the legal concepts and foundations of the crime, the absence of effective oversight mechanisms to prevent the abuse of counterterrorism powers, and shortcomings in reconciling biosecurity requirements with human rights standards. This highlights the need to develop balanced national legislation that ensures the protection of the state and society from biological threats without compromising human dignity and the rule of law.

Keywords: Biological terrorism, Iraqi law, human rights law.

Introduction

Biological terrorism is considered one of the most serious emerging crimes that threaten national security, public health, and human rights alike. It involves the dissemination of biological materials or agents capable of causing widespread harm to humans, the environment, and state infrastructure. Scientific and technological advancements, and the resulting potential for the misuse of microorganisms, viruses, and toxins, have necessitated that national legislation, including Iraqi law, strengthen its criminal justice system to confront this form of terrorism, while adhering to international human rights standards. Hence, the need arose to study the elements of this crime in Iraqi law, based on the concepts established by human rights law, whether related to the right to life, personal security, or environmental health.

The research problem lies in the fact that the Iraqi legal framework, despite the development of criminal legislation in combating terrorism, still faces challenges in defining the distinctive elements of biological terrorism and defining its scope in a way that prevents its misuse on the one hand, and guarantees the protection of human rights on the other. This problem leads to the following key question: What are the elements of the crime of biological terrorism under Iraqi law, and how does this framework align with the provisions and principles of human rights law in terms of criminalization, punishment, and legal safeguards?

The importance of this research stems from its addressing a highly sensitive topic that links biosecurity with the requirements for protecting fundamental rights. This makes the study a contribution to bridging a knowledge gap concerning how to reconcile combating biological terrorism with Iraq's international human rights obligations.

The research also seeks to achieve several objectives, most notably clarifying the legal concept of the crime of biological terrorism and defining its material and moral elements according to Iraqi legislation. It also aims to

demonstrate the extent to which relevant criminal texts are consistent with human rights principles, analyze potential shortcomings, and propose legislative or practical solutions that ensure a balance between protecting society and safeguarding rights and freedoms.

To achieve these objectives, the research employs a descriptive-analytical approach and a comparative methodology. This involves analyzing Iraqi legal texts related to terrorism and biological crimes, comparing them with the concepts adopted in human rights law and international standards, and ultimately formulating a comprehensive legal vision that contributes to the development of criminal policies in this field. Section One: The Material Element in the Crime of Biological Terrorism

This element is considered one of the most complex in contemporary crimes, given the nature of the means used, their invisible characteristics, and their ability to spread rapidly.

Requirement One: The Material Activity and its Effects on National Security

The material activity constitutes one of the most serious forms of contemporary threats to national security. The perpetrator uses or disseminates biological agents such as viruses, bacteria, or toxins with the intent of causing widespread damage to the health of the population, livestock, or environmental resources, leading to a severe disruption of the state's stability.

Subsection One: Positive Material Activity

The material element is represented by the criminal conduct: it is the movement or bodily movements driven by will, resulting in a change in the external world. The conduct is considered positive if some part of the body is used to produce the movement. Most crimes stipulated in domestic law require this type of conduct, because the provisions of domestic law are mostly aimed at preventing the commission of certain acts rather than requiring their commission. Consequently, the stages of thinking and the stage of firm intent to commit the crime are excluded from the definition of criminal acts

For example, positive behavior to pollute water is concentrated in dumping waste and germs into seas, rivers, beaches and waterways. Pollution of the territorial sea and beaches is also done by dumping waste from ships, especially those that work in the field of transporting petroleum materials, which is criminalized by various legal texts. The criminalization extends even to dumping outside the boundaries of a waterway, such as in the open sea or near territorial waters, in a manner that allows such waste to reach and pollute the water or shores. It is not required that the dumping occur within the specific legally designated area of interest, such as the territorial sea, the exclusive economic zone, or elsewhere. Rather, it is conceivable that it could occur in one of the tributaries or pipes extending from or crossing those waterways or water sources. This conduct can be perpetrated by any vessel, regardless of its nationality, as long as it is committed within the territory. It should be noted that criminal law does not consider the means by which the crime or criminal conduct is committed. Thus, murder is considered the same whether committed with a knife, a firearm, a stick, or poison; theft is considered the same whether committed at night or during the day, by simple means or by breaking and entering; and defamation is considered the same whether committed by telephone or through publication in a newspaper or other printed material. However, the law sometimes considers the means of the criminal conduct and regards it as an aggravating circumstance in punishment. This is also indicated in the Rome Statute of the International Criminal Court. The International Criminal Court holds perpetrators of criminal conduct responsible, whether the crimes are committed individually or through collusion with others by ordering, enticing, inciting, aiding, abetting, assisting, or otherwise contributing to the commission of the crime. This also applies if the crimes are committed by another person, even if that person is not criminally responsible. Therefore, criminal conduct is the external, physical activity constituting the crime. For example, criminal conduct in war crimes includes the use of poisons or poisoned weapons. Criminal conduct has two forms: the first is positive conduct, which is conduct achieved through the perpetrator performing an act criminalized by law, such as using asphyxiating or poisonous weapons; the second is negative conduct. Third requirement: Causation in biological terrorism

Causation is of particular importance in biological crimes because the effects may extend over time and space, and there may be multiple potential sources of disease. This necessitates establishing a definitive link

between the cause and effect, proving that the terrorist act was the primary factor that led to the harm. First Branch: The Difficulty of Proving Causatio in Biological Terrorism Crimes

Causation refers to the link between criminal conduct and the criminal outcome, such that it can be proven that the criminal conduct led to the criminal outcome. This is stipulated in some domestic criminal laws, including the Iraqi Penal Code, which states that an attempt is established if the crime is not carried out for a reason beyond the perpetrator's control, even though its execution has begun. However, if the result is not achieved because the perpetrator voluntarily abandons the crime, there is no punishment. This is called "voluntary abandonment." The Rome Statute of the International Criminal Court defines an attempt as "a concrete act intended to carry out a crime, even if it is not carried out due to circumstances unrelated to the person's intentions. However, a person who ceases to exert any effort to commit the crime or otherwise prevents its completion shall not be liable under this Statute for an attempt if he completely and voluntarily abandons the criminal purpose."

Therefore, the change in the external world that represents the outcome either constitutes an infringement upon the interest by completely or partially destroying it, or it threatens it with danger. Thus, it is necessary to prove that the link connecting the act or omission to the dangerous outcome is a causal link, according to the standards of probability and the normal course of events. Since establishing causation in crimes of endangerment raises difficulties not present in crimes of harm, the causal relationship can be established based on the material outcome (harm) in crimes of harm. However, in crimes of endangerment, it is assumed that there is no material outcome considered by the legislator in the form of harm, but rather a material outcome represented by the general danger arising from the perpetrator's conduct—that is, conduct that threatens a right protected by law and makes harm to it probable. Endangering human life, physical safety, or the property of others, according to the legal interests protected by the legislator in each specific case, is considered a material and legal outcome, such as committing an act that could spread disease or chemical viruses. Therefore, establishing the causal link for the conduct constituting crimes of general danger is based on a probabilistic assessment prior to the occurrence of the outcome. If we evaluate The conduct is considered to have created a punishable public danger. This danger, in reality, represents the potential for the harmful result to occur, which has not actually happened. More precisely, while establishing a causal link in crimes of harm is based on the fact that the result has actually resulted from this conduct, establishing a causal link in crimes of public danger is based on probability. That is, the result has not actually occurred, so it cannot be definitively proven that the conduct was effective in causing it.

Therefore, the causal link is the connection between the perpetrator's conduct and the criminal result, establishing its attribution to the perpetrator. As such, it is an essential element of the material element of all crimes for which the law requires a criminal result to be understood as a distinct fact separate from the perpetrator's conduct, as is the case in positive crimes. Considering the causal link as an element of the material element of this crime necessarily means that where this link is absent, the perpetrator cannot be held accountable for a completed crime. Rather, their responsibility is limited to attempted crime if they possess criminal intent, and they bear no responsibility whatsoever if this intent is absent. The concept of causation is not purely legal; its scope extends to all branches of science. Every science strives to identify causal links between the phenomena it studies. Causation must be present in all intentional crimes, such as theft or murder, as well as in unintentional crimes, such as manslaughter, and also in crimes where the result exceeds the perpetrator's intent, which are called crimes of transfer of intent, such as assault or battery resulting in death. Investigating the availability of proof of causation does not pose a problem as long as the criminal conduct directly and directly leads to the criminal result. For example, if the perpetrator shoots the victim, who dies instantly, or strikes him on the head with a thick stick, causing permanent disability, the difficulty arises when there are prior, concurrent, or subsequent factors that contribute to the perpetrator's act or criminal conduct in achieving this result. For example, if the perpetrator throws the victim into a well to drown, and it turns out that the victim has a heart condition and dies of shock before reaching the water, or if the ambulance transporting a gunshot victim is struck by a vehicle, and the injury contributes to worsening his condition and leading to his death, or if the victim's gunshot wound becomes infected during treatment and he dies from this infection, in all these examples, to what extent does the negligence of another contribute to the existence of a causal relationship between the perpetrator's conduct and the criminal result? The criminal conduct in biological terrorism and environmental pollution crimes is linked to a prohibited outcome that

causes disruption or alteration to the natural environment or habitat (aquatic, atmospheric, or food-related). The danger or harm arises as a consequence of human behavior and the resulting imbalance in the natural or qualitative equilibrium between the various elements and components of the environment. While the material element of environmental crimes consists of acts that pollute one or more of its elements, for this element to be considered complete, the outcome must be attributed to the physical activity of the perpetrator. In other words, there must be a causal link between the outcome and the physical activity. Establishing causation is not difficult if the perpetrator's behavior is the sole factor leading to the outcome, which is assumed to be sufficient to produce it. This is described as direct causation. However, it is often...

The second branch: The possibility of criminal liability without fault in the crime of biological terrorism. The fundamental principle dictates that responsibility for a crime is personal. Whoever does not contribute to committing the crime as a perpetrator or accomplice remains immune from its punishment. There must be a material relationship between the crime and the human behavior emanating from the person responsible for it. The perpetrator must contribute to the crime through his personal act, and there must be a causal relationship between the act of contribution and the criminal result that the legislator considers in criminalization and punishment. Therefore, the criminal legislator sometimes stipulates the possibility of committing the crime of biological terrorism and using toxic substances that pollute the environment in its unintentional form. The text rarely reveals the nature of that crime by specifying the form of the mental element that requires negligence to commit the crime. The legal texts criminalizing the use of biological weapons to pollute the environment often fail to specify the mental element required for the crime to be established. The general rule is that legislation should define the mental element in every crime for which the perpetrator is held intentionally responsible. Criminal liability for crimes stipulated in the penal code must be based on criminal intent and cannot be based on unintentional negligence unless explicitly stated. Does the absence of a specific definition of the mental element imply that both forms of mental intent are equally valid for the crime to be established? Therefore, is it sufficient for the perpetrator to be held accountable if any form of unintentional negligence is present?

The researcher believes that we should align with the second approach, which equates intent with unintentional error when the text is silent or lacks a description of the mental element necessary for the crime of polluting the environment with any toxic biological materials. In such cases, the act is considered a crime that can be attributed to either intent or unintentional error as the basis for criminal liability. In short, this aligns with sound legislative policy. It is unacceptable for the degree of error to affect the existence of the crime, especially when vital interests are at stake.

Conclusion: In light of the foregoing, it is clear that the material element in the crime of biological terrorism represents the core of the danger that characterizes this type of modern crime, due to its covert methods, ability to spread across borders, and the difficulty of detection and proof. The analysis shows that criminal conduct—whether positive through action or negative through omission—constitutes the foundation upon which the criminal outcome is built. This outcome may be delayed in time and place and leave far-reaching effects on national security, public health, and the environment. The importance of causation is evident in its role as the necessary link for attributing a result to the perpetrator, despite the inherent complexities, particularly in biological crimes where scientific, health, and environmental factors intersect. This underscores the urgent need to strengthen legislative, regulatory, and judicial systems to combat these crimes and to develop investigative and evidentiary mechanisms to effectively address modern biological threats.

First: Findings

1. It is clear that the material element of biological terrorism differs in nature and methods from traditional terrorist crimes. It relies on the use of subtle biological agents that are difficult to detect, whereas other terrorist crimes often focus on visible, physical means. This difference necessitates that Iraqi legislation develop specific legal instruments that comply with the standards set by human rights law to prevent the unjustified expansion of criminalization.
2. The comparison shows that biological crimes are based more on the concept of risk than harm. Iraqi law considers the act itself as a threat to public health, even before the outcome occurs. Human rights law, on the other hand, emphasizes the need to regulate such crimes so that they do not infringe upon fundamental rights

such as personal freedom and the guarantees of a fair trial, thus imposing a delicate balance between security and rights.

3. It is evident that criminal conduct in biological terrorism can be a positive act or an omission that constitutes a breach of a legal duty, a fact recognized by Iraqi law. Human rights law, however, stresses that holding an individual accountable for an omission is limited to a narrow and legally defined scope to ensure that criminalization is not arbitrary.

4. The findings indicate that the criminal outcome in biological crimes may be delayed or geographically widespread, making their proof under Iraqi law more complex than that of traditional terrorist crimes. Human rights standards, however, emphasize the necessity of rigorous proof and the prohibition of convicting anyone except on conclusive scientific evidence, thus imposing a higher level of judicial certainty. 5. The comparison reveals that the causal link in biological crimes is more complex due to the multiple sources of infection and the difficulty in identifying the point of origin, whereas other criminal legislation relies on a clearer causal link. Human rights law emphasizes that ambiguity in the causal link must be interpreted in favor of the accused, thus reducing the risk of unfair conviction.

6. It is clear that biological terrorism poses a transnational threat, making it necessary for the Iraqi national framework to receive international support and coordination that aligns with universal human rights obligations, particularly those related to the right to health and a safe environment. Human rights law stresses the need to ensure that security measures do not infringe upon individual rights or justify widespread violations.

7. The comparison confirms that Iraqi legislation has taken steps in criminalizing biological acts of a terrorist nature. However, the legal environment still requires technical and legislative modernization to address the shortcomings of scientific evidence. Human rights law continues to emphasize the need for these laws to be guided in a way that guarantees respect for human dignity and prevents the use of counter-terrorism provisions as a tool to restrict freedoms. Second: Recommendations

1. The Iraqi legislature must update the texts related to biological terrorism to ensure a precise definition of biological agents, toxins, and prohibited activities, in order to avoid expanding criminalization in a way that infringes upon rights.

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