

TERRORISM AND INTERNATIONAL LAW

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ABSTRACT

International law is a significant as a counter terrorism instrument. My paper will try to give an insight into the general principles of international law which may be relevant to the counterterrorism context. This paper is trying to provide some possible explanations for these questions:

What are the procedures the international law can provide to deal with terrorism?

Some possible questions arise from this question:

What is terrorism by t international law? And what are its types?

What are the domains that international law works in?

Is international law capable to deal with terrorism? Is it effective?

All these in regards to the basics of international law, international law on the use of force and the international human rights law. Each section will look at the relevance of the field of law to counterterrorism, set out the main sources of the law and relevant international bodies, and finally how the law works in practice.

KEYWORDS: Terrorism, Counterterrorism & International Law

INTRODUCTION

There is a growing body of international law which is directly relevant to the fight against terrorism. International law provides the framework within which counterterrorism activities take place and which allows states to cooperate with each other effectively in preventing and combating terrorism. This framework includes instruments addressing specific aspects of counterterrorism together with other international instruments designed for international cooperation in criminal law, the protection of human rights or the establishment of the laws of war which provide the broader context within which counterterrorism activities take place. The need to place actions to fight terrorism in the broader context is clear from the text of United Nations Security Council resolutions.

Defining Terrorism by the International Law

Terrorist activities have been around since the beginning of humanity. However, it was after the 9/11 terrorist attacks on the United States that the international community's efforts toward fighting terrorism garnered more strength and attention.

Terrorism till the present time does not have clear legal norms. Terrorism has become one of the top ranking problems threatening the peace and stability of the international community and challenging the international law at the present time. More cooperation among States and international organizations is going in this direction. One major obstacle

to the efforts being made to contain terrorism is the inability of the international community to adopt a comprehensive and generally acceptable definition of terrorism that would capture its all elements.

The problem with the discussion of the international law of terrorism comes from the difficulty of a proper examination of the phenomenon itself. Unfortunately, terrorism in international law has no generally acceptable definition, because efforts at defining terrorism have fallen short of adopting a definition that is generally acceptable to the international community.¹ The importance of a universally acceptable definition of terrorism cannot be overemphasized; as such a definition would enhance international cooperation, and bring harmony and unity of purpose in the fight against terrorism.² The search for a legal definition of terrorism has led some states to adopt as criminal acts that do not reveal the intent to produce a state of terror, and in some situations, those definitions are unnecessarily broad.³

Christopher Blakesley defines terrorism as violence committed by any means; causing death, great bodily harm, or serious property damage; to innocent individuals; with the intent to cause those consequences or with wanton disregard for those consequences; and for the purpose of coercing or intimidating some specific group, or government, or otherwise to gain some perceived political, military, religious, or other philosophical benefit.⁴ This definition is neutral and includes terrorism by both state and non-state actors.

There have been attempts, both by the UN and international treaties to make provisions on terrorism. In 1937, the League of Nations produced a treaty, the Convention on the Prevention and Punishment of Terrorism. The Convention defined terrorism as “all criminal acts directed against a state and intended and calculated to create a state of terror in the minds of particular persons or a group of persons or the general public”. This definition, although broad, contemplated terrorism committed by non-state actors and wittingly or unwittingly avoided inclusion of terrorism by State actors. Unfortunately, the 1937 Convention never entered into force.⁵

The United Nations has equally resorted to declarations and resolutions in its efforts to provide a definition of terrorism. Accordingly, in 1994, the General Assembly adopted the Declaration on Measures to Eliminate International Terrorism, the applicable provision of which states, 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 are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.⁶

Whatever the definition is, we can agree that the purpose of a terrorist act is to achieve an outcome of terror on its target, so terrorism is an act is the creation of terror. A definition of terrorism must therefore, contain this terror element for it to be objective.

¹ Oscar Schacter, “The Extraterritorial Use of Force Against Terrorist Bases”, (1989).

² Jacqueline Ann Carberry, “Terrorism: A Global Phenomenon Mandating a Unified International Response”, (1999).

³ Jordan Paust, “An Introduction and Commentary on Terrorism and the Law”, 32-34 (1987).

⁴ Christopher Blakesley, “Terror and Anti-Terrorism: A Normative and Practical Assessment”, 31 (2006).

⁵ J.G. Starke, “The Convention for the Prevention and Punishment of Terrorism”, 214-215 (1938).

⁶ U.N. Doc. A/49/743 (1994).

International Law and the Use of Force

Generally, the use of force by states was prohibited. It became glaring upon the coming into effect of the UN Charter that there is a general prohibition of the use of force in international law. This is by Article 2(4), which provides that: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." As can be seen from that provision, not only is the use of force prohibited, the threat of its use is also prohibited.⁷ The prohibition of the use of force is not untouchable, as it admits two exceptions: the first is the UN Security Council authorized action by virtue of Chapter VII; the second is the use of force in the exercise of the right of self-defense under Article 51.⁸

International Humanitarian Law and Terrorism

An international humanitarian law has its foundation in the notion that every individual is entitled to some cognizable rights both in times of peace and war.⁹ It is essentially the law of war between States.¹⁰ An international humanitarian law exists in two categories: one which deals with the rules that govern situations when it is permissible to attack, and one which deals with the rules that govern behavior in situations of war.¹¹ According to that, we would identify terrorist activities under two regimes: terrorism during an armed conflict and terrorism in peacetime.

Despite the obvious difficulty in adopting a generally acceptable definition of terrorism, it will not be out of place to say that terrorism is an instrument of warfare. It then follows that where terrorist acts are employed as an armed conflict strategy, then the international humanitarian law or the law of armed conflict will apply, especially where the terrorism is committed on the territory of a party to the armed conflict.¹²

A determination of whether or not international humanitarian law or the law of armed conflict applies to terrorism taking place in the course of an armed conflict can be made by examining some of the provisions of the Geneva Conventions. The protection from terrorism during an armed conflict offered by international humanitarian law as contained in the Geneva Conventions and their Additional Protocols applies only to protected persons, that is, civilians. It would appear that unprivileged combatants who are actively engaged in an armed conflict cannot benefit from this protection. The international humanitarian law generally applies to international armed conflicts, but to some extent it has relevance to non-international armed conflicts pertaining to national liberation and self-determination. Article 3 common to the four Geneva Conventions calls for minimal humanitarian considerations in cases of armed conflict, not of international character. However, acts of violence committed by private persons or groups, which are considered terrorist acts, internal disturbances, and tensions which are irregular in character and other acts of similar nature, are outside the consideration of the international humanitarian law.¹³

⁷ Kelsen, "Collective Security Under International Law," *International Law Studies*, US Naval War College.

⁸ Article 51 of UN Charter.

⁹ U. O. Umzurike, "Introduction to International Law", 212 (Spectrum Books Limited, Ibadan, (2005).

¹⁰ Pictet, *Humanitarian Law and the Protection of War Victims* (1976).

¹¹ Dan Belz, "Is International Humanitarian Law Lapsing into Irrelevance in the War on International Terror?", 97- 100 (2006).

¹² H.P. Gasser, "Acts of Terrorism and International Humanitarian Law," 84 *Int'l Review of the Red Cross*, 547-570, at556 (2002).

¹³ Article 2 of Protocol II

Terrorism as a Humanitarian Threat

Professor Sompong Sucharitkul struggles that peacetime terrorism, being an internationally organized crime, isolates itself from other crimes found in a single legal criminal system, and therefore should be treated separately from sporadic, individual attacks.¹⁴

Terrorism has some problematic implications for the international humanitarian law. Clearly, the Geneva Conventions and their Additional Protocols apply to armed conflicts but not to situations of internal disturbances and tensions such as riots and isolated and sporadic acts of violence.¹⁵ In the middle of the limited application of international humanitarian law to armed conflict situations, it could be drawn that terrorism occurring outside war situations are regulated by anti-terrorism conventions, supplemented by international criminal law.¹⁶

Some aspects of humanitarian law apply to armed conflicts as well as to peacetime. A suggestion has been made to treat those categories of terrorism as the peacetime equivalent of war crimes. However, this approach may not have good implications. For example, because it entails the application of the law of armed conflict to outside war theater terrorism, it will deliberate some entitlements on terrorists, such as the status of prisoners of war. In addition, it would increase the incidence of revolt, treating insurgents as combatants, rather than as common criminals.¹⁷

Legal Responsibility for Acts of Terrorism

The fact that terrorist acts are prohibited under international law is not contestable. There is no comprehensive legislation proscribing acts of terrorism. However, the collective effect of these instruments reveals a consensus that terrorism bodes badly for international law. It is a general principle of international law that a breach by a State of its international law obligation engages the responsibility of that State. The obligation of a State extends to the duty not to commit acts of terrorism, and where terrorism is linked to a State, that State would be responsible for its commission.

International Human Rights and Counterterrorism

The UN Charter has provisions that make reference to the respect for and promotion of human rights, but there is no consensus on whether or not these provisions confer rights on individuals and whether they are legally binding or not.¹⁸ Without going into details about the arguments surrounding those provisions, it to say that there are now separate instruments wholly devoted to human rights. First, the Universal Declaration of Human Rights was adopted in 1948, although as a non-binding General Assembly resolution. The Declaration made provisions for political and civil rights and economic, social, and cultural rights. The Declaration has come to be considered as having a great impact on human rights.¹⁹

¹⁴ Sompong Sucharitkul, "Applicable Law in International Terrorist Threats and Attacks and the Consequences of Error in Personam," 11 *Ann. Surv. Int'l & Comp. L.* 107, 111 (2005).

¹⁵ Motley, *Terrorist Warfare: Formidable Challenges*, F. 295-297 (1985).

¹⁶ *International Convention Against the Taking of Hostages*, 1979.

¹⁷ Michael Scharf, "Defining Terrorism as the Peacetime Equivalent of War Crimes: Problems and Prospects," 36 *CWRJIL* 359, 372-373 (2004).

¹⁸ J. G. Starke, *International Law*, 350 (1984)

¹⁹ Henkin, *Human Rights: Ideology and Aspiration, Reality and Prospect*, in *Realizing Human Rights: Moving From Inspiration to Impact* (Power and Allison, eds.) 3, 11-12 (2000).

In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted, but they did not enter into force until 1976. It is evident that international law has much concern, at least theoretically, for the respect and protection of human rights. It is incontestable that terrorism invades upon these guaranteed human rights. The trend of events on the international plane seems to suggest that counter-terrorism is used in a way that its effects on human rights overlap with those of terrorism itself. Any measures, including legislation, adopted with a view to combating terrorism, must recognize the importance of human rights. The issues of torture, wrongful prosecution, and repression seem to be central in a discussion of the counter-terrorism human rights link. It has been asserted that states seem to bask in the belief that as far as counter-terrorism is concerned, their actions cannot amount to terrorism.²⁰

Also, a situation where governments infringe on human rights, especially on a political ground, in the appearance of anti-terrorism, is as condemnable as it is appalling.

Furthermore, some counter-terrorism laws contain provisions that are clear violations of human rights. There was arbitrary detention of non-United States citizens, secret deportation hearings for persons suspected of having connections to terrorism, authorization of military commissions to try non-citizens accused of terrorism, and military detention without charge or access to counsel of United States citizens considered as enemy combatants.²¹ The past Secretary-General of the United Nations, Kofi Annan recognized the human rights implications of counter-terrorism measures. He said, "Our responses to terrorism, as well as our efforts to thwart it and prevent it should uphold the human rights that terrorists aim to destroy" Similarly, the General Assembly's 2004 resolution on human rights and terrorism recognizes that terrorism is a violation of human rights and should be fought in a such a way that complies with international norms.²²

Therefore, whatever effort is geared towards combating terrorism should make the issue of the protection of human rights its prime consideration.

Efforts at Fighting Terrorism: UN Counterterrorism Measures

Some measures have been initiated by the UN to combat terrorism. Numerous international conventions and other instruments have been adopted to fight terrorism. In 2004, the former UN Secretary-General, Kofi Annan, constituted the High-level Panel on Threats, Challenges, and Change to address the issue of international threat and security. Part of the Panel's recommendations on terrorism included a proposed definition of terrorism and a comprehensive global strategy for combating it. In this regard, efforts are to be made at reversing the causes and facilitators of terrorism by the promotion of social and political rights, the rule of law, and democratic reform. The United Nations should also address major political complaints. Included in the recommendations is the need for the United Nations to develop better instruments for global counter-terrorism cooperation, which would equally respect civil liberties and human rights.²³

²⁰ Mirna Cardona, "El Salvador: Repression in the Name of Anti-Terrorism," 42 CNLILJ 129,137 (2009).

²¹ Human Rights Watch, World Report 2003: United States, <http://www.hrw.org/wr2k3/us.html>.

²² U.N. Doc. SG/SM/8624- SC/7680 (Mar. 6, 2003), available at <http://www.un.org/News/Press/docs/2003/sigsm8624.doc.htm>. accessed 10 June 2018

²³ Kofi Annan, Foreword to Secretary -General's High-level Panel on Threats, Challenges & Change, A More Secure World: Our Shared Responsibility VIII (2004), available at <http://www.un.org/secureworld/report2.pdf>. accessed 10 June 2018

In 2005, the General Assembly adopted a Global Counter-terrorism Strategy, which required every state to implement and fully cooperate with all General Assembly and Security Council resolutions aimed at combating terrorism.²⁴ The strategy also required states to address the conditions conducive to the spread of terrorism, to undertake measures to prevent and combat terrorism, and to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. States are encouraged, under the Strategy, to contribute to measures strengthening the role of the United Nations towards fighting terrorism.²⁵

International organizations also contribute to countering terrorism. The World Bank and International Monetary Fund have intensified their initiatives on anti-money laundering and combating the financing of terrorism. These initiatives have been taken in recognition of the fact that money laundering is a means of financing terrorism. These measures still need to be supported by other efforts from all quarters of the international community in order to achieve the set objectives.²⁶

Constraints Might Face International Law and Possible Solutions

The fact that terrorism still persists despite the efforts made to combat it is perhaps a revelation of the inadequacy of those measures. It also underscores the need for a more viable, results-oriented approach to solving the problem of terrorism. There remains the great need to find the right causes of the underlying problems and not just focus on their symptoms. The United Nations Organization has been on the forefront, without success, to come up with a universal and comprehensive definition of terrorism. This definition would serve as a yardstick against which violent actions would be gauged to determine whether or not they amount to terrorism. For years, the United Nations has battled with this task through committee work, resolutions, and calls for concerted State actions to fight the problem. The inability of States to adopt a Comprehensive Convention on International Terrorism, which would provide an adequate definition of terrorism owing to unnecessary parochial interest, should be deprecated. Solving the problem of terrorism calls for a multidimensional approach and does not lie in using only military action, which can only cure the symptoms of terrorism but not the problem itself. It is one thing to recognize the need to tackle terrorism using a complex and it is another thing to take bold steps in the direction of combating terrorism.

There is a need for a change in the way people perceive terrorism. This change can be achieved by the campaign, both at the grassroots and upper levels. This change is where the role of NGOs and other international organizations becomes indispensable. This paper places much premium on this approach. Having found a link between politics and terrorism, it becomes crucial that those who control the machinery of government should be committed to democracy. It is time leaders discarded the idea of clinging to power at the displeasure of the governed.

There is a need also for the promotion of international cooperation in criminal matters, especially as it pertains to terrorism. States and individuals should see themselves as stakeholders in the task of combating terrorism. Above all, counter-terrorism should not be divorced from human rights; rather, both are complementary and should be adopted in the cause against terrorism. Anything to the contrary would lead to abuse and denial of human rights. The efforts at combating

²⁴ UN Action to Counter Terrorism, [http:// www.un.org/terrorism/strategy-counterterrorism.htm](http://www.un.org/terrorism/strategy-counterterrorism.htm) , accessed 10 June 2018.

²⁵ UN Global Counter-Terrorism Strategy, U.N. Doc. A/Res/60/288/Annex , 2005.

²⁶ Matthew Levitt, Iraq, U.S., and the War on Terror, Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges, 27 SPG FLETCHER F. WORLD AFF. 59 (2003).

terrorism should be given a human rights approach. Human rights bodies should increase their participation and should liaise with other stakeholders to achieve a terrorism-free international community.

CONCLUSIONS

With the increasingly international nature of terrorism, the knowledge of international law is crucial for understanding the legal framework for counterterrorism activities. In this dimension, the basic understanding of the most important aspects of international criminal law, humanitarian law, and human rights law relating to counter-terrorism is necessary. We can notice that by looking at the framework of international law relating to terrorism is that it has a complex and interlocking structure. Nobody of international law stands in isolation and the variety of tools required for preventing and combating terrorism may engage a number of different aspects of international law. A request for extradition of an individual under one of the universal counter-terrorism instruments may raise questions of international law or international human rights law. A decision on whether or not to prosecute a terrorist may give rise to questions of international criminal law and international human rights law as well as national rules on jurisdiction.

We can conclude that till now, the General Assembly plays an important role in elaborating an international legal framework that promotes cooperation against terrorism and in encouraging governments to work more closely together in addressing this threat. And we can agree on the definition that terrorism means the 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 are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them. The General Assembly often works in subsidiary bodies and committees, whose members are either all States or a group of States elected by the General Assembly to serve on the body.

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