

## Terrorism and Human Rights: Contradictory or Complementary

Md. Asif Huda<sup>1</sup> ; Sarah Tasnia<sup>2</sup>; Rubaiyat Jabeen<sup>3</sup> Md. Mahmudul Hasan<sup>4</sup>

**Abstract:** *“Terrorism” becomes the number one concern for the world today. The necessity of fighting this heinous crime needs no invitation. But not by compromising the principles and norms of the human rights law because any derogation of such norms may result give rise to an irreversible result. In this context, the paper concentrates on the review of the literature which shows the relation of human rights with the United Nations organs and how they are functioning to respond to terrorism along with respecting human rights. In doing so, it also examines the implications of human rights in responding to terrorism. The research paper also observes that after the incident of 9/11 how derogation of human rights in different countries increased and what are the consequences of such derogations. . By critically examining these techniques in the light of Human Rights this paper also critically analyzes the misconception about the term “armed conflict”; “self defence” and “self determination” which shows that invasion on other countries on plea of such terms are not valid. Based on both the findings of the literature review and the survey, the conclusion will show that, measures outside the realm of human rights norms, while responding terrorism, will ultimately prove contradictory while dealing with terrorism; and a set of recommendations are given to assist countering terrorism.*

### 1. Introduction

The issue of terrorism is not a new one in the human rights arena. For many years, acts of terrorism in all forms have demoralized, endangered and killed countless innocent people, jeopardized fundamental freedoms and seriously impaired the dignity of human beings. But from the heinous attack on the United States on the 11th of September, 2001, the world community has understood clearly that the issue of terrorism and terrorists is indeed a major threat to global peace and stability. The events of September 11 posed huge challenges to the agenda of human rights. There is no doubt however that, measures taken by countries in combating terrorism have become a license for disregard of human rights. It became the occasion for the adoption of the so called “anti-terrorist” measures, some of which clearly violate human rights. Democratic values and humanistic achievements have become seriously threatened in the name of national security.

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1 Lecturer, Dept. of Law, University of Information technology & Sciences (UITS)

2 Lecturer, Dept. of Law, University of Information technology & Sciences (UITS).

3 Lecturer, Dept. of Law, University of Information technology & Sciences (UITS).

4 Lecturer, Dept. of Law, University of Information technology & Sciences (UITS).

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Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism. In recent years, however, the measures adopted by States as anti-terrorism strategy have themselves often posed serious dilemma to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centers, and have often been disregarded. The states which are using the force to counter terrorism think that the only way to combat terrorism is by Military Invasion and strong legislative actions, even though these may amount to human right derogation or violation. They think that counter-terrorism while maintaining human rights norms is not possible. But the supporters of human rights do not agree with their tactics. According to them, terrorism is ultimately the violation of human rights of the victims. So, one cannot take measures for the violation of human right by violating the human rights of others. Regardless of which of the two views is more accurate, it is important to investigate why human rights are being compromised for fighting terrorism and what can be the ways where both human rights and counter terrorism strategy can coup up together.

## 2. Objectives and Methodology

### 2.1 Objectives

The aim of the study is to identify the link between human rights and terrorism along with the idea of balancing between human rights and security concern for the terrorism. In this context the main objectives of the study could be stated as below:

- To find out the applicability of Human Rights in responding terrorism.
- To find out the consequences of undermining Human Rights Law in fight against terrorism.
- To find out some issues which are intentionally misinterpreted to validate the counter terrorism activities.
- To find out the role of United Nations to uphold the Human Rights along with fighting terrorism.
- To find out whether the counter terrorism strategy by derogating and violating human rights are the best possible way of responding terrorism or not.
- To find out some solutions to combat terrorism along with respecting the norms of Human Rights.
- Raise awareness of the impact of terrorism and counter-terrorism on the enjoyment of all human rights.

## 2.2 Methodology

The article is basically based on Qualitative method. I have to use facts and information already available and analyze these to make a critical evaluation. The data and information used was collected from websites; articles and books of renowned writers; and legislations and conventions passed by states or United Nations body.

## 3. Global overview on terrorism and Human rights

United Nations have been promoting for a long time that terrorist acts are unjustifiable under any circumstances, wherever or by whom it is committed. But the major achievement of the United Nations in promoting human rights and numerous pronouncements of its organs enlighten us with the knowledge that human rights violations are also unjustifiable under any circumstances, wherever and by whoever committed.

### 3.1 Role of United Nations against terrorism and in protecting human rights law

Before the incident of 9/11 the term “terrorism” was certainly not new to the United Nations.

Even in the time of League of Nations convention for the prevention of terrorism was there to insure the punishment of the terrorist. In the same context two more Conventions were established. One is the 1973 United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, and another one is the 1977 a European Convention on the Suppression of Terrorism. Then again the 1963 Tokyo Convention, the 1970 Hague Convention and the 1971 Montreal Convention did much to enhance the protection of civil aviation against attacks of a terrorist nature. Furthermore, the 1977 International Convention for the Suppression of Terrorist and in 1999 a convention was adopted aimed at the Prevention and Suppression of the Financing of Terrorism.

#### 3.1.1 General Assembly

In November 2002, the U.N. General Assembly adopted an important resolution on Protecting human rights and fundamental freedoms while countering terrorism. Again on 8 September 2006 the United Nations Global Counter-Terrorism Strategy was adopted by the General Assembly. This is the first time that Member States have agreed to a comprehensive, global strategic framework to counter terrorism. In this consequence the Counter-Terrorism Implementation Task Force was established in 2005 by the Secretary-General. The Task Force has developed a programme of work and established working. Working groups include<sup>5</sup> :

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<sup>5</sup> United Nations Counter-Terrorism Implementation Task Force Working Group ‘*Protecting Human Rights While Countering Terrorism*’; 5-7 November 2008; at: [http://www.un.org/terrorism/pdfs/wg\\_protecting\\_human\\_rights.pdf](http://www.un.org/terrorism/pdfs/wg_protecting_human_rights.pdf); (accessed on 9 December, 2011)



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- Facilitating Integrated Implementation of the Strategy.
- Addressing Radicalization and Extremism that Lead to Terrorism.
- Countering the Use of the Internet for Terrorist Purposes.
- Protecting Human Rights While Countering Terrorism.
- Strengthening the Protection of Vulnerable Targets.
- Supporting and Highlighting Victims of Terrorism.
- Tackling the Financing of Terrorism.

### **3.1.2 United Nation Security Council (UNSC)**

In the aftermath of the September 11 attacks, the U.N. Security Council used its powers under Chapter VII of the U.N. Charter to mandate member states to adopt specific measures to combat terrorism. On 28 September 2001, the United Nation Security Council (UNSC) adopted Resolution 1373<sup>6</sup>. Through this Resolution the UNSC has established the “Counter-Terrorism Committee” (CTC). The CTC consist of 15 members of UNSC. CTC is there to help the world system to upgrade its capability to restrict freedom, economical and physiological support to terrorism and establish a network of information sharing and cooperative executive actions.<sup>7</sup>

### **3.1.3 Office of the High Commissioner for Human Rights ( OHCHR )**

The Office of the United Nations High Commissioner for Human Rights advocates the promotion and protection of all human rights and the implementation of effective counter-terrorism measures as complementary and mutually reinforcing objectives. OHCHR making general recommendations on States’ human rights obligations and providing them with assistance and advice in the area of raising awareness of international human rights is examining the question of protecting human rights while countering terrorism by. The Office provides assistance and advice to Member States on the protection rights and fundamental freedoms while countering terrorism, including the development of human rights-compliant anti-terrorism legislation and policy. Additionally, OHCHR contributes to the Counter-Terrorism Implementation Task Force by leading the Working Group on Protecting Human Rights While Countering Terrorism.<sup>8</sup>

### **3.1.4 The UN Special Rapporteur**

The UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, operating under the new Human Rights Council,

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<sup>6</sup> See Annex IV; United Nation Security Council Res. 1373 (2001) of 28 September ( accessed on 13 December 2011)

<sup>7</sup> See Security Council, Counter-Terrorism Committee, at: <http://www.un.org/sc/ctc/rights.html>. (accessed on 12 December ,2011)

<sup>8</sup> See for details, United Nations General Assembly (20 December 1993, 85th plenary meeting, UN Doc. No- A/RES/48/141.



works to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms.

### **3.1.5 United Nations Interregional Crime and Justice Research Institute**

The United Nations Interregional Crime and Justice Research Institute has provided training on witness protection, with a specific focus on the persons who participate or who have participated in terrorist or organized criminal groups as well as on victims of terrorism, for public prosecutors and other relevant investigating officials from 19 Latin American countries. Training activities aim at improving skills to optimize the use of information provided by witnesses in accordance with the right of defence and to promote appropriate approaches to victims of terrorism.<sup>9</sup>

## **4. Application or Enforcement of Human Rights in Combating Terrorism & Human Rights Violations as a Contributing Factor for Increasing Terrorism:**

### **4.1 Application of Human Rights in Fight against Terrorism**

Human rights as an International norm, principle and law have great applicability in the field of counter terrorism methods. Now the question come to what aspect and extent human rights is helpful and relevant in responding terrorism. To find out this answer, delimitations of the application of human rights have to be found. Secondly, the applicability and relevance of those norms, principles and applications have to be determined.

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. Human rights laws protect the individual at all times. Sometimes it is claimed that armed conflict is only a matter of International Humanitarian Law (IHL) . But this context does not suffice to exclude the implementation of the regime of the protection of human rights. Therefore, to claim that, in time of war, human rights obligations of a state are replaced by the norms of International Humanitarian Law ( IHL) are not valid argument.<sup>10</sup>

However, flexibility embedded in the international human rights instruments allows the states to impose limitations on the enjoyment of certain human rights. However, while imposing such limitations, states must respect a number of conditions.<sup>11</sup> The provisions of imposing limitations by derogating human rights

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<sup>9</sup> 'Activities of the United Nations Interregional Crime and Justice Research Institute and the Regional Institutes for Crime Prevention and Criminal Justice: Progress report of the Secretary-General'; *Criminal Law Forum*; Volume 3, Number 3 / March, 1992, p.481.

<sup>10</sup> On the relationship between human rights and humanitarian law see, Y.Dinstein, "Human rights in armed conflict: International Humanitarian Law", in T. Meron (ed); *Human Rights in International Law: Legal and Policy issues*, Clarendon Press, Oxford, 1984, pp345-368.

<sup>11</sup> See for details, Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13, 26 May 2004, and Siracusa Principles on the Limitation and Derogation of Provisions in the

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obligations, being restrictive and extra-ordinary in nature and must be interpreted in a strict manner. To legitimately derogate human rights obligations Article 4 of the International Covenant on Civil and Political Rights (ICCPR)<sup>12</sup> sets out some formal and substantial requirements which a state must fulfill. When life and existence of the nation is threatened and it is required by the extreme of situation, only then the option of derogation can be restored. Article 4 (1) of the Covenant specifies that any derogating measures must not be inconsistent with obligations under international law. Article 4 (1) of the Covenant further states that, the ability to derogate human rights only triggered in a time of "public emergency which threatens the life of the nation. Again according to Article 4 (2) of the International Covenant on Civil and Political Rights identifies some rights which are called non-derogable rights. Moreover, the UN Human Rights Committee, building on states' other obligations under international law, has developed a list of elements that, in addition to the rights specified in article 4 of the ICCPR, cannot be subjected to lawful derogation.<sup>13</sup> Apart from these permissible limitations and derogations, the obligations under international human rights law exist even during war time.

Finally, to find out whether human rights is relevant to counter-terrorism, the question whether the strategies taken as counter measures are taken on the basis of "law enforcement" or on plea of "war" needs to be answered. The question of derogation of human rights is the parameter here. The measures whether entered the territory of derogation is the burning question here.<sup>14</sup>

### **4.2 Human rights violations as a contributing factor for increasing terrorism**

The question of the root cause of terrorism has been the subject of much controversy. This becomes a burning question as the western starts are trying to give justification for their act in combating terrorism. It is clear therefore that a careful study of causal factors is an essential component of any strategy to reduce or eliminate terrorism. There is in parallel a growing realization that the origins of terrorism are related to the infringement of human rights.<sup>15</sup> A report of Policy Working Group on the United Nations and Terrorism states, "Terrorism often thrives in environments in which human rights are violated. Terrorist may

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International Covenant on Civil and Political Rights, E/CN.4/1985/4, annex.

12 G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

13 See, Human Rights Committee, General Comment No. 29, CCPR/C/21/Rev.1/Add.11, 31 August 2001.

14 Dinah Pokempner, "Terrorism and Human Rights: The Legal Framework", in *Terrorism and International Law: Challenges and Responses*, 2002, p. 25, available at: [www.michaelschmitt.org/images/4996terr.pdf](http://www.michaelschmitt.org/images/4996terr.pdf) (last visited on 23rd December, 2011).

15 According to the Special Rapporteur of the UN Commission on Human Rights stated in her report on "Terrorism and Human Rights", titled 'violation of human rights, humanitarian law and basic principles of the UN Charter, are among the major causal factors of terrorism'. See Preliminary Report, 'Terrorism and Human Rights', prepared by Ms K.K. Koufa, UN Doc. E/CN.4/Sub.2/1999/27, 7 June 1999, para. 130. (accessed on 27th December, 2012)



exploit human rights violations to gain support for their cause".<sup>16</sup>

**5. Derogation of Human Rights in different countries; Derogation of some Relevant Provisions of Human Rights & Consequence of Derogation of Human Rights.**

**5.1 Human Rights derogation in the name of counter-terrorism measures since the aftermath of September in some countries**

China has sought to shadow the distinctions between terrorism and calls for independence by the ethnic Uighur community in the Xinjiang-Uighur Autonomous Region (XUAR) by using the global counter-terrorism effort as a justification. Before September 11, no distinction between Uighur demands expressed peacefully and acts of separatist violence were made by the government officers. All were labeled separatist and treated simply as criminal cases. But After September 11, the government re-categorized separatist acts involving the use of force as "international terrorism," and reserving peaceful activities such as expressions of cultural identity, religion, literature, association, or rites of passage. But at every opportunity the two terms are linked.

Since the attack of September 11, Indonesia has been under the firing line because of the ongoing political and sectarian violence and alleged links between local Islamist movements and international terrorist networks as there was strong International campaign against terrorism. The Bush administration established a links with Indonesia as part of its counterterrorist strategy for Indonesia, arguing that the only way to support democracy and human rights and fight terrorism in Indonesia is to work with the military. After the 2002 Bali bomb attack, intense U.S. pressure was given which resulted enactment of two executive decrees to address terrorism passed by President Megawati. The decrees and draft legislation threaten to seriously curb fundamental rights, invoking broad definitions of terrorism that could be used to target political opponents.

Since the military actions in Chechnya in 1999, Russia's leaders have been describing the armed conflict there as a counter-terrorism operation and domestic matters and have been attempting to fend off international scrutiny of Russian forces abusive conduct by taking the plea of fighting terrorism. But after the September 11 attacks, Russia sought to convince the international community that its operation in Chechnya was its contribution to the international campaign against terrorism. However, after September 11, Russia called for the recognition of the appropriateness of their action in Chechnya, given the alleged links between Chechen rebels and the Taliban and Osama bin Laden.

In the United Kingdom, laws, policies, and practices that derogate and undermine the fundamental human rights protections, including the right to seek asylum and prohibitions against arbitrary detention and mistreatment were the government's response to the events of September 11. United Kingdom was the

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<sup>16</sup> See Annex II : Commission on Human Rights, Report of the United nations High Commissioner for human rights (Mary Robinson) and follow up to the World Conference on Human Rights, UN Doc..E/CN.4/2002/18 of 27 February 002



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only Council member of Europe which was derogated from the European Convention on Human Rights and Fundamental Freedoms (ECHR) on the counter-terrorist grounds. Subsequently little effort was found between national security interests and the protection of human rights by government action and rhetoric signaled.

Many of the measures adopted by the U.S. government after the September 11 attacks violated fundamental provisions of international human rights law. These included the arbitrary and secret detention of non-citizens, secret deportation hearings for persons suspected of connections to terrorism, the authorization of military commissions to try non-citizen terrorists, a failure to abide by the Geneva Conventions in the treatment of detainees held in US military custody in Cuba and elsewhere, and the military detention without charge or access to counsel of U.S. citizens designated as "war on terrorism."

### 5.2 Derogation of some relevant Human Rights provisions

International human rights law is reflected in a number of core international human rights treaties and in customary international laws. Of them is the Universal Declaration of Human Rights' 1948 which is only a declaration not any treaty. Other Human Rights instruments are as follows:

1. International Covenant on Civil and Political Rights (ICCPR)' 1966;
2. International Covenant on Economic, Social and Cultural Rights (ICESCR)' 1966;
3. International Covenant on the Elimination of all kinds of Racial Discrimination' 1979;
4. Covenant on the Elimination of All Form of Discrimination against Women (CEDAW)' 1979.
5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' 1984;
6. UN Convention on the Rights of the Child' 1989.

All of these instruments give different types of major rights. But as there continues the "war against terrorism"; these major rights are curtailed and derogated in different ways<sup>17</sup> :

- a) Right to life.
- b) Free from torture and inhuman behavior.
- c) Right to indiscriminate.
- d) Right to fair trial.
- e) Right to Freedom of association. ; etc

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<sup>17</sup> See 'Counter-Terrorism versus Human Rights: The Key to Compatibility'; n°429/2, October 2005, pp 25-29

## 6. Intentional Misconception in Responding Terrorism

During the last one decade, especially after the heinous events of September 11, 2001; new interpretations are being offered and new techniques are being implemented to deviate from the state obligations under human rights. These interpretations and techniques are imposing eminent threats to the very presence and existence of the basic norms of human rights. The debate is on the applicability of the rules to acts taken in response to terrorist acts concerns exclusively the use of *military* force and not other acts of extraterritorial law enforcement. To get support and clearance from the United Nations and world concern some deliberate misconception is created by world applying the rules of self defence as enshrined in Article 51 of the UN Charter and as it exists under customary international law.<sup>18</sup>

### 6.1 Relation of Self-defence in combating terrorism

According to Article 2(4) of the UN Charter, International law lays down a prohibition against the use of force between states. Therefore, if the use of force in such a case is to be lawful, this must be based on the right of self-defence under Article 51 of that charter. But To impose war on sovereign states, the war on terror is relying on the right of self-defence acknowledged by article 51 of the UN Charter. It is a misconceived idea of the attacking states. The right of self-defence is subject to further limitations that follow from international customary law. In this connection, reference is usually made to the classic Caroline case from 1837, where the US secretary of state formulated the requirements of burden of proof, immediacy, necessity and proportionality. The requirements of necessity and proportionality are supported in the Nicaragua judgment<sup>19</sup> and in the ICJ's advisory opinion on the legality of the threat or use of nuclear weapons (the Nuclear Weapons case)<sup>20</sup>.

The International Law Commission, in its studies and re-ports on State responsibilities, concluded that self-defence applies only against a state that had itself wrongfully used force.<sup>21</sup> Not every instance of the use of force against a state is deemed to be an armed attack under Article 51. There is a requirement that the level of force involved be of a certain magnitude. In this concern, the

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18 Article 51 of the UN Charter reads: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of the right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

19 See, *Nicaragua v. United State of America*, Judgments on the Merits on 27 June 1986; ICJ Reports 1986, para.176.;

20 *Legality of the Threat or Use of Nuclear Weapon*, Advisory Opinion, 1986; ICJ Reports, para. 41.

21 See Reports of the International Law Commission, 32nd Session, 1980 II (2) Year Book of the International Law Commission 1, 53.



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advisory opinion on the *Wall* case, the International Court of Justice seemingly required that an armed attack should be committed by a state or be imputable to a foreign state to come within the purview of article 51 of the UN Charter.<sup>22</sup>

Moreover, Article 51 does not explicitly say anything about from where an armed attack must have come if it is to give rise to the right of self-defence. The terrorist attacks against the USA have been seen as an example which is carried out by states but by non-state groups. It may be asked whether it shall be deemed necessary that another state can be connected to such an action in order to give rise to the right of self-defence. Because acting in self-defence entails the right to use force against another state, notwithstanding the general prohibition in Article 2(4) of the UN Charter. It may often be rather difficult to legally attribute terrorist acts to the state hosting the terrorist organization. In the *Nicaragua Case*, it was observed that *Military and Paramilitary Activities within and against Nicaragua were not* taken lightly by the International Court of Justice and they set a high standard for attribution of private acts to states.<sup>23</sup> This decision prevailed in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*.<sup>24</sup>

Furthermore, a state is not generally deemed liable for acts performed by individuals who are not in the service of that state personally. Nevertheless, there may be instances in which a state ought to be identified with actions carried out by certain groups, even when the latter are not formally affiliated to the state concerned. Here the ICJ in the *Nicaragua case*, formulated the issue of responsibility as a question of whether the USA had 'effective control' of what the contras were doing in *Nicaragua*.<sup>25</sup> But upon some criticism the tribunal came to the conclusion that effective control was not required: 'overall control' was sufficient.<sup>26</sup>

### 6.2 Armed conflict and Terrorism

Some commentators tends to exclude from the armed conflict any use of force, which is not directed from the state itself, ultimately excluding most types of terrorist activities.<sup>27</sup> Others believe that use of force in response to terrorist attacks is legitimate self defence since terrorist activities are one of the major forms of contemporary conflicts.<sup>28</sup>

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<sup>22</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *ICJ Reports 2004*, para. 139.

<sup>23</sup> *Nicaragua v. United State of America*, Judgments on the Merits on 27 June 1986, *ICJ Reports 1986*, para. 115-116.

<sup>24</sup> See, *Bosnia and Herzegovina v. Serbia and Montenegro*, 26 February 2007, *ICJ Reports, 2007*, para. 391-395, 396-412, and 413-415.

<sup>25</sup> 10 International Court of Justice, 1986: 65, para. 115; see also paras 109 and 110.

<sup>26</sup> See *Prosecutor v. Tadic*, 38 International Legal Materials 1999: 1546, para. 145.

<sup>27</sup> See for example Francis A. Boyle, 81 Proceedings of ASIL, 288, 293-96 (1987); Jochen A. Frowen, The Present State of Research Carried out by the English Speaking Section, Centre for Studies and Research, in Hague Academy of International Law, The Legal Aspects of International Terrorism 55, 64 (1988); Michel Akehurst, Humanitarian Intervention, in Hedley Bull, ed., *Intervention in World Politics* 95, 107-108, (Oxford, 1984)

<sup>28</sup> See William V. O'Brien, Reprisals, Deterrence and Self-Defence in Counterterror Operations,



It is true that there is no fixed International standard to find out the answer to the question whether the any terrorist attack falls within parameter of "armed conflict" or not as there lack legal standard that can define terrorist attacks. Countermeasures taken on to the Afghanistan and Iraq relating them to "war on Terror" are mostly not "armed conflict". Still, these hostilities are frequently being characterized as 'armed conflict' and thus the fact that terrorist attacks constitute crime is being suppressed. The U.S. President George W. Bush, while addressing the Congress on 20 September 2001, said: "On September 11th, enemies of freedom committed an act of war against our country".<sup>29</sup>

Finally, to answer what amount to an armed attack; it may be asked whether the judgment given by the International Court of Justice in the *Nicaragua case* is sufficient, namely that the criteria of a military operation as an armed attack would depend on the scale, depth and effect of that operation. It seems now that non-state actors can mount attacks of such a scale that they can be considered an armed attack sufficient to give recourse to the sovereign right of self-defence. In the context of terrorist acts, there may be a need for more specific threshold criteria regarding the level of severity, determine whether the acts constitute an armed attack or not.

### 6.3 Terrorist attack by non-state actors

The devastating attack on 9/11 gives us a new criteria of attack by individuals from other states as a war-like attacks who were operating as a non-state actors who acts as an organization but does not have any formal or legal status as the state or agent of states have. So, it creates doubt whether certain acts committed by terrorists or members of armed groups acting outside a state's control can properly be characterized as human rights violations.

Before the attack it may be observed that Article 51 of the UN Charter did not premise the right of self-defence on the commission of an armed attack *by a State*. So, immediately by the 11th Resolutions 1368<sup>30</sup> and 1373<sup>31</sup> the UN Security Council recognized the right of self-defence without explicit reference to state involvement. Resolutions 1368 (2001) and 1373 (2001) recognize the inherent right of individual or collective self-defence without making any reference to an armed attack by a State.<sup>32</sup> Strictly speaking under existing human rights doctrine, non-state actors are not legally bound by the supervisory mechanisms of international law and human rights law. So, ultimately, some states have risen questioned whether the legal fight against terrorism can be accomplished through the application of international human rights law or not.

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V.279, at 470

29 Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11, 37 Weekly Comp. Pres. Doc. 1347 (September 20, 2001).

30 UN Security Council Resolution 1368, 12 September 2001.

31 UN Security Council Resolution 1373, 28 September 2001

32 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9th July 2004, Separate Opinion of Judge Kooijmans, *ICJ Reports 2004*, para. 35

#### 6.4 The relationship between Terrorism and the Right to Self-determination

The self-determination in the United Nations era has been much expanded since 1945. By "self-determination" we mean national liberation movements for the independence of all peoples under colonial and racist regimes or other forms of alien domination. But presumably due to the impact of mass terrorism, the right to self-determination has been gradually thrust into the background. The distinction between the term self-determination and terrorism seems to be diminishing due to so controversy as the use of force to achieve self-determination will include the perpetration of terrorist offences, as one tactic is an otherwise permissible political strategy. Thus it seems clear that the issue of the terrorism and national liberation in the exercise of the right to self-determination will remain on the international agenda for the foreseeable future. But the expression "struggles for the right to self-determination" should not be misinterpreted as "war against humanity"

#### 7. Findings

- Though Human Rights norms are universally acclaimed values, yet the applicability of such principle does not seem to work so effectively to counter terrorism as it does to maintain peace in the world. But still many international instruments, which are playing great role on combating terrorism, praise the human rights and their functions is running along smoothly along with giving respect to the norms of human rights as it is eminent that non-fulfillment of various rights for the discrimination among the states are also the reason for the growth of terrorism.
- On plea of "war on terror"; "self-defence"; "counter-terrorism" measures human rights are drastically violated in many countries around the globe. Various kinds of non-derogable rights are also under threat though they should not be violated even in war.
- Nowadays, many use of force occurs in different countries tagging "armed conflict" for the justification, but a terrorist act does not necessarily in itself constitute an armed attack, nor does it necessarily give rise to an armed conflict.
- Any use of force in plea of "self-defence" is subject to conditions of necessity and proportionality. These conditions pose restrictions on the nature, scope, location and duration of the actions in self-defence. There is a new understanding that the right of self-defence also applies in relation to an armed attack which cannot be directly ascribed to another state.
- "Right to self-determination" has different magnitude and texture than the "terrorism". But after the incident of September 11, many states where the issue of "self-determination" arises the government tends to convert the right to some terrorist activities. It is very easy for those



states to convince United Nations and other powerful countries introducing them as a treat for the world peace by linking them with the terrorism.

### 8. Conclusion

The process of globalization, make us believe that global problems such as Terrorism cannot be resolved without global solutions, based on the international legal framework. That is why we all are faced with a dilemma that how any counter-terrorism actives could will function effectively at the same time ensuring the core set of International norms, values, human rights such as fundamental rights as no standard framework of international standard is yet achieved to response against terrorism. Now many states are enacting anti-terrorist acts willingly or by pressure or to supplement their political agenda. The applicability or use of the instruments may be useful for sometime being but the demerits occur because of these actives will run for a long time. The wound done by the counter terrorism activities will remain on the victim for the rest of his life. There is a prominent chance that the victims will loss respect towards the rule of law along with human rights of others.

So, though victims who lost their life, or relatives or friends in terrorist attracts may think for an instance that no human rights norms are necessary to combat with those terrorists, but as a defender of human rights we must not leave the righteous and just position because we must not discount the norms of human rights as it may endanger the rights of innocents in large group who could be falsely represented as terrorist.

### 9. Recommendation

- From a strategic point of view, an inflated use of the term "terrorism" should be avoided, as this may have adverse consequences. But still no standard International frameworks have yet defined any comprehensive definition of the term "terrorist" or "terrorism".
- The United Nations and its Specialized Agencies played a prime role in negotiating and adopting twelve international anti-terrorism treaties. These treaties are functioning in different aspect playing efficient role in responding to terrorism. But these treaties are not extensive and the time has come to complete a comprehensive convention outlawing terrorism in all its forms where no misconception can be created.
- States are currently adopting to counter terrorism infringe on human rights and fundamental freedoms. But compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist's objective. Upholding



## Terrorism and Human Rights: Contradictory or Complementary

human rights is not merely compatible with a successful counter-terrorism strategy but an essential element in it.

- A correct definition is needed to identify the terms like “armed conflict”; “self-defence” & “self-determination” In the context of terrorist acts, there may be a need for more specific criteria regarding the level of severity, and the extension in time and space of different related acts, to determine whether the act(s) constitute an armed attack. A new understanding of the right of self-defence in relation to an armed attack should be introduced. If the host state has demonstrated that it is willing or able to take steps to suppress future terrorist acts the use of force in self-defence in these cases should not be allowed by simply wrongly linking them with terrorist activities.
- Terrorist groups find it easiest to recruit among people with a narrow or distorted view of the world. We must therefore help states to give all their citizens a modern education that encourages scientific inquiry and free thought.
- The government of a failing state is often no longer in a position to control its territory and uphold law and order, provide safety to its people and observe international obligations. Failing to do so does not mean they are supporting the terrorists or actively or impliedly connected to them. This is obvious that with limited resource and to protect their citizen from the aggression of terrorist is no crime.

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