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Review article

TERRORISM AND HUMAN RIGHTS

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Abstract:

During the historical development of society, it is impossible to find instances of the formation and structuring of communities that existed in longer periods of time but did not need any form of organized defense. In this way of building contemporary, juridical and civic society, members of the community have aimed and expressed the need for security, ie the elimination of all forms of danger, which could call into question fundamental rights and freedoms (physical integrity privacy, dignity, security, property, etc.).

To have human security means the protection of fundamental freedoms and human rights; means protecting people from injury or threats to their safety. Human security focuses on creating an environment where all people feel secure, and this contributes to national, regional and international security. Human security constitutes sustainable peace and potential development, which can only be achieved when the basic needs and the rights of all human beings are met¹.

How human rights and security are connected, make us understand the statement by Sergio Viera De Mello, United Nations High Commissioner for Human Rights, who said: "Today, a very large number of international subjects pursue a fear-based policy, thinking they will increase security. But real security should be based on the already-proven human rights principle"².

Key words: Human rights, human security, freedom.

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¹ Gender Equality Group, 2012 Published by the Ministry of Foreign Affairs of Austria, www.etc-graz.at, visited on 12.11.2013

² Cited in the manual "Understanding Human Rights" by Dr. Benito Ferrero-Waldner, Published by the Ministry of Foreign Affairs of Austria, www.etc-graz.at, visited on 12.11.2013.

1. INTRODUCTION

Immediately after the fall of the Iron Curtain, the vision of a world with fewer conflicts and dangers seemed very close, but September 11, 2001 made it clear that the old threats were replaced by new ones. Threats no longer come from states, but from non-state actors, above all by terrorists intending to kill civilians, push mass terror and shake societies into their core. Terrorism is not an unknown term, we can say that every day we hear news or read in newspapers. Terrorism has always been present on the world stage over the last 40 years but has escalated with the events of September 11th. Terrorism has a direct impact on the respect of a large number of human rights, in particular the right to life, liberty and physical integrity. Various terrorist acts seriously destabilize different governments, endanger peace and security in to and out of the country, threaten economic and social development, all affect the enjoyment of the fundamental human rights that are guaranteed by the Universal Declaration of Human Rights and European Convention for the Protection of Human Rights. The attacks of September 11 have made a turning point in dealing with this phenomenon. The fight against terrorism has fueled international co-operation led by the US, but this war is undermining our security more than the dread of September 11th. States must restore a balance of freedom and security that can be guaranteed by existing international human rights organizations and humanitarian standards, and violation of human rights is coming as a result of terrorism but also of the phenomenon of war against this phenomenon.

2. DEFINITION OF TERRORISM

There is no international definition of terrorism in itself because some states have taken measures to combat terrorism outside the sphere of international law. Efforts to provide a content or legal form have preoccupied many international organizations as well as many international jurists for over 80 years. This problem since the League of Nations is considered an international legal problem. Initially, problems have been created within the local legislation on the ways of extradition, but other difficulties have also illustrated the failure of the international community to deal with this type of transnational crime.

Human rights are challenged in the absence of a universal definition of terrorism, and some countries also use broad and unambiguous definitions of terrorism in order to combat specific opposition groups under the guise of countering terrorism. People can not be prosecuted for human rights violations because of unclear definitions of terrorism.³

³ Counter terrorism and the Protection of Human Rights,
http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/HRC13_Counter-terrorism_and_Human-Rights.pdf (viziutare me 19.11.2013)

Terrorists use violence against their primary objectives, this violence contains the intent of causing bodily injuries often with deadly consequences and this violence affects the fundamental human freedoms.

Ludwig Wittgenstein has argued that "*it can not be exactly known how many elements are needed for a definition of terrorism or what are these elements because it can not be a collection of concepts, so there is no universal definition nor can it be possible have*".⁴

3. NATURE OF HUMAN RIGHTS

Human rights are universal values and legal safeguards that protect individuals and groups against acts and omissions mainly by state officials that impede fundamental freedoms and human dignity. The full spectrum includes civil, cultural, economic and political rights as well as the right to development. Human rights are universal, in other words, they essentially belong to all human beings, and are interdependent and inseparable.⁵

Human rights are expressed and guaranteed by treaties, according to customary international law, general principles and other sources of international law. Human rights by law oblige governments to act in certain ways or to refrain from certain acts in order to protect, respect and promote human rights.

Numerous laws limit some rights guaranteed by law during the state of emergency but this situation should be temporary until this condition lasts.

4. TERRORISM IN REPORT ON HUMAN RIGHTS

The attacks of September 11 have marked a turning point in the fight against terrorism, these attacks have shown that terrorist groups can attack at any time and in every state, thus crossing the state borders and draw attention to the fact that certain groups can very easily use weapons mass destruction for achieving certain goals. Terrorist attacks in the most brutal way possible violate fundamental freedoms but even the war against terrorism limits a lot of elementary rights.

4.1 Country Reactions

Counter-terrorism measures by states can be justified as necessary for self-defense, the preservation of national sovereignty, and the protection of its citizens from serious injury or violation of their human rights, but there are also limitations from the states themselves. Surveillance by means of surveillance violates the right to privacy, detention limits the right to freedom, interviews or questioning of

⁴ Definicija Terrorizma – Steven Best i Antony J. Nocella II, <http://www.zarez.hr/clanci/definicija-terorizma> (vizituarë 22.11.2013)

⁵ Human Rights, Terrorism and Counter-terrorism- Office of the United Nations High Commissioner for Human Rights (f 3), <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

suspects should not include torture as a means of obtaining information and trials should be conducted on a regular basis. The killings of terrorist leaders can only be justified when there are strong reasons that they pose a risk of preventing a possible terrorist attack and that this will have a positive effect. Military intervention against another country can only be justified if vital interest is violated and drastic HR violations.

Al Qaeda's attacks against the United States are at the center of attention, but these are not the only ones. Other examples are the terrorist campaigns of the Irish Republican Army against the United Kingdom, the Tamil Tigers against the government of Bangladesh, Hamas against Israel, Sunni and Shi'a Muslims against each other within Iraq and ISIS terrorists today, who use the fiercest ways of murders and ill-treatment.

States are morally justified in using violent police and military measures to identify terrorists that can seriously cause serious injury and human rights violations. The most common justification of anti-terrorism measures is that the state should increase the level of security for itself and the citizens, but the biggest criticism is that by increasing the level of security, citizens' freedoms are violated. In this context, the state needs to increase the level of security but by not declining the level of freedom.⁶

4.2 The impact of HR on terrorism

Terrorism affects three ways in the HR, first of all denying the fundamental rights, the right to life and creating an environment of fear, so people can not live and enjoy their free rights. Secondly, the threat of terrorism may push states to adopt laws that can hold people deprived of civil and political freedoms and thirdly, governments use the fight against terrorism as an alibi to suppress or imprison opposition opponents. It is clear that there is a link between terrorism and HR. This connection is when a terrorist group commits an attack and kills or plagiarizes civilians and deprives their liberties, destroys property and uses the jump to shed fear.⁷

5. FIGHT AGAINST TERRORISM AND VIOLATION OF HUMAN RIGHTS

After September 11, 2001, a large coalition of states was organized in the fight against international terrorism. The United Nations Security Council adopted a comprehensive sanction regime that for the first time in international law was not directed against states, but against individuals and organizations. The European Union (EU), the G8, the Council of Europe (EC) and other international organizations have adopted action plans and decisions, and states have received a wide range of measures.

⁶ Terrorism and Counterterrorism, A Moral Assessment- Carl Wellman (f 77-78)

⁷ Terrorism and Human Rights-Aprar Shishoo, <http://www.scribd.com/doc/49148718>

In almost all countries around the world, anti-terrorism measures are today a key political issue and a matter of public debate, because the changes made to legislation to combat terrorism often include restrictions on human rights and fundamental freedoms such as freedom of thought, freedom of religion, the right to a fair trial and a fair trial, freedom of movement and protection of privacy.

5.1 Case - Guantanamo Bay

The United States established a Detention Center for suspected terrorists on the Maritime Base in Guantanamo Bay, Cuba. Location is chosen with great care. The US may exercise de facto sovereignty in that country but is outside US land and outside the jurisdiction of the federal courts. Due to this unusual legal status, the rights of pre-detainees could be limited and according to the US justice department, judicial reviews could have differing interpretations of the rights of prisoners under the Geneva Convention (KG) and international law norms that could or could not be implemented in the case of the continuation of the war in Afghanistan⁸.

On January 11, 2002, his first prisoners were sent to Guantanamo, on February 07, 2002, US President Bush wrote a decree stating that "The war on terrorism" sends us to a new opinion on the law of war but always being in line with KG's principles, Bush does not deny international humanitarian law emphasized that MG applies only to states or not al-Qaida as a terrorist organization⁹.

He argues the status of Al Qaeda members problematic that they can not act on behalf of the state and are not part of international law, he went on to emphasize even if Afghanistan was the party of GC + that the Taliban failed to fulfill the agreement for a right war (they did not wear distinctive marks or uniforms). Bush finishes his argument that Taliban prisoners are unlawful fighters and therefore do not qualify as war prisoners under Article 4 of the GC (Bush, 2002). This decree of the US president denies the right to treat prisoners as a prisoner of war but with an opportunity to challenge their detention. This president's stance followed with the criticisms of non-governmental organizations where US courts were subject to harsh criticism. Bush stressed that the treatment of prisoners is a policy issue and that the US Armed Forces will continue to treat pre-detainees in a humane manner to the extent necessary with military necessities and in accordance with the Geneva Convention.¹⁰

These well-chosen words leave space for interpretation because "military necessity" has been used to justify a series of actions that were undertaken and taken for years to come.¹¹

⁸ A monstrous failure of justice- Guantanamo Bay and national security challenges to fundamental human rights, Andrea Birdsall (f 686).

⁹ Yes there.

¹⁰ Yes there.

¹¹ Yes there.

Geneva Conventions are part of international humanitarian law and are designed for persons who are not armed with the armed conflict, the first two conventions cover the wounded, ill and inverted military vessels, the third convention covers the prisoners of war until the fourth convention deals with civilians. This document allows all captured individuals to have legal rights based on IHR. GC's first additional protocol more elaborates on this issue, a person who participates in the fighting and falls to the other side will be considered a prisoner of war, and therefore will be protected by the third convention if he claims the status of a prisoner of war. If there are suspicions of his status, he will continue to have the status and be protected by the third convention until he has decided on a case for a court of competent jurisdiction.¹²

The US government started from the fact that detainees in Guantanamo are unlawful fighters without the right of assertion in this regard, so their status and fault were decided at the outset.

Defense Secretary Donald Rumsfeld has labeled them as "the worst of the worst" (Washington Post, 2008) and President Bush called them "bad people" (CNN 2003). Guantanamo Bay therefore constitutes a black legal hole for prisoners who are at the mercy of the US government.

The reasons why the US government denies the status of Guantanamo detainees are numerous, but the most important thing is that by declaring them as illegal fighters, the government has more room to question prisoners. According to the GC, a war prisoner should only declare his name, rank and number, otherwise he has the right to remain silent. Guantanamo pre-detainees' interrogation, according to the US authorities, intends intelligence gathering to prevent possible terrorist attacks in the future. Moreover, war prisoners under the GC have the right to be released if war ends without having to face trial¹³.

The second field in which the Bush administration was challenged in Guantanamo was the Convention against Torture. Guantanamo was originally built as a pre-trial detention center for suspects before facing a military trial, but the suspect's intent to keep the information about the upcoming terrorist attacks was very clear.

Until 2005, out of 520 inmates, only 9 were referring to a military commission, more and more complaints had been made to the way they were questioned and tortured prisoners.

The Bush administration narrowed down the definition of torture, arguing that Guantanamo's interrogation techniques were in line with IHL, the US justice department has confirmed that in the case of self-defense these breaches related to

¹²Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. <http://www.icrc.org> (viziutare me 18.11.2013)

¹³ A monstrous failure of justice- Guantanamo Bay and national security challenges to fundamental human rights, Andrea Birdsall (f 687-688).

questionnaires are justified and would not be constitutional if the convention principles were respected because they violated the power of the president during the war¹⁴.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with the term torture implies. "*term" torture "means any act by which another person is intentionally caused by severe, physical or mental pain or suffering in order to obtain from him or any third person information or allegations of conviction for the offense which he or any third person has committed or suspected of having committed or in order to intimidate or owe him or any third person or for any other reason based on any kind of discrimination where the pain or suffering of such are caused by an official person or by a third person acting ex officio or by his or her promotion or consent. This term does not include suffering or pain resulting solely from legal sanctions that are or are caused by them".*¹⁵

The Bush administration had justified its actions regarding existing international legal provisions, but they were interpreted in different ways to comply with political decisions.

The situation in the Guantanamo Bay has changed significantly with the Obama administration, he took office in January 2009. One of the first steps taken by the Obama administration was to issue an executive order to close Guantanamo as soon as possible, but not later than one year from the date of the order. Obama also ordered the status of each individual detained in Guantanamo be reviewed immediately. Guantanamo has shown that even though the United States has been forced to increase security by challenging the interpretation of existing international human rights documents this could not have been done in complete isolation and disrespect of the norms that have evolved for years.

5.2 Terrorism as the main cause of HR violation

Terrorist acts violate the victim's HR, the effects are very wide and almost no human being is excluded from these attacks. The effects are devastating, therefore, the right to life, liberty, security and dignity, and these rights are clearly documented by the competent UN bodies, in particular by the resolutions of the UN Commission and under the committees and the General Assembly. Also, intergovernmental organizations such as the Parliamentary Assembly of the Council of Europe (PACE), the Islamic Conference Summoned terrorism and the HR, the European Parliament in 2000 repeated that terrorism violates the HR.

¹⁴ A monstrous failure of justice- Guantanamo Bay and national security challenges to fundamental human rights, Andrea Birdsall (f 689).

¹⁵Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.unmikonline.org/regulations/unmikgazette/03albanian/Ahri/AConAgainstTortureOtherCruelInhuman.pdf>

The attacks of 11 September have struck the rights of every individual, in fundamental rights, especially the right to freedom and security, to be directly affected.

Terrorism creates a climate of fear, uses this fear and violence in order to achieve goals. It affects the ideological and political factors to establish the model of society itself, hindering pluralism and democratic institutions and citizens' decision-making. By creating negative conditions hampers the functioning of the constitution, the democratic process undermines economic, political, social and cultural freedoms, undermines the quality of democratic society and sends us more terrorism and hostility.¹⁶

5.3 Non-state actors

What can be questioned is that terrorist attacks committed by non-state actors should be considered a violation of the HR?

International law on IHR was developed to protect the HR within states and states, so IHR could effectively deal with terrorist attacks? According to the existing Doctrine of the HR, non-state actors are also not obligated to respect the mechanisms for the protection of the HR, some states have also questioned that the fight against terrorism should be realized through international human rights law. Many commentators argue that even the 11 September events are a crime under US criminal law.

However, this is only a reference for analysis, and this analysis may consider that the human rights law now transcends traditional boundaries to the creation of obligations for non-state actors as well. Almost all of the major HR instruments contain the creation of binding language on states to control certain activities of individuals in order to react against HR abuses. The UN Human Rights Commission has already ruled that rape by non-state actors constitutes a violation of women's rights, as well as the convention on civil and political rights, not only states but also groups and individuals, so terrorist attacks should not have no doubt that they are subject to international law.¹⁷

6. CONCLUSION

It is clear that great efforts have been made to combat terrorism both at national and international level, but it is strange that most of the norms and international law suffer from the lack of clarity in the issue of terrorism. So, the groups that have fought for their country's freedom that have since been recognized by the Geneva convention as refugees are not recognized as legal fighters and can be

¹⁶ Human Rights: Substantive and Institutional Implications of the War Against Terrorism- Sabine von Schorlemer (f 269), <http://www.ejil.org/pdfs/14/2/414.pdf>

¹⁷ Human Rights: Substantive and Institutional Implications of the War Against Terrorism- Sabine von Schorlemer (f 269), <http://www.ejil.org/pdfs/14/2/414.pdf>

considered as ordinary terrorists and at the same time legitimize international intervention in the name of peace.

The fight against terrorism justifies the purpose of protecting fundamental human freedoms when they are violated in the most dreadful manner as September 11th, however, states in the name of security should in no case address a category of people as an enemy to deprive them of fundamental rights and exclude them entirely from society.

Acts of terrorism under no circumstances can be justified, terrorism resembles totalitarianism in the sense that anyone who kills an innocent citizen in order to impose his or her views follows a totalitarian ideology. States in the fight against terrorism and the name of security also violate the rights of their citizens with the increase of the level of security that is not always in proportion to human rights, so there must be a balance between these actions.

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