

## **Combating terrorism and its impact on the protection of human rights**

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### **Abstract:**

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Terrorism is one of the most serious crimes facing societies, and therefore regional and international efforts have joined forces to combat it, through the conclusion of international agreements to prosecute terrorists, and each country seeks to take national measures to prevent the occurrence of those crimes. Despite that, the implementation of these measures often leads to Violation of international humanitarian law and international human rights law, often accompanied by the arrest and detention of innocent civilians.

**Keywords:** Terrorism ; International Crime ; Human Rights

### **1. Introduction**

Terrorism is a vague term, so many treaties related to combating terrorism have not defined its concept. Despite this, some international agreements have tried to define it by listing the acts that constitute a terrorist crime, Such as the Treaty on Cooperation among the Member States of the Commonwealth of Independent States in Combating Terrorism, 1999.

#### **1.1. Terrorism definition:**

The terms used in it mean: "Terrorism" - an illegal act punishable under criminal law committed for the purpose of undermining public safety, influencing decision-making by the authorities or terrorizing the population, and taking the form of:

- a) Violence or the threat of violence against natural or juridical persons; Destroying (damaging) or threatening to destroy (damage) property and other material objects so as to endanger people's lives.
- b) Causing substantial harm to property or the occurrence of other consequences dangerous to society.

Threatening the life of a states man or public figure for the purpose of putting an end to his State or other public activity or in revenge for such activity.

c) Attacking a representative of a foreign State or an internationally protected staff member of an international organization, as well as the business premises or vehicles of internationally protected persons (2).

United Nations Convention on the Law of the Sea defined terrorism as it said "Piracy consists of any of the following acts(3).

a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

## **2. Research problem:**

The problem of the research lies in that countries seek to implement international conventions to combat terrorism by taking measures that may affect human rights and basic freedoms guaranteed under international humanitarian law. Therefore, countries often seek to take arbitrary measures by imprisoning, arresting and killing civilians under the pretext of confronting terrorism, The question is, how can counter-terrorism conventions be implemented without compromising international humanitarian law and international human rights law?

## **3. Research Methodology:**

The research is based on the analytical approach by addressing the international and regional conventions to combat terrorism, with an explanation of the impact of the implementation of those treaties on human rights and the main freedoms contained in the international human etarial law and the human rights law, and being guided by practical models that support that.

## **4. Research aims:**

The research aims to shed light on international and regional cooperation to combat terrorist crimes, and to show the international community's need for a unified law to combat that crime, and ways to balance the implementation of international agreements and international humanitarian law.

## **5. Terrorism reasons:**

One of the most important causes of terrorism is that many countries violate the international agreements that they have signed by violating the rights of individuals, and therefore terrorism is a reaction to these violations.(4)

The superpowers are often behind the support of terrorism, for example, the United States of America supported extremist groups in the war against Russia. The major countries use terrorism as a means of proxy war, by providing extremist groups with supplies and weapons.(5)

Recent psychological studies conducted on some members of extremist groups indicate that most of them are young people who suffer from poverty, unemployment and lack of income. Despite all these difficult circumstances, these people refuse to indulge in corruption, bribery and addiction, therefore resort to joining extremist groups (6).

The increase in poverty and hunger, and the confinement of wealth in some of the major countries that dominate the global economy and plunder the wealth of poor countries (7) ,As a result, these poor countries feel injustice, which leads their youth to join terrorist groups.

## **6. The International efforts to combat terrorism:**

### **6.1- Convention on Offences and Certain Other Acts Committed on Board Aircraft:**

This convention Signed at Tokyo on 14 September 1963 in force on 4 December 1969 United Nations, Treaty Series, vol. 704, No. 10106

This Convention shall apply in respect of:

- (a) Offences against penal law
- (b) Acts which, whether or not they are offences, May or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.

Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State. (8)

This agreement allowed the pilot to take exceptional measures, in the event of awareness of a danger to the safety, lives or property of passengers;the pilot of an aircraft can detain any person on suspicion of committing a crime on board the aircraft.

It appears that the agreement seeks to empower the pilot of the aircraft with broader powers to prevent hijacking, violence or threats of violence, or terrorism on board the aircraft.

Therefore, Article (6) of that agreement stipulates that:

“The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary: (a) To protect the safety of the aircraft, or of persons or property therein; or (b) To maintain good order and discipline on board; or (c) To enable him to deliver such person to competent authorities (9).

### **6.2- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation:**

The Convention is based upon the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the Convention for the Suppression of Unlawful Seizure of Aircraft and criminalises similar behavior in the context of maritime navigation.(10).

**The Convention criminalizes the following behaviors:**

- a) Seizing control of a ship by force or threat of force
- b) Committing an act of violence against a person on ship if it is likely to endanger the safety of the ship;
- c) Destroying or damaging a ship or its cargo in such a way that endangers the safe navigation of the ship;
- d) Placing or causing to be placed on a ship a device or substance which is likely to destroy or cause damage to the ship or its cargo;
- g) Destroying or damaging a ship's navigation facilities or interfering with their operation if it is likely to endanger the safety of the ship;
- h) Communicating information which is known to be false, thereby endangering the safety of the navigation of a ship; or injuring or killing anyone while committing 1–6; or attempting any of 1–7; or being an accomplice to any of 1–8; and compelling another through threats to commit any of 1–9.

**6.3- The second supplementary Protocol 2005**

In London on 14 October 2005, a second supplementary Protocol to SUA was concluded. The full name of the Protocol is the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and is often abbreviated as "SUA 2005". The 2005 Protocol adds provisions, which criminalizes the use of ships to transfer or discharge biological, chemical, or nuclear weapons. However, the Protocol specifies that transporting nuclear materials is not an offence if it is transported to or from the territory or under the control of a state party to the Treaty on the Non-Proliferation of Nuclear Weapons. It also prohibits ships from discharging oil, liquefied natural gas, radioactive materials, or other hazardous or noxious substances in quantities or concentrations that are likely to cause death or serious injury or damage. Finally, it prohibits the use of such weapons or substances against ships involved in maritime navigation.(11)

**6.4- The Piracy and Maritime Violence Act 2011**

The Piracy and Maritime Violence Act 2011 was published in Government Gazette of Mauritius No. 112 of 17 December 2011, and criminalizes the following behaviors:

- (a) The unlawful seizure of a ship by force or threat of any kind, or the exercise of control over it, or the commission of an offense of hijacking.
- (b) Committing an unlawful act willfully destroying or damaging the ship or its cargo, or endangering the safety of navigation, or committing acts of violence that endanger the safety of navigation of the ship; or placing any device or substance likely to destroy or damage the ship or its cargo and endanger its safe navigation.

## **7. Regional efforts to combat terrorism**

### **7.1- The Arab Convention for the suppression of terrorism**

The Arab Convention for the suppression of terrorism Adopted by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice Cairo, April 1998 , It addressed the following acts as a terrorism acts (12)

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.

The first Article stated that the following acts constitute Terrorist offence

Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences:

-The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;

-The Hague Convention for the Suppression of Unlawful Seizure of Aircraft , of 16 December 1970;

-The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984

-The convention on the Prevention and Punishment of crimes against internationally protected persons, including diplomatic agents of 14 December 1973.

-The international convention against the taking of hostages, of 17 December 1979

-the provisions of the united nations convention on the law of the sea, of 1982, relating to piracy on the high seas.

### **7.2-Advantages of the Arab Convention for the Suppression of Terrorism**

I think that one of the best advantages of the Arab Convention for the Suppression of Terrorism is that the contracting states have committed themselves to taking preventive measures to suppress terrorism, which are:

a) To prevent the use of their territories as a base for planning, organizing, executing, attempting or taking part in terrorist crime in any manner whatsoever. This includes the prevention of terrorists; in-filtration into, or residence in their territories either as individuals or groups, receiving or giving refuge to them, training, arming, financing, or providing any facilitate on to them;

b) To cooperate and coordinate action among Contracting States, particularly neighboring countries suffering from similar or common terrorist offences;

c) develop and strengthen systems for the detection of the movement, importation, exportation, stockpiling and use of weapons, munitions and explosives and of other means of aggression, murder and destruction as well as procedures for monitoring their passage

through customs and across borders in order to prevent their transfer from one Contracting State to another or to third-party States other than for law full purposes;  
d) To develop and strengthen systems concerned with surveillance procedures and the securing of borders and points of entry over-land and by air in order to prevent illicit entry there by:

e) To strengthen mechanisms for the security and protection of eminent persons, vital installations and means of public transportation,

f) To enhance the protection, security and safety of diplomatic and consular persons and missions and international and regional organizations accredited to Contracting States, in accordance with their relevant international agreements, which govern this subject;

g) To reinforce security-related information activities and to coordinate them with those of each State in accordance with its information policy, with a view to exposing the objectives of terrorist groups and organizations,

thwarting their schemes and demonstrating the danger they pose to security and stability;

h) To establish, in each Contracting State, a database for the accumulation and analysis of information relating to terrorist elements, groups, movements and organizations and for the monitoring of developments with respect to the terrorist phenomenon and of successful experiences in counter-terrorism, and to keep such information up to date and make it available to the competent authorities of Contracting States, within the limits established by the domestic laws and procedures of each State (13)

### **7.3 - The Short coming of Arab Convention for the suppression of terrorism**

I believe that Article No. 2 of the Arab Convention to Suppress Terrorism is extremely dangerous, as it grants terrorists immunity that prevents them from being pursued internationally when they attack heads of state and the government. It stipulated that:

In the application of this Convention, none of the following offences shall be regarded as a political offence, even if committed for political motives.(14)

- Attacks on the kings, Heads of State or rulers of the contracting States or on their spouses and families;

- Attacks on crown princes, vice-presidents, prime ministers or ministers in any of the Contracting States.

- Attacks on persons enjoying diplomatic immunity, including ambassadors and diplomats serving in or accredited to the Contracting States;

- Premeditated murder or theft accompanied by the use of force directed against individuals, the authorities or means of transport and communications;

- Acts of sabotage and destruction of public property and property assigned to a public service, even if owned by another Contracting State;

- The manufacture, illicit trade in or possession of weapons, munitions or explosives, or other items that may be used to commit terrorist offences.

I noticed that this article incites state citizens to attack heads of state and members of the diplomatic corps, when these terrorists realize that they will escape the grip of

international criminal justice , In addition, the application of the national law to these terrorists will give them an opportunity to drop the crime and the statute of limitations , They will also benefit from amnesty laws, and these advantages will encourage them to commit crimes , Especially since the international criminal law does not include amnesty or statute of limitations

## **8. - Terrorism and Human rights violation**

### **8.1- Human Rights and international conventions**

1 - According to the article (111) of The United Nations Convention on the Law of the Sea hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters,

The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship (15)

So where reasonable grounds exist for suspecting that the ship is engaged in piracy, slave trade, unauthorized broadcasting, or is without nationality its possible to be pursued .(16)

To combat terrorism or illegal it high seas activity, maritime law enforcement could employ multiple distinct, intersecting, and complementary lines of effort: Action prior to an interdiction, right of approach/boarding, detention, and the assertion of jurisdiction, These measures are taken by states by storming a ship or aircraft and arresting and detaining civilians, These actions constitute a violation of Universal Declaration of Human Rights , the Convention Relating to the Status of Refugee,(17)the International Covenant on Civil and Political Rights .(18) the International Covenant on Economic, Social and Cultural Rights (19) and the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (20) among others Other relevant instruments include the European Convention on Human Rights (21)

The keenness of the international judiciary to respect human rights has been demonstrated in practice. Therefore, the International Court of Justice indicated in one of its rulings that the obligations of a state are based on some general and well-recognized principles, which are primary humanitarian considerations, which are more urgent in peace than in war, In 1999, and again in 2015, the International Tribunal for the Law of the Sea declared that “humanitarian considerations must apply in the law of the sea as in other areas of international law.”(22)

The Security Council was keen to respect human rights while pursuing terrorist pirates and issued Resolution No. 2184, which obligated states, while taking measures against terrorism, to observe international human rights law. human rights(23).

2- Article 4 of the International Covenant on Civil and Political Rights states:

“In cases of exceptional emergency threatening the life of the nation, the existence of which is officially proclaimed, the States Parties to the present Covenant may take,

within the narrowest limits required by the situation, measures derogating from their obligations under this Covenant, provided that such measures are not inconsistent with their other obligations under the present Covenant. International law, and that it does not involve discrimination whose sole justification is race, color, sex, language, religion or social origin.(24).

The General Assembly also affirms that everyone has the right to enjoy all the rights and freedoms recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, without discrimination of any kind, including as to race, color, sex, language, religion, political opinion or any other opinion, national or social origin, property, birth or other status.(25)

In the field of human rights, the Commission stressed that in order to make progress in the field of respect for human rights, this depends on the existence of effective institutions in the government in the first place. Courts, police, parliaments, national human rights commissions, supervisory and inspection bodies, and many other institutions all provide the tool by which human rights guarantees can be enforced. The Commission emphasizes that terrorism causes general tolerance of discrimination based on repression, and that combating terrorism by force often leads to circumvention of legal safeguards and thus weakening them. (26).

## **8.2- How can Human Rights affected by terrorism**

### **8.2.1-The direct Affection**

All basic rights are affected by terrorism, everyone has the right to life and not to torture or arbitrary detention.

In many countries, suspects are arrested without evidence, detained, denied access to a lawyer, denied a fair trial, false charges are often fabricated, and denied hearing witnesses, and trials are often unfair.(27).

Also, few judges and lawyers possess a culture of human rights, and the judge rarely stands in the face of the state or issues a verdict of acquittal of an accused in a case related to terrorism, and this is what we always see in third world countries.(28).

### **8.2.2-The indirect Affection:**

The indirect effect of terrorism is the horror and fear of terrorist operations committed against civilians, this fear leads to the ineffectiveness of measures taken to combat terrorism.

The feeling of terror is one of the reasons that lead to the curtailment of civil and political rights, Terrorism leads to insecurity, and waste of freedom of movement and movement, Terrorism also affects the human right to life, just as life with fear has no value.

Despite the multiplicity of international conventions to combat terrorism and to prosecute the perpetrators of terrorist crimes, the roots of terrorism extend and eat green and dry and affect human rights in direct and indirect ways.

Many countries, such as the United States of America, try to confuse terrorism with the struggle of peoples for independence, this confusion led to an escape from a binding definition of international terrorism.

The United States and countries biased against justice see the massacres committed by the Israeli occupation in Palestine as a legitimate struggle , but The truth is that what the Israeli army is doing against the Palestinian people are war crimes (29).

### **8.2.3- Violation of human rights under the pretext of combating terrorism**

The recent events of September came to drop the last fig leaf on the claims of some Western countries to abide by the international principles of human rights. Even the national legitimacy within these countries has begun to ease the burdens of commitment to these principles. Many Western countries began to place restrictions after restrictions in front of granting the right of asylum, and in front of the rights of refugees and asylum seekers. It enacted anti-terror laws that discriminate between citizens on the grounds of race, religion, and origin, and the expansion of circles of suspicion, and the administration became gives free rein to monitor the suspects, and storms the principle of correspondence and the secrecy of bank accounts. The Western world witnessed a storm of discrimination against Islam, Muslims and Arabs, and those who sympathized with or resembled them (30).

In the legal states, the law is supposed to protect public liberties and limit , The ability of the public authority to infringe on these freedoms, as this law is also supposed to be in accordance with the constitution (31).

The principle of legality aims to make the ruling authorities in the state subject to binding rules. It is, as it is obligatory for the convicts, and the administrative authorities in the state may not take (32).

Civil and political rights are the core principles of international human rights law. These rights are safeguarded in one vital treaty, the International Covenant on Civil and Political Rights, which compels signatory states to take all necessary measures to protect and promote the right enshrined in this treaty.

Moreover, by one of its landmark judgments, the Court of Cassation, has re-asserted, that the right to life, right to liberty and security, human dignity and freedom of opinion enshrined in the Constitution and several international documents cannot be restricted,except on the basis of law and its procedures (33).

Alkarama, a non-governmental human rights organization, issued several reports about human rights violations in the context of counterterrorism, affirming that one of the most pressing concerns in the country are the GID's practice to detain incommunicado and to use systematic torture against peaceful dissenting voices. Individuals detained by the GID are then subjected to unfair trials before the SSC and sentenced to heavy sentences. In several cases, this constituted a form of retaliation for acts of free speech, in an environment where freedom of expression, association and peaceful assembly is severely restricted. (34).

Third world countries suffer from losing the right to a fair trial, despite The Right to a Fair Trial is protected by the ICCPR under Article 14. The violations of the rights to Liberty and Security and prohibition of torture and inhuman or degrading treatment or punishment directly impact the right to a fair trial (35).

There are many testimonies from victims that highlight the subjection of some to unfair trials, one of these cases concerned a 21-year-old Polish and Jordanian youth Student Adam Al-Natour was sentenced to four years in prison by Dr SSC after a

flawed trial. He was arrested on August 12, 2015 by GID officers without any warrant, and held incommunicado for several weeks, during which time he was beaten and given electric shocks.(36).

#### **8.2.4 – The United Nations and the impact of terrorism on human rights**

The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council. Specifically, Member States have set out that terrorism (37).

- Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights
- Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments.
- Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery.

## **9. CONCLUSION**

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.

Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

Restricting civil liberties to prevent terrorist activities is considered as a huge challenge for human rights protection, and can seriously violate the fundamental rights and freedoms such as right to liberty, right to privacy and right to fair trial.

The international law permits States to take national legislative measures to combat terrorism, but such measures must not offend against international law. These laws have serious implications on human rights and freedom such as the right to freedom of expression, association, security of a person, religion, and opinion. It should be stipulated that any response to threat of terrorism must be in accordance with human rights.

Ironically during the applying of counter-terrorism measures, an unbalancing occurred. Here balance between security and human rights is important and the necessity of regulating international counter-terrorism strategies is required. The countering measures, which are taken by States, might respect the human rights standards; however the absence of clear legal framework and basis considered as an opportunity for some States to suppressing dissents groups and oppositions and increase control of Non-Governmental Organizations (NGOs). Respect for international human rights framework creates balance between the concern of national security of States and protection of civil liberties and fundamental freedoms.

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