

# The human rights and the terrorism

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## **Abstract**

*Regarding Human rights has been emphasized by governments through universal declaration human rights and its violations faced the global reaction in any case. From this perspective; the necessity of observing human rights against terrorism has been emphasized by many resolutions of the General Assembly, the Security Council and many regional resolutions. But, today especially after the September 11 events and America unilateral attacks by resorting to human rights and of course by considering the lack of international agreement on the norms, strategies and principles of human rights, the campaign against terrorism has started on the basis of its obligations, regardless to existing norms. So it would be said that today; the war against terrorism more than any other terrorist attacks threatens the security and human rights. However, human rights framework has never prevented effective and legitimate actions to the terrorist attacks. In other words; in the human right framework, there is no conflict with the campaign against terrorism, it emphasizes on identifying and fighting and even it guarantees the effectiveness of such a fight. As a result, Human rights violations at the expense of security, certainly associated with the destruction of both.*

**Keywords:** human rights, terrorism, 11 September, regional and international conventions and organizations.

**JEL Classification:** K10, K33

## **1. Introduction**

Terrorism; which one of its features is human rights abuse, has been condemned since its emergence. In fact; terrorism and its impact on human rights is nothing new. Even before World War II, efforts to show the challenges posed by terrorism in international law and human rights have taken place. Terrorism is a crime against humanity. However, terrorism is in contrast to human rights. Committing such a crime creates a universal jurisdiction, and such perpetrators should be prosecuted in any part of the world.

By testing the research hypotheses, the following goals will be included in this chapter:

1. Examining the conventions and the international and regional organizations associated with human rights

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2. Examining the conventions and the international and regional organizations associated with terrorism
3. Terrorism and human rights mutuality
4. The capability of implementation of human rights in the campaign against terrorism

## **2. Proceedings/international and regional institutions of human rights and campaign against terrorism**

### ***2.1 Regional institutions***

Along with the development of human rights discourse and the formation of international human rights documents, the movement of protecting human rights developed as regional systems in different regions of different continents and the world. By developing such regional systems, various human rights documents codification and ratification were done. Given that in many local written documents, some mechanisms presented for observing and implementing rights, regional human rights documents considered as the main source of human rights in these systems and besides playing an important role in establishing regional standards of humanitarian law, results in conceptual developments and expanding the scope of many included rights and topics. Among the most important regional human rights organizations include.

#### *2.1.1 New European Court of Human Rights*

In 1959 the European Convention on Human Rights was registered to investigate complaints against state parties about violating the rights and freedoms set forth in the Convention, including the right to life, prohibition of torture, right to a fair trial and speech freedom. Subsequently, several protocols attached to the convention and the scope of rights and supported freedom expanded<sup>3</sup>.

#### *2.1.2 American Court of Human Rights*

American Court of Human Rights is an independent judicial institution which is formed based on American Convention on Human Rights (1969) to interpret and implement the provisions of the aforementioned Convention and investigate human rights and liberties violation which were recognized in it. American Court of Human Rights was founded in 1979, and its first meeting was held in the Organization of American States in Washington, DC on 29 and 30 June on 1979. It should be noted that the American Convention on Human Rights had been binding a year before that in 1975. Court opening meeting established in San Jose, Costa Rica on September 3, 1979. American Court of Human Rights as well

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<sup>3</sup> Tabatabaei, S, *European Court of Human Rights; The new structure and jurisdiction*, „Journal of Political Rights” 5/2003, p. 105, 110.

as The European Court of Human Rights benefit from Advisory Jurisdiction and Adversarial Jurisdiction. The adversarial jurisdiction of the Court comprises all cases which referred to the court through American Commission on Human Rights or the Convention. As long as the states or concerned states recognize the Court's jurisdiction on adversarial investigation through the specific declaration or agreement, the votes which court issues in line with its adversarial jurisdiction will be binding for all states which accepted the court adversarial jurisdiction. The court is capable of imposing sentence for compensation. In case of disagreement on the meaning and scope of the pen and sentence, the court has to interpret the sentence on demand of one side<sup>4</sup>.

### *2.1.3 Court of Human Rights and the African people*

In 1981 the African Charter on Human Rights was adopted by the Organization of African Unity, today African Union. The charter which considered as the basis of African human rights was adopted in the eighteenth meeting of heads of states and governments of the Organization of African Unity, in Banjul Gambia. It has been binding since 1998. The African Charter on Human and Peoples' Rights contains a complete list of civil and political rights, economic, social and cultural rights and of course the collective ones. Like most human rights agreements, the charter consists of regulations which set forth to supervise the proper rights implementation and written freedoms by state parties as well as predicting suitable regulatory practices<sup>5</sup>.

## *2.2 International Organizations*

The activities of official and non-official organizations have been very influential in preparing the mind of the international community in the campaign against terrorism<sup>6</sup>. It will be discussed in the following.

### *2.2.1 United Nations*

United Nation activities in the campaign against international terrorism, which considered as the most important organizational cooperation to suppress terrorism indicate the international awareness of importance of combating terrorism through cooperation and common actions. United Nation performance in the campaign against terrorism shaped based on preventing a developmental crisis. The organization is trying to provide a political, social context by government which prevents individuals and groups resorting to terror and different forms of it. For instance; to prevent terrorist access to nuclear material as a global threat is one

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<sup>4</sup> Ebrahimi, M, American Court of Human Rights. Baqer al Oloom Institute, 2015, p. 2-4

<sup>5</sup> Eslami, R., Eslami, B., *Analysis of some African Commission Votes on human rights*, „Journal of Legal Studies” no. 13/2009, p. 321-325.

<sup>6</sup> Jamali, H., *Qeshm International and regional organizations*. Zamzam publication, 2006, p. 18

of main tasks of united nation<sup>7</sup>.

### 2.2.2 General Assembly

Although General Assembly is lack of enough power to influence on governments and other influential factors because of its structural properties and it cannot be considered as a direct coordinator in the campaign against terrorism, due to the special international status and almost all countries' membership, is capable of creating international norms or portrays some normative approaches illegitimate. General Assembly allows the members to discuss about important issues and introduce key issues as their common ones. The General Assembly has addressed the problem of international terrorism in two ways: First defines terrorism as a common problem by designing a normative framework; secondly encourages governments to do coordinated activities in ratification of influential national and international laws in campaign against terrorism<sup>8</sup>.

### 2.2.3 Security Council

Considering terrorism as a threat to international peace and security is one of the manifestations of Security Council activation after the Cold War<sup>9</sup>. There is no doubt in cases where international peace is damaged or threaten, the Security Council can impose coercive actions or even resort to force because of its essential role. Security Council serious role in the campaign against terrorism started practically four years after the bombing of Pan Am Flight 103 in 1988 in Scotland and the murder of some American citizens by issuing resolutions 748 and 732. It seems that the most influential and the most exquisite threat to peace and security had been crystallized in resolution 748. In fact, the resolution considered as the first and the most important initiative in the process of transforming international terrorism to one of the most important threats of international peace and security<sup>10</sup>.

### 2.2.4 International Court of Justice

International Court of Justice as one of the main judicial pillars of united nation considered as one of the effective legal tools to guarantee the rights. The court has to investigate claims, including claims relating to human rights in accordance with international law and adopt an appropriate decision. It should be mentioned that the court is particularly established to resolve disputes between

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<sup>7</sup> Karimi, S., *Crisis management in terrorist incidents*, National Disaster Management Conference. Hamedan, 2008, p. 11.

<sup>8</sup> Sazmand, B., Eslami Yazdi, *Developments in international terrorism after the Cold War and evaluate the United Nations act*, „Journal of Politics” 2/2015, p. 366-368.

<sup>9</sup> Mirzaei Yangaje, S., *The evolution of the concept of sovereignty in the United Nations*, Tehran: Institute for Political and International Studies, 1994, p. 154.

<sup>10</sup> Baghaee Mahane, E., *International terrorism and United Nations Security Council*, „Strategy Journal” 21/2001, p. 102.

governments not just as the International Court of Human Rights. However, according to its universal competence; especially as it is emphasized in article 36 of the Statute; under certain circumstances, examining civil actions considered as one of the court tasks; for example, as well as the European Court of Human Rights, European Court of Justice, the Inter-American Court of Human Rights and some other international courts, International Court of Justice may handle the cases related to human rights and resolve disputes<sup>11</sup>.

### 2.2.5 International Criminal Court

The extended war crimes and exorbitant violation of human rights and crimes against humanity which seriously threatens international peace and security, and at the same time immunity from prosecution and punishment of perpetrators of these crimes because of inadequacy of domestic judicial system lead to establish the international community and the international courts for prosecution of war crimes. Statute of the International Criminal Court, which is known briefly as the Rome Statute considered as one of the most important international treaties which is approved and adopted in order to establish one of these jurisdictions; International Criminal Court<sup>12</sup>. Rome Statute ratification is the most important development of united nation after ratification of United Nations Charter, in addition the establishment of the International Criminal Court on the basis of this document can be considered as well as the most important event after the end of the Cold War.

## 3. The manifestations of terrorism

Based on the United Nations viewpoints, terrorist acts are equal to criminal acts in peacetime<sup>13</sup>. Different conventions have been predicted due to the international face of terrorist offenses. Most countries have accepted these conventions and included their themes in their domestic law. Base on the conventions, terrorism can be classified into four categories: Aerial terrorism, maritime terrorism, ground terrorism and Virtual terrorism. Although last category has not been predicted in international conventions, in some countries domestic law paid less or more attention to it. Terrorist offenses can be classified in four categories based on international conventions approach<sup>14</sup>:

1. Terrorist crimes against the security of the airspace which four conventions predicted for them: Convention on offences and certain other acts

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<sup>11</sup> Jalali, M., *Human rights decisions of the International Court of Justice*, „Justice Legal Journal” 44/2003, p. 35.

<sup>12</sup> Beygzade, E., *The United Nations, the International Criminal Court Theory and Practice*, „Journal of Legal Studies”, 1996, p. 50.

<sup>13</sup> Savari, H., *The fight against terrorism and international law, risks and opportunities*, „Journal of International Law”, 29/2003, p. 152.

<sup>14</sup> Aalipour, H., *The legal nature of terrorism, Gaza events as the case study*, „Journal of Strategic Studies”, 2/2010, p. 180.

committed on board aircraft, Signed at Tokyo on 14 September 1963, Convention for the suppression of unlawful seizure of aircraft, Signed at The Hague on 16 December 1970. The 1971 Montreal Convention for the Suppression against the Safety of Civil Aviation and Protocol annexed to the Montreal Convention in the fight against illegal activities of violence at Airports Serving International Civil Aviation adopted in 1988.

2. Terrorist crimes against the security of maritime which consists of two documents, namely the 1988 Rome Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988)

3. Terrorist crimes against the security of special individuals which New York Convention has predicted some regulations to prevent and punish crimes against individuals who are under international protection such as diplomatic agents, approved by Act of 1973. There's no clear definition of terrorist crimes neither in these convention titles or their themes.

4. General terrorist offenses; here some conventions such as the 1991 Convention on the Marking of Plastic Explosives for the Purpose of detecting them, the 1979 Convention on the Physical Protection of Nuclear Material and the International Convention against the terrorist nuclear activities adopted on April 2005 have been predicted based on terrorist offenses tools. Some other conventions including; 1979 International Convention against the taking of hostages, the December 1997 International Convention for the Suppression of Terrorist Bombings and December 1999 International Convention on Combating the Financing of Terrorism have been highlighted based on the way of committing a terrorist offense. As a whole, based on the first part of article 2 of the draft convention that was considered since 2001, every terrorist offense includes the following:

a) Anyone with any intention committing one of the following behaviors intentionally and illegally;

b) Killing a person or damaging severe physically.

c) Damage seriously to public properties including state or government facilities, public transportation systems and infrastructure and environmental facilities

d) Damaging to the above-mentioned property, places, facilities or systems that definitely or probably lead to prominent economic loss<sup>15</sup>.

#### **4. Terrorism and human rights**

Today, terrorism has a specific nature, its dimensions are widespread, its ways are constantly changing because of technological advancements and its methods and objectives are international<sup>16</sup>. What terrified the world is not the

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<sup>15</sup> Idem, p. 181.

<sup>16</sup> Tayeb, A., *Terrorism, history, sociology, discourse, rights*. Tehran: Ney Publication, 2003, p. 117

number of people killed by terrorists, but it is an unknown form of fighting which avoids speaking and is just seeking to threaten the sense of security and survival of life through consciously open and direct display of horror. So the phenomenon of terrorism threatens the sense of security and survival of rationality. This feeling of insecurity is understandable at the actor level as well as the state and government level<sup>17</sup>. As the Preamble and Article 3 of the Universal Declaration of Human Rights points out, in addition to violate the human rights which is based on life, liberty and personal security, terrorism violates the International Covenant on Economic, Social and Cultural Rights and of course the International Covenant on Civil and Political Rights in which the right to be free from fear is sharply emphasized<sup>18</sup>. In fact, terrorism directly jeopardizes the individual's rights and freedoms, in other words because of disturbing the peace and social and political stability, it can lead to deprivation of the individual's enjoyment and social security on the one hand, and on the other hand provide a circumstance to increasing violation of human rights and fundamental freedoms limitation by governments in the context of the fight against terrorism<sup>19</sup>.

In fact, terrorism and its impact on human rights is nothing new. Even before World War II efforts to demonstrate the problems caused by terrorism have taken place in the field of international law. On November 16, 1937 the League of Nations adopted the Convention on the Prevention and Punishment of Terrorism, it was the first international effort to define terrorist action and since then, the definition of terrorism has remained as the most difficult issue for all stakeholders in anti-terrorism treaties. In addition, the issue of terrorism since 1972 when 11 Israeli athletes were kidnapped and murdered during the Munich Games has always been on the agenda of the United Nations. Terrorism has a direct impact on human rights in two ways: the first is blatant interference in the fundamental rights of victims. Terrorist acts influence, particularly the right of life and physical and mental integrity, secondly a terrorist act or a terrorist threat inevitably is in conflict with the fundamental rights of citizens<sup>20</sup>. Globally accepted relevant provisions of international humanitarian; has played a significant role in solving the problems of the armed conflict through a series of restrictions on the use of violence. After World War II, one of the main reasons of making terrorism definition difficult was that resorting to "terrorism" considered as one way of war of liberation. Nonetheless, while during the diplomatic conference, the development of international humanitarian law was emphasized 1974-1977, and granting legal status (International) to these wars was accepted, but it doesn't let the individuals involved in such wars to use prohibited methods and tools in the framework of

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<sup>17</sup> Amini, V., *International law and international peace: an analytical framework for global terrorism, international law and world peace and global security*. „Journal of International Relations”, 2014, p. 109.

<sup>18</sup> Mir Mohamad Sadeghi, H., *Media terrorism*, Conference terrorism and self-defense According to Islam, 2001, p. 175.

<sup>19</sup> Baghaee Mahane, E., *Terrorism and human rights*. International Studies Tehran University Center, 2003, p. 72.

<sup>20</sup> Kargari, N., *Terrorism and human rights*. „Journal of Law”, 15/2011, p. 15

these regulations. In international humanitarian law, preserving the principle of equality of both parties which is an indispensable part of this system which shows a global consensus whereby pushing the boundaries and limits of the use of prohibited means and methods of war, even as the defense is unjustified. Now about the ban on terrorist acts at all times, even in war time, an agreement will be reached? (If yes) What are those actions? At least in the general level, international humanitarian law is clear. According to common sense; terrorist acts defined as: "Purposeless actions committed against civilians or persons and social groups due to race, culture, nationality or social or religious affiliations." International humanitarian law without any hesitation and ambiguity prohibits the attack on the civilian population as well as all acts of racial discrimination, religious etc. International Humanitarian Law does not provide a solution for out of conflict and armed conflict situations such as what is common in dictatorship; in these systems oppression citizens, their arrest and imprisonment, torture and social exclusion considered as a common practice. Rules of humanitarian law are not applicable in these situations, since the states explicitly have been removed of the inclusion of these provisions by the Additional Protocol to the 1977 national jurisdiction. The issue is too delicate that sometimes makes it difficult to discriminate the boundaries between civil wars and domestic disturbance. The underlying problems with a large number of UN resolutions concerning the fight against terrorism are obvious, because there is no discrimination between actions taken in the campaign against terrorism and violent acts committed by fighters and opposition to oppressive regimes<sup>21</sup>.

## 5. Conclusion and recommendations

Terrorism is not a new phenomenon, history is full of acts of terrorism which have committed due to various motives and taken the lives of countless innocent people and jeopardized people's rights, freedom and public safety. But today, the threat of national terrorism has become an international one, and there's a fear that by its development, human rights as the foundation of international peace and security may be at risk. It has led to highlight the terrorism and its relations to human rights seriously. In fact, after the September 11 events, United States men hasty decisions made rapid changes in domestic and international law to campaign against terrorism. The country's leadership in the campaign against terrorism can be considered as the beginning of the crisis on human rights in the 21<sup>st</sup> century. As a result; September 11 attacks and America acts, superpower's negligence to basic norms of human rights have carried a message to the international community. The message implies that the US government violated the basic belief that human rights are fundamental and should be preserved even in crisis, and showed the superiority of power over ethics and international law and human rights. Thus, in the light of changes and new approaches, the human rights

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<sup>21</sup> Savari, H., *The fight against terrorism and international law, risks and opportunities*, „Journal of International Law” 29/2003, p. 336.



have received special attention and covered wider dimensions at international level. After the September 11 attacks, the extent of counterterrorism and human rights in relation to its position led to new issues and discussions without any certain consensus among scientists. The main objective of these kinds of discussions is the campaign against terrorism.

Human rights violations in the name of fighting terrorism have weakened the efforts have been done to respond to terrorist threats and of course raises the risk of security of the citizens both in the short and long term. So it can be said that there's an inverse relationship between terrorism and human rights, hence the extended violation of basic human rights and freedom can lead to terrorism expansion. On the other hand; violence which is commonly known as terrorism may violate the human rights and freedom. The World Conference on Human Rights in the Vienna Declaration that was adopted in 1993 highlighted the terrorism risks and dangers to fundamental human rights for the first time. Subsequent resolutions in the past few years as human rights and terrorism by the UN General Assembly and Commission on Human Rights issued. Moreover, the characteristic of terrorism in the modern era is drawing people to the scene of a power struggle, abusing them in direct and indirect strategies to gain power and privilege. Physical elimination of political power known as direct strategy and Intimidation and the threat of terrorism known as an indirect one put pressure on their governments to solve the problem of terrorism. Terrorist acts directly undermine the individual rights and freedoms, because of disturbing the peace and social and political stability, on the one hand deprives the citizen of individual and social security and, on the other hand provide a situation (and in some cases excuses) to increase violation of human rights and threats the fundamental freedoms by governments. The problem to campaign against terrorism referred to the difficult situations of governments; as they have to protect their citizens against terrorism and simultaneously they have to respect the rights of their citizens too. In other words; the governments have to balance between the acts supposed to do against the terrorism and protection of human rights against terrorism, and at the same time they have to protect the human rights from government inappropriate interventions resulting from anti-terrorism acts. As a result; these pressures may lead the government to do similar terrorist actions in the campaign against terrorism, and this may seem legal. So although governments have a legitimate right to protect themselves and their citizens, they are not allowed to use similar terrorist actions such as Intimidating innocent citizens, prosecuting people who have different religious beliefs, different ethnic groups or ignoring presenting different correct viewpoints and etc. Creating balance between legitimate ways of fighting terrorism and protecting human rights is so delicate, as the purpose (human rights violation) is not justified by instrument (terrorism). In fact, failure in considering universal international laws, not only threatens our common values, but also weakens international cooperation and public support that is essential for effective anti-terrorism acts. It supports our first hypothesis. It means that the current framework of the fight against terrorism is incomplete and ineffective.

Obviously; any country interprets terrorism, according to its national interests and benefits. Conflicts of interests prevent the achievement of a comprehensive common definition, and as long as we don't have a common definition of terrorism, any action would be unfair. Since human rights are not only incompatible with fighting terrorism, but also provide a framework for the intended fight, so the campaign against terrorism won't be considered as an instrument for human rights violation. In fact, there is consensus that there's no necessity to leave the accepted standard of human rights, and most importantly; there is no Covenant on Civil and Political Rights and European Convention on Human Rights in the campaign against terrorism. So considering human rights, not only doesn't mismatch with the terrorism, but also guarantees the effectiveness of such a struggle. In this regard, as mentioned earlier; among the general resolutions, in addition to the resolutions relating to the elimination of terrorism, Resolution 912/75, entitled "The protection of human rights and fundamental freedoms while countering terrorism", which was adopted on 27 February 2003 clearly pointed out to the necessity of observing human rights in the campaign against terrorism. According to this resolution's preamble and its first article: "Reaffirms the fundamental importance of respect for all human rights and fundamental freedoms and the rule of law in response to terrorism and the fear of terrorism concedes that governments must ensure that any acts in campaign with terrorism is in accordance with their obligations, especially human rights, refugee law and humanitarian law." So, it is a fundamental fact that is often overlooked in the discourse of the campaign against terrorism and human rights. The fact is in clear and serious contrast to fight against terrorism should under no circumstances lead to the violation of human rights. Even in emergency situations which human rights violation will be possible in campaign with terrorism, again a series of conditions have been created to prevent this violation. Accordingly; anti-terrorism in every process and function should create a rational and systematic balance between threatening aspects of terrorism on human rights and human rights aspects of counterterrorism and its consequences. It can support our second hypotheses and implies that human rights and observing its rules are applicable in the campaign with terrorism and there is no excuse to be violated by governments. In general, it can be said that although human rights have been caught in terrorism and anti-terrorism limbo, it can not be considered as a permission to ignore principles. So, while you should deal completely with terrorism, but not at any price and cost, and no doubt for violation of fundamental human rights and values. To create a balance between observing human rights and the campaign against terrorism, the following strategies should be noticed:

1. The force should be emphasized less than all other means. Of course, it doesn't mean that you're not allowed to use coercion and force, but we can apply it as the last strategy.
2. If necessary, force is just applicable by the United Nations and they should refrain from arbitrary unilateral action and reaction, as it would pave human rights violations and expand the terrorists resort to attacks on civilians.

3. Discrimination between combatants and civilians in the fight against terrorism.
4. Matching the acts of terrorism fight and international law, in particular human rights, refugee and humanitarian law.
5. Promotion and protection of human rights must be at the center of a global strategy against terrorism.
6. Strengthening determination among governments, especially victim ones and strengthen further cooperation to fight terrorism.

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