

SOS POLITICAL SCIENCE & PUBLIC
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HUMAN RIGHTS (402)

TOPIC NAME-TERRORISM & THE QUESTION
OF HUMAN RIGHTS

INTRODUCTION

- Terrorism clearly became a mad violator of human rights, according to the National Human Rights Commission, in the wake of the very recent Mumbai terror attacks in which numerous people were killed. The NHRC further went on the remark that a terrorist had no religion. He does not believe in the tenets of religion because no religion preaches such insane violence. Therefore, terrorism of whatever hue must be unequivocally condemned by all. In what can be called one of India's worst terror attacks in Mumbai, militants attacked high profile landmarks, including the Taj Mahal Palace and Tower Hotel, the Oberoi Trident Hotel, Metro Theatre and the Chhatrapati Shivaji Terminus (formerly Victoria Terminus) railway station. At least 101 people, including a foreign tourist and four top police officers, were killed and over 250 injured. The crisis continued for days with terrorists holding people hostage
- in the two five-star hotels. The tug of war in between Human Rights and Terrorism becomes a matter of global concern. The welfare has always been regarded as major objective of welfare state and a ladder to social & mankind development. But development and ruin are associated with each other. It is said that if development is as old as the human being then it is along with the practice of terror which is as old as welfare and civilization itself. From ancient times to present individuals, rebel groups and government have used violence to eliminate enemies, to spread fear and alarm and to attract attention of political or religious causes.

HUMAN RIGHTS AND TERRORISM

- terrorist attacks on 11 September 2001 in New York and Washington made the fight against terrorism a top political priority for the international community. On 28 September 2001, the UN Security Council adopted Resolution 1373 under Chapter VII of the UN Charter, calling upon states to implement more effective counter-terrorism measures at the national level and to increase international co-operation in the struggle against terrorism. The Resolution created the Counter-Terrorism Committee (CTC) to monitor actions on this issue and to receive reports from states on measures taken. Following the adoption of Resolution 1373, a substantial number of states have adopted plans for further measures to combat terrorism. Security Council Resolution 1456, adopted in 2003, called on the CTC to consider human rights in its work; yet the Committee has ignored the impact on human rights of its activities in relation to repressive governments that justify human rights violations with reference to antiterrorism measures. Another issue of concern is the way entities or individuals are added to the terrorist list maintained by the Security Council. The absence of review or appeal for those listed raises serious accountability issues and possibly violate fundamental human rights norms and Conventions. The attacks on trains in Madrid in 2004 and the London transport system in 2005 reminded world leaders that terrorism poses a serious threat to the security and the lives and freedom of citizens worldwide. In Resolutions 1530 (2004) and 1611 (2005) the Security Council condemned the attacks and expressed its reinforced determination to combat all forms of terrorism, in accordance with its responsibilities under the UN Charter.

HUMAN RIGHTS & TERRORISM

- Twelve Conventions have been drafted at the UN level to deal with terrorism; recent ones are the Convention for the Suppression of Terrorist Bombings (1997), the Convention for the Suppression of Financing Terrorism (1999) and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). These Conventions and others establish that states are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts. Practically all forms of terrorism are covered by these Conventions, in addition to the Geneva Conventions and the Rome Statute of the ICC.

INTERNATIONAL HUMAN RIGHTS CONVENTIONS RELEVANT TO COUNTER- TERRORISM

- Within the United Nations human rights system, there are nine core international human rights instruments, a number of which have optional protocols which should inform State counter-terrorism law, policy and practice, as well as enable individual complaints to be made alleging human rights violations by States parties in respect of their treaty obligations. A number of these treaties are of special relevance to countering terrorism.
- Complying with these obligations requires States to develop national counter-terrorism policies, laws and practices that seek to prevent terrorism, as well as prosecute and punish those responsible for terrorist acts, in a manner that is consistent with the promotion of and respect for human rights. These activities must also include measures to prevent the spread of terrorism, including measures to reinforce human rights, prevent ethnic, national or religious discrimination, political exclusion and socio-economic marginalization, as well as measures to address impunity for human rights violations

SECURITY COUNCIL CONTROL TOURISM COMMITTEE

- Terrorism poses a serious threat, not only to international peace and security, but also to the enjoyment of human rights and social and economic development. Member States are therefore under a human rights obligation to safeguard the security of their citizens, including through effective counter-terrorism measures.
- Beginning with its adoption of [resolution 1456 \(2003\)](#), the Security Council has consistently affirmed that States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights, refugee, and international humanitarian law. More recently, the Council has underscored that effective counter-terrorism measures and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing, and constitute an essential part of successful counter-terrorism efforts. In its [resolution 2178 \(2014\)](#), the Council stated that failure to comply with these and other international obligations, including under the Charter of the United Nations, fosters a sense of impunity and is one of the factors contributing to increased radicalization.

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- With the establishment of the Counter-Terrorism Committee Executive Directorate (CTED), the Committee began moving toward a more proactive policy on human rights. CTED was mandated to liaise with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other human rights organizations in matters related to counter-terrorism ([S/2004/124](#)), and human rights experts were appointed to its staff. In the Counter-Terrorism Committee's reports to the Security Council, submitted as part of its comprehensive reviews of the work of CTED, the Committee states that CTED should take account of relevant human rights obligations ([S/2005/800](#) and [S/2006/989](#)). In May 2006, the Committee adopted human rights policy guidance for CTED. The Committee and CTED now routinely take account of relevant human rights issues in all their activities, including country visits and other interactions with Member States.
 - [Security Council resolution 1624 \(2005\)](#), which addresses incitement to commit terrorist acts, stresses that States must ensure that any measures they take to implement the resolution comply with all their obligations under international law. The resolution's preamble highlights, inter alia, the relevance of the right to freedom of expression to counter-incitement measures, and states that incitement poses a serious and growing danger to the enjoyment of human rights.

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 - In accordance with [Security Council resolution 1805 \(2008\)](#), CTED established an internal Working Group on Issues Raised by resolution 1624 (2005) and Human Rights Aspects of Counter-Terrorism in the Context of resolution 1373 (2001). The Working Group's main objectives are to enhance expertise and develop common approaches by CTED staff on human rights issues, as well as to consider ways in which the Committee might more effectively encourage Member States to comply with their international obligations in this area. More recently, in its [resolution 2129 \(2013\)](#), the Council encourages CTED to further develop its activities in the areas of human rights and rule of law, "to ensure that all issues relevant to the implementation of resolutions 1373 (2001) and 1624 (2005) are addressed consistently and even-handedly, including, as appropriate, on country visits that are organized with the consent of the visited Member State and in the delivery of technical assistance".

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- In its [Global Survey of the implementation of resolution 1373 \(2001\) by Member States](#), CTED drew attention to a range of human rights issues relevant to the implementation of the resolution. It observed, for example, that some States had proposed or enacted special measures that departed from standard criminal or administrative procedures, including by extending permissible periods of investigative or pre-trial detention or imposing limits on access to counsel. CTED also noted that United Nations human rights mechanisms had expressed concern that such provisions might not comply with States' international human rights obligations.
 - Since its inception, the Counter-Terrorism Committee has been regularly briefed by the High Commissioner for Human Rights (including former High Commissioners Mary Robinson, Sergio Vieira de Mello, and Navanethem Pillay), as well as by the Vice Chairman of the United Nations Human Rights Committee and the Special Rapporteur of the United Nations Human Rights Council, on the promotion and protection of human rights while countering terrorism. OHCHR has submitted notes to the Committee on the human rights obligations of States in the context of counter-terrorism, and regularly liaises with CTED on a number of issues. CTED also works closely with the Counter-Terrorism Implementation Task Force (CTITF) as a member of its Working Group on Human Rights and Rule of Law

THE ROLE OF THE COURTS

- Judicial scrutiny ensures that justice is being seen to be done; an objective that is particularly important in light of the growing sense of alienation and distrust of authority in the Muslim community.
- So far I have focused on the need for adequate checks and balances on the exercise of the new executive decision-making powers. These safeguards are important because the new powers operate outside the framework of the criminal justice system.
- The criminal justice system on the other hand already contains many built in safeguards – like the laws of evidence – which help ensure that no matter how heinous the crime the alleged offender will get a fair trial

INTERNATIONAL ACTS OF TERRORISM

- This involves types of terrorism which occur beyond the jurisdiction of a country. Alexander and Gleason⁵⁵ define international acts of terrorism as: Terrorist activities may be regarded as international when the interests of more than one state are involved, for example, when the perpetrator or the victim is a foreigner in the country where the act is done or the perpetrator has fled to another country. International acts of terrorism have clear international consequences. These acts include incidents where terrorists cross national borders to strike foreign targets, select victims or targets because of their connections to a foreign country (for example, diplomats, local executives), attack airliners on international flights, or force airliners to fly to other countries .

TRANS-NATIONAL ACTS OF TERRORISM

- In other words, perpetrators of trans-national terrorism generally overcome traditional national differences by concentrating on a common goal of achieving social change, under the banner of personal beliefs, through violence. These individuals may not consider themselves to be citizens of any particular country, but instead seek common political, social, economic or personal objectives that transcend nation or state boundaries. The World Trade Centre bombing may be considered as an act of trans-national terrorism, because of the different nationalities of the terrorists involved. The suspected bombers included Egyptians, Iraqis, Jordanians, Palestinians and US citizen

COUNTER TERRORISM IN DEVELOPED COUNTRIES

- This section provides an overview of counter terrorism approaches in developed countries. The countries identified are the United States of America (US), the United Kingdom (UK) and Russia. Their approach to terrorism will be analysed with the underlying aim of determining aspects that have been successful in countering terrorism. These three countries are considered superpowers within the international arena, as they command enormous political and economic influence within the multilateral fora. Both the US and the UK have been victims of recent devastating acts of terrorism on their home soil. Russia, as well, has a persistent history of terrorism originating from the Chechnyan struggle. The experiences of the above-mentioned countries, which have both the resources and the expertise to counter the terrorist threat, may provide valuable insights on ascertaining relevant and appropriate counter terrorism strategies.

THE EFFECT OF NEW COUNTER-TERRORISM LAWS

- Five years after September 11, Australia now has a web of counter-terrorism laws which deliver unprecedented new powers to the executive and create a tough new range of offences which criminalises anyone who is knowingly or recklessly involved in preparing or planning a terrorist act.
- While there have been reviews of the operation of particular aspects of the new laws, most notably the recent Sheller Inquiry, there has been no regular and independent analysis of the overall operation of Australia's counter-terrorism regime.
- I believe regular and independent review is vital given the potential of some laws to disproportionately curtail fundamental human rights like the right to liberty and the right to a fair trial.
- The importance of independent review is only exacerbated by the lack of adequate judicial review mechanisms for some of the new executive decision making powers and the inability of a person to test these laws against the human rights standards set out in a Bill of Rights.
- One option is to have an 'Independent Reviewer' based on the United Kingdom model. The Independent Reviewer reviews the operation of UK counter-terrorism laws including an annual review of the implications of any amendments proposed by the Secretary of State on the operation of the existing laws.

BALANCING HUMAN RIGHTS AND NATIONAL SECURITY

- Despite the practical utility of integrating human rights principles into counter-terrorism strategies there is a persistent and popular misconception that international human rights laws are inflexible, esoteric principles which hamstring government efforts to effectively respond to danger.
- This idea that human rights are antithetical to national security fails to recognise the fact that international human rights law was forged in the wake of devastating periods of global conflict and already strikes a balance between security interests and the rights which are considered fundamental to being human.
- It recognises that sometimes individual rights need to be balanced against the need to protect collective security. For example, article 12 of the ICCPR which protects the right of freedom of movement can be subject to restrictions to protect national security if – and this is the important qualification – the restriction in question is the least intrusive means of effectively protecting national security..

BALANCING HUMAN RIGHTS AND NATIONAL SECURITY

- It recognises that sometimes individual rights need to be balanced against the need to protect collective security. For example, article 12 of the ICCPR which protects the right of freedom of movement can be subject to restrictions to protect national security if – and this is the important qualification –the restriction in question is the least intrusive means of effectively protecting national security. In other words, international human rights law permits protective actions to be taken by states but demands that those actions be necessary and proportionate to meet the gravity of the threat. This approach was adopted by the Sheller Inquiry, who accepted HREOC's submission, that counter-terrorism laws must be proportionate to the aim of achieving national security.
- Article 4 of the ICCPR also envisages that human rights may be justifiably infringed by States in times of public emergency, although to date Australia has not sought to rely on Article 4. Of course some rights – including the right to life and the right not to be subject to torture - cannot be suspended in any circumstances. The Article permits derogation from key human rights protections – like the right to liberty and the right to freedom of association –'in times of public emergency which threatens the life of the nation

BALANCING HUMAN RIGHTS AND NATIONAL SECURITY

- In 2004 the House of Lords accepted that the threat of terrorism may constitute a 'public emergency'. However, it also emphasised that 'measures taken by a member state in derogation of its obligations under the Convention should not go beyond what is strictly required by the exigencies of the situation'.
- So ultimately the litmus test for the human rights compatibility of counter-terrorism is proportionality. While the concept of proportionality may sound like a vague, malleable creature, offering only rhetorical comfort, International human rights law has posed a practical test: is the limiting measure the least restrictive means of achieving the relevant purpose?

THANK YOU

