

Report Part Title: TERRORISM AND HUMAN RIGHTS

Report Title: TERRORISM AND HUMAN RIGHTS

Report Subtitle: THE PERSPECTIVE OF INTERNATIONAL LAW

Report Author(s): DAVID P. STEWART

Published by: Middle East Institute (2018)

Stable URL: <https://www.jstor.org/stable/resrep19954.9>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

*Middle East Institute* is collaborating with JSTOR to digitize, preserve and extend access to this content.

# PART III. TERRORISM AND HUMAN RIGHTS

How do these separate but related bodies of international law interact with each other?<sup>20</sup>

## 1. TERRORISM AS A VIOLATION OF HUMAN RIGHTS

If one accepts that terrorism involves the use of politically-motivated, fear-generating violence to commit criminal acts aimed at harming innocent individuals for the purpose of coercing governments or societies to take or refrain from action, then it clearly violates —indeed, is precisely intended to violate —fundamental human rights (and, more generally, the very concept of rule of law).

By committing acts of terror, terrorists by definition attack the values at the heart of the Universal Declaration of Human Rights, the two Covenants, and other international instruments, in particular many “first generation” rights (such as the rights

to life, liberty and physical integrity) but also second and third generation rights.

Moreover, terrorist acts can be distinguished from “ordinary” crimes precisely because they are aimed at destabilizing Governments, undermining civil society, jeopardizing peace and security, and threatening social and economic development, all outside “normal” political and legal channels and in defiance of the law.

The destructive impact of terrorism on human rights and security has repeatedly been recognized by the United Nations. Consider, for instance, the preamble to UN Security Council Resolution 2396 (adopted Dec. 21, 2017):

*Reaffirming* that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever, wherever and by whomsoever committed, and remaining determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level,

*Reaffirming* that terrorism poses a threat to international peace and security and that countering this threat requires

collective efforts on national, regional and international levels on the basis of respect for international law and the Charter of the United Nations,

*Emphasizing* that terrorism and violent extremism conducive to terrorism cannot and should not be associated with any religion, nationality, or civilization...<sup>21</sup>

As a matter of contemporary international law, States have an affirmative duty to protect individuals under their jurisdiction against interference in the enjoyment of their human rights, in particular the right to life and the right to security. These rights have been described as “preeminent” rights because without them all the other rights would effectively be meaningless. In many respects, terrorism aims to undermine the ability of governments and governmental entities —and perhaps more importantly, the *confidence* of the population in that ability —to safeguard society in precisely this fundamental respect. Perhaps more directly, acts of terrorism violate the rights of individual victims, who suffer an attack on their most basic right to live in peace and security.

Increasingly, support for the victims of terrorism has become an important aspect of international focus. In the 2005 World Summit Outcome (General Assembly Resolution 60/1), for example, Member States stressed “the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.” Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to “promote

international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation.” In one sense, the failure of governments to provide assistance and relief to victims of terrorism may well be described as a human rights violation itself.

## 2. TERRORISM AS A CONSEQUENCE OF HUMAN RIGHTS VIOLATIONS

Terrorism is not a single phenomenon. It comes in many varieties. Nor is it generated by a single “cause” but can arise from a variety of circumstances and motivations which differ (in nature, impact, and extent) from situation to situation. In many instances, those circumstances and motivations involve real or perceived human rights violations.

Among the commonly-cited conditions that make terrorism possible or likely (“precursors”) are extreme poverty, social exclusion, and economic privation; religious and ethnic prejudice and discrimination; political repression and denials of due process; communal alienation; and lack of education, employment opportunities and social services. Without question, political objectives and ideological orientation have frequently played important roles (i.e., desire to end foreign occupation or outside interference, to overthrow or promote a particular form of governance) as have

religious factors (belief in the superiority of one's faith or in commandments from the Deity).

Yet it seems clear that in many if not most circumstances the conditions that create susceptibility to radicalization, that make terrorist violence against innocent civilians appear to be a reasonable, justifiable and even necessary option, themselves reflect human rights violations. It is not simply that people choose terrorism when they are just trying to correct what they perceive to be social, political or historical injustices, but perhaps more likely when they have (or perceive they have) no other options, when they feel excluded from other ways of achieving their desired changes. Terrorism appeals to individuals and groups denied fundamental human rights (for example, those subjected to oppressive and authoritarian regimes) *because* they have no alternatives. Deprivation of human rights unquestionably fuels that sense of alienation and exclusion that is often used to justify terrorist acts.

Of course, more personal factors - marital difficulties, broken relationships, recent loss of employment, mental health problems, etc. - can all be "triggers" in specific instances. It is also surely the case that some individuals who become terrorists have certain predispositions or psychological traits conducive to violent or anti-social behavior. Many are drawn to emulate what they see as the heroic feats of others. It may also be true that a "tyrannical mindset" does exist in some segment of every population, and perhaps it does take "monstrous people

to produce atrocious deeds."<sup>22</sup> Without question, violent crime occurs even in the most human-rights compliant societies. Compliance with international human rights obligations cannot prevent all acts of violence or terrorism.

Yet it also seems true that recruitment by international terrorist groups is aided by deeply-felt grievances nurtured by poverty, foreign occupation, and the absence of human rights and fundamental freedoms, as well as the lack of means of redress "within the system." Democracy may be neither a necessary nor sufficient bulwark against terrorism (even from within) but it certainly seems that the social and political communities that are most compliant with human rights norms tend to suffer the least from domestic ("home grown") terrorism. It also appears that improvements in domestic human rights conditions tends to reduce the level of terrorist violence.

### **3. HUMAN RIGHTS IMPLICATIONS OF COUNTER-TERRORISM**

At the same time, some measures to counter or prevent terrorist acts can themselves pose serious challenges to the protection and promotion of human rights —both for the perpetrators and for the population at large. The declaration of the "Global War on Terror" in the wake of the 9/11 attacks, which led to the use of torture and other "enhanced interrogation techniques" and to such practices as "irregular rendition" and prolonged



incommunicado detention at Guantanamo, put this aspect of the relationship between human rights and terrorism squarely before the international community. It has since become a dominant theme in the international consideration of terrorism.

The UN General Assembly has repeatedly emphasized that the rights of the alleged perpetrators of terrorist attacks must be respected in the course of their apprehension and prosecution, including their rights to public trial, to be presumed innocent until proven guilty, and not to be subject to torture or other degrading treatment. For example, in adopting its fundamental “Global Counter-Terrorism Strategy” in 2006, the UNGA reaffirmed that “the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the protection of

human rights are not conflicting goals, but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism.”<sup>23</sup>

To the same effect, the 2009 UNGA resolution on the “protection of human rights and fundamental freedoms while countering terrorism” stressed “the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law.” It emphasized that “Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law” and underscored that “respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing

with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism." Finally, it noted that "failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization to violence and fosters a sense of impunity."<sup>24</sup>

The UN Security Council echoed these principles in a recent anti-terrorism resolution, reaffirming that "Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law." It also stressed that "[r]espect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort," noted "the importance of respect for the rule of law so as to effectively prevent and combat terrorism." and said that "failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization to violence and fosters a sense of impunity."<sup>25</sup>

These principles have become embedded in the expanding UN structures for dealing with terrorism and counter-terrorism. The Security Council's Counter-Terrorism Committee, established in 2001,

emphasizes that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law, including coordination with the Office of the UN High Commissioner for Human Rights.<sup>26</sup>

Within the UN Secretariat, an Office of Counter-Terrorism headed by an Under-Secretary General was recently established<sup>27</sup> to assist Member States in implementing the UN Global Counter-Terrorism Strategy. It will evidently combine the functions of the pre-existing UN Counter-Terrorism Implementation Task Force and the UN Counter-Terrorism Centre. Among its mandates is preventing violent extremism in accordance with the 2006 Global Counter-Terrorism Strategy (thus ensuring emphasis on compliance with human rights norms).

The newly-appointed Special Rapporteur of the UN Human Rights Council on "the promotion and protection of human rights and fundamental freedoms while countering terrorism," Fionnuala Ní Aoláin, indicated in her recent report to the UN General Assembly that she will focus on four substantive areas: (1) the proliferation of permanent states of emergency and the normalization of exceptional national security powers within ordinary legal systems; (2) the need for greater clarity in respect to the legal relationships between national security regimes and international legal regimes (human rights, international humanitarian law, and international

criminal law) as well as the relationship of human rights to the emergence of stand-alone international security regimes regulating terrorism and counter-terrorism; (3) the advancement of greater normative attention to the gendered dimensions of terrorism and counterterrorism; and (4) advancing the rights and protection of civil society in the fight against terrorism.<sup>28</sup>

The same themes are being given attention in other international bodies. On July 6, 2017, the European Parliament set up a special 12-month committee on the impact of EU anti-terror laws on fundamental rights.<sup>29</sup> Within the OSCE's "human dimension" component, attention has long been paid to the relationship between the need for security in response to terrorism and the risks that counter-measures can pose for fundamental rights and freedoms, including the rights to a fair trial, to privacy, and the freedoms of association and of religion or belief. Participating States have pledged under a "Plan of Action" to fully respect international law, including the international law of human rights, in the development and implementation of their counter-terrorism initiatives. A very useful discussion of the issues can be found in the OCSE's Manual on Countering Terrorism, Protecting Human Rights.<sup>30</sup>

## **PART IV: TERRORISM AND OTHER ASPECTS OF INTERNATIONAL LAW**

### **1. TERRORISM AND INTERNATIONAL REFUGEE LAW**

Alongside the specific obligations of human rights law, international refugee law provides a set of principles that have increasingly become relevant to the effort to combat international terrorism, particularly with respect to crimes committed in European and other states of refuge for persons fleeing the conflicts in the Middle East.

The basic international instruments are the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which taken together define the term refugee to denote an individual who is outside his or her country of nationality or habitual residence and is unable or unwilling to return due to a "well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group." As a technical legal matter, the definition excludes those who are economic migrants or victims of natural disasters or violent