

Human Rights Protection and Counter Terrorism Measures under United Nation Conventions and Resolutions

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要 旨

2001年9月11日の米国同時多発テロは、国際テロリズムに対する国際的対応を変化させる契機となった。テロリズムの概念は古くから存在しており、各国の国内において対策がなされてきた部分が存在する。しかし、グローバル化に伴いテロリズムは国境を越えた動きとして見られるようになってきている。また、非国家主体によるテロ活動が議論の中心となっているが、歴史的には国家テロリズムが存在していたことも想起される。

本稿では、2001年以前及びそれ以降の国際的なテロリズムに対する動きを、安全保障理事会や総会によって採択された決議及び条約を手がかりに検討する。同時に、テロ対策の実施に際しては、人権の観点からの考慮が求められているので、この観点からの序論的考察を併せて可能な限り行い、今後の研究の一助とするものである。

Keywords: Human Rights, Terrorism, UN Convention and Resolution on Human Rights and Counter Terrorism Measures.

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Appendix

I. Introduction.

The terms “Human Rights” and “Terrorism” are two opposite terms that were in the spotlight, in particular after September 11, 2001. The former refers to the rights of human beings to live with dignity. Conversely, the latter represents an attack against human values. These terms seem contradictory but are often used at the same time. According to the UN Secretary General’s Report¹ which provides, for example, the UN and States’ counter-terrorism measures shall be consistent with human rights obligations.

Terrorism in the international sphere is a recent phenomenon, especially after 9/11. The incident in 2001 has made international terrorism a terrifying action, an asymmetric and concrete threat to the international community. However, far before 9/11, terrorism has been familiar to the process of human civilization in one way and another.²

According to Hans Morgenthau, the desire for power is rooted in nature of man³. The struggle for power arises because people want things and not necessarily because of the evil in their desires. Ultimately, conflict and war are rooted in human nature. Also, from Hedley Bull’s point of view, represented in his book “the Anarchical Society”, the element of war and power among states in the international system merged because of a sense of common interest in elementary goals of social life, as well as the element of transnational solidarity and conflict, cutting across the divisions among states.⁴

Taking the severe consequences of the terrorism action on September 11, 2001 as “the darkest episode” in human history, the United Nation (UN) come to recognize that terrorism destroys the human rights of the people to be free in life, and free from fear, since Human Rights presuppose a recognition of the dignity and values of human beings. Human Rights became a legitimate international concern after World War II. The protection of Human Rights is one of the main objectives of the UN, and UN General Assembly adopted the Universal Declaration of Human Rights in 1948. The resulting 1948 Universal Declaration of Human Rights, together with two UN Covenants (1966 International Covenant on Economic, Social and

Cultural Rights (ICESCR), and 1966 International Covenant on Civil and Political Rights (ICCPR), are, as a whole called the “International Bill of Rights”.

In the regional system for the protection of Human Rights, we can find the European Convention of Human Rights (1950), the Inter-American Convention on Human Rights (1969), and the African Convention on Human and People’s Rights (1981). These Conventions provide their own monitoring bodies: the European Court of Human Rights, the Inter-American Court of Human Rights as well as Inter-American Commission on Human Rights (both are OAS organs), and the African Commission on Human and People Rights.

The main objective of the present article is to examine the Human Rights protection toward terrorism, especially since September 11, 2001, a major turning point’s toward the treatment of terrorism. Obviously, there are some counter terrorism measures before 2001, but they still need some improvements in ensuring Human Rights while fighting against terrorism.

The present article will deal with six points. Parts II deals with the history and definition of terrorism, and compare concepts such as freedom fighter and terrorism. It also touches another aspect of terrorism, the role of state in terrorism. This part is the most important one since we will understand the definition of terrorism in its current meaning and dynamism by acknowledging the historical background of terrorism.

Part III examines UN Conventions and/or Resolutions on Counter Terrorism. This part will try to explore UN anti-terrorism measures over the years. The present article will attempt to analyze how the UN Conventions/Resolutions guidelines and measures may affect over the case, finding the best ways.

Next, Part IV addresses the issues on terrorism before and after 2001 in connection with globalization. After the attacks of September 11, 2001, the counter-terrorism measures tend to be recourse to military action, and the violating of fundamental rights. They involve the rights of those who are suspected of terrorism action (right to fair trial, property, remedy, prohibition of torture, inhumane, and degrading treatment), as well as the rights of victim (right to health, property, freedom of movement). This part also illustrates the connection between globalization and terrorism.

Part V deals with the new paradigm concerning terrorism; the interplay between International Criminal Law, International Humanitarian Law, and International Human Rights Law. This part also shows a unique characteristic of terrorism, when compared with the application of three kinds of International branches. The complexity of terrorism lies in its nature. It should be borne in mind that there are many

considerations to consider the meaning, the consequences, and the implementation of terrorism.

Finally, the present article concludes with some preliminary considerations on how counter-terrorism measures can achieve its equilibrium between fighting against terrorism and respecting Human Rights.

II. History and Definition: Terrorism, Freedom Fighter, and State/Non State Terrorist.

2.1. History of Terrorism

In order to understand the historical background of terrorism movement, we shall look back on how historical records treated it in the past. Mostly, today conflicts are seeking to maintain the *status quo* and “those” (the actor) are trying to destroy it⁵. Further, the origin of terrorism is a state action, during the French Revolution. It was the “reign of terror” instituted in 1793, which followed the popular overthrow of the monarchy⁶. The French and American Revolutions unleashed the idea that people could overthrow tyrannical regimes. When Woodrow Wilson pronounced the end of Age of Empires and the dawn of that of Nations, some said that he used it against his enemies in War World I to dismember the Austro-Hungarian and Ottoman Empires⁷.

Nevertheless, we should distinguish between the historical meaning of “terrorism” and “revolution”. In the past, revolutions are treated as a just action against tyranny or oppression, even when violence involved. Armed resistance against Nazi Germany during World War II or the targeted use of violence in the struggle of national liberation movements against oppressive colonial rule are two instances where a right to resistance has been met with approval also by the international community.⁸

The use of the right of resistance is the current ongoing discussion on UN reform. According to the Report of the Secretary General “In larger freedom: towards development, security and human rights for all. Follow up to the outcome of the Millennium Summit”, the right of resistance “should be understood in its true meaning and not including any right to deliberately kill or maim civilians”.⁹ In other words, the right of resistance is a notion that provides moral, political or judicial legitimacy against an oppressive regime. It cannot be invoked as a justification for international use of force, or even terrorism act.¹⁰

In light of a historical perspective, we can say there is a conceptual difference between terrorism

and revolution (the right resistance) as described earlier. At the same time, we should be aware of a danger on the use of the term “terrorism”. A State may use force to invade other countries or to oppress their people under the name of “counter-terrorism measures”.

2.2. Definition of Terrorism, Freedom Fighter, and State/non State Terrorist.

As mentioned in the earlier part, terrorism is a crime against basic human rights, as well as against international peace and security. Now, there is no agreed definition of “terrorism” in the international sphere. The definition tends to rely heavily on who defines it and for what purpose (for political or other social purpose). The Convention of the Organization of the Islamic Conference for combating International Terrorism (article 2) affirms that people must not misrepresent terrorism and the fight for self determination¹¹.

Yet, to identify deeper definition of terrorism, we explore the word “terrorism” itself (it comes from a Latin word “terrere”, which means “to frighten”). The word, through French in the fourteenth century, was first used in English in 1528. Terrorism gained its political connotations from its use during the French Revolution. Terrorism was initially associated with state actors following its application in the French and Russian anarchies of the 1880s and 1890s¹². The meaning of terrorism shifted once again in the twentieth century. Nazi and Fascist regimes, in the 1930s, re-established the connection between state-sponsored violence and terrorism.¹³

State terrorism is characterized as the kidnapping and assassination the political opponents of the government, imprisonment without trial, torture, massacre of racial or religious minorities or of certain social classes, incarceration of citizens in concentration camps, and generally speaking government by fear¹⁴. These acts were conducted by State organs such as the police, the secret service, and the army.

The issue of terrorism reached the turning reaction of international institution (the UN Security Council, the Commission on Human Rights, and Sub-Commissions)¹⁵, at least until September 2001. The effort to define terrorism did not fully succeed. Some have argued that terrorism is a subjective term. “One man’s terrorist is another man’s freedom fighter¹⁶”. It might reflect more a political challenge than a legal or semantic challenge to achieving this goal. In the meantime, it is an element in a strategy, not an end in itself¹⁷. Most cases showed it as a matter of fact.

In the report, “A more secure world: our shared responsibility”, issued by the UN High level Panel on Threats, Challenges and Changes, suggests an elaboration of a comprehensive text on terrorism in which

definition of terrorism should be based on the following elements¹⁸:

- (a) Recognition, in preamble, that States use of force against civilian is regulated by the Geneva Convention and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;
- (b) Restatement that acts under 12 preceding anti terrorism conventions are terrorism, and a declaration that they are a crime under International Law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;
- (c) Reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council Resolution 1566 (2004).

In conclusion, due to lack of consensus and no agreeable definition of “terrorism” in the international sphere, the present article would refer to the terrorism definition constructed by the UN Conventions and Resolutions on anti terrorism measures.

III. The United Nation Conventions and Resolutions on Counter Terrorism Measures and Human Rights Protections.

3.1. The United Nation Conventions & Resolutions Concerning Counter Terrorism Measures.

As mentioned above, terrorism severely undermines basic human rights, international peace and security. The terrorist attack on September 11, 2001 was a new cornerstone in the fight against international terrorism. But the international community was dealing with the issue long before than that¹⁹.

Even before 2001 attacks, UN Security Council already associated terrorism with threats to international peace and security (article 39 on the UN Charter). For instance, in the Lockerbie case²⁰, sanctions²¹ against Libya²² (Resolution 748 and 883, see the appendix below), against Sudan (Resolution 1591, see the appendix below), and then against the Taliban regime and Al Qaeda (Resolution 1267, see the appendix below). Overall the General Assembly has adopted up to 45 resolutions²³ (see the appendix below).

However, whether states can use force against terrorist based in another country is much discussed.²⁴ The relevant provisions of the UN charter do not provide a conclusive answer.²⁵ The UN

Charter lays down a guide on these debates. Article 2 (4) of the UN Charter obliges member states “to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the Purpose of the United Nations”.

In article 42 and 51, the Charter recognizes two exceptions to this prohibition: forcible enforcement measures within the framework of the organization’s collective security system, and the rights of self defense against armed attacks.

The Security Council Resolution 1368 (2001) acknowledged that the act of September, 11, 2001 as an “armed attack”, constituted as a threat to international peace and security, and also recognized the “inherent rights of individual or collective self-defense in accordance with Charter”. As already pointed out in the earlier part, there are several changes in fighting against terrorism since September 11, 2001.

Such a change can be summarized as follows;

1. The concept of “terrorism” started to expand from the internal sphere to external one. It also came to include non-state actors.

As a result, this movement conveys other consequence related to the “statist” nature of Human Rights Law²⁶, especially a question on whether a victim can submit a petition alleging his or her violation on a terrorism attack. Such a petition poses some difficulties;

- (a). Only States can be parties to Human Rights Convention.
- (b). Only States can be subject to treaty-based complaints by individuals or groups.
- (c). Only States can submit a periodic report on the implementation of the seven principal UN Human Rights Convention.
- (d). There is no mechanism of accountability under existing Human Rights Convention through which a claim alleging a violation by non-state actor can be considered.

Nevertheless, the UN Human Rights Committee’s latest decision comes to a conclusion that a State has an obligation to respect and ensure the individual’s rights to the security of her/his against violent acts by non state actors of terrorism.

2. Human Rights Watch states many problems of anti-terrorism action. Many countries around the world cynically attempted to take advantage of this struggle to intensify their own crackdown on political opponents, separatists and religious groups, or to suggest they should be immune from criticism of their human rights practices²⁷.

If we take a look at the UN Conventions concerning the counter-terrorism measures before and

after 2001, we notice a fact that the UN General Assembly has adopted thirteen International Conventions from 1963 to 2005 on this matter. There is one Convention adopted after 2001, namely Convention Suppression of Acts of Nuclear Terrorism in 2005, which entered in force in 2007 (see Table I).

Table I: International Convention Concerning Terrorism.

No	Convention	Year Adopted	Enter in Force	States Status; Signature : Party
1.	Offences and Certain Other Acts Committed on Board Aircraft,	Tokyo, 14/09/1963	4/12/1969	40 : 185
2.	Suppression of Unlawful Seizure of Aircraft	Hague, 16/12/1970	14/10/1971	76 : 185
3.	the Suppression of Unlawful Act Against the Safety of Civil Aviation,	Montreal, 23/09/1971	26/01/1973	59 : 188
4.	Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	New York, 14/12/1973	20/02/1977	25 : 172
5.	Against the Taking Hostages	New York, 17/12/1979	3/06/1983	39 : 167
6.	The Physical Protection of Nuclear Material	Vienna, 3/03/1980	8/02/1987	45 : 142
7.	The Suppression of Unlawful Acts against the Safety of Maritime Navigation	Rome, 10/03/1988	1/03/1992	154
8.	The Protocol to that Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf,	Rome, 10/03/1988	1/03/1992	143
9.	The Protocol for the Suppression of Unlawful Acts for Violence at Airports Serving International Civil Aviation, Supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Montreal, 24/02/1988	6/08/1989	68 : 169
10.	The Marking of Plastic Explosives for the purpose of Detection.	Montreal, 1/03/1991	21/06/1998	50 : 141
11.	Suppression of Terrorist Bombing	New York, 15/ 12/1997	23/05/2001	58 : 164
12.	The Suppression of Terrorist Financing	New York, 9/12/1999	10/04/2002	132 : 171
13.	The Suppression of Acts of Nuclear Terrorism	New York, 13/04/2005	7/07/2007	115 : 58

Sources: UN Convention on Terrorism.

The scope of these treaties include nearly fifty offences, including ten crimes against civil aviation, some sixteen crimes against shipping or continental platforms, a dozen crimes against people, seven crimes involving the use, possession or threat of the use of bombs or nuclear materials and two crimes concerning financial terrorism²⁸.

The principal obligation set forth in these treaties is to incorporate these crimes into domestic criminal law, and to make them punishable by judicial decisions in a way which reflects the gravity of the offence. The state parties to the treaties also agree to participate in the construction of “universal jurisdiction” over these offences, that is, to take the necessary measures to give their courts a broad jurisdiction over the offences in question.

In addition, they accept an obligation to either extradite any suspected offenders found in their territory or to begin criminal proceedings against them (principle of “*aut dedere, aut judicare*”). These treaties invariably provide the offences in question shall not be considered political offences, which are not extraditable under most treaties of extradition. Further, these treaties require various types of cooperation among state parties, ranging from cooperation in the prevention of terrorist acts to cooperation in the investigation and prosecution of the relevant offences.

Most of these treaties also contain some dispositions on the protection of human rights²⁹. Such dispositions can be divided into three parts: (1) General positions which indicate that the obligations set forth in the treaties are without prejudice to other international obligations of the state parties. (2) The rights of accused or detained persons to due process, and (3) Conditions regarding extradition and the transfer of prisoners (*cf.*, article 9 of 1973 Convention on Internationally Protected Persons).

Similar provisions can be found in the 1979 Convention against hostage taking (article 9), the 1979 Convention on Nuclear Material (article 12), and the 1988 Convention on Maritime Navigation (article 7 (3)). The 1997 Convention against Terrorist bombings (article 7 (3)) and the 1999 Convention against the financing of terrorism contain more comprehensive formula (article 9 (3) *cf.*, article 36 (b) of the Vienna Convention on Consular Relations).

With regard to the right of asylum, the saving clause contained in the 1973 Convention on Internationally Protected Persons (article 12) and the 1979 Convention against Hostage Taking (article 15) provide that “the provisions of this Convention shall not affect the application of the treaties on Asylum, in force as the date of the adoption of this Convention, as between the States which are parties to those Treaties”.

The 1979 Convention against Hostage taking also contains an important provision which reaffirms the principle of *non refoulement*, a cornerstone of international refugee law (article 9, *cf.*, article 31 (1) of Convention relating to Refugees). The 1997 Convention against Terrorist Bombings and 1999 Convention against the Financing of Terrorism extend this principle in the field of the mutual legal assistance.

Recent treaties (article 13 of 1997 Convention against Terrorist Bombing, article 9 of 1999 Convention against the Financing of Terrorism) also contain a provision which in effect prohibits a practice known as “rendition”³⁰ and “extraordinary rendition”³¹, which links to torture, denial of access to competent courts, and other human rights violations have been documented.

Meanwhile, there are numerous General Assembly Resolutions since 1970s. The Commission of Human Rights also asserts that terrorism threatens or destroys basic human rights and freedom, particularly life, liberty, but also civil, political, economic, social and cultural rights.

3.2. The UN Conventions and Resolutions Concerning Human Rights Protection and its Implementation by State.

International law since World War II (WWII) has been built upon a respect for human rights, the sovereignty of nation states, and the non use of force. One of the largest innovations in international law after WWII was the inclusion of Human Rights, embodying the ideas specified in the Universal Declaration of Human Rights in the form of various international human rights conventions.

At the same time, we can point out a proliferation of international non-governmental organizations of humanitarian nature, such as Amnesty International, the International Committee of the Red Cross, the International Commission of Jurist, the Minority Rights Group, the International League of Human Rights and numerous others.

During the 70s and 80s, Human Rights Organizations have developed their techniques for confronting the use of terror by governments of any kinds. In fact, Human Rights Non-Government Officials (NGOs) focused on the state role as a human rights violator and defined a limited role for themselves in relation to terrorism by non state actors.

The principles of self determination and decolonization in the 1960’s have led Third World states into independent. But, at the same time they subjected many populations to unstable and illiberal regimes which often use their sovereign rights to deny or at least neglect human rights³².

According to Amnesty International, this situation requests a comprehensive program, including independence institutions and procedures for controlling police, military personnel, prison officials, and other agents of state. The citizen must be aware of their rights and know how to complain when these rights are infringed. International aid is allocated to promote such programs.³³

Some states have been prepared to make the international legal commitment to human rights but numerous states have not yet internalized the obligation and developed the institutions to nurture it. States have not yet wholly assimilated. In fact, they have understood an international obligation to respect the rights of their citizens. The act of torture or a denial of due process is a violation of international obligations. However, both violating state and non states have not yet fully shed the traditional attitude that conditions inside the state, including how the states treats its own inhabitants, are no one else's business³⁴.

For these reasons, the international law has developed some special enforcement machinery. The machinery is established by particular human rights agreements, such as the Human Rights Committee under the Covenant on Civil and Political Rights, the Committee on Racial Discrimination under the Convention on the Elimination of All Forms of Racial Discrimination, the Committee Against Torture under the Torture Convention, and the Committee on Discrimination Against Women under the Convention on the Elimination of All Forms of Discrimination Against Women.

There is also a political system for developing Human Rights standard within UN bodies, namely the General Assembly, Economic, Social, and Culture (ECOSOC), and in particular, the Commission of Human Rights. These are sometimes seen as political, not legal bodies, but they invoke norms, including the UN Charter provisions, and are properly seen as a part of the monitoring system. Non Governmental Organizations, such as Human Rights NGOs as well as the media, play an increasingly important role in human rights law.

The basic elements of the monitoring system are as follows. State parties to the Human Rights Conventions submit a report to the committee of experts at the regular intervals or at the request of the committee. The committee examines the reports, holds an open meeting with state representatives, and makes concluding observations for each country. It also expresses its general comments as it may deem appropriate, and issues general reports on its activities.

The UN System has emphasized that Human Rights norm must be rigorously respected, even in a state emergency. For the Office of the High Commissioner for Human Rights (OHCHR), protecting the Human Rights in the context of counter terrorism measures is the first thing to achieve. The OHCHR stressed

that, in accordance with the International Covenant on Civil and Political Rights (ICCPR) and pursuant to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, certain rights are “non-derogable”, meaning they can not be suspended, not even in time of emergency.³⁵

In this connection, the Security Council’s efforts to protect Human Rights while fighting against terrorism is guided by Resolution 1456 (2003) adopted at the level of Ministry of Foreign Affairs (see the appendix). It declared that “States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular human rights, refugee, and humanitarian law”³⁶. This sweeping statement shifts the burden of proof that the anti terrorism measures are consistent with other rules of international law³⁷. Regardless of the Security Council’s Resolution consistency *per se* with international law, states are under an obligation to make sure that their national measures does not violate international law³⁸.

The implementation of counter terrorism measures brings other consequences. There are some examples of rights which may be affected by such procedures. Thus, the important aspects of anti-terrorism measures have proven controversial, debatable, and are likely to generate significant judicial decisions in the future. This depiction will emphasize limited rights on the frequent human rights abuse by the states anti terrorism counter measures on the domestic implementation level.

3.2.1. The rights to a fair trial, due process of law and derogation (article 14 of ICCPR).

The right to a fair trial ranks among the most basic protections in international human rights law. The Human Rights Committee’s (HRC) General Comment No. 29 mentions “fundamental requirements of a fair trial” must not be derogated by states even in a state of emergency, regardless of the fact that rights to a fair trial not being included in the list of non derogable rights under article 4 of the ICCPR. The right to a fair trial applies both to criminal charges as well as to the determination of the rights and obligations in civil proceedings³⁹.

It remains that terrorism and counter-terrorism measures have made a significant challenge on this important provision, mainly with the issues of presumption of innocence, special courts, length of proceedings, rights to silence, restriction on the correspondence between the terrorist suspect and his legal representative, and the access to legal representation⁴⁰. Specifically, the principle of presumption of innocence must be applied not only by judiciary, but also by any other public authorities (Human Rights Committee, General Comment 13⁴¹. In terms of a specific issue-prosecution of civilians before military tribunals, the

Inter-American Commission on Human Rights is among the international bodies that most strongly oppose such practices.⁴²

3.2.2. The right of detainees to not be tortured, to be subject to inhumane, and degrading treatment (article 7 & 10 (1) of the ICCPR).

As reported by media, the detainee were treated by harsh interrogation techniques amounting to inhumane treatment, physical, and mental abuse and even torture at the facility at Abu Ghraib in Iraq and at Guantanamo.⁴³ Eventually, people suspected of having committed terrorist acts must always be treated with due respect for their fundamental rights. Torture is not justified under any circumstances. Their rights to an effective defense must be guaranteed both during investigation into the events in question and during a trial before an independent, impartial court establish by the law.⁴⁴

3.2.3. The rights of remedy and banishing the system of list (article 2 of the ICCPR).

As of date, there is no judicial remedy available within the UN to challenge one's presence in the Consolidated List.⁴⁵ The UN Special Rapporteur on the promotion of human rights and fundamental freedoms states, "Among the major challenges to the UN actions against terrorism that the Organization's listing procedures did not meet with due process requirement of fair trial, national must review sanctions implementation measures"⁴⁶. To improve the regime, it is favored introducing an independent review body composed of independence experts, which would be part of the Security Council's decision making procedure. A more radical option would be to abolish the 1267 Committee and list of Al-Qaeda/Taliban terrorist, which would move the question of listing to the Counter Terrorism Committee's jurisdiction, on the basis of Resolution 1374 (2001). The United Nations could provide expertise in identifying persons to be listed, but decisions would be made at the national level and avoid legal obstacles for effective review.⁴⁷

3.2.4. The right to property (article 17 of the Universal Declaration of Human Rights).

Inevitably, the freezing of assets implies an encroachment on the right to property. States measures would need to take this aspect into account against the background of domestic constitutional law provision. The fact that Resolution 1452 provides for a regime of exceptions to the freezing of assets on humanitarian grounds⁴⁸ may further weaken the argument that such restriction to the rights to property are by themselves contrary to human rights.

3.3. The Committee Counter Terrorism (CCT) Sanctioning Regime.

Under Charter VII, the Security Council took a number of important steps in fighting against terrorism. The most important action in this part is Resolution 1373 (2001). It requires all states to take steps to combat terrorism, generally to review their domestic laws and practices to ensure that terrorist can not finance themselves or find safe heavens for their adherents or operations.

The Resolution established the Counter Terrorism Committee (CTC). The Committee, composed of all 15 Security Council members, is tasked with monitoring the implementation of the Resolution: to raise the average level of government performance against terrorism across the globe; the nation's legislation and executive machinery to fight terrorism. Resolution 1373 (2001) requests member states to, in particular:⁴⁹

- (1) Criminalize the financial of terrorism,
- (2) Freeze without delay any funds related to persons involved in acts of terrorism,
- (3) Deny of all form of financial support to terrorist group,
- (4) Suppress the provision of safe havens, sustain or support for terrorism,
- (5) Share information with other governments on any groups practicing or planning terrorist acts,
- (6) Cooperate with other governments in the investigation, detection, arrest, extradition, and prosecution of those involved such acts, and
- (7) Criminalize active and passive assistance for terrorism in domestic laws and bring violator to justice. In summary, all the steps are expected could accelerate the UN effort on fighting terrorism action, especially on financial ground constraints.

The Committee began its task from examination of states reports on what steps they have taken to implement Resolution 1373 (2001). Based on the report, with information of international organization, and other public sources, the Committee would issue the Preliminary Implementation Assessment (PIA) which is to be distributed to the member states. PIAs have been prepared for 192 member states and each country is given an opportunity to review it and make comments or updates in order for the Committee to build a more accurate picture of what is happening in each place⁵⁰.

In 2004, the Security Council also set up the Counter Terrorism Committee Executive Directorate (CTED), a body of experts assisting the CTC, consisting of 40 members about half of them are legal experts

and also has a senior human right officer. The CTC is divided into two sections: an Assessment and Technical Assistance Office (ATAO), and an Administrative and Information Office (AIO). The ATAO further divided into three geographical clusters to enable the experts to specialize in particular regions of the world.

The CTED carries on-site visits, particularly to monitor the measures to implement their anti-terrorism legislation⁵¹. And then, it includes experts from such organizations as the International Criminal Police Organization (INTERPOL), the World Customs Organization (WCO) and the Financial Action Task Force on Money Laundering (FATF). During the comprehensive visits, the expert team compiles their observations into a report with recommendations for action mainly in areas that include counter-terrorism legislation, measures to prevent the use of assets for criminal purposes, the effectiveness of law enforcement services, international cooperation, territorial control and technical assistance.

Referring to information contained in PIAs, CTED prepared in 2008 the first global survey of how Resolution 1373 (2001) is being implemented in various region and sub regions around the world. The survey attempted to identify what aspect of progress has been made and where gaps remain. It suggested the point on which the international community should focus its counter-terrorism efforts. The survey also contains global assessments across the major thematic areas dealt with in the resolution, notably counter-terrorism legislation, border control, law enforcement, countering the financing of terrorism, international cooperation and the protection of human rights while countering terrorism⁵².

In the same year, the Security Council adopted Resolution 1535 and 1566, reminding States of their obligation that any measures taken to combat terrorism comply with their entire obligation under international law, in particular international human rights, refugee, and humanitarian law.⁵³

IV. Terrorism Issues before and after September 11, 2001 in connection with Globalization.

In the current global era, people are aware of the interconnection of the interests among states is one of the characteristics of globalization. Some assumed that states became borderless as “a global village”. Globalization could speed up exchange of capital, goods, technology, information as well as ideas, people across border, but it also leads to transnational crime (terrorism, money launderings, human trafficking, arm and illicit drugs, sea piracy, corruption).

As the historical records show us, terrorism has evolved as a political, religious, and criminal tactic

for thousands of years. Initially, such acts were local and non-networked, and involved few people. As time goes by, capacities increased and acts become more violent, destructive, and global⁵⁴. Vis-à-vis the terrorism movements, we may find that there are two sides of “coin” as globalization progresses: positive and negative.

The attacks on September 11, 2001 constituted a turning point in the relationship between international law, global politics, and terrorism. International institutions responded to it with an extraordinary manner⁵⁵. The UN Security Council Resolution 1368 (2001) determined that the attacks constituted a threat to international peace and security as an armed attack and also recognizes the inherent rights of individual or collective self defense in accordance with the Charter.

Also, the terrorism attack represented a turning point in the strategic approach of the United States to the terrorism of Al Qaeda in particular. The Bush Administration has proclaimed a Global War on Terror, and, in more technical legal terms, declares that the United States is in an armed conflict with Al Qaeda and its affiliates. This strategy adopts a war model in dealing with terrorism in contrast with an exclusively criminal law model⁵⁶. A war model employs the instruments of warfare such as armed interventions, armed forces and military violence. A criminal law model employs the instruments of law enforcement, policing and prosecutions. However, the war model could influence more on the states implementation of the counter terrorism measures globally.

In short, there is an interconnection between globalization, terrorism, and counter-terrorism measures. Many believe that globalization could prove to be the infrastructures for terrorism action worldwide. Today, the most dangerous dimension of interconnection between individual actors across the border is the growth in size, influence, and destructive capacity of transnational terrorist organization.⁵⁷ The combination of globalization and the revolution in information technology has empowered individuals and wide-ranging groups.

On the other hand, the counter terrorism could have appalling consequences, including even the launching of necessary and self punishing wars, to be politically congenial, even necessary.⁵⁸

V. New Paradigm of Terrorism “the interplay” among International Criminal Law, International Humanitarian Law, and International Human Rights Law.

In general, terrorism is purely a crime against national and international law⁵⁹. Further, from the point of view of legal practice, terrorism is just in the sphere of domestic criminal law; no special knowledge

or expertise is needed to litigate or adjudicate terrorism cases⁶⁰.

Furthermore, the Rome Statute of International Criminal Court (article 5)⁶¹ points out the crimes within the jurisdiction of the Court: the crimes of genocide, the crime against humanity, war crimes, and the crime of aggression, are the crimes that could be tried under its authority. The Court has the mandate to try individual rather than states. In the context of terrorism, many states wanted to add terrorism and drug trafficking to the list of crimes covered by the Rome Convention, hampering there is no agreed definition of terrorism among states as a whole⁶². Nevertheless, terrorism is in opposition to the International Customary Law, even the states are having not formally accepted the term of any International Convention, Regional Treaty, or even Bilateral Treaty.

To make clearer the vision about terrorism interplay contexts, we should look at the International Humanitarian Law commitment toward the issue. The International Humanitarian Law is the body of applicable International Law when armed violence reaches the level of the armed conflict, whether international or not. International Humanitarian Law prohibits acts of terror in both international and non international armed conflict, irrespective of whether they are committed by states or non-state parties⁶³. The best-known Treaties in this field are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. But there are other special treaties in the field of International Humanitarian Law aimed at reducing human suffering in times of war, such as the 1997 Ottawa Convention on landmines⁶⁴

The International Humanitarian Law is also called the Law of Armed Conflict or the Law of War, which does not provide a definition of terrorism. Further, it may occur during armed conflict or in time of peace. As the International Humanitarian Law applies only in the situation of armed conflict (article 51, paragraph II, Protocol I & article 13 paragraphs II, Protocol II), it does not regulate the action committed in a peace time⁶⁵. The International Humanitarian Law also proscribes the following acts, which could be considered as terrorist attacks⁶⁶:

- (a). Attacks on civilians and civilian objects (article 51, paragraph 2, article 52 Protocol I, and article 13, Protocol II).
- (b). Indiscriminate attacks (article 51 paragraph 4 Protocol I).
- (c). Attacks on places of worship (article 53, Protocol I, article 16, Protocol II),
- (d). Attacks on works and installations containing dangerous forces (article 56, Protocol I, and article 15, Protocol II),
- (e). The Taking of Hostage (article 75, Protocol I, article 3 common to the four Conventions, and

article 4, paragraph 2b, Protocol II),

- (f). The murder of persons who one no longer taking part in hostilities (article 75, Protocol I, article common to the Four Convention, article 4, paragraph 2, Protocol II).

In terms of terrorism, we arrive to the statement that the war of “terrorism act” is not an inter-State war. From the point of view of International Humanitarian Law, there are three backgrounds as a basic principle. Terrorism cannot be considered as “real war” because of the things mentioned below:

1. Terrorism itself is committed by non-state actors who do not fulfill conditions laid down on the Additional Protocol II of Geneva Convention (article 1 (1)).
2. The fighters in armed conflict must be distinguished between combatant and non combatant, civilian and military objects (article 51, paragraph II, Protocol I).
3. Most terrorist action happens in peace time.

Therefore, the International Humanitarian Law cannot apply to both sides, to the state and to the terrorist group. As a result, the International Committee of the Red Cross has taken the position that, with the exception of Al Qaeda and its allies in Afghanistan, most entities described as “terrorist” are “loosely organized group (network) or individuals that, at best, share a common ideology”, therefore, from the point of view of Sydney Jones⁶⁷, “it is doubtful whether terrorist can be characterized as a “party” to a conflict within the meaning of the International Humanitarian Law”.

There is a relationship between the International Humanitarian Law and International Human Rights Law. Three provisions of the 1949 Geneva Conventions and their Protocol deserve special mention:

- (a). Common article 3: “the passing of the sentence and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people”.
- (b). The Geneva Convention on the Civilian Convention (the Fourth Convention).
- (c). Fundamental guarantees (article 75 of Additional Protocol I) as binding customary law. It specifies elements of the right to a fair trial that are guaranteed to all individuals who do not benefit from more favorable treatment under the 1949 Convention or the Additional Protocol.

However, both seek to protect the individual from arbitrary action, abuse, and terrorism. Human

Rights are inherent to the human being and protect the individual at all times, in war and in peace. Again, the International Humanitarian Law only applies in the situation of armed conflict. Thus, in times of armed conflict, International Human Rights Laws and the International Humanitarian Laws both apply in a complementary manner.⁶⁸

VI. Conclusion

With regard to human history, power and authority have engaged in any society across the globe, starting from very simple form, such as: morality, common, and order. From international relationship practices, there are many ways to maintain and sustain power, for instance by conflict and war among groups, tribes, and nations. Many believe, today's conflicts are seeking to maintain the *status quo* or, conversely, to destroy it. As history description revealed, initially terrorism action was believed associated with the effort to put to the end of the monarchy.

Yet, there are many definitions over the precise meaning of terrorism. Schmidt and Jongman recorded 109 deferent definitions of terrorism⁶⁹. Moreover, terrorism can also be as a tactic or strategy of freedom fighters, liberators, and revolutionaries for self determination from colonial states of occupation, until coming "the terrorism decade phenomenon, the second half of the twentieth century"⁷⁰.

Since September 11, 2001, the "sense" of terrorism has changed drastically. The Bush Administration, with his policy "war on terror" using pre-emptive strike strategy, tried but failed to collect an international support through United Nations to attack Al-Qaeda, Afghanistan, and Iraq. The former organization was regarded as non-state actor destroyed the WTC building in New York on September 11, 2001. And, Afghanistan was condemned as the harboring country on training the terrorist action throughout the world. The latter supposedly as the mass destruction weapon holder's country.

After all, the terrorism attack on September 11, 2001 was well known as a driving force of the international community under the UN. Nevertheless, as a matter of fact, after nearly a decade passing since 2001, we may appear to the statement, the counter terrorism measures in fighting against terrorism act tend to use the military action, violating the fundamental rights.

However, most of the UN Anti-Terrorism Convention provisions and obligations contain dispositions concerning the protection of Human Rights. Such Dispositions contain general provisions indicating that the obligations set forth in the treaties without prejudice to other international obligations of

the state party. It also contains provisions concerning the rights of accused or detained persons to due process, and provisions establishing the conditions regarding extradition and transfer of prisoners⁷¹.

Also, we should take into account the Security Council Resolution 1373 (2001), establishing the Counter Terrorism Committee (the CTC). The aim of the CTC is to raise the average level of government performance against terrorism across the globe, the nation's legislation and executive machinery to fight terrorism. In 2003, the Security Council also adopted Resolution 1456. The Resolution states that member states have to guarantee all counter terrorism measures; and comply with international law, in particularly human rights, refugee, and humanitarian laws.

Based on the great undertaking of the International community under UN leadership on fighting terrorism while respecting Human Rights as delivered in the present article, people understand that this milestone still need much improvement, including:

1. State members under UN measures' countering terrorism should try to find the real root causing terrorism in every state/region (social, economics, and political) by applying the integrated approach over the issues. So that, the aiming of the international community under the UN anti terrorism measures will be really accomplished in reality.
2. The UN State Members should formulate a balancing approach between "the state security movement reasons" and pay more attention on "human rights sense" while fighting terrorism action.
3. States measures in fighting terrorism should strengthen "the infrastructure system", emphasizing on "national states' policy level".

The attempts will take time, endeavor, and new outlooks among the member states of the UN, NGOs, and international law experts, and other actors as well.

Appendix

Table II: UN Security Council Resolution Regarding Counter Terrorism Act.

No	UN Security Council Resolutions on Counter Terrorism (since 1989)	Content
1.	Resolution No. 635 (1989)	On marking of plastic or sheet explosive for the purpose of detection.
2.	Resolution No. 687 (1991)	Restoration of sovereignty, independence, and territorial integrity of Kuwait.
3.	Resolution No. 748 (1992)	Sanction against Libya.
4.	Resolution No. 731 (1992)	Destruction of Pan American Flight 103 and Union des transport Airlines Flight 772.
5.	Resolution No. 1044 (1996)	Calling upon Sudan to extradite to Ethiopia three suspects wanted in connection with the assassination attempt against President Mubarak from Egypt.
6.	Resolution No. 1054 (1996)	Sanctions against Sudan in connection with non compliance the Security Council Resolution 1044 (1996) demanding extradition three suspect wanted in connection with the assassination attempt against President Mubarak from Egypt.
7.	Resolution No. 1189 (1998)	Terrorist Boom Attacks on 7 August 1998 in Kenya and Tanzania.
8.	Resolution No. 1267 (1999)	Measures against Taliban.
9.	Resolution No. 1269 (1999)	International Cooperation against Terrorism.
10.	Resolution No. 1333 (2000)	Measures against Taliban.
11.	Resolution No. 1363 (2001)	The establishment of a mechanism to monitor the implementation of measures imposed by Resolution 1267 (1999) and 1333 (2000).
12.	Resolution No. 1368 (2001)	Condemning terrorist attack of 11 September 2001 in New York, Washington D.C, Pennsylvania, United States of America.
13.	Resolution No. 1373 (2001)	International Cooperation to combat on threat to the international peace and security caused by terrorist attack.
14.	Resolution No. 1377 (2001)	The adoption of declaration on the global effort to combat terrorism.
15.	Resolution No. 1438 (2002)	Boom attacks in Bali, Indonesia.
16.	Resolution No. 1440 (2002)	Condemning the act of taking hostages in Moscow, Russian Federation, on 23 October 2002.

17.	Resolution No. 1450 (2002)	Condemning the terrorist boom attack in Kikambala, Kenya, and the attempted missile attack on airplane on Mombasa, in Kenya on 28 October 2002.
18.	Resolution No. 1452 (2002)	The implementation of measures imposed by Resolution 1267 (1999).
19.	Resolution No. 1455 (2003)	The improving the implementation of measures imposed by Resolution 1267 (1999).
20.	Resolution No. 1456 (2003)	High Level Meeting of the Security Council on Combating terrorism
21.	Resolution No. 1465 (2003)	Boom attack in Bogota, Colombia.
22.	Resolution No. 1516 (2003)	Boom attack in Istanbul, Turkey, on 15 & 20 November 2003
23.	Resolution No. 1526 (2004)	The further improving the implementation of Resolution 1267 (1999), strengthening the mandate of the 1267 Committee and requesting the Secretary General to appoint an Analytical Support and Sanctions Monitoring Team for 18 months (paragraph 1,3,6 & 7).
24.	Resolution No. 1530 (2004)	Boom attack in Madrid, Spain, on 11 March 2004.
25.	Resolution No. 1535 (2004)	The creation Counter Terrorism Committee Executive Directorate (CTED)
26.	Resolution No. 1540 (2004)	Under Chapter VII of the UN Charter, obliges states to refrain from supporting by any means non states actors from developing, acquiring, manufacturing, possessing, transferring or using nuclear, chemical or biological weapons and their delivery systems.
27.	Resolution No. 1566 (2004)	The creation of working group to consider measures against individual, groups, and entitle others than Al Qaeda/Taliban.
28.	Resolution No. 1611 (2005)	The condemnation of terrorist attack in London.
29.	Resolution No. 1617 (2005)	The reviewing the measures imposed by Resolution 1267 (1999) with a view to their further strengthening in 17 months; providing definition of "associated with", calling for submission of checklist, and requesting the Secretary General to extend the mandate of the Analytical Support and Sanctions Monitoring Team for 17 months.
30.	Resolution No. 1618 (2005)	The condemnation of terrorist attack in Iraq.
31.	Resolution No. 1624 (2005)	The prohibition of incitement to commit terrorist act.
32.	Resolution No. 1625 (2005)	Threat to international peace and security by terrorist acts.
33.	Resolution No. 1631 (2005)	The cooperation between United Nations and Regional Organization on maintaining international peace and security.
34.	Resolution No. 1673 (2006)	The extending mandate of the 1540 Committee for a further two years.

35.	Resolution No. 1699 (2006)	The request the Secretary General to take the necessary steps to increase cooperation between United Nations and Interpol.
36.	Resolution No. 1730 (2006)	The establishment of focal point within the Secretariat to receive de listing request and direct the relevant sanction committee to revise their guidelines accordingly.
37.	Resolution No. 1732 (2006)	The taking note with interest of the best practice and methods contained in the report of the Informal Working Group on the issues of sanctions (S/2006/997) and requesting subsidiary bodies to take note as well.
38.	Resolution No. 1735 (2006)	The reviewing the measures imposed Resolution 1267 (1999) with a view to their further strengthening in 18 months; providing cover sheet for listing submissions, extending consideration period for exemption request under Resolutions 1452, and extending the mandate of the Analytical Support and Sanctions Monitoring Team for a further of 18 months.
39.	Resolution No. 1787 (2007)	The extension of the Counter Terrorism Committee Executive Directorate (CTED) mandate.
40.	Resolution No. 1805 (2008)	The extending mandate of the Counter Terrorism Committee Executive Directorate (CTED) until 31 December 2010.
41.	Resolution No. 1810 (2008)	The extending mandate of the 1540 Committee for further three years until 25 April 2011.
42.	Resolution No. 1822 (2008)	The directing 1267 Committee to conduct a review of all names on the Consolidated List by 30 June 2010 and followed by regular reviews; making accessible publicly releasable reasons for the listing of individuals and entities and extending the mandate of the Analytical Support and Sanctions Monitoring Team for a further period of 18 months.

Source: the UN Security Council Resolutions.

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