

# Upholding Human Rights and International Law in the Combat against International Terrorism

Ahmed Naji Mohammed Al-hanhanah<sup>1\*</sup> Maming Fei<sup>2</sup>

1. Dalian Maritime University, Administration Building, School of Law, Industrial Zone, No. 1 Linghai Road, 116026, Ganjingzi District, Dalian, China.
2. Dalian Maritime University, Administration Building, School of Law, Industrial Zone, No. 1 Linghai Road, 116026, Ganjingzi District, Dalian, China.

\* E-mail of the corresponding author: [ahmednaji2020@yahoo.com](mailto:ahmednaji2020@yahoo.com)

## Abstract

The question of human rights protection remains a big puzzle in the combat contrary to international terrorism. Terrorism remains a complicated concept that has posed great challenges in countering without compromising the human rights. Some of the methods used by states leaved a lot to be desired under international law. It is another issue for states to be seen countering terrorism which in most cases is not state actors but using the UN Charter and its systems to justify their actions. It is prohibited in the United Nations Charter of 1945 under Article 2(4) for States to adopt the use of force among themselves in cases of self-defense. UN Charter under Article 51 does not provide for non-state actors for instance terrorists and this has posed a great challenge to the implementation of various Treaties and Conventions. States' attacks against non-state actors continue to take place without any condemnation. Human rights have been violated in the pursuit of terrorists and the act has not been condemned. What then is supposed to be done?, several counter-terrorism measures have been putted in place but there is also an argument that it is close to impossible to combat terrorism without compromising human rights. In other words, countering terrorism is synonymous with violating human rights and international law. These contradictions among others make one wonder whether it's the inefficiency of the prevailing laws or mere international politics that is making the combat against terrorism a complex matter.

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## 1. Introduction

It is an era of international counter-terrorism as terrorists increase in numbers. This has led to several positive and negative changes. In eradicating terrorism, should not ignore the aspects of international law and human rights but rather upheld. New concepts have emerged for instance whether force can be used against non-state actors and whether upholding human rights is a hindrance to the fight against terrorism. Despite the introduction of counter-terrorism measures into the international legal system, the issue of non-state actors (terrorists) and whether force can be used against them by states continues to affect the international legal framework. International law, precisely the UN Charter (1945) centres on the issues to do with states as its parties as opposed to non-State actors. The fight against them not only undermines the provisions of the UN Charter but also leads to various violations of human rights. Terrorism has not been defined clearly but rather described by several Conventions and Treaties. However, this has not prevented the UN to continue adopting several Resolutions, including 1368 and 1373 after the 11 September, 2001 (9/11) terrorist attack on the US. This article will briefly discuss what amounts to terrorism, the use of force and its application to non-State actors under international law, the notion of human rights in the combat against international terrorism and the possible ways for human rights to be upheld while implementing counter-terrorism measures.

## 2. Definition of Terrorism

Global lack single accepted definition of the word terrorism which can be used to understand well this concept, its definition is paramount. This is amidst various Conventions, treaties, Protocols, Declarations and Resolutions providing for counter terrorism measures. It is worth noting that certain struggles such as those seeking for independence and self-determination involving violence could be described as terrorism as well in the current era.

A broader definition of terrorism could as well suffocate some non-violent dissent and in turn undermine rule of law. 'Terrorism assaults the ideals at the heart of the United Nation: the rule of law, respect for human rights, peaceful conflict resolution, tolerance among peoples, nations and rules of war that protect civilians. [It] thrives in situations of humiliation, despair, political oppression, poverty, human rights violations and fanaticism; it also thrives in contexts of foreign occupation and regional conflict; and it gains from a state's inability to enforce law and order (Larger Freedom, 2005). For Crenshaw, generalized by calling conducts of terrorism may dictate a military, not political response and justify extraordinary measures (M. Crenshaw, 1995). If this was to go by, it would seem like a creation of tyranny in some cases.

Terrorism, according to Higgins, 'is a legal term with no legal meaning. It is merely an easy method of referring to behaviours that are universally condemned, whether by individuals or states, and in which either the techniques used are illegal, or the targets are protected, or both (R. Higgins, 1997). As already noted, not all actions that may be disapproved of are illegitimate. It is dependent on one's perception. To the oppressed who is demanding self-determination, it will be a legitimate cause, while for the government that deems it otherwise, it shall be an illegal situation warranting actions to neutralise the movement. According to Mallison, "terror" and "terrorism" are not terminologies which refer to a precise and well-identified group of facts. Neither do the terminologies have a universally acknowledged legal connotation. As a result, the terms "terror" and "terrorism" do not correspond to a unified idea in either reality or law (W. Mallison et al, 1974). Even with several anti-terrorism laws, there is no single Treaty or Convention that defines what terrorism is. There are provisions of a wider description of what amount to acts of terrorism. Terrorism regarded as "criminal acts intended or calculated to induce a state of terror in the general public, a group of persons, or individual persons for political reasons," according to the Paragraph 3 of Declaration on Measures to Eradicate International Terrorism (UN General Assembly, 1994).

According to Myra (2009) 'terrorism' is often seen to be ideological or political intimidation: the terror is designed as the source for others to perform which they would not perform otherwise. This differentiates non-state actors like pirates from terrorists, who are inspired primarily by private, material gain rather to attaining larger ideological political goals. Myra argues that 'it is impossible to have single global definition of the word 'terrorism', he is optimistic that, "entering into the 'definitional quagmire' will at least provide an awareness of the difficulties which preclude consensus and will provide clarity on the main points of disagreement. An international legal definition will only be possible once those points of disagreement have been acknowledged and as far as possible addressed (Myra, 2009).

The absence of a universal definition of terrorism has accelerated so much to the continuous violation of international law and human rights. One wonders whether terrorism is the hardest ever concept to be defined. It is either there is lack of will by those supposed to define the concept or just mere geopolitics. On 11th September 2001, the Al Qaeda terrorists attack on the US, from which UNSC Resolution 1373 (2001) was birthed which requires states to enforce international terrorism conventions and put applicable domestic legislation in place to enforce the conventions, multiple terrorist acts occurred, and judgments opposing the application of force contrary to non-state actors were in place. The implementation of the same has led to most states enacting laws that almost describe every criminal act, likely to create tension as a terrorism act. The Security Council has however not minded at incorporating some of the clear challenges to fighting against terrorism with the current UN Charter. This has trampled on the adherence to rule of law and human rights and hence a notion that implementing counter-terrorism measures without compromising human rights is close to impossible. To continue adopting laws whose intended subject is not clearly understood is also illogical.

It is clear that, international politics plays a big role in the fight against terrorism. Overall, there seems to be a will to fight terrorism, however, it is compromised by what some States wish to do and not what is written under the law. Otherwise, what would be the logic in continuing to provide laws for an undefined subject matter for such a long period?. This continues to provide a fertile ground for continuous desecrations of international law and human rights. The law that is mostly used, UN Charter is a preserve of state actors and not non-state actors. In other words, permission must always be sought from a host state before any attack in retaliation is resorted to. What does international law say regarding the usage of force in the combat against terrorism?

### **3. Self-defence and Terrorism**

When the UN Charter was being prepared, terrorism existed but was basically at the level of state against state. The individual terrorism has really posed great challenge to international law. The biggest test is that state involvement is paramount to invoke the UN Charter. UN Charter under Article 2(4) of 1945 the application of

force is strongly forbidden and this is widely considered as the *jus cogens*. It states that; in their international dealings, all Members should cease from bullying or applying force against the territorial integrity or political independence of any state, or in any other way varying with the United Nations goals.

To best analyse the above provision, reference has to be made to other supplementary provisions under Chapter VII of the Charter. The Security Council under Chapter VII (Articles 41 and 42) of the Charter has the mandate to adopt Resolutions that allow it to impose sanctions which may or may not include the usage of force. 'The implementation of measures including the application of force is contingent on the Security Council determining that other methods would be inadequate to restore or preserve international peace and security. Adoptions of Key Security decisions on terrorism is from Chapter VII (Articles 39-51) of the Charter, including 2253 (2015), 2199 (2015), 2178 (2014), 2170 (2014), 1540 (2004), 1373 (2001) and 1267 (1999) (UN Vienna, 2017).

The prerogative that international law forbids the usage of defensive force against non-state actors is losing legal power and becoming increasingly difficult to defend (W.Y. Jean, 2018). This is due several factors, including the advancement in technology among others. However the official legal position is that, the right to self-defense can only be claimed against an aggressor state, this is not the case in practice. This has posed a great challenge in the application of the UN Charter in situations where non-state actors are involved. Paddeu, states that although 'there is not yet a clear establishment as to the lawfulness of right of self-defense against non-state actors, the right of self-defense against non-State actors has been increasingly invoked and accepted in state practice (F. I. Paddeu, 2017). As for Lubell, 'based on the data from the state practice, it appears that non-state actors may be behind armed attacks which result in the invocation of self-defense. This is particularly true when considering the response to the September 11, 2001 attacks.

### *3.1 Preventive Self-defence*

Preventive self-defense has generated major concerns among the international community, especially legal scholars who argue that the Charter's provisions are not adequate to respond to the present security threats like transnational Terrorism. According to Wood, this void has prompted some to "stretch the boundaries of the law, aiming to build a unilateral right to use force preventively or for humanitarian causes, and to argue for retroactive or implied authorization by the Security Council for the use of force" (M. Wood, 2013). The adoption of Resolutions 1368 and 1373, would very certainly have lawful the application of force under Chapter VII of the UN Charter since they expressed a "readiness to take all necessary means to react to terrorist attacks" in conforming to its roles under the UN Charter" (Security Council Resolution 1368, 2001). Another sign that they would have allowed the use of force is the choice for governments to, among other things, "act preventively and deny safe havens to individuals implicated in terrorism" (Security Council Resolution 1373, 2001). Judge Jessup in his dissenting judgment stated that, '[t]reaties, particularly multiple treaties of a legislative or constitutional character cannot have completely unchallengeable character and are thus prone to various interpretations' (ICJ. 4, 439, 1966). What remains unclear is the extent to which a state can take preventative action in collective or individual self-defense regarding to terrorism.

With all the confusion and approaches surrounding the UN Charter and its provisions on self-defence and the application of force, one question remains startling, whether the law as it is, is that law that it ought to be, and if so, are the rules adequate to address the prevailing threats from non-state actors? What's to be noted is that despite the debate and the issue of non-state actors not clearly expressed in the Charter, the provisions of the Charter is adequate to cover their threats, especially invoking chapter VII. The United Nations General Assembly (UNGA) confirmed in 2005 at the heads of state and governments meeting that "the relevant provisions of the Charter are sufficient to confront the broad range of threats to international peace and security." We endorse the Security Council's power to order forced action in order to maintain and reestablish international security and peace. We emphasize the need of operating in conformity with the Charter's aims and values (General Assembly Resolution. 60/1, 2005). What remains a big challenge is that the methods employed by non-state actors may not always allow the states to wait until the invocation of chapter VII, especially in cases where information available can lead the state to the conclusion of where they are located. It's hardly possible that a state can wait so longer without retaliation even when it concerns the breaching of the sovereign right of the host state.

However, such a trend of events only leads us into disregarding what is law to what the powers that be decided, hence a play of international politics as opposed to addressing the challenges posed. This again propelled continuous breaches of international law and abuse of human rights renders those that may not have the influence to determine the law to stand to abide by what the law prescribes. This completely distorts the harmony intended within international law. In 2014, after the US had carried out airstrikes in Syria on invitation from Iraq,

having no permission from the Syrian Government, the US through its UN Ambassador Samantha Powers in a letter to the Security Council stated that, 'Iraq and other countries including USA, neighbour regions and beyond are threatened by group of terrorist in Syria and IS (Ban Ki-moon, 2014). It remains a wonder how with such explicit actions and proposals amidst continuous international law and human rights violations such a discussion in the report could have been such a complex issue for the UN considering the fact that most states were previously involved in preventive attacks against non-state actors. Providing for such circumstances in order to recognise non-state actors under the Charter would seem a compromise to the purpose and intent of the Charter. The fact though is that incorporating such changes would seem beneficial to the entire international community even if under a UNSC Resolution.

### *3.2 The concept of "armed attack"*

Article 51 of the UN Charter, is to the effect that self-defense can only be invoked if an "armed attack" occurs. Does this cover the actions of non-state actors to give rise to a subsequent right of self-defence? An armed attack is 'an attack directed from outside territory controlled by the state' (A. Stanimir et al, 1996). According to Elizabeth an 'armed attack' is defined as "an intentional interference in or against another state without the approval or following agreement of that state, which is not legally justifiable [...] and does not need to exceed any threshold of intensity"( W. Elizabeth, 2005). Elizabeth's definition differs from what case law provides in The Nicaragua. In The Nicaragua case it was stated that '[...]an armed attack must be understood to include not only action by regular armed forces across an international border, but also "the sending by or on behalf of a state of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to" (among other things) "an actual armed attack carried out by regular soldiers, or its significant infiltration'(K. Zemanek, 2019 and H. Duffy, 2005).

Terrorism is not far from this notion. Unless by its nature terrorism is considered by its effects and actions rather than territorial connection (attribution factor) it will remain a dilemma to find the right angle to attack them without necessarily breaching international law and violating the human rights. It's been practically possible to have homegrown terrorists although they may not be common as of today but will eventually emerge. This is slowly forcing states to include crimes that would basically be under their Penal Codes as acts of terrorism in their Terrorism legislations. The continuous breaches of international law and human rights are left without condemnation by the UN, yet the same body keeps adopting Resolutions to guide in combating terrorism without incorporating the changes. This will continue to derail cohesion of international law where other states are condemned leaving others scot-free.

### *3.3 Legality of Using Force*

In order for states to resort the usage of force in self-defense, cognisance of the parameters in which its actions are to be carried out must be put in mind. There is no justification whatsoever for a state to commit further international wrongs just because another non-state actor or state has perpetrated the same. According to Gardam, 'in determining the validity of measures, for example, the extent to which the aggressor state's territory can be invaded or its military capabilities destroyed is determined by one's perspective on the goals of self-defense. The same concerns apply to states that intervene violently in combined self-defense on behalf of another state under attack' (J. Gardam, 2004).

The sequence of events have also suggested that the provision does not impose any substantive obligations because the requirement does not arise until self-defense actions are adopted, it appears unreasonable that compliance with it may decide the [il]legality of the operation's inception (M. Knisbacher, 1977). This would however create an absurd precedent to assert that states must always be obliged to report before they can take action. There is hardly any state that will be attacked by any magnitude that will wait to report to the UNSC before it can retaliate. Situations warranting patience of that kind are rare. Aggressions are normally abrupt that states cannot wait further to retaliate if it's in position to foil any subsequent anticipated attacks.

Although customary practice does not seem to bar the invocation of self-defense where a report has not been made, It does, however, it provide some guidance in determining the legality of the asserted self-defense methods. To Ruys, 'It is sufficient to consider that there do not seem to be whichever declarations in the practice of the Security Council in which states demanded that the actions taken were illegal simply because a report was not submitted, and that, contrariwise, states have occasionally assisted the lawfulness of one-sided interferences that were not informed to the Council' (T. Ruys, 2010). States are under a duty to report any intended recourse

to the use of force for any armed attack. As for Gray, it is imperative for a report to be filed since 'states have infrequently flattered the filing of a report as a sign of 'good faith,' and, more outstandingly, have warned that failing to do so damages a state's legal case'(C. Gray, 2001). It is worth noting that most of the UN Charter provisions have remained so good in theory but hard to practically implement. This would however create an absurd precedent to assert that states must always be obliged to report before they can take action. There is hardly any state that will be attacked by any magnitude that will wait to report to the UNSC before it can retaliate. Situations warranting patience of that kind are rare. Aggressions are normally abrupt that states cannot wait further to retaliate if it's in position to foil any subsequent anticipated attacks.

In the era of increased terrorism, one wonders whether the fulfilment of the principles enshrined in self-defence as provided under the UN Charter is possible without breaching the law or compromising human rights. It has often been said that fighting terrorism is synonymous with violation of human rights. Indeed this trend seems to be the new normal as well. The question is how long will this practice go on under the watch of UN?. Is it intentional or just a lack of will to reduce or completely the violation of human rights. Next discussion emphasis will be on what briefly amounts to human rights, cases of violations and proposals on how these can be maintained in the fight against terrorism.

#### **4. The Human Rights**

Regardless of residence, nationality, location, gender, origin, race, language, color, or any other status, human right is also inherited to all people. These rights are to be enjoyed equally by all without discrimination. They are inextricably linked, interdependent, and inseparable. Treaties, general principles, other elements of international law and customary international law express and safeguard worldwide human rights. Through international human rights law, governments are provided with obligations to act or cease from acting in order to protect and promote individuals' or groups' fundamental freedoms and human rights. Human rights are guided by various principles that are followed in order to have them fully enjoyed. These principles have however been compromised by the fight against terrorism. Whenever, international law is breached by the stakeholders in every conflict, the human rights 'suffer' most. Below are some of the human rights principles.

##### *4.1 Universality and inalienability*

Human Rights first Universal Declaration emphasized in 1948 has subsequently been repeated by other Resolutions, conventions of international human rights and United Nation Declarations. Human Rights world conference held in Vienna 1993 as an example emphasized that, state has the responsibility of promoting and protecting all fundamental freedoms and human rights, independently of economic, cultural or political formations (Vienna Conference, 1993). Most states have ratified at least one of the core human rights conventions and this reflects the consent of states and legally creates legal obligations for them (Human Rights Instruments Bodies, 2018). This is a sign of the expression of the universality of the human rights to the extent that some fundamental human rights and norms have enjoyed protection through customary international law across all boundaries and civilisations. The inalienability of human rights asserts that human rights should not be taken away, save in specific circumstances after which due process have been followed. Rights such as the right of liberty may be restricted where a crime has been committed. In some countries where death penalties are still upheld, the right to life may also be taken away after someone has been proved guilty of an offence for which punishment was death.

##### *4.2 Equal and non-discriminatory*

International human rights law carries fundamental concept of non-discrimination. It is featured in all treaties of human rights and serves as a fundamental topic in most Conventions of international human rights including the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. In its application, the principle relates to all freedoms and human rights and forbid by law discrimination based on a non-exhaustive list, including sex, race and colour. Article 1 of the Universal Declaration of Human Rights provides that "All human beings are born free and equal in dignity and rights." This presupposes that there shouldn't be discrimination of any kind whatever the case it may be.

#### *4.3 Interdependent and indivisible*

Political and civil rights, like the right to equality before the law and life; economic, social and cultural rights like the right to work and education; and collective rights, like the right to development and self-determination, are all interdependent, indivisible and interconnected. The improvement of one right affects the others, and the ruin of one right affects the other.

#### *4.4 Both Rights and Obligations*

According to the international human rights law, rights are presented together with its obligations. These are assumed by states under international law to fulfill, respect and protect them accordingly. Regarding the obligation to protect, states must protect groups and individuals against any abuse of human rights. As to the obligation of respect, states are to refrain from intervening or minimizing the joyful of the rights. The obligation to fulfill mandates the states to take positive actions to enable the enjoyment of human rights. These obligations however are not only a reserve of the states but also at an individual level one is supposed to uphold the enjoyment, protection and respect for others' rights in achieving his own targets.

#### *4.5 Common Cases of Human Rights Abuse*

In combating terrorism, several methods have been deployed by most states but in most cases they have contributed much in the violation of human because they are either unlawful or even when legal are in one way not effective in human rights protection. For instance:

##### *4.5.1 The neglect of some rights*

Over the years, the social, economic, and cultural rights (ESCR) have been neglected in implementing counter-terrorism measures with respect to the emphasis that has been accorded to civil and political rights. However, after the November 2008 Expert Seminar on 'The United Nations Counter-Terrorism Implementation Task Force Working Group on 'Protecting Human Rights While Countering Terrorism' published a report titled 'Counter-Terrorism Measures and the Impact of Terrorism on the Enjoyment of Social, Cultural and Economic Rights', there is optimism that their implementation will be highly regarded. Notwithstanding, it is the role of the UN Treaty monitoring bodies to see to it that the current trend where some human rights are neglected for others that are considered 'most important' is reversed and uphold an overall implementation of all human rights in countering terrorism. The thought that some rights are lesser than others or doesn't matter most have been a wrong approach in the fight against terrorism.

##### *4.5.2 Extra-judicial killings*

It must be admitted that there is more killings in the fight against terrorism than before which in most cases have been extra-judicial. As already noted, terrorism is war and deserves the same force in its fight however, this is against international law in some instances where some culprits may be apprehended. Competent court is the only body to prove guilty to suspect every person committed a crime, unless otherwise is presumed innocent. Where the situations of extra-judicial killings have taken place, the same have received less condemnation even when they have bypassed the requirements under the UN Charter on the use of force.

##### *4.5.3 Use of drones*

Where decisions are taken to deploy military means by way of missiles it is likely that the fundamental principle of distinction between military targets and civilians will be breached. This follows that, legally required precautions in attacks which are aimed at protecting civilians will as well not be taken in such a process of targeting decisions and strikes.

Despite the Human rights and international law providing frameworks through which drones may be used albeit with limitations, their use insufficiently protect civilians in a warfare of this kind where distinguishing terrorists and civilians is so difficult. This inaccuracy in many airstrikes renders the whole program illegal and unattainable under international law. Under international humanitarian law, the two core principles of prohibition of indiscriminate attacks and distinction between military targets and civilians should always be upheld. However, in situations that involve strikes on large numbers, who in most times are not armed, with insufficient

information and intelligence about the actual target location, it's out rightly illegal.

According to an Amnesty International Report, the US has acknowledged that since 2012 it conducted drone strikes outside of the recognized war zones, especially in countries such as Yemen, Somalia and Pakistani (Amnesty International, 2013). These were carried out by the Central Intelligence Agency (CIA) and the Joint Special Operations Command (JSOC) of the US military. These bodies operations are done with little or no public transparency and with disregard to international law. The report further highlights how the drone strikes by the US led to death of many people who were not posed any danger to life or engaged directly in hostilities (P. Vincent, 2012).

#### 4.5.4 The use of Chemical Weapons

In the fight against terrorism some area have reported to used chemical weapons, especially in the Middle East. During the Iraq war, reports indicate that there was the use of chemical weapons, including dimethylheptylpyran (DMPH) which reportedly causes blisters on the skins of victims and PAVA spray sleeping gas that can cause death as a result of severe suffocation. Although with divergent information, it is also reported that the US used White phosphorus during the war in Iraq which left a number of fatalities. However, the US has never been put to accountability for such crimes and human rights violations.

#### 4.5.5 Enforced Disappearance

The media lately has been engaged in series of reports of families in war stricken areas due to terrorism seeking for their family members as a result of enforced disappearances. This has been in the period between 2003 since the war in Iraq to date. For instance between 2006 and 2007, the Medico-Legal Institute (MLI) in Baghdad received about 20,000 bodies with fewer than half being identified. The MLI also reported that around 800 bodies have been received in each month since 2003 with difficulty in identifying the majority of them.

According to Article 2 of the Convention for the Protection of All Persons from Enforced Disappearance which was adopted by the United Nations General Assembly On 20 December 2006, a forced disappearance (or enforced disappearance) is defined as the abduction, detention, arrest, or any other type of deprivation of liberty by groups of persons or persons or agents of the state or acting with the authorization, acquiescence or support of the state, followed by a rejection to accept the lack of concealment or liberty of the whereabouts or fate of the disappeared individual, putting such a person outside the guard of the law. Ideally, the war on terrorism should be one of protection of civilians to enable them live freely, however the contrary is the norm.

#### 4.5.6 Arbitrary rapes

The war on terrorism has seen other forms of violations of human rights by way of illegal and immoral acts of rapes. Gang rapes are normally used as a tool of warfare to create terror amongst war stricken population to achieve the cheapest inhuman goals. Sexual violence is a distinct function in civil conflicts as an instrument of terror and normally depicts underlying objectives of the groups involved and the purpose of why such a method was involved.

Besides the rape against women, there is also continued harassment and torture of male prisoners in trying to get confessions from them for crimes they are accused of. These have caused severe mental torture to the prisoners and a punch below the belt in international law spheres.

#### 4.5.7 Violate the right to privacy

Among other rights that the war on terrorism has continuously violated is the right to privacy. There is always a lot of home raiding without prior notice, crackdowns to check various places and person. These are some of the tools that military insurgencies in war stricken areas for not genuine reasons but for the creation of terror and distress in public. In this regard several rights to life, information, speech and possession. Several UNHCR reports have indicated that thousands of people including men and children have lost lives in curfews, crackdown and home raids.

### 5. Way forward

Whereas it may seem hard in this era to seek implementation of human rights without involving politics, it's

however the best solution if counter terrorism policies are to have a meaningful and all satisfying achievements. Combining politics and counter-terrorism measures has been the worst regime in the fight against international terrorism. Most states have under the guise of international intervention continued to violate international law and human rights, especially as they forward their agendas. This has been the most case with the Middle East countries where the war seems not to have a definite end and is being fought at a state level as opposed to target groups and individuals. Amidst all these, the normal innocent citizen continues to pay the price of the confusion and has been left to straddle in conditions of homeless living, famine, torture and at worst death, among others.

The UN Charter 1945 is so clear about when and how self-defense can be used. It clearly states that it shall be applied amongst states. With the developments after the 9/11 attack by terrorist on the US, the paradigm seems to have changed, especially with the adoption of Resolution 1373 by the UNSC. Despite its adoption, its implementation remains a mystery to some states. Even the states that have tried to implement them have not found it smooth, the biggest challenge being that most states are not complying with their international law obligations, especially the UN Charter. As Vincent puts it, 'we must instill some traction into resolution 1373 and similar instruments; otherwise, primary counter-terrorism obligations will be relegated to pure form'<sup>29</sup>.

There is a need to revise the purpose and intent as to why the UN Charter was adopted by states. As the days go by, the journey towards its implementation seems at crossroads. As already noted, at times UNSC Resolutions are made biased on politics. The law is always interpreted as it ought to be rather than what it is depending on who is before the Council. This is what continues to affect international law and leading to various human rights abuse. Most international anti-terrorism instruments don't even attempt to define terrorism. Therefore, each state must find ways to fulfill the obligations put to it as a party to the UN Charter. However, if state responsibility was emphasised that any state that complains that her sovereignty and integrity has been violated by another state by way of self-defense against terrorist on its territory was put to account for her actions with regard to ousting the terrorist from its territory, the situation would change and compel states to combat terrorism more efficiently within their borders and shift the focus to prevention. The ICJ mostly concentrates on what the victim state did and whether it was within the law. This is a wrong approach which will not help in combating terrorism. All states have equal rights imposed on them by the UN and should be fulfilled. If a state allowed a non-state actor to defile her territory by using it to launch attacks on another state, why should the action (commission) of a victim state be regarded a wrong at the expense of the host state's omission? The law at this move can be regarded efficient and adequate to handle the situation.

It needs to focus on the responsibilities of the UNSC. By its roles, it should be intervening in most cases where there has been a violation of human rights but in most occasions has shunned its responsibility to which most states have resorted to use of force against the non-state actors before and fulfilled their obligations to report to the Council later. This continuous deficiency of confidence in the objectivity and quality of the UNSC in decision making has been one of the reasons why states keep bypassing it. The Council has been faulted for its lack of consistence, persuasiveness and limited response to states and human security. Whereas there may be a need to tackle a security threat, the council may fail to agree on the real solution for different reasons as a matter of either diplomatic tie some Security Council member states enjoy with a given state or other social and economic conditions. These will continue to impede the relevance of the Council and have been the major reasons as to why some countries choose to act first in self-defense and report to the Security Council later. Such a practice will continue to undermine adherence to international law. In the long run, the UN cannot exert its mandate to implement the anti-terrorism measures where the States will is absent. In order to achieve a comprehensive anti-terrorism convention with a clear definition of terrorism, a political imperative should be upfront. It is this lack of agreement on a clear and well known definition which continues to undermine and stain the image of United Nations.

Finally, Article 2(4) is insisting requirement of overall international law whereby no departure is permitted, any application of force is banned unless clearly permitted. This being the position is not followed. There is a notion that has remained a practice of a few states that continue to create breaches of international law based on the existing practices. Even the pre-existing notion of preventive self-defense does not meet the standards of armed attack as specified in Article 51 because the victim-state has not yet been subjected to an armed attack. There is urgent need for the international community to explicitly adopt new practices to cover the dynamics that have come with the rise of non-State actors. It is a legal principle that laws are not dogmatically made but are meant to resolve issues at hand and not of the past.



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