

THE IMPACT OF INTERNATIONAL TERRORISM ON THE RIGHT TO PERSONAL SECURITY IN IRAQ AFTER 2003

Zainal Amin Ayub, Senior Lecturer, School of Law, UUM COLGIS, Universiti Utara Malaysia, Malaysia. Email: z.amin@uum.edu.my

Ahmad Masum, Senior Lecturer, School of Law, UUM COLGIS, Universiti Utara Malaysia, Malaysia. Email:

Mohamed Salman,* PhD Candidate, School of Law, UUM COLGIS, Universiti Utara Malaysia, Malaysia. Email: mohamadlaw2010@yahoo.com

Abstract: Hardly a day passes by without news of a terrorist bombing, kidnapping, or assassination somewhere in the world especially in Iraq. Terrorism has become a cancer and it is not in the interest of the nations, because it takes away their right to personal security. Following the event of September 11, there have been violations of international conventions and usages, human rights, which prompted countries globally to come up with laws to protect civil freedoms. In the context of Iraq, the Government came up with the Iraqi Anti-Terrorism Act No.13 of 2005 and the Iraqi Constitution of 2005 to address the issue of terrorism. The aim of this paper is to address the impact of international terrorism on the right to personal security in Iraq after 2003. The methodology adopted in this paper is a doctrinal legal research, focusing namely on primary and secondary data. This paper concludes that international terrorism has indeed affected the Iraqis right to personal security after 2003. Hence, there is a need to protect this fundamental right by re-looking into the Iraqi Anti-Terrorism Act No.13 of 2005. For instance, under the Act there is no clear definition of the terms “terrorism” and “terrorist act”. This has led to serious problems in the enforcement of the Iraqi Anti-Terrorism Act No. 13 of 2005 such as the abuse of the right to personal security where innocent Iraqis are deprived to enjoy this fundamental right at the disguise of fighting terrorism by the state, which is not even clearly defined under the Act.

Key words: International terrorism, Iraqi Constitution of 2005, Iraqi Anti-Terrorism Act No.13 of 2005, right to personal security.

INTRODUCTION

The word “terrorism” is derived from the word ‘terror’ in the English language. This word originated from the Latin language and evolved into European languages.¹ In a modern context, it is used widely to refer, mainly to either terrorism or international terrorism.² The history of terrorism started since the establishment of man's relationship with terrorist acts. However, this

¹ Foerster, V.H., Mora, M.P., & Amiot, W.L. (1960). Doomsday: Friday, 13 November, AD 2026. *Science New Series*, 132(3436), 1291-1295

² *Ibid.*, Schmid, A., (Ed.), (2011), *Handbook Of Terrorism Research*. London: Routledge. Schmid, A. (2012). The Revised Academic Consensus Definition of Terrorism. *Perspectives on Terrorism*, 6(2), 158-159. Retrieved from <http://www.terrorismanalysts.com/pt/articles/issues/PTv6i2.pdf>

act of terrorism has evolved over the decades and different from each other in terms of the parties responsible, motive, means and methods used in such activities. Terrorism has grown both quantitatively and qualitatively in terms of its philosophy, tools and objectives.³ As a result, it brings about alarming implications in a global state of affairs where it is apparent from the use of advanced military methods supported by people with extensive experience which calls for concern.⁴ Also, terrorism has become a type of crime that pose real threat to the lives of innocent people in the contemporary world. For instance, international terrorism has its risk towards a person, institution, global community and civil freedoms.⁵ It goes without saying that due to the impact of terrorism i.e. domestic or international, there have been numerous bouts of international campaign against international terrorism after the 9/11 terrorist attacks in New York and Washington in 2001. The attacks have resulted in serious mass destruction where more than 5000 lives were victims of terrorist acts which has infringed and violated their rights.⁶

Following the event of September 11, there have been violations of international conventions and usages, human rights and freedoms, which prompted countries globally to come up with laws to protect civil freedoms. Perhaps it is of paramount importance to note that three months after 9/11 attack, the UN has formed a special Committee to help combat terrorism by strengthening the capacities of Member States to prevent terrorist's internal and external attacks. For over thirteen years, this Committee has played its role in promoting international cooperation to combat terrorism and imposes the third item of Resolution 1373 of 2001 of the United Nations Security Council Committees, 2004. In the context of Iraq, the Government came up with the Constitution of 2005 where Article 7 stipulates that the state will fight terrorism in all its forms and this has also prompted the Government to come up with the Anti-Terrorism Act No. 13 of 2005. The Iraqi Anti-Terrorism Act No. 13 of 2005 is viewed as an important piece of legislation in the fight against terrorism. However, it is vital to note that the United Nation (UN) has detected a lot of loopholes in this Act due to the fact that the fight against

³ Rondot, P. (1986, November 22). America And Europe Are Grown Harvested. *Each Magazine Arabs Paris*, 217.

⁴ *Ibid.*

⁵ Salman, M., & Masum, A. (2014). A Quest For Defining Terrorism In International Law: The Emerging Consensus. *Journal of International Studies*, 10, 77-93.

⁶ Adam, R. (2005). The War On Terror In Historical Perspective. *Survival: Global Politics and Strategy*, 47(2), 101-130. Retrieved from <http://www.iiss.org/en/publications/survival/sections/2005-9d59/survival-global-politics-and-strategy-summer-3623/05-roberts-fb0e>

terrorism may be used as a blanket means to deprive individuals (Iraqi citizens) their civil freedoms such as the right to personal security. Under the Iraqi Anti-Terrorism Act No. 13 of 2005, there is no clear and precise definition of the terms terrorist acts, terrorism, who are the terrorists, etc.

The aim of this paper is to address the impact of international terrorism on the right to personal security in Iraq after 2003. This paper is divided into three parts excluding the introduction. The first part presents the concepts of international terrorism and the right to personal security. The second part focuses on the impact of international terrorism on the right to personal security in Iraq after 2003. The third part addresses the conclusion and some recommendations in order to confront the threats posed by international terrorism on the right to personal security in Iraq.

CONCEPTS OF TERRORISM AND THE RIGHT TO PERSONAL SECURITY

International terrorism is also viewed as an international crime. However, there is no international agreement as to its definition and statement of pillars despite various decisions made at international conferences, conventions and internal legislation. This fact continues to elude the international community, despite over 70 years of efforts to agree on one definition.⁷ In recent years, international terrorism has taken a new identity from its means of operation that are historically advanced. It is, therefore, pertinent to look into the definitions of “terrorism” and the “right to personal security” in order to have a clear picture from the very beginning before addressing in-depth the impact of international terrorism on the right to personal security in Iraq after 2003. It is important therefore to make reference to the following definitions:

Definition(s) of terrorism

Reviewing the efforts of the international community in order to eliminate the phenomenon of terrorism, it is important to note that all of the earlier “League of Nations” and even the current UN General Assembly based on its decisions, has not made any progress about the definition of terrorism or reach a comprehensive convention on how to confront terrorist acts and control.

⁷ Hassan, O.A. (2011). *International Terrorism and the Legal and Political Manifestations*. Egypt: Aldar Legal Books Press.

This is attributed to the big difference in the views of the States with regard to the legal aspects of terrorism and disagreement on the constituent elements of the crime, the multiplicity of motives to commit the crime, diversity of images and forms of terrorist acts, in addition to the different views of both the international criminal law to the phenomenon of international terrorism and the national criminal laws of all countries.⁸

Many scholars have tried to look at the legal definition of terrorism, but it seems that there is no consensus on the exact meaning of terrorism. It is important to note that the definition of terrorism cannot be separated from the problems of terrorism within a given country especially in Iraq. According to Leonard, terrorism is a way to negatively motivated individual tactically or use of force to do violence or involve in violence publically. Furthermore, Spencer⁹ has explained the concept of “terrorism” as being one of the most disputed terms in the social sciences. The problem of defining the term “terrorism” is well known and has been examined extensively. On the other hand, Schmid and Jongman,¹⁰ in their book *Political Terrorism*, list 109 different definitions of terrorism in existence between 1936 and 1981¹¹ Moreover, as Golder and Williams¹² say, the number would be more, but all efforts to create a generally recognised legal definition of terrorism have failed in international law. According to Hickman,¹³ there is still some uncertainty over what the precise definition of terrorism should be, i.e. drafters of the International Criminal Court (ICC) statute did not include the crime of terrorism in the treaty due to a perceived lack of consensus for a clear definition and the inability to discern a clear rule of international law to make terrorism a universal crime.

In addition to the above, in his report to the UN, Paul¹⁴ maintained that terrorism and human rights issues are fraught with political and social consequences. The controversial phrase is

⁸ Blishchenko, I., & Zhdanov, N. (2010). *Terrorism and international law*. Moscow: University of Moscow Press

⁹ Spencer, A. (2006). Questioning the concept of new terrorism. *Peace Conflict and Development*, Issue 8, 1-33. Retrieved from <http://epub.ub.uni-muenchen.de/13769/1/Feb%2006%20SPENCER%20version%202.pdf>

¹⁰ Schmid, A., & Jongman, A. (1988). *Political Terrorism. A New Guide To Actors, Authors, Concepts, Databases, Theories And Literature*. Amsterdam: North-Holland Publishing Company.

¹¹ Ganor, B. (2002). Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?. *Police Practice and Research*, 3(4), 287-304

¹² Golder, B., & Williams, G. (2004). What Is Terrorism? Problems Of Legal Definition. *University of New South Wales Law Journal*, 27(2), 270-295.

¹³ Hickman, J.D. (2011). Terrorism As A Violation Of The Law Of Nations: Finally Overcoming The Definitional Problem. *Wisconsin International Law Journal*, 29(3), 447-483.

¹⁴ Paul, H. (2004). Human Rights And Terrorism. *Human Rights Quarterly*, 26(4), 932-955

“terrorist to one person, is a freedom fighter to another”.¹⁵ The writer notes in the report the difficulty to distinguish between internal armed conflict and terrorism; he assumes that there is a core meaning of “terrorism,” at least with respect to attacks on civilians about which there is increasingly very little normative disagreement. This principle lies at the heart of the entire structure of international human rights and humanitarian law and applies regardless of the motives or political objectives of the authors of such acts. As a result, for many of the anti-terrorism measures taken since September 11, 2001, governments have used vague and over-broad definitions of terrorism. Such definitions run the risk of sweeping peaceful, expressive activity into the definition of terrorism and can be the basis for repressive regimes attacking political opponents or other perpetual uses of anti-terrorism campaigns. Such anti-terrorism laws violate the principle of legality and provide a basis for governments to label political opponents or human rights defenders as terrorists.¹⁶

In this respect, it was the United States Central Intelligence Agency (CIA), which has adopted in 1980 the definition stating that “terrorism is the threat or use of violence or the use of violence for political purposes by individuals or groups, whether working for a governmental authority list or working against it, when it is the intent of those actions shock, or panic, or amazement, or horror among the target group, which are usually wider than the direct victims of the terrorist act. May involve terrorist groups seeking to overthrow specific regimes, correct specific grievances, whether nationalism or grievances of particular groups, or in order to destroy the international system as an end to itself intentional.”¹⁷ On the other hand, at the regional level, agreements did not adopt the “Organization of American States” (OAS) comprehensive convention against terrorism, but it adopted in 1971 "Convention on the Suppression and Punish Terrorist Acts," which takes the form of crimes against protected persons. However, this did not address the definition of international terrorism and in the same context, it did not provide the "European Convention on the Suppression of Terrorism" (ECST) definition of terrorism in 1976, but it confined itself as a statement that considers terrorist acts.¹⁸

¹⁵ *Ibid.*

¹⁶ *Ibid*

¹⁷ Adams, J. (1986). *The Financing Of Terrorism*. New York: Simon Schuster

¹⁸ Hussein, A. (2005). *International Terrorism Under International Variables*. Beirut: Al-Halaby Legal Publications

Still looking at the regional position especially in the context of the Arab countries, it is important to note that Arab cooperation in fighting terrorism came in the form of ministerial meetings involving the interior ministers, ministers of journalism and ministers of justice in the region way back in 1987 in Kuwait i.e. the Islamic Summit Five. Apart from this summit, another Arab Summit Conference held by the Arab League in Amman in November 1987 also discussed the need to clarify the concept of terrorism, condemning terrorism in all its forms, but they supported the struggle of people for their liberation and to stand against the colonial powers. In other words, the two conferences supported the struggle of national liberation movements and the right of self-determination. These Arab Summit conferences did not come up with a clear definition of terrorism as well as identifying terrorist acts.¹⁹

Looking at the position in Iraq, Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005 defines terrorism as: “Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals”. In the context of this paper, the authors are of the opinion that the Iraqi Government should adopt a comprehensive description of terrorist crime distinguishing it from other crimes according to the principles of international law and international conventions in order to protect civil freedoms of the Iraqi citizens i.e. the right to personal security.

Definition(s) of the right to personal security

In the provisions of the UN Charter, the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 include items and directives to enhance the status of international law of human rights and civil freedoms i.e. the right to personal security in all countries of the world. For example, Bai (2004) studied the ICCPR

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¹⁹ Al-Hussein, M. (2003). *International law*. Saudi Arabia: Suad Al- Islamic University Press.

through a critical review and found that Article 1 of the ICCPR is discussing more on the special protection of state parties. The current Covenant deals with the ethical values and also ensures all rights within the territory of a Member State, subject to its jurisdiction are recognized by all the Member States. These rights should be recognised without any discrimination, such as “race, color, gender, language, religion, political grounds, national or social origin, wealth, birth or other status”. This provision is based on non-discrimination and the principle of equality applies to all of the rights in ICCPR. On the other hand, Article 3 provides that States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. It is pertinent to note that the enjoyment of all civil and political rights set forth in the ICCPR would include the right to personal security. Moreover, international efforts continued to formulate laws that prevent the attack on the right to personal security in their charters. Also, international institutions’ efforts continued in the twentieth century to declare the civil freedoms in their charters. Thus, the UN Charter in Article 55 as well as the UDHR defined civil freedoms as the right to personal security. Articles 1 and 2 of the UDHR further confirm that all people indiscriminately are born free and equal in dignity and rights.

In addition, Yamali²⁰ argued that the concept of civil freedoms is stipulated in Article 10 of the European Convention on Human Rights (ECHR), which provides that the exercise of such freedoms implies duties and responsibilities and may be subject to such formalities, conditions, restrictions or penalties. It is also prescribed by law and necessary in a democratic society for the interests of national security, territorial integrity or public safety in order to prevent disorder or crime, protect health, morals, the reputation or rights of others, prevent the disclosure of information received in confidence or maintain the authority and impartiality of the judiciary.²¹

Looking at the Iraqi Constitution of 2005, Article 15 outlines that civil and political rights are to be enjoyed by every individual Iraqi, which shows that everyone has the right to life, security and freedom and deprivation or restriction of these rights is prohibited except in accordance with the law and based on decision issued by a competent judicial authority. Furthermore, Article 46

²⁰ Yamali, N. (2009). What Is Meant By State Recognition In International Law. *General Directorate of International Laws and Foreign Affairs*, 2-3.

²¹ *Ibid.*

provides that: “Restricting or limiting the practice of any of the rights or freedoms stipulated in this Constitution is prohibited, except by a law on the basis that limitation or restriction does not violate the essence of the right or freedom.” In the context of this paper, it could be argued that civil freedoms such as the right to personal security cannot be treated lightly irrespective of fighting international terrorism.

Finally, in analyzing the concept of the right to personal security, the authors fully support the view of Eleanor,²² who said that it is vital to achieve personal security of citizens and therefore the protection of this life must follow the principles laid down in the UDHR, for being the encyclopedia of human rights and civil freedoms. Also, looking at the provisions of the Iraqi Constitution of 2005 above, the Iraqi Government is under an obligation to protect and respect the right to personal security of its citizens regardless of fighting terrorism both at home and abroad. There is no doubt that terrorism has devastating consequences on the ability of individuals to fully enjoy their right to personal security.

IMPACT OF INTERNATIONAL TERRORISM ON THE RIGHT TO PERSONAL SECURITY IN IRAQ AFTER 2003

According to Kelly (2008),²³ before 2003 no suicide attack had ever taken place in Iraq. However, by the end of 2007, there had been nearly 1,000 terrorism operations. From Kelly’s observation, Iraq may now represent as much as 70% of all recorded suicide terror incidents since 1980 at the international level. In the context of this paper, it would be vital to make reference to the UNAMI report about the situation in Iraq regarding the impact of international terrorism on the right to personal security after 2003. According to the casualty figures released by UNAMI; a total of at least 799 Iraqis were killed and another 1,409 were injured in acts of

²² Eleanor, R. (2008). The Universal Declaration of Human Rights At Sixty. *Journal USA Celebrating 60 Years of Human Rights*, 3- 8.

²³ Kelly, B.M. (2008). Martyrs in Mesopotamia: The Logic of Suicide Terrorism in Iraq. *College Undergraduate Research Electronic Journal*, University of Pennsylvania, 7-108.

terrorism and violence in May 2014. The number of civilians killed was 603 (including 144 civilian police), while the number of civilians injured was 1108 (including 218 civilian police). A further 196 members of the Iraqi Security Forces were killed, and 301 were injured. Based on the figures provided by UNAMI above, there is no doubt that the impact of international terrorism has indeed robbed the Iraqis their right to personal security. This impact of international terrorism on civil freedoms such as the right to personal security was echoed by the UN Special Representative in Iraq Mr. Mladenov²⁴ saying that: “I strongly deplore the sustained level of violence and terrorist acts that continue rocking the country. I urge the political leaders to work swiftly for the formation of an inclusive government within the constitutionally mandated time frame and focus on a substantive solution to the situation in Anbar and Mosul cities”. Also, it is evident that the announcement made by the Ministry of Human Rights in Iraq noted that terrorist attacks had robbed the Iraqis' their right to personal security from 2004 until 2011, including approximately 70,000 Iraqis who have been killed and nearly 250,000 injured.²⁵

Furthermore, the UN Secretary-General Ban Ki-moon has been reported to have shown his grave concern about the serious deterioration of the security situation in Mosul, Iraq in the Mid of 2014, where thousands of Iraqi civilians have been displaced in the recent violence. He strongly condemned the terrorist atrocities in Anbar, Baghdad, Diyala, Mosul and Salah Al-Din provinces, which have led to the killings and woundings of many Iraqi civilians over the past several days. These atrocities prompted the Secretary General to extend his profound condolences to the families of the victims and to the government of Iraq. In order to stop the violation of human rights, the Secretary-General reminded all Member States of their obligation to impose financial sanctions, arms embargo and travel ban on the Islamic State in Iraq and Syria (ISIS) pursuant to Security Council Resolutions 1267 and 1989.

By analyzing the impact of international terrorism above, it could be argued that after 2003 Iraq has witnessed a lot of suicide attacks in recent years. Hence, the impact of international

²⁴ Mladenov, N. (2014). Special Representative of the United Nations Secretary-General for Iraq (SRSG): United Nations Assistance Mission for Iraq (UNAMI). Retrieved from <http://www.unmultimedia.org/tv/unifeed/category/contributing-agency/unami-united-nations-assistance-mission-for-iraq/>

²⁵ Yassin, K. (2014). Terrorism and its impact on the content of human rights. *Journal of the Rights Sixth Letter College of Law University of Karbala*, volume 1, 222-253.

terrorism is far reaching on civilians and thus set to increase in the near future if nothing is done such as redefining the terms “terrorism” and “terrorist acts” under the Iraqi Anti-Terrorism Act No. 13 of 2005 or even to come up with a new law altogether in order to fight terrorism and at the same time protecting human rights. Today, Iraq is still witnessing violence and terrorist activities that are aimed mainly at civilians and civilian infrastructure, resulting in loss of innocent lives.²⁶

CONCLUSION

In view of the foregoing discussions above, it is inevitable to point out that the enforcement of the Iraqi Anti-Terrorism Act No. 13 of 2005 has indeed deprived the Iraqi citizens of their civil freedoms such as the right to personal security due to the ambiguity and lack of clear definition of the terms “terrorism” and “terrorist acts”. It is the contention of the authors that the time has come for the Iraqi Government to re-look into the Iraqi Anti-Terrorism Act No. 13 of 2005 especially in the context of redefining the terms “international terrorism” and “terrorist acts”. Perhaps it is of paramount importance that reference be made to Resolution No. 1373 of 2001 of the UN Security Council. This Resolution is considered as one of the important Resolutions in inviting states to issue legal legislations to combat international terrorism. Apart from that, there is also a need for all countries to give their full commitment and support to the UN in combating international terrorism and at the same time respecting human rights such as the right to personal security as provided under the international human rights instruments. In other words, the international community cannot run away from balancing these two conflicting interests in an amicable manner i.e. fighting terrorism as well as safeguarding human rights. There is also a need to educate people about the dangers of terrorism. This awareness can be created by educating the Iraqi citizens and make them become aware of the seriousness of global terrorism.²⁷ (Ahmed, 2010).

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