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The Terrorism from the Perspective of Human Rights: A Challenge for the United Nations



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ABSTRACT: *The process of globalization, make us believe that global problems such as Terrorism cannot be resolved without global solutions, based on the international legal framework. It is well known that the codification of new international legal norms is in fact a very slow mechanism, despite of the high speed to which growth and increases the challenges the world community has to deal with. By other hand, the complex United Nations System doesn't have an effective interaction between their components, originating a duplication of efforts and the inexistence of mutual cooperation that allows the achievement of common goals. The Terrorism is a flagellum the world have suffered many times and more and more threats are present, and more casualties are regretted after so many attacks. This phenomenon cannot be eliminated, however, with practices that opposes to fundamental principles of International Human Rights Law. United Nations have said, that counter Terrorism measure, must be balanced and must always consider the protection of the human dignity. But, international news show us that these recommendations are not being taken into consideration on the ground. It is urgent to adopt a "human" approach in the combat of Terrorism and this research has as purpose the explanation of two steps in this regard: the adoption of an International Convention on Terrorism and Human Rights, and, the creation of an institutional link between the Counter-Terrorism Committee of the UN Security Council and the UN Human Rights Council.*

Keywords: *Terrorism, Human Rights, United Nations*

a) Introduction

The terrorist acts are defined by the United Nations in generic and non binding terms, as those "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes... whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them" (UNGA Resolution 61/40).

There's a generalized perception, that today's world -against what could be thought- is a more unsafe one. Of course, the cause of this covers a multiplicity of dimensions and certainly it's hard to precise, but the Terrorism could be a clue to understand why the traditional concepts of international security that have been effective until now, have become obsolete and indeed, no longer provide real answers to the challenges and problems the world is facing. And the reason of that is actually very simple.

In the genesis of the contemporary International Organizations, the Terrorism was present but was not an issue that would manifest itself in such magnitude as now. Today, day after day, we have get used to see news related to terrorist acts, perpetrated in the heart of the western world -United States, Spain, England- as well as in places very far away from our closest geographic location -Algeria, Israel, Lebanon, Iraq, India, Pakistan, Indonesia-.

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The motivations of such acts are obviously diverse but in any case, the result is frequently the same: destruction of infrastructure, direct or indirect economic damage, death of innocent civilians and generalized chaos.

We have to emphasize that there's an effect caused by terrorist acts, generated precisely as an answer to such acts. And is that the States affected by them, try to implement measures in order to repay the damages and to develop new strategies to avoid terrorist acts in the future. Unfortunately, the public opinion's influence -that pressures to obtain forceful and immediate steps-, the particular political interests and the lack of concrete answers among the conventional International Law, about how to counter Terrorism respecting fundamental freedoms, have caused an injury, in some cases grave and explicit, of the human rights, within what have been called "*Fight*" or "*War*" against Terror or Terrorism.

The International Commission of Jurists, in its Declaration of Berlin of 2.004, entitled "*Upholding Human Rights and the Rule of Law in Combating Terrorism*" expressed that "*the world faces a grave challenge to the rule of law and human rights. Previously well-established and accepted legal principles are being called into question in all regions of the world through ill-conceived responses to Terrorism. Many of the achievements in the legal protection of human rights are under attack*".

In relation with this, should be analyzed what have said the United Nations. It's convenient then, to remember that the article 1,2 of the United Nations Charter says that one of the main purposes of the Organization is "*to achieve international co-operation in... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction*". Such goal is almost in identical terms in the article 2,1 of the Universal Declaration of Human Rights, that would become the main reference of later International Treaties on Human Rights.

The UN Security Council, through its Resolution 1624 (2.005) stressed that "*States must ensure that any measures taken (while countering Terrorism) comply with all of their obligations under International Law, in particular International Human Rights Law*". This was reaffirmed by the UN General Assembly in its last period of sessions, when approved the Resolution 61/171, in which also deplored "*the suffering caused by Terrorism to the victims and their families*".

Another organ of the United Nations, the Human Rights Council, in one of its first activities, adopted the Decision 2/112 (2.006) entitled "*Persons Deprived of Liberty in the Context of Counter-Terrorism Measures*", in which it is urged to "*ensure that persons deprived of liberty, regardless of the place of arrest or of detention, benefit from the guarantees to which they are entitled to... including... protection against torture, cruel, inhuman or degrading treatment or punishment, protection against refoulement, the review of their detention and... fundamental judicial guarantees*".

The case of the detainees in the US base of Guantánamo is illustrative on this regard, and has generated a lot of debates within the United Nations and even in the United States, at the Supreme Court's level. The UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, in its "*Preliminary Findings on Visit to United States*", published on May 29th 2.007, says that he "*does not consider the international fight against Terrorism as a 'war', at least not in other than rhetorical terms... The conduct of the United States must therefore comply not only with the Geneva Conventions, but also with applicable International Human Rights Law...*".

How can this be guaranteed worldwide?. Two alternatives are suggested: the instrumentation of a conventional mechanism on the subject and the creation of a network among the principal and subsidiary organs of the United Nations that have a mandate related to Terrorism and Human Rights.

b) International Convention on Terrorism and Human Rights

Today are effective twelve legal instruments of universal reach on Terrorism, being the most recent one, the International Convention for the Suppression of the Financing of Terrorism, signed in New York in 1.999. From the list of those instruments it's very easy to find out that no one gives a clear and express concept of Terrorism and none of them covers the relationship between counter Terrorism and human rights. It is proposed then, an International Convention on Terrorism and Human Rights, in order to give binding support to the Reports, recommendations, Resolutions and statements made by different United Nations organs.

The preamble of the Convention would just consist in the mention as a recompilation, of the last UN Resolutions about the issue Terrorism-Human Rights, from the General Assembly, the Human Rights Council and the Security Council. There could be quoted also, excerpts from Reports of the thematic Special Rapporteur and from other relevant documents -such as the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention relating the Status of Refugees and the Geneva Conventions of 1.949 with its Additional Protocols-. This would express the philosophic, historic, legal and rational source of the main proposal of the Convention, which is, combat Terrorism respecting human rights.

A key aspect could be seen in the preamble of the International Convention for the Suppression of the Financing of Terrorism: "*Noting also that existing multilateral legal instruments do not expressly address such financing...*". Applying this to the topic we are dealing with and as was previously said, there is no International Treaty that involves Terrorism and human rights.

The operative clauses of the Convention would be consolidated around the already referred UNGA Resolution 61/171, that *"reaffirms the obligation of States... to respect certain rights as non-derogable in any circumstances, (and) that any measures derogating from the provisions of the Covenant (on Civil and Political Rights) must be... exceptional and temporary"*; and also requests that *"counter-Terrorism measures should be implemented in full consideration of minority rights"*; that it must be respected the *"non-refoulement obligations under International Refugee and Human Rights Law"*; and, that there must be respected the *"safeguards concerning the liberty, security and dignity of the person and to treat all prisoners... in accordance with International Law, including Human Rights Law"*.

Other recommendations are in the Report of the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism (A/HRC/4/26), presented at the beginning of this year:

- *"84. (...) either universal or random security checks as preferred alternatives, instead of measures based on profiling. Universal or random checks are non-discriminatory and at the same time impossible for terrorists to evade..."*
- *86. (...) that States establish clear and strict standards as to what factors law-enforcement agents may or may not employ for their search efforts in the counter-Terrorism context..."*
- *87. (...) to ensure that the use of terrorist-profiling practices by law-enforcement agencies is clearly documented and monitored..."*

The Treaty itself, before the ratification and the entry into force, could be provisionally applied according to article 25 of the Vienna Convention on the Law of Treaties. The article 18 of the same Convention, expressed that *"a State is obliged to refrain from acts which would defeat the object and purpose of a Treaty"* when that State has already signed it, and even before the ratification and entry into force.

c) Link between the Counter-Terrorism Committee of the UN Security Council and the UN Human Rights Council

The Security Council, according to the article 24 of the UN Charter has as a *"primary responsibility the maintenance of international peace and security"*. By doing an extensive interpretation of such disposition and keeping in mind the events of recent years, this executive organ have brought into discussion the topic of Terrorism, mainly after the remembered acts against the New York World Trade Center in 2.001.

Precisely after those attacks, it was approved by the Council, the Resolution 1373 (2.001), that among other things established *"a Committee of the Security Council... to monitor implementation of this Resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee... on the steps they have taken to implement this Resolution"*. This Committee would be known later as the Counter-Terrorism Committee.

We also have the UN Human Rights Council, created by the UNGA Resolution 60/251, that points out the specific duties of the new organ, including the promotion of the *"universal respect for the protection of all human rights... without distinction"* and the addressing of *"situations of violations of human rights"*. It is very important to emphasize the operative clause n° 3 of the mentioned Resolution, which confers the Council the responsibility of *"promote the effective coordination and the mainstreaming of human rights within the United Nations System"*. This could be tied with the Global Counter-Terrorism Strategy, adopted in 2.006, in which the Member States of the UN resolve *"to support the Human Rights Council, and to contribute... to its work on the question of the promotion and protection of human rights for all in the fight against Terrorism"*.

Indeed, the UNGA Resolution 61/171 expresses in its operative clause n° 12, that the General Assembly *"welcomes the ongoing dialogue established... between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies..."*.

Finally, we have as a reference the Report of the UN Secretary-General entitled *"Recommendations contained in the Report of the High-Level Panel on United Nations System-wide Coherence"* (A/61/836), in which he says that *"the Organization urgently needs more coherence and synergy so it can perform as one and be more than the sum of its parts"*.

Then, it is indispensable that the linkage mechanism between the Counter-Terrorism Committee of the UN Security Council and the UN Human Rights Council, being re-enforced, especially within the process of reforms undertaken by the United Nations after the World Summit of 2.005.

As part of this idea to put into a network both organs, there could be held joint official meetings, and might be made joint Reports that include a strict monitoring of the counter Terrorism measures of the Member States of the UN. Other steps would be the adoption of common plans, the exchange of relevant information and the harmonization of global initiatives.

d) Conclusion

The Terrorism is a form of violence that breaks all the patterns of civilization that mankind share. We certainly cannot ignore the suffering caused by groups of peoples and individuals, that act apperted from the rule of law. But, the combat of Terrorism cannot serve as an excuse to implement measures that could be or have proved to be restrictive of human rights or that violate human rights.

Dignified the human being in the combat of Terrorism is not a feature of weakness but without doubt, a symbol of the reaffirmation of the values that the Terrorism pretends to attack.

In consequence, it is not possible the violation of human rights countering a phenomenon that by its own nature, already violates them. From an ethical and moral point of view, there wouldn't be any difference at all between the terrorists and those who combat them.

Like His Holiness Pope Benedict XVI said this year in its message on the World Day of Peace, *"the scourge of Terrorism demands a profound reflection on the ethical limits restricting the use of modern methods of guaranteeing internal security... States cannot fail to recognize the need to establish clearer rules to counter effectively the dramatic decline that we are witnessing"*.

e) Bibliography

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