

Terrorism And Human Rights: Some Reflections – I

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[The issue of terrorism has re-engaged the attention of the international community right since the end of the cold war. In fact, during this phase, the demands for self-determination by many ethno-cultural and religious groups in various states descended into violence when they sought to take on the might of the state by militant means. This phenomenon of violent assertion was conveniently passed off as ‘terrorism by the analysts the world over. But the issue was much more complex and all these complexities came to the fore once the states themselves started discussing about it in the UN. The UN system, which has been underlining the respect for territorial integrity and state sovereignty, and equally stressing the respect for human rights has found it difficult to define terrorism as well as reconcile terrorism with respect for human rights. The debates in the UN bodies, which have been covered in this article indicate that consensus on the definition still eludes the international community. Editorial Board]

The UN Secretary General, Kofi Annan, addressing a Conference on Fighting Terrorism said that “terrorism has threatened Member States of the UN for many years and the Organization (the UN) remains active against it on many fronts”. [1] Expressing a grave concern that UN itself had been the target of a vicious and heartless terrorist attack, he stressed the “need for a debate regarding policy responses to fight terrorism effectively”. The problem of terrorism occupied the centre-stage of 58th UN Session (2003) which underlines the urgency of concluding a comprehensive Convention on ‘International Terrorism’.

The UN augmented, during the post 9/11 phase, its efforts in dealing with terrorism under UN system and international humanitarian law. The initiatives to deal with terrorism in UN system have a long history spanning over more than 55 years. [2] In fact, the two issues appear to be coming in the way of finalizing a comprehensive and unambiguous international consensus on terrorism. The first pertains to the definition of ‘terrorism’, and the second is related to the absence of an unambiguous framework in striking a balance between ‘Terrorism and Human Rights’.

The problem of the definition has remained unresolved since 1937 when the Convention for Prevention and Punishment of Terrorism drafted under the auspices of League of Nations could not be adopted due to the lack of consensus on the definition of terrorism. In the backdrop of peoples’ struggles against colonialism and imperialism the absence of a global consensus on defining terrorism may be easily comprehended. Since then the issue of terrorism has generally been addressed on case to case basis. Even the UN Security Council Resolution 1373 (2001), in essence, is specific to 9/11.

The eruption of ethnic and ethno-religious conflicts in the aftermath of breakup of Soviet Union prodded the UN to address the issue afresh. The UN Commission on Human Rights (UNCHR) resolution 1997/42 of April 1997 entitled “Human rights and Terrorism” provides a general frame-work to address the issue. The resolution condemns the acts, methods and practices of terrorism as acts of aggression which are aimed at destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted governments etc.[3] In other words, the resolution describes terrorism in inclusive and illustrative terms.

The Security Council Resolution 1269 (1999) was the first resolution to underline a resolve to wage a common fight against terrorism anywhere in the world. This resolution supported the efforts to develop new international instruments to counter the terrorist threat. The UN General Assembly adopted the resolution 54/164 of December 1999 which echoed the UNCHR resolution of April 1997 cited above. In response to 9/11, the UN Security Council adopted Resolution 1373 (2001) unequivocally condemning the 9/11. This resolution underlined that international terrorism constituted a threat to international peace and security. However, this resolution is specifically related to the “terrorist acts” which are described to constitute grave threats to international peace and security. Even the decision of the Security Council under this resolution urges upon the states to refrain from providing active or passive support to entities or persons involved in “terrorist acts”. The decision further prohibits the financing of “terrorist acts”. Thus, even this resolution while laying emphasis on ‘acts’ circumvents the definition of ‘terrorism’ itself. The UN General Assembly resolution of October 1970 which was reiterated in the Security Council Resolution 1189 (1998) and again reiterated in the resolution 1373 (2001) made it clear that states were duty bound to refrain from organizing, instigating, assisting or participating in “terrorist acts” in other states or acquiescing in organized activities within its territory

The UN Initiative

The Policy Working Group(PWG) on the UN and Terrorism has been working on spelling out a direct role for UN in countering terrorism “in the areas in which the Organization has a comparative advantage.” The PWG clearly maintains that “the group has not attempted to devise a definition of terrorism, identify its diverse roots or address specific instances of terrorist activity.”[4] In view of this position, the PWG has recommended that UN activities should be part of tripartite strategy supporting global efforts to: a) dissuade disaffected groups from embracing terrorism; b) deny groups or individuals the means to carry out acts of terrorism; and c) sustain broad-based international cooperation in the struggle against terrorism.[5] Thus, it is clear that UN has steered clear from the responsibility of defining terrorism and concentrated on the strategies to counter terrorism. However, the PWG observes that “despite its relatively wide use as a technique, terrorism is not a single phenomenon, but must be understood in the light of the context from which terrorist activities arise.”[6]

The UNCHR Initiative

In 1996, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (now designated as Sub-Commission on the Promotion and Protection of Human Rights), which has been making valuable contribution on thematic issues, requested Ms.Kalliopi K. Kaufa to prepare a working paper on the question of terrorism and human rights. The working paper (E/CN.4/Sub.2/1997/28) was well appreciated and

subsequently in 1998 Ms. Kaufa was appointed as Special Rapporteur to carry out the comprehensive study on terrorism and human rights[7].

The Progress Report on ‘Terrorism and Human Rights’[8] prepared by the Special Rapporteur presently forms the main reference point on the subject dealing with the definition of terrorism. It is a valuable report in as much as it takes a historical view of the evolution of terrorism and identifies the difficulties in arriving at an international consensus on the definition of terrorism. The report also deals with different forms and manifestations of terrorism. It is not clear whether the Special Rapporteur would ultimately be in a position to propose a definition of ‘terrorism’ or not. However, the study raises the issues on the basis of available academic literature and opinions of experts and activists which have a bearing on the subject. The study, discreetly identifies the formulations which make it difficult to devise a definition of terrorism under international humanitarian law.

At the outset, the report maintains that “the term (terrorism) is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgment and is used selectively.”[9] It may not be disputed that the term is politically loaded and highly emotive. However, the past 55 years experience and developments should provide some guidance in arriving at a plausible consensus on the definition of terrorism. The report is quite comprehensive and covers a wide range of issues. Some of these issues deserve a critical analysis in order to disentangle the main issue from the ambiguity. The report has divided the phenomenon of terrorism in three different categories, namely State terrorism, sub-State (individual) terrorism and State-sponsored terrorism, and discussed them quite in detail. According to report, a distinction between State-terrorism and sub-State or individual terrorism would be “useful to locate the historical genesis of modern terrorism and also the evolutionary alteration that its ordinary meaning has undergone since its first usage but also current concept of international terrorism.”

State and sub-State Terrorism

In an analysis of State terrorism, the report traces historically the origin of the phenomenon to the revolutionary government in France during the French revolution (1792-1794). It was under the policy of *regime de la terreur* that the revolutionary government used it as an instrument of political repression and social control. According to the report the main purpose of this policy was the consolidation of State authority. The report provides further illustrations of the State terrorism in different parts of the world during the different phases of history.

Taking stock of sub-State (or individual) terrorism, the report maintains that it emerged a century later (1878-1881) and evolved as a part of terrorist process, first in Tsarist Russia, and then across Europe and in the US. The explanation offered is that individuals and groups influenced by anarchist ideology adopted the tactics of state terror and they conjured it up with the philosophy rejecting state. The explanation is enriched by various illustrations from different social settings across the world.

The Interpretations

In both the cases, the historicity and the facts relating to State and sub-State terrorist tactics may not be disputed but the interpretation of the historical facts provided in the report remains controversial. The explanations offered in support of theorizing State and Sub-State terrorist tactics described as terrorism, border on vague academic generalizations. The States or sub-State individuals or groups might have employed terror tactics in pursuance of their objectives but to place them in the category of modern day phenomenon of terrorism would be inappropriate. Moreover, the terror tactics adopted by State and responded to by the non state groups in the pre-colonial period of the World history have their specific ideological and at times even politically legitimate connotations. Thus, the semantic similarity of the terms do not entitle them to be incorporated within the terminology of “terrorism” as comprehended in modern day world. This is bound to create confusion and elude the consensus further on the definition of terrorism, apart from touching upon the sensibilities of many a modern nation state. Therefore, it is proposed to place and view the phenomenon of terrorism purely in the context of post colonial world when a now global order was fashioned with a broader inter-national consensus through United Nations. This would enable the expert to create borders within which the phenomenon of terrorism may be placed and analysed. These borders would make it less ticklish to reach a consensus on the definition.

Right of Self-Determination

The other concern, which is reflected at many places in the report with reference to academic and expert studies on the subject, relates to the State responses to the struggles of Right of Self-determination.

According to the report, concerns have been raised by many States about “wars of national liberation in the context of Right of Self Determination”. To define the wars of national liberation is a highly contentious issue. Who is to decide that a particular conflict is a struggle of national liberation? Should each ethno-cultural or ethno-religious group in a plural and multi-cultural State seeking separation be declared to be engaged in a war of national liberation? Will the international order be in a position to bear the consequences of such a proposition? These questions need to be answered. It may be mentioned that other forums of UN are engaged in grappling with this contentious proposition. The outcome and position of these forums should be incorporated in the discourse on definition of ‘terrorism’. It may be underlined that UN fora is meant for clearing and not compound the ambiguities.

As far as Right of Peoples’ to Self- Determination is concerned, it may be viewed from three dimensions. Firstly, the right of peoples’ Self- Determination, as host of studies and vast literature on the subject conclude, stands exhausted with the completion of process of decolonialization and the emergence of sovereign independent states. It needs to be acknowledged that residual issues of allowing Peoples to exercise their right of Self Determination remained, which are being tackled by the UN itself. Moreover, at the dawn of new millennium, these are exceptional cases. The exceptional case of East Timor or the residual issue of Palestinian statehood provide an illustration to the point. Thus, the right can not be invoked perpetually at the will of groups of people.

The second dimension of the issue is related to the spurt in ethnic and ethno-religious upsurges which erupted in the aftermath of Soviet disintegration. The breakup of former Yugoslavia provided further impetus to these upsurges. These upsurges, in their effort to reinvent the right of Self Determination are challenging the sovereignty and territorial integrity of Member states of the UN. Ironically, the UN Charter and other UN Covenants and a host of resolutions including the UNCHR resolution on 'Human Rights and Terrorism' have underlined the respect for the territorial integrity of States. Thus, the recognition, respect and right to defend the territorial integrity forms the core of UN philosophy and is the bedrock of international law. The acts of aggression "threatening the territorial integrity and security of States, destabilizing the legitimately constituted governments and undermining pluralistic civil society "have been declared as acts of terrorism. The upsurges witnessed during more than last one decade have enhanced the levels of violence in pluralistic societies around the world and invariably these groups are claiming the right to self Determination. The States have been quick to describe these upsurges as 'terrorism'. The independent Human Rights NGO's did maintain a long silence on the issue. However, for the last several years the international Human Rights NGO's have been deriding the violence at the hands of "non- State actors" in the zones of violence around the world in pursuance of the claims of Right of Self Determination. It needs to be recognized that we live in a multi-ethnic, multi-cultural and multi-religious world. Even a monolithic Muslim country like Saudi Arabia has sectarian, tribal and cultural minority groups in its Kingdom. These groups have been, occasionally, seeking assertion through violent means. In case the reinvented right of Self Determination for territoriality finds the general approval of UN, the entire world is bound to be broken into bits and pieces. There is a host of literature available on this subject and there is an international consensus even at the academic level, that the process of allowing the creation of new states, on ethno-cultural or ethno-religious basis would be catastrophic.

The third dimension is related to the UN initiative in reinterpreting the right of Self Determination. In this regard, the Special Rapporteur and Chairperson of the Working Group on Prevention of Discrimination and Protection Of Minorities of the sub-Commission on the Promotion and Protection of Minorities, which was established in 1995, (its mandate was further extended in 1998) has been addressing the issue for the past several years. He has produced various reports and conducted a host of Seminars on the subject. The Special Rapporteur has clearly rejected in his reports the hypothesis that right of Self Determination involves redrawing of borders. He maintains that the minorities (in multi-ethnic and pluri-religious and pluri-cultural States it is the minority groups which are claiming redrawing of borders) have a right to 'internal self -determination' which envisages their participation

in democratic governance and representation , preservation of their culture and language and incorporation of these guarantees in the constitution of the State. In the very first report, the Special Rapporteur expressed the deep concern on the conduct of 'conflict entrepreneurs' (alluding to non-state actors or terrorists) who were out to disturb the multi cultural and pluri religious ethos across the societies. In proposing a definition of terrorism, these developments may be taken into account and the plea of exercise of right of Self-Determination and the denial of the exercise of the same on the part of State may not be brought in out of the context of UN position on the subject.

Striking a Balance

The Human Rights defenders have been deeply concerned, and rightly so, that the individual human rights are not jeopardized in the process of elaborating the concepts and laying down the international norms. In majority of the cases the balance has tilted in favor of individuals or groups against State. However, in striking a balance between State terrorism and sub-State terrorism, it needs to be borne in mind that States are bound by international covenants and

treaties which uphold human rights. The international mechanisms and procedures are in place to oversee that human rights norms are observed and implemented by States.

The report rightly concedes that “the basic duty of non-intervention in the domestic affairs of States has been subject to a process of reinterpretation in the human rights field since 1945, so that States can no longer plead it successfully as a bar to international concern and consideration of international human rights situations.”[10] The outcry in US media and Human Rights defenders about the treatment of Al-Qaeda prisoners in Guantanamo Bay in US provides an illustration to the point. The performance of States regarding the maintenance of Human Rights record is under constant review of UN bodies and a constant vigil needs to be maintained in this regard. Thus, the UN mechanisms and procedures are geared up enough to check the menace of State terrorism.[11] The UN Secretary General has stressed that the “promotion and protection of human rights, as well as the strict observance of international humanitarian law, should be at the centre of anti-terrorism strategies.” In this vein, it is the sub-State terrorism which remains outside the framework of any norm or code of conduct. Hence this position shifts the onus to sub-state terrorism which has remained undefined and unaccountable.

Mercenaries

Another Working Group on the “Use of Mercenaries as means of violating Human Rights and impeding the exercise of the right of Peoples to Self Determination” has also been reflecting on terrorism.[12] The Second Meeting of Experts on ‘Traditional and New Forms of Mercenary Activities’ stressed in particular the linkage between mercenary activities and terrorism. The Committee discussed mercenary activities taking new forms, manifestations and modalities.[13] According to the Committee, mercenarism has many facets which include the involvement of mercenaries among other activities, in sabotage and participation in covert activities that undermine the constitutional order of a state and participation of mercenaries in terrorist activities.

It is evident from the report that the Expert Committee has described terrorism in inclusive and illustrative terms. The other report further enlarges the scope of mercenary activities by incorporating the acts of international terrorism within its sphere.[14] Thus, the initiatives undertaken by the UNCHR to define ‘terrorism’ and ‘mercenaries’ supplement and compliment each other.

State Sponsored Terrorism

The report has also raised the issue of State sponsored terrorism[15] and maintains that there has been a marked increase in the involvement of states in pursuance of their immediate foreign policy. According to report the scope of state sponsored terrorism includes any form of overt or covert support or assistance given by a state to terrorist agents for the purpose of subverting or destabilizing another state or its government. The sponsor state need not necessarily be strong, even weaker states have sponsored terrorism. The report provides illustrations in this regard.[16] There are host of General Assembly and Security Council Resolutions which have addressed the problem of State sponsored terrorism.

The debate in the UN sub-Commission on the Report indicates that there is no unanimity of views on the subject. The Report points out that sub-Commission members were divided on the issue of evolving a definition of 'terrorism' and some members even expressed a view whether it was at all needed.[17] The other members differed on the key elements of definition, e.g.; actors and nature of acts. In view of these differences the report has proposed that sub-Commission should determine the issues it considered worth developing[18] The report also informs that there was a consensus in UN bodies on some elements of conduct that comprised terrorism but there was no consensus on the potential authors of terrorism or those who could make use of this phenomenon.

In quest of building a consensus, the Special Rapporteur on Terrorism and Human Rights presented the Additional Progress Reports in August, 2003.

[To be concluded]

Notes and References

1. Secretary General, Kofi Annan, Conference on "Fighting Terrorism for Humanity: A Conference on the Roots of Evil"; UN Press Release, SG/SM/8885, 22nd September 2003. Kofi Anan said that "Recently, the UN itself has been the target of a vicious and heartless terrorist attack, in which many irreplaceable colleagues and friends were killed. I am deeply saddened by their loss. They were some of our best."
2. The existing international conventions relating to various aspects of the problem of international terrorism, may be enlisted as; the Convention on Offences and Certain Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.
3. The resolution 1997 (42) "condemned all acts, methods and practices of terrorism, regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed

as acts of aggression aimed at the a) destruction of human rights, b) fundamental freedoms and democracy, c) threatening the territorial integrity and security of States, d) destabilizing legitimately constituted governments, e) undermining pluralistic civil society, f) and having adverse consequences for the economic and social development of States.”

4. Report of the Policy Working Group of the United Nations and Terrorism, Document A/57/273, 8/2002/875,UN; p.4
5. Report of the Policy Working Group; op.cit.p.1
6. Report of the Policy Working Group; op.cit. p.4
7. The Special Rapporteur has so far submitted three reports and one Working Paper along with two addendums to the sub-Commission.
8. E/CN.4/Sub.2/2001/31(hereinafter to be referred as Report)
9. Report, para 25
- 10.Report, Para 47
- 11.Secretary General, op.cit.
- 12.Document E/CN.4/2003/4
- 13.The Document illustrates the involvement of mercenaries in the activities such as: a)armed conflict; b)sabotage and participation in covert activities that undermine the constitutional order of a state; c) interference in the internal affairs of States calculated to bring about political instability by violent acts on political leaders; d) unlawful trafficking of weapons, precious stones, oil and drugs; e) mercenaries hired by authoritarian regimes as professional military experts to carry out military training ; f) participation of mercenaries in terrorist activities; g) participation by mercenaries in crimes against State security and economic well being; h) mercenary operations carried out by private security companies; and i)impunity aided by the absence of enabling national legislation to punish mercenaries.
14. Document E/CN.4/2003/16
15. Report, Para 52
16. The Problem of State sponsored terrorism has been dealt within the Declaration on Principles of International Law concerning Friendly relations and cooperation among states in accordance with the Charter of the UN incorporated in UN General Assembly Resolution 2625 (1970), General Assembly Resolution (1970) Security Council Resolution 1189 (1998), Security Council Resolution 1269 (1999) and the Security Council Resolution 1373 (2001).
- 17.Report paras 27 and 28
- 18.Report para 33