

IMPACT OF TERRORISM ON HUMAN RIGHTS AND OTHER RELATED ASPECTS OF INTERNATIONAL LAW: A REFLECTION

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SUMMARY

Terrorism poses a threat to humanity as a whole, without distinction, as every State desires to defend itself against terrorist activities that threaten its citizens and instil fear. Human rights are important, and the cost of terrorist activities is expressed in numerous human lives and enormous material damage. Yet to date, international organisations and governments have not found a common definition or uniform approach. Terrorist groups seek to conduct attacks, violate borders, radicalise and recruit potential extremists within the region. Terrorists motivated by other forms of extremism use violence to threaten civilian populations, undermine the rule of law and disrupt normal daily life. The strategic objectives include the reduction of terrorist attacks, secure borders and all ports of entry against terrorist threats and elimination of other types of disturbances to the peace and security of the country.

The work was prepared through a combination of archival and internet search and consultation; carried out through an analysis of existing literature in the domain of terrorism as well as legal discipline. The results show responses to counter-terrorism as well as efforts to thwart and prevent it, and uphold respect for human rights, fundamental freedoms and the rule of law. Faced with terrorist acts and threats, governments are tempted to react at once with force, setting aside legal safeguards in a democratic state. But in crises such as those brought about by terrorism, respect for human rights is even more important; any other choice would favour the aims of terrorists and would undermine the foundations of society. On the other hand, the need to respect human rights is not an obstacle to the effective fight against terrorism. The work aims to reconcile both requirements: defending society and preserving fundamental human rights and freedoms considering the protection of victims of terrorist acts. Finally, it is designed to serve as a practical guide for anti-terrorist policies, legislation, policymakers, counter-terrorism practitioners and legal scholars.

INTRODUCTION

Although the term is not subject to a universally agreed definition, terrorism can broadly be understood as a method of using violence to spread fear and attain political or ideological goals. The attack spreads fear as the violence is directed unexpectedly against innocent victims, which in turn puts pressure on third parties, such as governments, to change their policies or positions. Contemporary terrorists utilise many forms of violence and indiscriminately target civilians, military facilities and State officials among others. Terrorism has gained new dimensions and manifestations, and is still lacking consensus over the conceptual definition as a severe threat to national and international security. The approaches towards terrorist activities differ from case to case; as, at this point, there is no single legal regime to deal with terrorist activities, and the legal regime is what gives the answer and the framework for the counter-terrorist activities of the security forces, to be able to deal with the threat. Following the terrorist attacks in recent years, the fight against terrorism has become a top priority for everyone. These attacks have been perceived as a direct assault on the fundamental values of human rights, democracy and the rule of law.

During the last few centuries, humanity has witnessed several patterns of terrorism, and the twentieth century added new patterns to terrorism.² There are numerous conventions that define certain manifestations of terrorism, addressing the way states should deal with the threats of terrorism, but not a single comprehensive document has

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² (Schmidt 2011).

been tendered. States' practices differ, and without a comprehensive legal definition, applicable law can be applied on a case-by-case analysis. Legal precedents that serve as working examples of how fundamental human rights laws are applied in practical contexts giving in-depth guidance on the international frameworks protecting human rights and countering terrorism. These include extra-territorial application of international human rights obligations, and the rights to life, liberty, fair trial, privacy, freedom of expression and association, and how they may be respected in the context of countering terrorism. The impact of the absolute prohibitions on torture and ill-treatment are explained in the context of renditions, expulsions and extraditions. Although terrorism might be an existential problem to a democratic state, human rights should be preserved, nonetheless. The balance between the right of a country to defend itself against terrorism and the preservation of human rights derived from the concepts of democracy, rule of law and humanity.

A. REVIEWING BASIC CONCEPTS OF HUMAN RIGHTS AND TERRORISM

Terrorism is a threat to the most fundamental human rights; therefore, finding common approaches to countering terrorist activities serves the cause of human rights. A major difficulty arises when some argue that it is not possible to completely eliminate terrorism while respecting human rights. Although the issue of terrorism is not new in the human rights narrative, it is true that after the 9/11 terrorist attack in the United States of America, there has been a shift in the policies of many countries to combat terrorism. While guaranteeing the security of human life and dignity in countering terrorist activities, State counter-terrorism strategies pursued after September 11, for example, have sometimes undermined efforts to enhance respect for human rights.

In addition to this, terrorism threatens social and economic development, destroys properties, and jeopardises peace and security. Securities of persons are fundamental human rights, and the protection of individuals is an obligation of the government. History has shown that when societies trade human rights for security, most often, they get neither.³ The key component of terrorism is that it involves the use of threat and fear. In recent years, however, the means adopted by states to counter terrorism have often posed serious challenges to human rights and the rule of law. Some states have engaged in torture and other ill-treatment to counter-terrorism. Others have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious rights abuse, thereby violating the international legal obligation of non-refoulement.⁴

Furthermore, due to the nature of terrorism and terrorist acts committed by private actors, it becomes challenging to hold States responsible. However, States can have a separate and distinct duty of exercising due diligence in preventing certain activities. There has also been the enactment of legislation as well as policy implementation at the country, regional and international levels to aid counter-terrorism. Most of these laws focus on counter-terrorism but have compromised and violated human rights, security, and the rule of law. Some of these violations compromised include; civil and political rights, such as the right to a fair trial, privacy, and cruel inhumane and degrading treatment. Fundamental human rights principles most commonly engaged in the fight against terrorism explain states' obligations when dealing with terrorism. Counter-terrorism strategies that are compliant with human rights not only avoid certain legal pitfalls but may also prove more effective in the long term at winning the ideological battle against terrorism than strategies that themselves violate human rights. One of the side effects of terrorist activities and the international response to it has been the tendency to pit the ideas of liberty and security against each other. The notion of human rights protection has often been presented as conflicting with protection from terrorism; nothing could be further from the truth. International human rights standards emerged from a need, and obligation to control violent and extreme behaviour.

In part, United Nations human rights standards were created to deal with the ravages of political extremism, violence and war of the 1930s and 1940s. Human rights instruments are structured to respond to conflict and provide the mechanisms to ensure peace and stability. The international human rights framework is therefore applicable in dealing with terrorist threats, from addressing its causes, dealing with its perpetrators, and protecting its victims, to limiting its consequences. States have an obligation to provide protection against terrorism. Human rights standards impose positive obligations on States to ensure the right to life, protection from torture, and other human rights and freedoms. Acts of terrorism are likely to infringe on all of these rights that are part of a State's positive duty to protect. This does not necessarily mean that an act of terrorism amounts to a failure to protect by the State. However, if the State fails to take adequate and appropriate measures to protect those rights, the State itself bears some responsibility for the violation. An effective counter-terrorism strategy can therefore be a part of a State's human rights obligations.

³P Hoffman "*Human Rights and Terrorism*" (2004) 26 (4) Human Rights Quarterly 944. Journal of Liberty and International Affairs vol3, No 2017/ eISSN 1857-9760

⁴ Doc on Human Rights, Terrorism and Counter- Terrorism

Terrorism *per se* is an anathema to human rights. Modern human rights standards are rooted in the following four simple values: freedom from want; freedom from fear; freedom of belief; and freedom of expression. These freedoms form the core principles of the Universal Declaration of Human Rights (UDHR), which sets out the fundamental elements of international human rights accepted by United Nations member States and elaborated in many subsequent human rights treaties. The UDHR is accepted as a common standard of achievement for all peoples and all nations. The random nature of terrorist acts undermines freedoms and, consequently, the international human rights framework. This is not because human rights represent a pacifist doctrine; even the UDHR accepts that people may be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression. Still, even extreme circumstances cannot justify using random acts of violence or threats against civilians. Human rights standards envisage a society that is based on the rule of law and democratic values. Therefore, even in the pursuit of such a society, using acts of terrorism, which are themselves in direct contradiction with those values, is never justified.

Internationally recognised human rights standards require governments to take into account and implement certain key universal principles. This imposes a level of discipline and rigour upon government agencies. If they ignore or misapply those human rights standards, they are to be held accountable before an independent and impartial court. As a general principle, the more severe the potential human rights violation, the greater the scrutiny that both decision-makers and courts should carry out. Human rights standards ought to be uppermost on the minds of those implementing counter-terrorism policies. Counter-terrorism mechanisms and enforceable human rights standards are intimately linked. Counter-terrorism laws and practice that damage or destroy human rights are self-defeating and unacceptable in a society governed by human rights, the rule of law and democratic values.

It is essential not to exempt the fight against terrorism from the obligations imposed by international human rights norms and other relevant rules under international law. Any policy of fighting terrorism insensitive to this concern, or even fails completely in this regard, undermines the notion of what it means to be a democracy. Moreover, it encourages sympathy for terrorists and violent attacks on the population, especially in the region most affected, where people find it very hard to deal with their daily activities. Therefore it is important that the initiatives and the political will of the State be attuned to the rule of law.

The United Nations General Assembly has adopted a number of resolutions on terrorism and human rights since 1972.⁵ The Assembly has reiterated that States must comply with their international human rights obligations and international law while combating terrorism. Human rights law places the dignity of the human person at the centre of its concerns. Inflicting harm on civilians is clearly a breach of the core values that human rights are designed to uphold. Yet, if one is to judge from the public debates and the stance taken by many governments, there is tension between upholding human rights while countering terrorism and ensuring people's security in the face of the terrorist threat. Counter-terrorism measures must comply with human rights law. The special rapporteur on promoting and protecting human rights has compiled good practices on legal and institutional frameworks that ensure respect for human rights by intelligent agencies while countering terrorism.⁶ Thus while countering terrorism, the only way to respect human rights is to adhere to and respect the principle that all human beings are born free and equal in dignity and rights,⁷ the principle on which the framework of international humanitarian law and human rights law were built upon. Member states were required to take action against terrorist threats within the framework of protecting human rights and fundamental freedoms.

1. HUMAN RIGHTS AND INTERNATIONAL HUMAN RIGHTS LAW

a. *Defining Human Rights*

Internationally recognised human rights are commonly understood to encompass those rights to which all persons are entitled without discrimination by the mere fact of being human; that is, rights that cannot be denied or restricted on the basis of culture, tradition, nationality, political

⁵ See UN General Assembly Resolution 60/158 (2005) articulates the fundamental framework for the protection of human rights and counter terrorism, <https://www.unodc.org/e4j/en/...3/.../legal-sources-and-un-ct-strategy.html> (accessed 29th August 2021)

⁶Special Rapporteur on the Promotion and Protection of Human Rights

⁷ Article 1, UDHR.

orientation, social standing or other factors, but must be protected in fact and given effect by law. Broadly speaking, these rights include the most fundamental preconditions for a dignified human existence. They are primarily asserted against government authorities (i.e., must be respected, protected and given effect by the governments) but in some instances are also capable of assertion against other individuals in their private capacities (e.g. discrimination, etc.)

b. *International Human Rights Law*

The main articulation of international human rights law is found in various human rights treaties and other international instruments. As a General Assembly resolution, the UDHR is technically non-binding under international law but is generally accepted as articulating the obligations undertaken by UN Member States under the UN Charter. The two Covenants are legally binding on States that have ratified them, and they are widely ratified, if not equally widely respected in practice. Other core universal human rights treaties include the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1980 Convention on the Elimination of All Forms of Discrimination against Women, the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, and the 2006 Convention on the Rights of Persons with Disabilities. In addition to these universal conventions, several regional human rights systems are founded on their own treaties and feature regional enforcement mechanisms, specifically the Council of Europe, the African Union and the Americas (OAS). No such agreements or mechanisms exist for the Middle East (or Asia).

c. *The Impact of Terrorism on Human Rights*

At its most general level, the term “terrorism” denotes the (generally criminal use of politically-motivated violence. It typically refers to a special form or tactic of fear-generating, coercive political violence, direct violent action without legal or moral restraints, targeting mainly civilians and non-combatants and conflict parties. However, no single or agreed legal definition exists at the international level. The term is frequently employed to describe various acts committed in response to varying circumstances and phenomena at both the domestic and international levels. Its use is often politically charged. This section explores the relationship between terrorism and human rights from a global legal perspective. It concludes with some observations about issues of international terrorism in the context of refugee, criminal, and humanitarian law. A comprehensive, binding convention is needed to criminalise terrorism and establish effective mechanisms requiring terrorists and their “aiders and abettors” to compensate their victims.

d. *Violation of Human Rights as a result of Terrorist Activities*

Terrorism involves the use of politically-motivated, fear-generating violence to commit criminal acts aimed at harming innocent individuals for the purpose of coercing governments or societies to take or refrain from taking action, and then it clearly violates human values. By committing acts of terror, terrorists, by definition, attack the values at the heart of the Universal Declaration of Human Rights, the two Covenants, and other international instruments, in particular, many first-generation rights such as the rights to life, liberty and physical integrity but also second and third generation rights. The destructive impact of terrorism on human rights and security has repeatedly been recognised in all forms and manifestations, constitutes one of the most serious threats to international peace and security, and any acts of terrorism are criminal and unjustifiable regardless of their motivations.

e. *Counter-Terrorism Implications on Human Rights*

At the same time, some measures to counter or prevent terrorist acts can pose serious challenges to protecting and promoting human rights, both for the perpetrators and the population at large. The fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law, emphasised that Member States ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular, international human rights law, international refugee law, and international humanitarian law. Finally, it noted that “failure to comply with these and other international obligations, including under the Charter of the United

Nations, is one of the factors contributing to increased radicalisation to violence and fosters a sense of impunity.”

2. TERRORISM AND INTERNATIONAL REFUGEE LAW

The basic international instruments are the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which, taken together, define the term refugee to denote an individual who is outside his or her country of nationality or habitual residence and is unable or unwilling to return due to a “well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group.” As a technical legal matter, the definition excludes those who are economic migrants or victims of natural disasters or violent conflict (but not personally subject to discrimination amounting to persecution) and the “internally displaced.” Alongside the specific obligations of human rights law, international refugee law provides a set of principles that have increasingly become relevant to the effort to combat international terrorism, particularly with respect to crimes committed in European and other states of refuge for persons fleeing the conflicts in the Middle East. The definition also excludes persons who would otherwise meet the refugee definition when there are “serious reasons” for considering that he or she (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes, (b) has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee, or (c) has been guilty of acts contrary to the purposes and principles of the United Nations.³² Acts which bear the characteristics of terrorism will almost invariably amount to serious non-political crimes.³³ The basic principle of refugee law is the obligation of States not to return (refouler) a refugee to “the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³⁴ This “non-refoulement” obligation is generally acknowledged as a human right and has been expressly incorporated into a number of human rights treaties (including the UN Convention against Torture, the American Convention on Human Rights, and the African [Banjul] Charter on Human and Peoples’ Rights).

As a strictly legal matter, however, the obligation only precludes the “return” of individuals who have been “admitted” into a State’s territory; it does not obligate States to grant admission to individuals seeking entry as refugees. In other words, it does not mandate automatic acceptance or “open borders” even for those who might eventually be adjudicated to have the necessary “well-founded fear.” Nor does it prohibit requiring an individual to leave for a third country where he/she would not face persecution on one of the prohibited bases. Immediately following the 9/11 attacks, the UN Security Council called upon Member States *inter alia* to “take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts” and to “ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists.”³⁵

3. TERRORISM AND INTERNATIONAL CRIMINAL LAW

The main emphasis in the international community’s legally-oriented counter-terrorism efforts over the past several decades has been to develop a body of binding international conventions aimed at coordinating and strengthening domestic criminal law responses to specific terrorist acts that span different national jurisdictions or otherwise have an international element. These treaties have typically been negotiated in reaction to egregious terrorist events (such as the hijacking of aircraft, the killing of diplomats, the taking of hostages, the use of plastic

explosives, the hijacking of the Italian cruise ship *Achille Lauro*, acts of terrorist financing, etc.) to provide a consensual framework for international cooperation.

In general, they follow a common approach: they define the particular “terrorist” acts in question and require States Party to criminalise those acts under their respective domestic laws, to prosecute the perpetrators in certain situations (for instance, when the offense is committed in their territory or by their nationals), and to cooperate with other States Party in preventing such acts. Importantly, most of the treaties also obligate States Party to extradite an accused individual to other States Party if they find that person in their territory but lack one of the required jurisdictional elements to prosecute - for example, because the crime was not committed in their territory or the accused is not their national. But if for some reason they cannot accomplish the requested extradition, the treaties require them to proceed with a domestic prosecution. In other words, the treaty provides an internationally-agreed jurisdictional basis for prosecution. This *aut dedere aut judicare* (“extradite or prosecute”) principle was intended to eliminate safe havens for terrorists. Deterrence is obviously among the broader policy objectives of this approach, by eliminating terrorists’ refuges and fostering a coordinated international approach to criminal prosecution of specific types of terrorism. Encouraging States to pursue terrorists through criminal prosecution also serves, to some extent, to prevent summary or extra-legal punishment and to protect the “first generation” due process rights of the defendants.

4. **TERRORISM AND INTERNATIONAL HUMANITARIAN LAW**

International humanitarian law contains a set of rules on the protection of persons in “armed conflict”, as that term is understood in the relevant treaties as well as on the conduct of hostilities. These rules are reflected in a number of treaties, including the four Geneva Conventions and their two Additional Protocols, as well as a number of other international instruments aimed at reducing human suffering in armed conflict. Many of their provisions are now also recognised as customary international law.⁸ There is no explicit definition of “terrorism” as such in international humanitarian law. However, international humanitarian law prohibits many acts committed in armed conflict which would be considered terrorist acts if they were committed in times of peace. For example, deliberate acts of violence against civilians and civilian objects constitute war crimes under international law, for which individuals may be prosecuted. This rule derives from the fundamental principle of international humanitarian law related to the protection of civilians in armed conflict, namely the principle of distinction. According to this principle, all parties to a conflict must at all times distinguish between civilians and combatants. In essence, this means that attacks may be directed only at military objectives, i.e., those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances applicable at the time, offers a definite military advantage. Civilians lose their protection as civilians for such time as they participate directly in the hostilities. Just as terrorism impacts on human rights and the functioning of society, so too can measures adopted by States to counter terrorism.

As mentioned above, because terrorism has a serious impact on a range of fundamental human rights, States have not only a right but a duty to take effective counter-terrorism measures. Effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States’ duty to protect individuals within their jurisdiction. There has been a proliferation of security and counter-terrorism legislation and policy throughout the world since the adoption of Security Council resolution 1373 (2001), much of which has an impact on the enjoyment of human rights. Most countries, when meeting their obligations to counter terrorism by rushing through legislative and practical measures, have created negative consequences for civil liberties and fundamental human rights. The most relevant human rights concerns which States should take seriously to ensure that any measure taken to combat terrorism complies with their obligations under human rights law.

III. HUMAN RIGHTS AND STATE OBLIGATIONS DURING COUNTERING TERRORISM OPERATIONS

⁸ S. Marks, A. Clapham, *International human rights Lexicon* (Oxford, 2005), p. 345.

The international community has committed to adopting measures that ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, through the adoption of the United Nations Global Counter-Terrorism Strategy by the General Assembly in its resolution 60/288. Member States have resolved to take measures aimed at addressing the conditions conducive to the spread of terrorism, including lack of rule of law and violations of human rights, and ensure that any measures taken to counter terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.

In 2004, the High-level Panel on Threats, Challenges and Change reported that recruitment by international terrorist groups was aided by grievances nurtured by poverty, foreign occupation, and the absence of human rights and democracy.⁹ The World Summit Outcome, adopted by the General Assembly in 2005, also considered the question of respect for human rights while countering terrorism and concluded that international cooperation to fight terrorism must be conducted in conformity with international law, including the Charter of the United Nations and relevant international conventions and protocols. The General Assembly and the Commission on Human Rights have emphasised that States must ensure that any measures taken to combat terrorism comply with their obligations under international human rights law, refugee law and international humanitarian law. Not only is the promotion and protection of human rights essential to the countering of terrorism, but States have to ensure that any counter-terrorism measures they adopt also comply with their international human rights obligations.

In addition to the general obligation of States to act within a human rights framework at all times, it should be noted that the universal treaties on counter-terrorism expressly require compliance with various aspects of human rights law. In the context of the International Convention for the Suppression of the Financing of Terrorism, for example, this is illustrated in article 15 (expressly permitting States to refuse extradition or legal assistance if there are substantial grounds for believing that the requesting State intends to prosecute or punish a person on prohibited grounds of discrimination); article 17 (requiring the “fair treatment” of any person taken into custody, including enjoyment of all rights and guarantees under applicable international human rights law); and article 21 (a catch-all provision making it clear that the Convention does not affect the other rights, obligations and responsibilities of States).

The promotion and protection of human rights while countering terrorism is an obligation of States and an integral part of the fight against terrorism. National counter-terrorism strategies should, above all, seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.

At the outset, it is important to highlight that the vast majority of counter-terrorism measures are adopted on the basis of ordinary legislation. In a limited set of exceptional national circumstances, some restrictions on the enjoyment of certain human rights may be permissible. Ensuring both the promotion and protection of human rights and effective counter-terrorism measures nonetheless raises serious practical challenges for States. One such example is the dilemma faced by States in protecting intelligence sources, which may require limiting the disclosure of evidence at hearings related to terrorism, while at the same time respecting the right to a fair trial and the right to a fair hearing for the individual. These challenges are not insurmountable. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These two types of restrictions are specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances, while at the same time—provided a number of conditions are fulfilled—complying with their obligations under international human rights law.

LIMITATIONS

As provided for by international human rights conventions, States may legitimately limit the exercise of certain rights, including the right to freedom of expression, the right to freedom of association and Assembly, the right to freedom of movement and the right to respect for one’s private and family life. In order to fully respect their human rights obligations while imposing such limitations, States must respect a number of

⁹ Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference) (1989 Vienna Document), *Principles*, para. 13. Available at <http://www.osce.org/documents>.

conditions.¹⁰ In addition to respecting the principles of equality and non-discrimination, the limitations must be prescribed by law, in pursuance of one or more specific legitimate purposes and necessary in a democratic society.

1) Prescription by law

Common to international, regional and domestic human rights instruments and guidelines is the requirement that any measure restricting the enjoyment of rights and freedoms must be set out within, or authorised by, a prescription of law.¹¹ To be “prescribed by law”: (a) the law must be adequately accessible so that individuals have an adequate indication of how the law limits their rights; and (b) the law must be formulated with sufficient precision so that individuals can regulate their conduct.¹²

(2) In the pursuance of a legitimate purpose

The permissible legitimate purposes for the interference vary depending on the rights subject to the possible limitations as well as on the human rights treaty in question. They are national security, public safety, public order, health, morals, and the human rights and freedoms of others.¹³ The important objective of countering terrorism is often used as a pretext to broaden State powers in other areas. Offences which are not acts of terrorism, regardless of how serious they are, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of other counter-terrorism measures, even if undertaken by a person also suspected of terrorist crimes.

(3) Necessity and proportionality

What is often referred to as “necessary in a democratic society” is an additional safeguard which requires States to demonstrate that the limitations do not impair the democratic functioning of society. In practice, this means that they must meet the test of necessity and the requirement of proportionality. So any limitation on the free enjoyment of rights and freedoms must be necessary in the pursuit of a pressing objective, and its impact on rights and freedoms strictly proportional to the nature of that objective. As a general matter, given the impact of terrorism on human rights, security and the functioning of various aspects of international and domestic societies, there is no doubt that the countering of international terrorism is an important objective which can, in principle, permit the limitation of certain rights. To be justifiable, however, the imposition of such a limitation must satisfy various requirements. Assuming that the right is capable of limitation and that the limiting measure is imposed within the bounds of certain procedural requirements, it must be necessary to achieve a particular counter-terrorism objective. To be necessary, a rational link must exist between the limiting measure and the pursuit of the particular objective.

(4) Example of permissible limitations

The requirements for a valid limitation of rights can be illustrated in the context of incitement to terrorism and freedom of expression. Prohibiting incitement to terrorism involves a limitation on the ability of persons to express themselves as they wish. Any prohibition against incitement must therefore comply with the requirements for a legitimate limitation on rights and freedoms: the limitation must thus be prescribed by law; be in pursuance of a legitimate purpose; and be both necessary and proportional. The first requirement, that any limitation must be prescribed by law, means that the prohibition against incitement should take the form of a provision within legislation. As to legitimate purpose, proscribing incitement to terrorism is consistent with the protection of national security or public order.

The final requirement of necessity and proportionality is relevant to the way in which the proscription is expressed in the legislation and how it is applied. The law prohibiting incitement to terrorism must be expressed in a way that not only respects the principle of legality, but also ensures that it is restricted to its

¹¹ Guideline XVII (Compensation for victims of terrorist acts), *op. cit.*, note 11, *human rights and the fight against terrorism*, p. 12.

¹² Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies.

¹³ *Op. cit.*, note 5, 1991 Moscow Document, para. 21.2.

legitimate purpose. The merit of any measure will depend on the importance of the counter-terrorism objective it pursues, as well as on its potential efficacy in achieving it. The imposition of a limitation on rights and freedoms for the purpose of countering terrorism, but by ineffective means, is unlikely to be justifiable. In assessing the impact of a counter-terrorism measure on rights and freedoms, consideration must be given, case by case, to the level to which it limits the right or freedom, and also to the importance and degree of protection offered by the human right being limited.

5. Derogations

In a limited set of circumstances, such as a public emergency which threatens the life of the nation, States may take measures to derogate from certain human rights provisions under the International Covenant on Civil and Political Rights. Its article 4 sets out the formal and substantive requirements which a State party must fulfil to derogate legitimately from certain obligations under the Covenant.⁴⁵ A state of emergency must be understood as a truly exceptional, temporary measure to which may be resorted only if there is a genuine threat to the life of the nation. Short of such extreme situations, States must develop and implement effective domestic legislation and other measures in compliance with their international human rights obligations.

(a) Non-derogable Human Rights

Derogation from certain human rights set out in international human rights treaties is prohibited, even in a state of emergency. Article 4 (2) of the International Covenant on Civil and Political Rights identifies as non-derogable the right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment, the prohibition against slavery and servitude, freedom from imprisonment for failure to fulfil a contract, freedom from retrospective penalties, the right to be recognised as a person before the law, and freedom of thought, conscience and religion. In its general comment N° 29, the Human Rights Committee has also emphasised that the Covenant's provisions relating to procedural safeguards can never be made subject to measures that would circumvent the protection of these non-derogable rights. Regional human rights law has also emphasised the importance of procedural guarantees. The Human Rights Committee has identified as customary law rights: the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibitions against the taking of hostages, abductions or unacknowledged detention.

Compliance with international law obligations also prevents the adoption of derogating measures purporting to authorise conduct which would constitute a basis for individual criminal responsibility for a crime against humanity. As the right to a fair trial is explicitly guaranteed under international humanitarian law during armed conflict, the Human Rights Committee has expressed the opinion that the requirements of fair trial must also be respected during a state of emergency. So as to respect the principles of legality and the rule of law, the protection of those rights recognised as non-derogable requires that certain procedural safeguards, including judicial guarantees, are available in all situations.

(b) Public Emergency which threatens the Life of a Nation

The ability to derogate under article 4 (1) of the Covenant is triggered only in a time of "public emergency which threatens the life of the nation." In its general comment N° 29, the Human Rights Committee has characterised such an emergency as being of an exceptional nature. Not every disturbance or catastrophe qualifies as such. Whether or not terrorist acts or threats establish such a state of emergency must therefore be assessed case by case.⁴⁷

(c) Permissible extent of Derogations

Any derogation under article 4 (1) of the Covenant may only be "to the extent strictly required by the exigencies of the situation." Key to this requirement is the temporary nature of any derogation. The Human Rights Committee has said that the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant. Any measure derogating from the Covenant must be necessary and proportional. Finally, as with limitations described above, any derogation must comply strictly with the principles of necessity and proportionality.

IV. INTERNATIONAL LEGAL FRAMEWORK IN COUNTERING TERRORISM

A. International Convention against the Taking of Hostages¹⁴

This Convention was negotiated for the first time in the General Assembly on September 1976 in the wake of the Israeli operation to rescue its national held hostage at Entebbe, Uganda and following the successful conclusion of previously mentioned international conventions dealing with particular types of terrorist offences. During the negotiation of this convention, there was controversy over the definition of hostage taking and the scope of the Convention. However, no exception based on the motive of the offender or the identity of the victim was drafted into the Hostage Convention. The Convention also makes it imperative for State Parties to prosecute under criminal law or extradite any person committing an act of hostage-taking;¹⁵ and take appropriate measures of punishment, considering the grave character of such an offence.¹⁶ Other provisions require state parties in the territory of which the hostage is held, to take appropriate measure to ease the situation, and required states parties to assist each other in connection with criminal proceedings brought under the Convention.¹⁷

B. International Convention for the Suppression of Terrorist Bombing.¹⁸

The US initiated the negotiation of this Convention in the aftermath of the deadly truck bombing attack on US military personnel in Dhahran, Saudi Arabia, on June 25 1996. That attack and other similar attacks,¹⁹ made it clear that, although there were many important counter terrorism conventions as mentioned earlier; none of these conventions has dealt with the problem of attacks by terrorist in public places as the Dhahran Bombing. The Convention is structurally based on prior counter terrorism conventions adopted by the UN and its specialised agencies.²⁰ It includes a requirement that state parties criminalise certain conduct, submit for prosecution or extradite persons found in their territory, suspects of the proscribed offences, and cooperate in the investigation and prosecution of the offences. Like its predecessors, the convention does not attempt to define terrorism but, instead defines particular conduct that regardless of its motivations is condemned internationally and therefore, an appropriate subject of international law enforcement cooperation. Moreover, it requires states parties to adopt any measures that may be necessary to ensure that criminal acts, within the scope of the convention, in particular where they are intended or calculated to create a state of terror, are not justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.²¹

C. The UN Security Council In Countering Terrorism

The Security Council (SC) can take decisions that are binding on all states under Chapter VII rules of the United Nations Charter. This empowers the Security Council to take decisions and make resolutions that will maintain international peace and security²². The Security Council has made a number of contributions to countering terrorism and these are highlighted below. The first is Resolution 1267 of 1999. This resolution dealt with terrorism financing and freezing of Al Qaeda and Taliban affiliated accounts. The accounts to be frozen would be determined by a committee that the resolution created.²³ Resolution 1373 of 2001 called on member states to cooperate in countering terrorism, prevent and punish the planning, preparation or perpetration of terrorist acts. It also provides for the suppression of recruitment of terrorists, sharing and support between states with regard to early warning systems, information sharing, prevention of movement of terrorists, trafficking of arms, explosives and hazardous materials as well as border controls. Security Council Resolution 1624 stresses that States must ensure that any

¹⁴This Convention entered into force on 3 June 1983.

¹⁵ Article 8 of the Convention against Hostage Taking.

¹⁶ Ibid, Article 2

¹⁷ For full text see <http://treaties.un.org/doc/db/Terrorism/English.18-5.pdf> (accessed April 2, 2020)

¹⁸ This Convention entered into force on 23rd May 2001.

¹⁹ These include the poison attack in Tokyo's subways; see US Dept. of State, Pub. No. 10321. Patterns of Global Terrorism: 1995, at 5(1996); a bombing in Colombo, Sri Lanka, see US Dept. of State Pub. No. 10.433. Patterns of Global Terrorism: 1996. At 28(1997); and a bombing in Manchester, England

²⁰ See, S.M.Witten ; 'Current Development : The international Convention for the Suppression of Terrorist Bombings', 92(4) American Journal Law, (Oct. 1998); 775

²¹ There is no parallel to this article in the prior counter terrorism conventions. This provision was added during the negotiations primarily because some delegations thought it important to include the concept that conduct described in the convention can instill "terror" in the public (although the word is not define and it is not an element of the offence in Article 2) and to emphasize that the offences outline in article 2 above should be universally condemned and criminalized regardless of the motivations of the perpetrators.

²² Article 25 Charter of the United Nations

²³ UN Security Council Resolution 1267 S/RES/1267 (1999)

measures they take to implement the resolution which is based on incitement and promoting cultural dialogue complies with all their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.²⁴ Security Council Resolution 1805 (2008) established, on recommendation of the Director, a working group on issues raised by Resolution 1624 and human rights concerns emanating from Resolution 1373. Its mandate is to enhance human rights expertise and develop approaches for CTED staff, and encourage member states to comply with their international human rights obligations.²⁵ The Security Council, through Resolution 1612 (2005) established the Monitoring Reporting Mechanism (MRM) on Children and Armed Conflict, which has an explicit mandate to monitor attacks on schools, teachers, and students. As the highest organ of the UN, the SC demonstrated particular leadership in framing and reiterating that counter-terrorism measures must comply with international human rights and humanitarian law.

D. The UN General Assembly and Counter-Terrorism

The GA has been used by member states to advance their legal and operational counter-terrorism strategies. Apart from member states adopting conventions to suppress terrorism,²⁶ the GA has adopted the first Global Counter Terrorism Strategy in September 2006. The salient features of this strategy include measures to address the conditions conducive to the spread of terrorism, measures to prevent and combat terrorism, measures to build states capacities to prevent and combat terrorism, strengthen the role of the UN in this area and measures to ensure human rights and the rule of law while countering terrorism. The strategy also calls for the GA to monitor, review and update it regularly.²⁷

The GA, through this resolution, urged states to become parties to the key human rights, refugee and international humanitarian law instruments and implement them. It also urged member states to accept the competence of international and regional monitoring bodies. States were also urged to utilise the training expertise of the Office of the United Nations High Commissioner for Human Rights to train their agencies on human rights while countering terrorism. States were also urged to support the SRCT²⁸. In 2008 and 2010, the Secretary General issued reports on the review of the strategy and the activities of the UN with regard to the Global Counter Terrorism Strategy reaffirming the UN's enhanced role in countering terrorism.²⁹

E. The Role of the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism

In 2005, the member states considered that to aid the fight against terrorism, and protect human rights, a special rapporteur was required. The reason for this was the need to make human rights an integral part of the fight against terrorism³⁰. The SRCT working under the Human Rights Council, was charged with the mandate of identifying, exchanging and promoting best practices on measures to counter terrorism that respect human rights and fundamental freedoms.

V. REGIONAL LEGAL FRAMEWORK FOR COMBATING TERRORISM IN AFRICA

Africa started experiencing terrorism attacks by the late 1990s when US embassies in Kenya and Tanzania were attacked in 1998³¹. Africa's many liberation struggles throughout the years led many countries to adopt counter-terrorism legislation with the aim of silencing government critics. Examples of this include Swaziland, Uganda,

²⁴ Resolution 1624 (2005) S/RES/1624 14 September 2005

²⁵ Resolution 1805 (2008) S/RES/1805 20 march 2008, Security Council CTC <http://www.un.org/en/sc/ctc/rights.html> (accessed 13 august 2029)

²⁶ The convention on the prevention and punishment of crimes against internationally protected persons and in 1979, the international convention against the Taking of Hostages. More conventions like 1997 international convention for the suppression of terrorist bombings, the 1999 international convention for the suppression of the financing of terrorism and the international convention for the suppression of act of nuclear terrorism have also been passed.

²⁷ The strategy was informed by the world leaders submit, recommendations by the adaptation of the strategy. UN Actions to counter terrorism.

²⁸ (No 80 above)

²⁹ ibidem

³⁰ UN action to counter terrorism "protecting hman rights while countering terrorism"
<http://www.un.org/terrorism/terrorism-hr.shtml> (accessed 15 August 2020)

³¹ Homeland Security 'Attacks on US. Embassies in Kenya and Tanzania'
<http://www.globalsecurity.org/security/ops/98mb.htm> (accessed on 17th August 2020)

Nigeria and Zimbabwe and Cameroon.³² The development of regional legislation on counter-terrorism began in 1992 when the Organization of African Unity (OAU) came up with a framework for countering terrorism. OAU Heads of State and Government adopted a Resolution³³ aimed at enhancing co-operation and coordination between member states in order to fight terrorism.³⁴ In 1994 in Tunis, the OAU Assembly adopted a Declaration on the Code of Conduct for Inter-African Relations, condemning terrorists' acts in all their forms and rejected acts of religious fanaticism and extremism. This section looks at the regional legal framework aimed at combating terrorism after 1992 to present.

1. Conventions adopted by the African Union to Combat Terrorism

Africa started experiencing terrorism attacks by the late 1990s when the US embassies in Kenya and Tanzania were attacked in 1998.³⁵ Africa's many liberation struggles throughout the years led many countries to adopt counter terrorism legislations with the aim of silencing government critics. Examples of these include; Swaziland,³⁶ Uganda, Nigeria and Zimbabwe.³⁷ The development of regional legislation on counter terrorism began in 1992 when the Organization of African Unity (OAU) came up with the framework for counter terrorism. OAU Heads of State and Governments adopted a Resolution³⁸ aimed at enhancing co-operation and coordination between member states in order to fight against terrorism.³⁹ In 1994 in Tunis, the OAU Assembly adopted a Declaration on the Code of Conduct for Inter-African Relations condemning terrorists' acts in all their forms and rejected acts of religious fanaticism and extremism.⁴⁰ This section examines the regional legal framework aimed at combating terrorism after 1992 till present in Africa adopted by the AU.

2. OAU Convention on the Prevention and Combating of Terrorism.⁴¹

The OAU Convention on Prevention and Combating of Terrorism (Algiers Convention) was adopted in 1999 (after the US embassy bombings) and took the bold move of defining terrorism.⁴² Apart from defining a terrorist act, the preamble to the Convention sets the general tone, emphasising cooperation among its member states relations: promotion of human values based on tolerance, rejecting all forms of terrorism irrespective of their motives for example self-determination, liberation struggles.⁴³ This Convention required states parties to review their national laws and establish criminal offences for terrorist acts as defined in the convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offence⁴⁴. The Convention deals with areas of cooperation, and identifies certain activities by states as prohibited as they further terrorism. It also requires states to cooperate and share information without using confidentiality as reason not to share information, investigations and arrest of persons involved in terrorist activities within the jurisdiction of national law of each State, exchange of information and establishing of data bases and extradition between states is paramount.⁴⁵

3. AU Plan of Action on the Prevention and Combating of Terrorism in Africa.

In 2002, a Plan of Action on the Prevention and Combating of Terrorism in Africa (Anti- Terrorism Plan of Action) was adopted by the intergovernmental High Level meeting of member States of the African Union held in Algiers,

³² Africa Renewal "Africa looks beyond 'war on terror' (October 2009) 16.

<http://www.un.org/ecosocdev/geninfo/afrec/vol23no3/233-terrorism.html>, Amnesty international Swaziland. An Atmosphere of intimidation: counter terrorism legislation used to silence dissent in Swaziland' <http://www.amnesty.org/en/libraruinfoAFR55/OO4/2009/en> (accessed 17th August 2020)

³³ AHG/Res.213

³⁴ F Viljoen international human rights law in Africa (207). 299

³⁵ Homeland Security Attacks on U.S. embassies in Kenya and Tanzania. <http://www.globalsecurity/ops/98emb.html>. (Accessed April 10, 2020)

³⁶ Amnesty International 'Swaziland: an atmosphere of Intimidation, counter terrorism legislation used to silence dissent in Swaziland'. <http://www.amnesty.org/en/library/info/AFR55/004/2009/en> (accessed 10 April, 2018).

³⁷ 139 Africa Renewal 'Africa looks beyond war on terror (Oct.2009) <http://www.un.org/ecosocdev/geninfo/afrec/vol23no3/233-terrorism.html>. (accessed 02, April 2018)

³⁸ AHG/Decl.213 (XXVIII).

³⁹ F Viljoen (2007) International human rights law in Africa () 299.

⁴⁰ AHG/Decl.2 (XXX).

⁴¹ See full text. <http://treaties.un.org/doc/db/Terrorism/OAU-english.pdf>. (Accessed, 10 April

⁴² See Article 1 (3) of Algiers Convention.1999.

⁴³ Preamble OAU Convention on the prevention and Combating terrorism 1999.

⁴⁴ Article 2(a) of the Algiers Convention

⁴⁵ Article 4, Algiers Convention.1999

Algeria.⁴⁶ The Anti-Terrorism Plan of Action provides a tactical road map for countering terrorism. It also calls on states to sign and ratify and implement the Algiers Convention as well as international Conventions that are concerned with Counter-Terrorism. Member states are encouraged to cooperate internationally with states in counter terrorism and to take note of the correlation between terrorism and other related activities such as drug trafficking. States are also urged to improve border security and ensure that their immigration processes are fool proof to ensure that falsification of travel documents is minimal.

4. Protocol to the OAU Convention on the Prevention and Combating Terrorism.⁴⁷

The Protocol to the OAU Convention on Prevention and Combating of Terrorism (Anti- Terrorism Protocol) was adopted in 2004. This protocol consolidates the provisions of earlier African Conventions. Its main purpose is to coordinate, and harmonise continental efforts through the Peace and Security Council. The protocol is however, not yet in force.⁴⁸

5. OAU Convention on the Prevention and Combating of Terrorism

The OAU Convention on the Prevention and Combating of terrorism (Algiers Convention) was adopted in 1999 (after the US embassy bombings) and took the bold move of defining terrorism. Article 1 defines a terrorist act as an act that may violate criminal laws of a member state, endanger and cause harm to the lives of citizens as well as destruction of public property. Intimidation and imparting fear are also considered to be terrorist acts⁴⁹. Apart from defining a terrorist act, the Preamble to the Convention sets the general tone, emphasising cooperation among its member states relations; promotion of human values based on tolerance rejecting all forms of terrorism irrespective of their motives for example self-determination, liberation struggles.⁵⁰ Investigations and arrest of persons involved in terrorist activities is within the jurisdiction of national law of each State, exchange of information and establishment of data bases and extradition between states is paramount⁵¹. Though the Convention is well intended it does not address the issue of states' scarce resources and how they are supposed to implement the Convention.⁵²

6. AU Plan of Action on the Prevention and Combating of Terrorism in Africa

In 2002, a Plan of Action on the Prevention and Combating of Terrorism in Africa (Antiterrorism Plan of Action) was adopted by the Intergovernmental High Level meeting of member states of the African Union held in Algiers, Algeria.⁵³ The Anti-Terrorism Plan of Action provides a tactical road map for countering terrorism. It also calls on states to sign and ratify and implement the Algiers Convention as well as international conventions that are concerned with counter-terrorism. Member states are encouraged to cooperate internationally with states in countering terrorism and to take note of the correlation between terrorism and other related activities such as drug trafficking. States are also urged to improve border security and ensure that their immigration processes are fool

⁴⁶ Plan of Action of the African Union High-Level Intergovernmental Meeting on Prevention and Combating of Terrorism in Africa, <http://bibliotecavirtual.clacso.org.ar/ar/libros/iss/pdfs/oau/PoAfinal.pdf> (accessed 5 April, 2020)

⁴⁷ Protocol to the OAU Convention on the Prevention and Combating Terrorist, <http://www.africa-union.org/root/au/Documents/Treaties/Text/The%20Protocol%20on%20Terrorism%2026July2004.pdf>. (Accessed 9 April, 2020).

⁴⁸ See note 109 Supra

⁴⁹ (a) any act which is the violation of the criminal laws of a state party and may endanger the life, physical integrity or freedom of or causes serious injury or death to any, any number or group of persons, or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to (1) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular stand point or according to certain principles or (2) disrupt any public service, the delivery of any essential; service to the public or to create a public emergency or (3) create general insurrection in a state (b) any promotion, sponsoring, contribution to, command, aid, incitement, encourage, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (1) to (2). OAU Convention on the prevention and combating of Terrorism, July 1999.

⁵⁰ Preamble OAU Convention on the Prevention and combating of Terrorism, July 1999

⁵¹ Article 4 of AU Plan Action on the Prevention and combating of Terrorism in Africa

⁵² OHCHR, Centre on International organization, Colombia University 'Human Rights, the United Nations, and the Struggle against Terrorism' (2003) http://www.ipinst.org/media/pdf/publications/human_rights.pdf. (accessed 20 August 2020)

⁵³ Plan of Action of the African Union High Level Inter-governmental meeting on the prevention and combating of Terrorism in Africa <http://bibliotecavirtual.clacso.org.ar/ar/libross/iss/pdfs/oau/PoAfinal.pdf> (accessed 20th August 2020)

proof to ensure that falsification of travel documents is minimal. The Anti-Terrorism Plan of Action further urges states to enact legislation and equip the judiciary with the necessary tools to be able to use the laws once they are enacted.

7. Protocol to the OAU Convention on the Prevention and Combating of Terrorism

The Protocol to the OAU Convention on the Prevention and Combating of Terrorism (Anti-Terrorism Protocol) was adopted in 2004. This Protocol consolidates the provisions of earlier African Conventions. Its main purpose is to coordinate and harmonise continental efforts in countering and preventing terrorism and implementation of other international standards through the Peace and Security Council.⁵⁴ The Protocol is, however, not yet in force⁵⁵.

8. The AU Peace and Security Council

The Peace and Security Council (PSC) was established by a Protocol (the PSC Protocol), and adapted pursuant to article 5(2) of the AU Constitutive Act, to co-ordinate and harmonise continental efforts in the prevention and combating of international terrorism in all its aspects⁵⁶. The PSC, in carrying out its functions, is guided by the principles within the AU Constitutive Act, the UN Charter, the UDHR and respect for human rights, the rule of law, fundamental freedoms, sanctity of life and humanitarian law. The PSC is mandated to implement the Algiers Convention, as well as other counter-terrorism conventions and coordinate efforts within the region to counter terrorism.

9. The African Commission on Human and People's Rights (African Commission)

Apart from Article 19 of the PSC Protocol, the other regional conventions do not expressly mention the relationship with the African Commission⁵⁷. This is unfortunate as the regional legal framework on counter-terrorism is not in conformity with the international standards which call for protecting and promoting human rights while countering terrorism. The African Commission made a positive move at its 38th Session when it adopted a resolution on the Protection of Human Rights and the Rule of Law while Countering terrorism. *11. The African Charter on Human and People's Rights (ACHPR)* The ACHPR is silent on the issue of counter-terrorism and human rights. The AU has, however, expressed concern that terrorism violates basic human rights, particularly freedom of expression, freedom from fear, the right to life, rights to development, to practice religion and security and stands in the way of aspirations of Africans as based in the Constitutive Act of the AU as well as other frameworks within the AU like the African Charter.⁵⁸

CONCLUSION

The international legal framework has emphasised on promoting and protecting human rights while countering terrorism. The African instruments, however, lack specific emphasis on protection of human rights while countering terrorism. They however encourage member states to ratify international instruments and cooperate with other states. There are definitions of terrorism within the African regional system. Several important steps could be taken by the international community to address some of the issues identified. Perhaps most important is the recognition that human rights violations are themselves among the main generators of terrorist violence. Consequently, respecting the rights of marginalised groups, strengthening the protections available to minorities and the disadvantaged, ensuring equal participation in political, economic and social life; these can be the most effective counter-terrorism strategies. Equally important is acknowledging that repressive counter-terrorism policies and practices are demonstrably counter-productive. Agreement on a global or comprehensive Convention on International Terrorism could be a significant step forward

⁵⁴ Protocol to the OAU Convention on the prevention and combating of Terrorism. <http://www.africanunion.org/root/au/Documents/Treaties/Text/The/The%20Terrorism%2026july2004.pdf> (accessed page 21 august 2020)

⁵⁵ ibidem

⁵⁶ Protocol relating to the establishment of peace and security Council of the African Union http://www.africanunion.org/rule_prot/protocol-%20PEACE%20AND%20SECURITY%20COUNCIL%20OF%20THE%20AFRICAN%20UNION.pdf(accessed 21August 202)

⁵⁷ Article 19 states 'the peace and security council shall seek close cooperation with the African Commission on Human and People's Rights in all matters relevant to its objectives and mandate.

⁵⁸ African Union 'Combating Terrorism and Human Rights Concerns in Africa' <http://www.au.int/?q=node/450> (accessed 1 October 2010)

legally. This effort, centered in a UN Committee, remains deadlocked over how to define the term. Of course, by itself, agreements on the text of such a treaty would not be sufficient; it would need to be coupled with a broad commitment by States Parties to implement it effectively. Regarding deterrence, effective action is needed to hold terrorists accountable both for their own acts and for providing compensation for victims of terrorism.

