Terrorism, Counterterrorism and Human Rights Debate: A Critical Appraisal

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Abstract

While terrorism is not a new phenomenon its nature, dynamics and magnitude continue to present many a research puzzle for scholars, security and/or and policy practitioners alike. Taking on a critical descriptive approach, this paper sheds light on the "terrorism, counterterrorism and human rights debate," the end objective being, to critically examine how terrorism and the efforts to counter it at various levels feature in the human rights research program over the past one-and-a-half decades of the 21st century. At the centre of the debate is the contention that while terrorism is at times presented as a "weapon of the weak," whose rights have been violated; at the same time thousands of innocent people have lost their lives to acts of terror over during this period. Yet in the vein, at times, human rights violations have taken place as states attempt to counter terrorism over this period. As such, terrorism and the fight against it continue to feature strongly in the human rights agenda. While counterterrorism may provide an "escape route" for irresponsible governments to get away with anything (the use of two wrongs to make a right); the terrorist is in many ways hosti humani generis- enemy of all humanity. In the final analysis, this paper arrives at the conclusion that a well thought-out and properly governed counterterrorism agenda that engenders responsible government action in the noble duty of protecting humanity from the ravages of the heinous acts of terrorism remains key to a better environment as far as the counterterrorism-human rights debate is concerned.

Introduction

Late 2014 and early 2015 once again, brought to the attention of the world, the reality of terrorism; while invoking the dark past that was epitomized by the 11th September Attacks on US soil that left close to 3,000 dead and scores maimed and injured. The siege on a restaurant in Sidney in December and the attack on a media house in Paris, in January reminded humanity that counterterrorism is no option for governments. Nonetheless, as governments face the terrorist, the *hosti humani generis,56* from time to time, this noble undertaking has proved to be counterproductive, especially when the very people who need protection from terrorism fall victim to their protectors-governments. In a nutshell, the journey of human rights has been long and treacherous, spanning at least three centuries: right from the age of liberalism in Western Europe that gave impetus to the "social contract," the abolition of slavery and the enfranchisement of women; through to the emancipation of colonized and racially segregated peoples. As the second half of the 20th century came to a close, a solid body of international human rights regimes, practices and customs came into place, with issues ranging from the general aura postulated in the United Nations Charter (1945), Universal Declaration of Human Rights (1948), through to the political and socioeconomic realm as enshrined in the 1966 twin covenants- the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Cultural, Social and Economic Rights (ICCSER) (Shaw 2003).

Furthermore, even more specific international legal instruments with global-wide support emerged on the latter half of the 20th century, including the Convention Against all Forms of Torture, Inhuman and Degrading Punishment (CAT), the Convention Against all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), as well as the 1998 Rome Statute, which saw the establishment of the International Criminal Court (ICC)- a body established to provide justice and enforce international law in light of gross human rights violations and grievous crimes including genocide, war crimes, mass murder, forceful transfer of populations amongst other crimes against humanity, international law and international peace (DeLeat 2006, 4-7). It is noteworthy that the Rome Statute is by extension part of a broader international humanitarian law legacy that dates back to the United Nations Convention in Prevention and Punishment of the Crime of Genocide; popularly known as the Genocide Convention (1948), the Tokyo and Nuremberg Trials (1949) and the Geneva Conventions (1949) and Additional Protocols (1977), (Des Forges 1995; Meron and Galbraith 2007). While much ground has been covered towards institutionalizing human rights through these well-established channels, many challenges continue to plague the human rights cause especially in countries where underlying structural realities associated with widespread rural poverty and ignorance, high unemployment and urban destitution, gross food insecurity and resource scarcity and bad governance and official corruption have provided fertile grounds for the proliferation of ills such as global terrorism, while at the same convoluting global efforts to counter it.

One outstanding feature that has characterized the journey of human rights over this entire period is that the very nature of a human rights abuse in one part of the world at any point in history eventually emerges to provide a platform of change and an enduring reference-point in as far as the institutionalization of a particular human rights domain is concerned. A good example is the era of colonialism and racial segregation in Africa in the latter-half of the 20th Century. The US-based civil rights movement and the wider Pan-African movement also provided an important "demonstration effect" for peoples under similar circumstances in Asia, Africa and other parts of the world in subsequent years. Subsequently, human rights violations (including acts of terror) in and of themselves on one hand; and the various efforts to counter them on the other, are intricately related and continue to be important issues that continue to attract academic and policy attention alike.

In the final analysis, this paper holds that the very grievous and complex nature of terrorism and the efforts to combat it as it is understood by the community of world states today, is acting as an emergent frontier in the institutionalization of human rights in terms of protecting the would-be innocent victims of both terrorism and counterterrorism processes alike; more so in the context of terrorism and the various national, regional and global efforts to combat it over the past decade-and-a-half or so, particularly following the September 11, 2001 attack on the United States. Towards this end, I utilize a critical qualitative-descriptive approach to the issues under investigation herein. As such, secondary sources of data mainly documented sources on the 'terrorism, counterterrorism and human rights debate' are utilized herein, with the aim of trying and establish patterns that speak to the idea that the terrorism-counterterrorism nexus has a special place in the global human rights discourse in the 21st Century.

Terrorism, Counterterrorism and Human Rights: Exploring the Theoretical Link

Terrorism and the responses to it constitute a complex domain. It involves intricately related physiological and psychological means and ends. There is always a *sender* and an *immediate* (or proxy) *target and an ultimate end-objective recipient and/or target-* the underlying final target and rationale behind any act of terror. Modern political scientists simply view terrorism as signal sending- a way through which the sender (by unleashing sharp and brutal punishment on the proxy or immediate target) makes known their disposition as a highly resolved type that is ready to pay the heaviest possible cost to meet their ultimate-end objective. Perhaps terrorism is more political than anything. A potent political weapon (though it may be presented as a "violent ideology that holds no value for human life or regard for human dignity")56 mostly employed by conventionally weaker adversary whose message is "*we shall punish your so called innocent civilians in such brutal manner so that they* (the affected citizens) *will prevail upon you and your friends and the friends of your friends let us have our way*" to gain well rationally calculated goals. To the scientific analyst of conflict processes, it is only fool-hardy to dismiss and label acts of terror as simply senseless irrational acts. Bargaining and deterrence theorists for instance contend that what

my appear irrational is in fact "rational" so long us the actor who partakes of such "irrationality" is clear about their goal and why they want to achieve it- otherwise it will never make any sense to anyone why someone with their full mental faculties in a market place packed with innocent women in children (at times of their own race, lineage and religion) and execute a deadly suicide attack in which he or she is the primary casualty.

But in the same vein, governments acting on shared and well collected and verifiable actionable intelligence about the clear, present and imminent plan to carry out such terror attacks will do anything to stop and "take-out" (which is civilized way to mean killing, destroying, decimating and completely annihilating the target) the core suspect(s) in the scheme and their facilitators to save the many innocent and precious lives of citizens they are mandated to protect- for that is the "rational" thing to do and to meet the equally "rational" terrorist. For this cardinal reason, the counter-terrorist can be as equally highly resolved: "…you cannot wait us out…you cannot defeat us…the fight continues and we will never waver…we rise up to the challenge, we persevere and we get the job done" were the words of US Secretary of State Hillary Clinton following the killing of Osama Bin Laden by US Special Forces in Abbottabad, Pakistan on May 1st 2011.56

Be it as it may however, both terrorism acts by fundamentalists and their sympathizers and counterterrorism measures on the part of state security agencies may well be seen as processes of *signaling resolve* and one's *type* (Kydd and Walter 2006). The terrorists want some form of yielding action on the part of their end-target, who may behave just how the terrorist wanted; that is, by behaving like the terrorist in trying to counter the terror threat; or at times make concessions in favor of the terrorists' interests. On the one hand, governments may want to signal resolve and raise the bar so high that the terrorists would have to think twice before making a move. At times, governments can take the war to the terrorists' homes- their friends and relatives, or communities at large- and hit them so hard to the point that the terrorists' kin turn against one another and soon confusion reigns and the ultimate political message that the terrorist group was making loses meaning and/ or general appeal. As such, what may appear to the layman as pure irrational horror can be seen as a game of strategic bargaining and credibility building between highly strategic actors- terror groups on one hand, and government on the other (Siegel and Young 2009, 775-776).

Nonetheless, the problem with fully understanding terrorism is that while the relationship between the sender and ultimate end-objective recipient of it, is clear and straightforward; the sad reality is that impact the sender's actions have on the *immediate* and/or proxy target; who happens to be the *innocent victim of the act* and almost invariably has nothing to do with the underlying relationship between the sender and the ultimate end-objective recipient, is at the least incomprehensible and utterly unjustified. As such, each time an act of terrorism occurs, an innocent human being (a child, a woman or man- generally *unarmed innocent civilians*) is violated and exposed to a heinous form of inhuman treatment and brutality with both physical as well as far reaching emotional and

psychological effects in relatives, friends and communities over time and space. Yet it even becomes more convoluted because; depending on who you ask, the *sender* and the *ultimate end-objective recipient* of the act of terror may well point at each other as "the terrorist," and before you know one man's terrorist becomes another's hero- the villains of yesteryears then become today's heroes and vice versa. Furthermore, terrorism has been used over this period as an instrument of statecraft with accusations and counter-accusations within and among sovereign states of funding and or otherwise indirectly abating terrorism against an adversary. It may be recalled that "losers" in the post-2011 Arab Spring phenomenon and related events in the recent past, the likes of Muammar Gaddafi of Libya, Hosni Mubarak of Egypt, Ben Ali of Tunisia and most recently Assad of Syria have apparently blamed their woes on "terror groups," that interestingly have received material and financial support (at least indirectly) from Western powers.

But one fact is clear, no matter whom the end -objective recipient of terror is, or who the sender is and why; the innocent victim of this state of affairs, the (proxy-target, who could be anyone - women, children, innocent non-combatants) remains a violated and endangered species- a state of things that brings human rights issues at the very centre of the terrorism-counterterrorism discourse. As such, the terrorism/counterterrorism-nexus presents a 'complex web scenario' with a unique undercurrent cutting across it- the human rights debate. At this juncture, this paper adopts the *violations approach* fronted by the likes of Kalantry et al (2010). The idea is that one can point to various human rights violations associated with the terrorism-counterterrorism nexus with specific reference to certain core human rights instruments, in addition to several pertinent domains of international customary law. The sanctity of human life as an inalienable right comes to mind here. In this direction, a number of pertinent moral, legal and political issues further illuminate the debate. The Universal Declaration of Human Rights (UDHR), with the right to life remaining a core issue. Subsequently, the International Convention in Civil and Political Rights (ICCPR) is yet another; and by extension, the International Convention on Economic, Social and Cultural Rights (ICESCR). The former, UDHR is a matter of custom, while the latter two are a matter of legal obligation. As such, the very act of terror on innocent civilians is a violation of human rights just as the killing of innocent persons in the war on terror is. Borrowing a leaf from Kalantry et al (2010, 354) it is important to understand what constitutes violations in the language of these treaties, the obligations of states (and related actors) pertaining to the said right and what benchmarks one would use to measure progress or otherwise, retrogression as far as treaty implementation is concerned.

In the same token, it would be important to see what states have in place in as far as their counter-terrorism instruments at the legislative and/or operational level is concerned. For instance, what do Counterterrorism Act(s) provide for as far as the safeguarding of human rights is concerned? Subsequently, specific reference to counter-terrorism instruments such UNSC Resolution 1373 and other country-specific Acts and what they have to offer in terms of safeguarding human rights

in their counter-terrorism agendas is something to consider too (Rosand 2003, 233-234). Yet another issue worth illuminating herein also, is the level and/or framework of analysis in the debate. Intra-state specific terrorism-counterterrorism actions (either by state or other actors) on one hand and inter-state or externally driven terrorism-counterterrorism platforms on the other (bilaterally, multilaterally or otherwise) ought to be accounted for. Nonetheless, this paper argues that both levels are likely to interact and/or converge from time to time.

Global Terrorism and Counter-Terrorism Trends since 2000: An Overview

Terror is not new, lets us be clear about this. But its methods have changed over time and space. Nazi Germany employed absolute terror in its victims in the Holocaust and so did the slave owners, caliphates, sultanates and empire builders of old and their colonizing and racist counterparts of the modern era. Yet today's terrorism is more "faceless," sophisticated and truly "unconventional," capitalizing on sharp and brutal surprise and far-reaching effects on the weakest and most unexpected targets to send the message across to its ultimate end-objective recipients. This trend begun to be noticed in the late 1960s and 1970s where terror attacks were characterized by the hijacking of passenger planes and taking of hostages as well as the bombings of certain civilian targets as was the case with the Munich Attack in September 1972 or the sporadic bombings by Irish Republican Army operatives on their British targets. As the 1980s set-in similar attacks were orchestrated by anti-Israeli militants within and around Israeli territory. On New Year's Eve December 31st 1980, a bomb was hurled at a British owned Norfolk Hotel in Nairobi, Kenya in reaction to Kenya's help for the Israel during the Entebbe Raid of 1973 in which Israeli Commandoes rescued several Israeli citizens from the hands of anti-Israeli militants. These attacks were more often far and wide and ostensibly with a more "political" disposition to it.

It must also be recalled that in these years (1960s through to the 1980s), many a liberation movements were in place in what appeared to be Cold War driven proxy machinations from Latin America, through to Asia and Africa. To this end, national liberation fighters in Southern Africa including Nelson Mandela, Sam Nujoma, Samora Marchell and Robert Mugabe and Kenneth Kaunda were no less than terrorists in the eyes of Apartheid South Africa. So was Yasser Arafat who led the Palestinian Liberation Organization (PLO) and Jerry Adams of the Irish Republican Army's political wing Shenfeign. Yet these leaders, alongside others were to later gain world recognition for their role of working towards peace to the extent of winning the Nobel Peace Prize.

Be it as it may however, as the post-Cold War period set in, a new theatre of terrorism was taking shape around the world, and by the time the Twin Towers in New York came down and a direct attack on the Pentagon, the military headquarters of the world's undisputed Super Power, on September 11 2001, in the hands of American-trained pilots of Middle-Eastern origin, now turned Al Quaeda operatives, it was clear that a new age of terrorism and the global responses to it had been born. While the attack on the Pentagon may have passed to be squarely an attack on a military

target (the only one since the Japanese Attack on Pearl Harbor on December 7th 1941), the lives of over 2000 innocent civilians lost in New York, Washington D.C and Pennsylvania that brought the entire world to terms with the stark realities of the new face of terrorism in the 21st Century (Sofaer 2003).

True enough, extraordinary times called for extraordinary measures, an equally highly resolved, relentless and powerful counter-terrorism war that sent shock -waves world over- from the Torabora Hills of Kandahar, Afghanistan to the streets of Baghdad, Tikrit and Mosul in Iraq, through to Abbottabbad neighboring Pakistan; from the streets of London, Madrid and Bali which came under terror attacks; to the meandering footpaths of Lamu and Mombasa in Kenya, where Al-Qaeda are suspected to have pitched tent; to the bullet-riddled ruins of Mogadishu, Ras Kamboni and Kismayu in war-torn Somalia, from where the dreaded Al-Qaeda affiliated Al - Shabbab group is based; to the vast plains of Kaduna and Jos in Northern Nigeria, strongholds of the infamous Boko Haram. Yet a decade down the line, heavy casualties have been recorded on both sides of the terrorism-counter-terrorism divide, and certainly more questions than answers over the toll these events and their concomitant ramifications have had on the very sanctity, ethos and general state of human life.56

At this juncture, I delve into discussion on the regional dynamics of terrorism over this time. For the most part, international terrorism has been increasingly organized and spread its tentacles across the globe. However, some parts of the globe have experienced more terror attacks than others. Nonetheless, this may not mean that the Americas are much less a target of terrorism when compared to other regions, say Africa or Europe. The reason for these differences may be that some parts are better organized in their counter-terrorism than others. It may also be that a spatial hypothesis may be plausible at this level-that is, the "further a state is from the Middle East which is the global epicenters of global terrorism, the less likely it will be attacked." Nonetheless, the Americas have experienced fewer attacks then other parts of the world, yet the few that occurred have been among the worst. Apart from the Oklahoma bombing of April 199556 and the Boston Bombings of April 2013, the September 11 2001 attack was the most devastating and the worst in the region. Since, then such attacks have remained rare and far apart- but the threat is remains real- hence continued and heightened counter-terrorism activity. It may be true that since 2011, no nation has invested in counter-terrorism on the world more than the United States both in terms of men, money and materials.

Across in Europe, terrorism is real and so have counterterrorism efforts remained active. Many decades earlier in 1972, the Munich Massacre which targeted Israeli nationals who were attending the Olympics brought the realization that such events could replay themselves in future. Yet terror tactics changed in form and content form airplane hijackings and hostage takings of the 1970s, to the suicide bombings and bomb-plantings of the 2000s. Nonetheless, at times events that were very similar to the 1970s have at times been replayed once in a while, catching security agencies

and related authorities off-guard. The September 1st 2004 attack in Madrid Spain was an attack on Spain's rail transport system and over 191 people died. A similar attack took place in London as year later in July 7th 2005. One outstanding feature of Europe's terrorism is that for many years it was localized and internally directed. For close to three decades, for instance, Northern Ireland came under terror attacks directed from the Irish Republican Army. It is noteworthy that a localized group known as ETA that claimed responsibility for the Madrid bombings (Crenshaw 2007, 140).

More recently however, more and more citizens within the EU and even Scandinavian countries are directly getting involved in terror activities particularly in the Middle East, Asia and even Africa. More recently for instance, following the release of a video showing a suspected Briton Jihadist, based in Eastern Syria beheading a US journalist, the UK Government announced plans to have even stringent measures in the war on terror. On this particular matter, a UK Government Official announced that:

> *"....we know that far too many British citizens have traveled to Iraq and traveled Syria to take part in extremism and violence and what we must do is redouble all our efforts to stop people going, to take away the passports of those contemplating travel, to arrest and prosecute those that take part in this extremist and violence, to take extremist material off the internet and to do everything we can to keep our people safe and that is what this government will do"56*

True enough, many British citizens including women did travel to countries such as Syria to fight on either side of the divide. Some are pro-establishment while others form the antithesis.

On the other hand, the theatre of terrorism and counterterrorism in the Middle East is complex and multifaceted. One cross-cutting under-current is the Arab-Israeli conflict. Right from the 1948 conflict between the newly established state of Israel on one hand and her neighbours in the region; through to the Six Day War of 1967 as well as the 1973 Yom Kippur War; through to the Israeli Invasion of Lebanon in 1983, to the *Intifada* attacks of the 1990s, various theatres of terror have been played-out especially around the activities of groups such as Fatah, Hamas, the Palestinian Islamic Jihad (PIJ) and Hezbollah. The Munich Attack in 1972 was directed at Israelis, and so were the 1972 siege56 on Entebbe Uganda and the 1980 attack on the Norfolk in Nairobi. Nonetheless, more suicide attacks began to be carried out on Israel soil in the 2000s. In March 2002, suicide attacks in Israel killed at least 62 people in two separate but sequential attacks that targeted restaurants and other public facilities in cities such as Tel-Aviv, Ntenya and Haifa. Nonetheless, the Middle-East terrorism is not centred on the Arab-Israeli conflict alone. Various other theatres of anti-Western and/or anti-American directed terrorism activity took place in various places around the Middle-East and by extension North Africa. For instance, terror attacks were orchestrated in Riyadh Saudi Arabia in May 12th 2003.

It is noteworthy that since the US-led invasion in Iraq in 2003 and the subsequent overthrow of the Saddam Hussein regime, suicide attacks increased exponentially since then and have persisted

to present in Iraq. This was especially so as it emerged that the regime changes that ensued were either anti-new establishment (and by extension, anti-US and/or anti-Western) or pro-new establishment (and by extension pro-US and/or pro-US backed new regimes) further taking a religious dimension- Shiite versus Shiite and so on.56 Since then, abductions, beheadings, shootings, suicide attacks have continued in states such as Iran, Iraq, Syria and Yemen. For a long time, the leading group behind the anti-US Islamic fundamentalist campaign was Al-Qaeda. Over this period however, various other groups joined the Al-Qaeda side and broadened the scope of what in now a wider Global Islamic Jihad Movement (GIJM).

The Arab Spring factor of 2010 through 2011 and its ripple effects across the Middle-East saw the ouster of Western-leaning and otherwise anti-Western regimes alike. It may be recalled that Col. Gaddafi for instance at some point blamed the growing rebellion in his country on Al-Qaeda. In Egypt, regime change was seen to be driven by the Muslim Brotherhood, which was Mubarak but not in the strict fundamentalist anti-Western sense. It must be stressed that two faces of terrorism have emerged here. The first is one that is *internally directed* as groups such as the Muslim Brotherhood and Islamic Republic of Iran and Syria (ISIS) seeks some form of regime takeover-with the ultimate aim being to establish Islamic states. The second is the *externally driven*, where certain groups are part of a global movement to fight against all forms of western influence in the world. For the most part, current statistics reveal that most of the world's terrorism is concentrated in about 10 countries most of which are in the Middle East Africa and South Asia. A Report published by the Institute for Economic and Peace (IEP) in November 2014 for instance revealed that Iraq, Afghanistan and Pakistan accounted for up to 65.8% of all deaths by terrorism in 2013.56 It is also possible that there is a high degree of ideological and operational confluence on the part of both kinds-such that cross-pollination of ideas and joining of operational and material efforts cannot be ruled-out, across time and across regions.

Asia, particularly south, east and central Asia has its own unique setting of terrorism and counterterrorism. Nonetheless, various theatres of terrorism in parts of Asia have from time to time been closely associated with the happenings in the Middle-East. For these reasons, it should come as no surprise that major international terrorism networks such as Al-Qaeda became quite active in parts of Asia after September In October 2012, an Al-Qaeda linked group successfully orchestrated the terror attack on Bali, Indonesia in which at least 212 people dies, most of them being Australians. A similar attack took place in Moscow on October 2002 when militants besieged a public facility and penned fire at innocent civilians. In the process of subduing the terrorists, Russian troops used poisonous gas,56 a counter-terrorism operation that turned tragic, leaving at least 179 people dead. A similar attack was orchestrated in Belsan, North Ossetia, Russia between 1st and 3rd of September 2004, when Islamist gunmen took over 1,000 hostages in a sports facility. In that attack, over 330 people, many of them children died after the Islamist gunmen set-off explosives. It is noteworthy that the form of terror that has been carried out in parts of Russia is internally directed especially in the context of parts of Russia that seek secession or

separation of sorts- though in some cases, it has been shrouded in religious overtones, where Islamic militants have been involved.

It is noteworthy that the two individuals suspected for having been behind the Boston Bombings had links with Islamic fundamentalist groups in Russia. That said Asia is a vast continent where other states in the region particularly Pakistan (South Asia), and Afghanistan (Central Asia) and to some extent, India. The Allied Operation in Afghanistan (Operation Enduring Freedom), which began in early October 2001 took the war against Al-Qaeda to its stronghold operational bases in the border areas between Afghanistan and Pakistan. Throughout this period, various terror attacks of the suicide kind continued to be waged on western targets both in Afghanistan and Pakistan. Though a new Western-leaning government was formed in Afghanistan, it continued to be under serious challenge from the Taliban, Al-Qaeda and other related groups. Thousands of innocent non-combatants including women and children have died both in the hands of terror groups and anti-terror security operations alike. Most recently, the employment of drone attacks by Allied Forces in the region have raised human rights concerns.

Finally, Africa has been a major focal point as far as the activities of international terror groups is concerned. According to the Global Terrorism Index Report for 2014, out of a total of 162 states, the top-20 most affected by terrorism, 6 are in Africa namely Nigeria, Somalia, Kenya, Egypt, Libya, the Democratic Republic of the Congo (DRC), Sudan and the Republic of South Sudan.56 For many years however, terror attacks in the African region were few and far between for most of the 1980s and 1990s. In fact, apart from the twin attacks on August 7th 1998 on the US Embassies and Dar es Salaam (orchestrated by Al-Qaeda, leaving over 250 dead), more attacks took place after 2000. The Africa terror map is one that shows three main concentration areas-North Africa, East Africa and West Africa. Nonetheless, internally directed terrorism has been on for a long time, though perhaps not publicized due to its localized nature.

National liberation movements in Africa such as the Mau Mau in Kenya, the Algerian liberation movement, the armed wing of the African National Congress (ANC) in South Africa, South Western Africa People's Organization (SWAPO) in Namibia and the Zimbabwe African National Union, Patriotic Front (ZANU-PF) in Zimbabwe (then, Southern Rhodesia) were all classified at one time or another as terrorist groups. Also, the decades of the 1960s-1990s, were characterized by numerous civil wars on the African scene-Zaire (now DRC) Nigeria, Mali, Ethiopia, Uganda, Sudan, Angola, Mozambique, Rwanda and Burundi just to mention but a few. These conflicts were characterized by various acts of terror against civilian populations. Nonetheless, the kind of terror that characterized the post-2000 period in Africa is one that has a strong Islamic fundamentalist ideology and particularly directed towards the US and her allies in the region. Nonetheless, the current settings of terrorism seem to be centred on two major Al-Qaeda-related extremist groups; Al-Shabaab in Somalia and Boko Haram in Nigeria. Both groups have been quite active and increasingly working in cahoots with other militant groups' cells that are dotted all over the

northern region especially in Libya, Mali, Algeria, Morocco and Egypt (and by extension Yemen, Oman, Comoros and Afghanistan).

Terrorism, Counter-Terrorism and Human Rights Debate: A Critical Analysis

In mid-August 2014, Human Rights Watch published a Report in which Kenya's mainly Western-funded Anti-Terror Police Unit (the ATPU) was cited as having directly or indirectly abated or orchestrated extra-judicial killings and forced disappearances in the War Against Terror (WAT). The organization went further to recommend that Kenya's bosom allies in the West led by the United States and Great Britain should severe counter-terrorism funding in a bid to curb such human rights abuses not only in Kenya but in the wider Eastern Africa region.56 Though such Reports do not come as "breaking news" to governments- western or otherwise, which have their own "versions of the story," they point to an important development in the human rights agenda: that the counter-terrorism effort is emerging as the new-found platform in the human rights debate globally.

No doubt, like the pirate of old, the terrorist can pass to be *hostis humani generis* and the worst any government can do is sit back and allow the innocent (immediate and/or proxy targets of terror) perish without protection and/or recourse (Schorlemer, 2003, 269). But the politics of global counter-terrorism and human rights do present a complex set of challenges. The greatest challenge for governments is how best to handle what appears to be an ever changing, every dynamic and mostly "invisible" enemy who brutalizes the innocent to gain power, control and influence. Governments are equally different as far as how, when and for whom they exercise their mandates. While the world's leading democracies can be held responsible for their actions due to the impact of domestic normative and institutional checks that govern the relationship between policymakers and the electorates they represent; in other political systems, leaders can do almost anything and get away with it provided they please the small political-military and economic elite networks that sustain their stay in power (Bueno De Mesquita et al 2003, 41).

Ordinary citizens hence (or subjects) may not have much control over the governments that protect them let alone deal with the threats that international terrorism poses and the aberrations that governments may commit in the name of responding to it. Counterterrorism policies vary too. Some states take a purely *minimalist* and by extension *confrontational* approach which is simply to take the war to the terrorists and subdue them. On the other hand, other governments take a more *maximalist* approach that takes on both the direct-pre-emptive strategy of the former but also recognize that that terrorism takes place in a broader and potentially complex human environment- hence the *human agent approach* that oscillates with a careful balance of long-term *prevention* and *pursuit* strategies as well the short term *protective* and *responsive* strategies (Dongen 2010, 234-235).

An interesting pattern of issue then follows. International terror groups' ideologies that can easily be accessed by citizens of the world's leading democracies by virtue of the wide range of human rights protections and basic freedoms they enjoy in addition to a conducive environment for the enjoyment and advancement of a whole range of social, economic and cultural rights- a state of affairs that has made it easy for citizens from as far as the United Kingdom, Germany, France, Sweden, the United States, Canada and Australia to mention but a few, to raise money, fund, access information and even travel back and forth to the battle-fields in Iraq, Iran, Yemen, Syria, Afghanistan, Libya, Somalia and Lebanon to support a given Jihadist and or fundamentalist group or another.56

At the same time, with support of such support and networks, the very human rights mantle that is espoused in the world's leading democracies is increasingly being "misused" to fund fundamentalist and murderous terror schemes elsewhere around the world especially in the least developed countries where many years of a poor human rights background in the structural sense; through misrule, poor governance and socio-economic marginalization provides a safe havens and ungovernable virtual spaces for recruitment and radicalization of populations, who then become conduits for terrorism, at times for the money and basic survival and not necessarily for any deep-seated ideological reason. It cannot however that both governments and international terrorist organizations have at one time or another supported insurgents and at times, the insurgents seem to have a "life of their own- a unique agency latitude" that at times has seen them switch allegiance on either side depending on which best suits their interests (Byman 2006, 85-86).

At the same time, responsible democratic governments want to please and protect their citizens from the dangers that global terror possess- after all, that is the only way they can remain in public office. Their counter-terrorism actions should at the least be seen to be (and believably so) in conformity with the democratic culture and strong institutions that govern the democracy and freedoms their societies enjoy. Yet they need to keep the "war" away from their shores and they must be involved in order to protect their own. At times the "leeway" their more authoritarian counterparts enjoy works best for them (that is the Western leading democracies) in the gathering, analysing and dissemination of information for purposes of pre-empting and thwarting terror threats before they can get to the actionable-executable levels. But sometimes, once in a while, "accidents" and/or "unavoidable circumstances" can present themselves (Foot 2007, 511).

The Boston Marathon Attacks of April 2013 remind the US of the need for eternal vigilance and once again reminded the American people of the realities of global terrorism and what it is capable of doing. Though Russian authorities had warned US security authorities of the activities of the Tsarnaev brothers and their links to anti-American terror cells based in Kyrgyzstan, the US government had to tread carefully in lieu of the fact that the bothers were operating on US soil and enjoying full Constitutional protection and the rights and responsibilities it demands not only from ordinary American citizens, but also to the government that protects them. Nonetheless, when 'push came to shove,' it was time to act fast and firmly- once it was clear to the authorities that

Brothers were the prime suspects, a manhunt was mounted all over the State of Boston and when they suspects posed a clear, present and imminent danger by fatally shooting and killing a police officer, they were met with an equal measure of force that left one dead and the other captured and totally subdued and subsequently hospitalized and formally charged- following a dramatic hunt-down that caught global attention. US authorities had to do what they had to do to safeguard the lives of their citizens and remained prepared to answer questions openly, transparently and clearly to justify their action as far as the terror attack was concerned.

Yet all countries are not the same. Much fewer counties enjoy the political, financial and military clout that the U.S. or Great Britain possess; and though many support the counter-terrorism cause, they may be exposed to more frequent "mistakes, accidents and sheer blunders" as far as effectively handling global terrorism is concerned. But their governments somewhat enjoy much leeway and at times may "play dirty" with the covert support of their western counterparts who may not enjoy such privileges but can provide accurate intelligence and actionable facts about who was behind the Westgate, Jos, Tripoli or Mogadishu attacks. In the final analysis, human rights advancements in the world's leading democracies are indirectly "aiding" global terror, while poor institutionalization of the same in the less developed partially-democratic and more authoritarian political systems is partly aiding the counterterrorism effort but also getting away with a lot as far as human rights is concerned- as state of affairs that may prove counter-productive (Hafner-Burton and Shapiro 2010, 416).

While there can be different strands of terror, so can there by different shades of counter-terrorism. While terror can be the *modus operandi* of certain groups that aim to capture power within a given state, (Al-Shabaab, LRA, Boko Haram) others claim to deeper and broader ideologically driven missions such as the total liberation of Palestine or stopping and defeating the spread of US-led neoliberalism and hegemony around the world. Similarly, governments have may have different motivations in their counter-terrorism agendas. More accountable mature democracies must deliver the promises they make to the citizens-they must win. The less accountable governments may genuinely fight terror but at times corruption and poor management of state affairs make them and the people they ought to protect even more vulnerable. In yet other circumstances, such governments may politicize the war on terror and brand their political opponents "the terrorists" and ostensibly hide behind the veil of countering global terror to chock their opponents, circumvent constitutions and enhance their grip of power through illegitimate and unpopular means.56 Subsequently, governments that are generally viewed as "rogue states" may at times prove to be most instrumental on taming international terrorism in the eyes of their more democratized counterparts (Foot 2005, 294-295). Hence the *use* on one hand and *abuse* of the instruments of counterterrorism on the other, are separated by a thin and often blurred line (Guiora, 2012, 760).

The more politically and econometrically developed democracies have had and continue to grapple with these challenges too. The US has had its own share of these challenges. The immediate post 9/11 period for instance called for extraordinary measures- a state of affairs that saw the not only

Congress but also supporter give the Bush Administration a blank check to deliver justice and bring Al-Qaeda and its leaders to book for their deeds (Fitzpatrick 2003, 250). Yet the challenges of Abu-Ghraib, Guantanamo and alleged CIA extra-judicial machinations outside US soil in achieving this mission did call for some caveats and at times "a return to the drawing" formula since (Twiss 2007). Some scholars have alluded to the fact that post-9/11 realities in the terrorism-counterterrorism divide put the world in a perpetual "state of emergency" that to date had never really formally ended. In this context, questions around process of extraordinary rendition have been posed in various human rights circles, especially where some of the cases remain shrouded in inter-governmental security agency secrecy- hence less and/or no communication with the immediate families or friends of the said suspects (Weissbrodt and Bergquist 2006, 159). Governments hold-on to such practices dearly. It is noteworthy that such processes in some cases appear to have borne fruit, especially when governments reveal that information obtained from a facility such as Guantanamo was crucial to the tracking and capture of Osama Bin Laden, for instance.

Important grey areas will persist and it need not be taken for granted that governments have facts; and for the most part, some of these "facts" cannot become public knowledge overnight even with the loudest protests from well-meaning Congressmen or powerful local and international human rights movements. The very claim from a responsible government that "*we cannot go into details as this may prejudice our efforts and expose great danger to state survival*" ….and so on and so forth; is as times as genuine as it can get. Of course in others especially where citizenship is a privilege and not a constitutionally protected right, such claims are no more than hogwash! This also brings in the question of whether states that are both economically underperforming and politically underdeveloped (in the context of democratization) can effectively combat terrorism without abrogating their human rights obligations.

These debates further raise a number of pertinent questions over whether human rights are *unlimited* and how far they can be claimed as well as protected. How far can governments go as far as counterterrorism is concerned? (Gearty 2005, 19). It has been argue that the physical act of terror is only a manifestation of an underlying form of structural conflict taking place and confronting these questions squarely is the first key step in the process of addressing the terrorism menace. Hence, there are several things that may inform the terrorist agent. One is a deep ideological conviction that what they do is rationale and fully justified. Hence, something has to be done to change these ways of thinking. Second is the idea that the agent and their cats may be doing it for material gain as a result of wanton suffering and poverty in the hands of other groups of people and/or governments. It would not be unimaginable to "make sense" of a situation here people who commit acts of suicide terrorism are doing it because "*even though we die…we believe that terrorizing the enemy will free our people from the yoke of unfair marginalization, domination and degradation.*" Yet others may not have deep-seated ideological convictions or have been the direct victims of the now end target of terror, but rather, they are in it to 'make ends meet.'

It has been established that terror cells at times thrive and survive among poor populations where youths can easily be hired to plant bombs in buildings or in market places as well as get engaged in active asymmetric warfare simply for the sake of monetary gain and not deep-seated ideological and/or political conviction held by the top-notch sponsors of such activities. In this way, broader issues to do with human rights of the Third Generation kind come into play. As such, poverty and destitution, and other related society-wide maladies including unemployment and illiteracy in most parts of the world today are important issues to consider in informing ways to turn the counterterrorism agenda into a useful platform of confluence with the advancement of human rights. In this direction, governments need to be most cautious about their counterterrorism strategies. Some research work has shown that brutal force more often than not does not have long-term effect in stemming terror. At times the indiscriminate processes employed could well be the very end-objective some terror groups are seeking-provoking government repression in thereby unconsciously radicalizing sections of the population that the terror groups claim to be protecting and directing such radicalization to the government (Bueno De Mesquita and Dickson 2007, 364).

Conclusion

This paper set out to examine the place of the terrorism-counterterrorism nexus in the human rights discourse. For the most part, this paper contends that the topic in question is quite complex. Each time an act of terror is committed, human rights suffers. In the same vein, countering terrorism can by its very nature be a form of protecting and/or preventing further human right violations. Yet the interface between the two-terrorism and counterterrorism- has at times been at the centre of controversy as far as the human rights agenda is concerned. This paper proffers several pertinent policy recommendations in the direction of institutionalization of human rights as far as the terrorism-counterterrorism nexus is concerned. First, states need to agree on a what terror means both to the terrorist and the end-target so as to arrive at internationally agreed means of combining the vice without abusing human rights. At it is now, a lot of controversy surround these issues. Secondly, governments should strive as much as possible to ensure that their counter-terrorism processes remain within the confines of clearly spelt-out legal bounds in order to be able to efficiently and justly evaluate and improve on such processes (Thakur 2005, 283).

Finally the structural sources of conflict and social inequality that may are partly responsible for the emergence and proliferation of the current wave of international terrorism need to be addressed both within and among states. This would ensure that terrorism becomes a less attractive means of solving political, ideological and/or socio-cultural differences among peoples. While counterterrorism may appear to be an "escape route" for irresponsible governments to get away with anything (the use of two wrongs to make a right); in the actual sense, the continued reaction to such "irresponsible acts," when they do occur- is slowly turning into a powerful agenda for holding them accountable for their actions as far as human rights is concerned- hence somewhat

indirectly serving the noble purpose of institutionalizing human rights around the globe, while protecting humanity from a common enemy- terrorists and their sympathizers.

References

Abrams, Max. 2006. Why Terrorism Does Not Work. *International Security*. 31(2): 42-48.

Adamson, B. Fiona. 2006. Crossing Borders: International Migration and National Security. *International Security.* 31(1):165-199.

Bantekas, Ilias. 2003. International Law of Terrorist Financing. *American Journal of International Law*. 97(2): 315-333.

Blank, R. Laurie. 2012. The Consequences of "War" Paradigm for Counterterrorism: What Impact on Basic Rights and Values? *Georgia Law Review*. 46(3): 720-741

Bothe, Michael. 2003. Terrorism and the Legality of Pre-emptive Force. *European Journal of International Law*. 14(2):227-240.

Bueno De Mesquita, Bruce and Dickson S. Eric. 2007. *American Journal of Political Science*. 51(2): 374-381.

Bueno De Mesquita, Bruce Smith Alastair, Siverson M. Randaolph and Morrow D. James. 2003. *The Logic of Political Survival*. Cambridge, MA: The MIT Press.

Byman. L. Daniel. 2006. Friends Like These: Counterinsurgency and the War on Terrorism. *International Security*. 31(2): 79-115.

Crenshaw, Martha. 2007. Explaining Suicide Terrorism: A Review Essay. *Security Studies*. 16(1): 133-162.

DeLeat L. Debra. 2006. *The Global Struggle for Human Rights: Universal Principles in World Politics*. United States: Wadsworth.

Des Forges Alison. 1995. The Ideology of Genocide. *Journal of Opinion.* 23(2): 44-47.

Dongen van Teun. 2010. Mapping counterterrorism: a categorisation of policies and the promise of empirically based, systematic comparisons. *Critical Studies on Terrorism*. 3(2): 227-241.

Donnely, Jack. 2007. The Relative Universality of Human Rights. *Human Rights Quarterly*. 29(2): 281-306.

Felner, Eitan. 2009. Closing the Escape Hatch: A Toolkit to Monitor the Progressive Realization of Economic, Social and Cultural Rights. *Journal of Human Rights Practice*. 1(3): 402-435.

Fitzpatrick, Joan. 2003. Speaking Law to Power: The War Against Terrorism and Human Rights. *European Journal of International Law*. 14(2): 241-264.

Foot, Rosemary. 2005. Human Rights and Counterterrorism in Global Governance: Reputation and Resistance. *Global Governance*. 11(3):291-310.

Gearty, Conor. 2005. Counterterrorism and the Human Rights Act. *Journal of Law and Society.* 32(1): 18-33.

Guiora, N. Amos. 2012. Human Rights and Counterterrorism: A Contradiction or Necessary Bedfellows? *Georgia Law Review*. 46: 744-760.

Hafner-Burton, Emile and Shapiro N. Jacob. 2010. Tortures Relations: Human Rights Abuses and Counterterrorism Cooperation. *PS: Political Science and Politics*. 43(3): 415-419.

Keck, E. Margret and Sikkink Kathryn. 1998. *Activists Beyond Borders*. Icatha: Cornell University Press.

Kydd, H. Andrew and Walter. F. Barbara. 2006. The Strategies of Terrorism. *International Security*. 31(1): 49-80.

Meron Theodore and Galbraith Jean. 2007. "Nuremberg and Its Legacy" in Noyes E. John, Dickson A. Laura and Janis W. Mark. (Eds). *International Law Stories*. Thomson West: Foundation Press: 13-43.

Neuman, L. Gerald. 2003. Humanitarian Law and Counterterrorist Force. *European Journal of International Law*. 14(2): 283-298.

Rosand, Eric. 2003. Security Council Resolution 1373, the Counterterrorism Committee, and the Fight against Terrorism. 97(2): 333-341.

Schorlemer, von Sabine. 2003. Human Rights: Substantive and Institutional Implications of the War Against Terrorism. *European Journal of International Law*. 14(2): 265-282.

Shaw N. Malcolm. 2003. *International Law*. New York: Cambridge University Press.

Siegel, A. David and Young, K. Joseph. 2009. Simulating Terrorism: Credible Commitment, Costly Signaling, and Strategic Behavior. *PS: Political Science and Politics*. 765-771.

Sofaer, D. Abraham. 2003. On the Necessity of Pre-emption. *European Journal of International Law*. 14(2): 209-226.

Thakur, Ramesh. 2005. A Shared Responsibility for a More Secure World. *Global Governance*. 11(3): 281-289.

Twiss, B. Sumner. 2007. Torture, Justification and Human Rights: Towards an Absolute Proscription. *Human Rights Quarterly*. 29(2): 346-367.

Weissbrodt, David and Bergquist. 2006. Extraordinary Rendition: A Human Rights Analysis. *Harvard Human Rights Journal*. 19:123-159

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