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Is Terrorism a Violation of Human Rights? Mini-Essay.

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"People whose primary aims are driving, shopping, and television are subject to terrorism at any time."

- Steven Deitz

Is Terrorism a Violation of Human Rights? Mini-Essay.

Unlike the common belief that terrorism is currently still not defined, or as some even suggest that it can not be defined *per se*,¹ there is a vague but global understanding of what the word “terrorism” means. *A. Cassese* is right in assessing that the notion of terror has become part of customary law,² but one must stress here that in order for certain elements to become part of international customs, a vast majority of countries have to accept the new rules either by declaration or by action. One must also acknowledge that the only feasible forum where the notion of terrorism can / could have been elaborated is the United Nations: not all terror-acts amount to international level, therefore the world community has an interest in developing only the concept of global terrorism, while interpretations of national organs on the micro level should be disregarded.

If one takes all the UN conventions on terrorism³ and deducts from it the elements which are still up to this day controversial (*e.g.* the inclusion / exclusion of the freedom-fighting movements), the meaning and nature of the concept lies on the surface, while its more or less specific aspects are hidden from view. Thus the notion of global terrorism is like a shark with its fin sticking out in the ocean, while most of its body is submerged in water – everyone agrees on the basic ideas, and details of the “body” though vague and unclear still form a certain shape everyone can more or less observe. It would not be a lie to say that most of legal scholars and majority of countries link the word “terrorism” with the words “civilians” and “fear”. Quite successful in this aspect is the expression used in *Golder and Williams’* work⁴ that terrorism is “violence aimed at inspiring

¹ As suggested, for example by Walter Laqueur, who claims that it is neither possible to define terrorism nor worthwhile to make the attempt in “Terrorism”, Weidenfeld & Nicolson, 1977, p. 7.

² Antonio Cassese. *International Criminal Law*. Oxford University Press, 2003, p. 120.

³ Full list of which is available at <http://untreaty.un.org/English/Terrorism.asp>, International Convention for the Suppression of the Financing of Terrorism even provides a definition of it’s own in article 2(1)(b), which of course is not without flaws. It states as follows: “[Terrorist act is] any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”.

⁴ Golder Ben, Williams George. What is “Terrorism”? *Problems of Legal Definition*. *UNSW Law Journal*, Vol. 27, No. 2, 2004, p. 270.

fear and intimidating populations”, while ill-starred is *Hoffman’s* late attempt⁵ to stretch the definition to equally cover threats of violence, as well as to interpret terrorism through the prism of political aims and motives. Violence is a necessary prerequisite for *fear of terrorism*, indicating that terrorists “mean business”, while simple threats do not amount to such intimidation. Neither is there any evidence that terrorism has to be dictated by politics, although normally it is not devoid of it.

Is terrorism a violation of human rights? Despite the fact that Islamic countries have put up quite a fight⁶ against the Universal Declaration of Human Rights since its adoption in 1948, one has to admit that today on the global level, western values have prevailed, as they are now considered a new standard of civilization.⁷ Currently, obligations to uphold human rights stem not only from the UDHR, ICCPR, ICESCR⁸ and other international instruments, but also from the UN Charter itself.⁹ All of these treaties are only binding for the states however, and since terrorists are not and cannot be signatories to these documents, claiming that they should observe human rights therein would not be too prudent.

Mary Robinson, a High Commissioner for Human Rights was quick to call the attacks on September 11, 2001, a “horrific violation of human rights”.¹⁰ The only reasonable explanation for that phrase from the viewpoint of international law would be that human rights law has evolved beyond *jus scriptum* and that now its principles have become part of customary law, thus terrorist organizations analogically can be liable for violations of specifically customary norms. There does not seem to be a logical reason for such complex (and maybe even radical) rearrangement in general perception of human rights and terrorism though, thus Security-General’s claim that terrorism is “an attack on human right”¹¹ or in General Assembly’s Third Committee’s wording

⁵ Hoffman Bruce. *Inside Terrorism*. Columbia University Press, 2006, p. 40.

⁶ E.g. one could mention adoption of Cairo Declaration of Human Rights in 1990, which affirms Shari’ah as the sole source of human rights. Available at <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm>.

⁷ Donnelly Jack. *Human Rights: A New Standard of Civilization?* *International Affairs Journal*, Vol. 74, No. 1, 1998, pp. 1-23.

⁸ International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966).

⁹ See preamble: “*We the Peoples [...] determined [...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations[...]*”.

¹⁰ Human Rights, the United Nations, and the Struggle against Terrorism. UN Office of the High Commissioner for Human Rights. November 7, 2003. Available at http://www.ipacademy.org/pdfs/HUMAN_RIGHTS.pdf, p. 10.

¹¹ UN Action to Counter Terrorism: Human Rights. Available at <http://www.un.org/terrorism/terrorism-hr.shtml>.

“activities aimed at destroying human rights”¹² seems more appropriate under current international law than Robinson’s statement.

If terrorism itself is but a menace to the enjoyment of human rights, then states which harbor terrorists, support terrorists or tolerate their presence on their territory can theoretically be held accountable for human rights violations, but only if there is a direct link established and proved beyond reasonable doubt between actions of states and terrorist acts which led to the breaches. One must note however, that since accusing countries of terrorism nowadays is just as politically offensive as accusing them of human rights violations, no state bothers to use both arguments.

¹² GA/SHC/3566 Press Release of 18 November 1999: Citing Terrorism as Violation of Human Rights, Social Committee Calls for Internationalism, Regional Cooperation Against It. Available at <http://www.un.org/News/Press/docs/1999/19991118.gashc3566.doc.html>.