Human Rights Council

Research Report

The Question of:

Human rights of suspects of terrorism

Introduction

Terrorism has been a major cause for distress for a long time. There were and unfortunately will be casualties, let us just consider the substantial damage the September 11 attacks caused on a long-term both physically and mentally. Generations are suffering due to the tragic loss, while it is apparent that the threat posed by hostile groups is not decreasing.

Our way of life, universal human rights concepts and the right to life are endangered by terrorism. Additionally, terrorism is able to destabilize governments, threaten civil society, hazard security and put economic development at risk. These points combined have a definite and clear impact on human rights.

The question of the treatment of terror subjects has been one of fundamental controversy. In recent years during the struggle to address the issue of terrorism, many States violated human rights and laws during the process of prosecution. Several member states have, for example, used torture as a tool for interrogation or general ill-treatment like starvation or sleep deprivation. While afraid of the general public opinion, these States jeopardized the independent monitoring of these suspects, meaning that there was absolutely no chance of recognizing and addressing their case.

There has been major controversy regarding the USA and her allies for using the process of extraordinary rendition, meaning terrorist suspects are kidnapped without trial by the governments and tortured for information. Often these suspects are never put to trial and many of them turn out to be innocent over time.

The Committee

The United Nations Human Rights Council (UNHCR for short) is a United Nations body to promote and protect human rights around the world. The committee has 47 members elected for 3-year terms. The headquarters are not in New York, but in Geneva, Switzerland.

The HRC makes non-binding resolutions, meaning that they are not declarations like in the Security Council resolutions, but rather initiations and suggestions for states on how to combat different issues. The committee has a President and a Deputy President, who will be presiding over the sessions.

The HRC follows the standard Rules of Procedure, which means it is *not* an ad-hoc committee.

Key Terms

Administrative detention: a type of arrest by the state without trial. It is usually explained as a mean of maintaining security and that people who receive this are bound to commit crimes again. This practice is in wide use around the world for combating terrorism and illegal immigration, though having received criticism.

Enemy combatant: a person who directly engages in hostilities for an enemy state/organization in an armed conflict.

Habeas corpus: a legal recourse, where a person can report an unlawful detention or imprisonment to a court and request that the court order the custodian (prison official) to bring the prisoner to court, where it will be determined if the detention is lawful or not.

Non-refoulement: a fundamental principle of international law that forbids a country receiving an asylum seeker from returning him/her to a country where he/she would be in likely danger of persecution, either based on race, religion, nationality, political opinion, etc.

Presumption of innocence: a legal principle, meaning that one is considered innocent until proven guilty. It is widely accepted internationally and also in Article 11 of the Universal Declaration of Human Rights.

Terrorism: the most common definition refers to the use of intentionally indiscriminate violence to create terror amongst people. The main goal usually is to cause fear and to fulfil financial, political, religious or ideological aims. It is important to highlight that there is no universal definition of terrorism, as the interpretation differs state by state.

War: the use of violence and force between two or more states to resolve a matter of dispute.

War crimes: excessive brutality during war, in contravention of an international treaty or convention.

General Overview

States all around the world are facing difficulties when it comes to the prosecution of terrorists. They have to carefully balance between legality and public opinion, which is not an easy task to have while also dealing with domestic politics. Many States choose to detain and torture the terrorist suspects without a prior trial. This not only creates a vacuum in legal practice, but threatens human rights in general.

Many argue that terrorists, who commit such horrible crimes are not to be treated as humans, but to be given the treatment they deserve, often meaning torture, life-long imprisonment or even death penalty. While it is apparent that for governments it is crucial to keep good terms with the public and that satisfactory punishments should be imposed, we cannot ignore international agreements regarding basic and non-debatable human rights.

The Universal Declaration of Human Rights, adopted by the General Assembly, clearly states all the fundamental rules applicable to this issue:

- Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ";
- Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."
- Article 9: "No one shall be subjected to arbitrary arrest, detention or exile. "
- Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."
- Article 11: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

In their fight against terrorism many States adopted a revised maximum-detention time and regulated the chance to independent monitoring, making it unclear in what way the suspects were treated. These acts not only violate human rights declarations, but they create difficulties when dealing with non-terrorism suspects as the judicial procedure might adopt these non-standard ways of prosecution.

The best example of this is probably the facilities located at Guantanamo Bay. Since its opening at the beginning of 2002, over 100 inmates have been constantly held there. The common factor for many of them is that they have not yet been tried. The minority that has been successfully convicted are either serving (or have served) their sentences or they have been released to their country of origin. All of them lack the chance for legal counselling or independent monitoring, highlighted several times by Amnesty International and other human rights NGOs.

Not just the US and its allies are using such measures in the name of fighting terrorism. In the Middle-East (where most of the detainees in Guantanamo come from) there are as well harsh laws in practice. Saudi Arabia for example allows for a suspected terrorist to be detained without a reason and held for 120 days. During this period the suspect cannot receive legal help, and the detention can be renewed indefinitely by a judge. Those who are tried are treated in a strange procedure: without any legal help, while judges are free to exclude the suspects from hearing witnesses or experts. Upon

decision, the ministry responsible for terrorist suspects must approve the decision, making the judicial procedure basically pointless.

A general pattern then appears to be that terrorist suspects are treated in an ad-hoc way (very much appearing like martial law) by the governments. They decide what "procedure" to follow internally, after that there is absolutely no chance of independent supervision nor legal counsel. It is extraordinary if one of them is even tried, yet sentenced.

Do terrorist suspects deserve to be treated as humans?

It is a question many consider, based on emotion and natural human instinct. It seems logical for some that the committers of such horrendous crimes against humanity should be dealt recklessly, without any unnecessary delay during the procedure. However, we cannot forget that these suspects have not been convicted yet, therefore it is not correct to treat them as such. We should apply the internationally recognised procedure of "presumption of innocence", when dealing with such occasions.

Additionally, in Article 6 of the Universal Declaration of Human Rights it is made clear that everyone should be recognised as a person before the law. When some suggest that terrorists should be denied standard prosecution and should be tortured or even killed, we should consider this article as a standard right to everyone.

The switching between the status of criminal or enemy combatant during prosecution

Acts of terror are universally condemned by the Member States, however there are distinctions made as for how do they try such criminals. It has become a political decision whether terrorism is considered to be a crime or an act of war. This is a crucial point, as it decides in many States if the suspect is tried before a civil court or a military tribunal or what their sentence be.

On the one hand many argue that terrorism does not fit the legal definition of war, which is: "the use of violence and force between two or more states to resolve a matter of dispute". If we interpret it that war is only an act between two states, then it is apparent that terrorism is not in fact an act of war. However, based on the cruelty and emotional impact these terrorist attacks possess, it is not rare to hear that terrorists should be punished like war criminals.

On the other hand, civil courts are under constant pressure from the government and the general public to reach a sentence deemed necessary, or are considered too slow by some. They suggest that military tribunals should deal with terrorist suspects, as these courts are more effective and have a greater range of means of punishment. The answer to this question is contested. Currently, it is up for each Member State to decide, but a mutual opinion throughout the Member States will most certainly advance humanities struggle against terrorism.

Major Parties Involved

United States of America: During President Obama's mandate, there seemed to be some major reforms happening in regards to the US combats terrorism. Apart from military development, one of the main focus was on the legal process in order to shift away from controversial methods of treating terrorist suspects, like rendition, harsh interrogation techniques and secret prisons. The administration even chooses to close the detention centre at Guantanamo Bay.
Since President Trump's mandate these reforms have been rolled back. Guantanamo bay stays open. It facilitates terrorists held by the US, but also by her allies. The UK however is opposing to the facility, as it is commonly known that especially cruel interrogation techniques are used.

People's Republic of China: In China the term "terrorism" refers to violence intended to affect the political or ideological status of the country. Following the September 11 attacks China strengthened its involvement in international counter-terrorism efforts. Many argue that China is only committing to these efforts so that the Uyghur separatist movements and how the government is dealing with them can be ratified.

United Kingdom of Great Britain and Northern Ireland: The state makes no distinction between the prosecution of terrorism-related offences and other crimes. However, non-officially there have been accusations of the UK Government sending suspects to Guantanamo Bay to her ally the US, in order that the terrorists are handled appropriately.

Russian Federation: Russia have introduced amendments to its counter-terrorism laws following the 2013 Volgograd suicide bombing. Sentences have been increased and the state has been authorized to freeze the assets of the suspects and compensate the families that have suffered from the attack. While the compensation part really contributed to the decrease of the social harm caused by terrorism, a vague phrasing of the law caused controversy. Assets of any people close to the suspected terrorist(s) are eligible for this kind of seizing by the state. Often "close" people disappear without any trial or conviction.

Israel: Israel uses administrative detention and the term "unlawful combatant" very vaguely. By law it is approved to detain anyone suspected of terrorism for up to 14 days, without legal counsel. Detention can be renewed indefinitely by a judge every 6 months. Often Palestinians or anyone that lives in the Gaza area is detained and held until necessary. Estimates range between 3-5 hundred people, mainly Palestinians, are held in administrative detention in Israel.

Previous attempts to solve the issue

General Assembly Resolution A/RES/60/158: "Protection of human rights and fundamental freedoms while countering terrorism" – the resolution tried to address the issues of international law violations while combating terrorism. It stressed out that human rights and international law procedures are to be taken into account without alteration during domestic counter-terrorism procedures. Generally, the resolution is quite generic, meaning that it highlighted current standards, but in reality did not contribute much to proper change in the situation.

UN CTITF Working Group "Protecting human rights while countering terrorism" Concept Note

UN Global Counter-Terrorism Strategy, part IV: "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism"

Both of the above-cited documents are existing measures introduced to address the issue of fair trial and detention treatment. In accordance with the UN's counter-terrorism strategy it is of extreme importance that every participant of the fight against terrorism (even the terrorists themselves) are guaranteed proper legal proceedings. Therefore, it is still necessary to determine how these suspects are to be detained, tried and sentenced, so that there can be a universal set of rules which the Member States would adopt possibly.

The Future

It is important for the committee to come to a consensus regarding the course of prosecuting suspects of terrorism. While it is crucial that the decision comes as soon as possible, time will be needed in order to wind up the current captives held as terrorists in different governmental facilities throughout the world.

The USA will most probably continue the detention and special prosecution of the people deemed as terrorists by them, although many are urging the government to create a well-defined framework for these occasions.

However recent actions indicate a change towards equality in prosecution, these procedures have never been public, therefore they might be continued in secret whatever the international agreement might be.

Important Decisions a Resolution Must Take

There are a few questions mentioned here, which will most probably help the delegates to point their research towards more concrete areas, however it is important to stress the fact that there are more aspects to this issue than these questions, so we stress that delegates research their countries' policy extensively.

Who is considered to be a terrorist?

What is the definition of terrorism?

Should terrorists be treated as criminals or enemy combatants?

How can we ensure that terrorists receive fair trials?

How can we stop the use of torture on suspects of terrorism?

How long should states be able to detain terrorist subjects without trial?

How can we maintain the concept of innocent until proven guilty when referring to terrorist subjects?

Further Reading

For delegates, it can be really useful if they have a few websites where they can read more about your issue. You can refer to useful websites here.

https://www.cfr.org/backgrounder/prosecuting-terrorists-after-september-11

https://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article2203501.html

https://theintercept.com/2017/11/30/nsa-surveillance-fisa-section-702/

https://www.theatlantic.com/international/archive/2017/11/isis-trump-terrorist-obama-court-military-guantanamo/546296/

https://www.rand.org/blog/2018/03/terrorism-on-trial-the-problem-of-prosecuting-international.html

https://www.theguardian.com/commentisfree/2017/feb/22/the-guardian-view-on-terror-suspects-protecting-their-rights-is-in-our-interests

https://www.hrw.org/topic/terrorism-counterterrorism

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https://www.haaretz.com/how-france-israel-and-other-countries-treat-terrorists-1.5353638

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