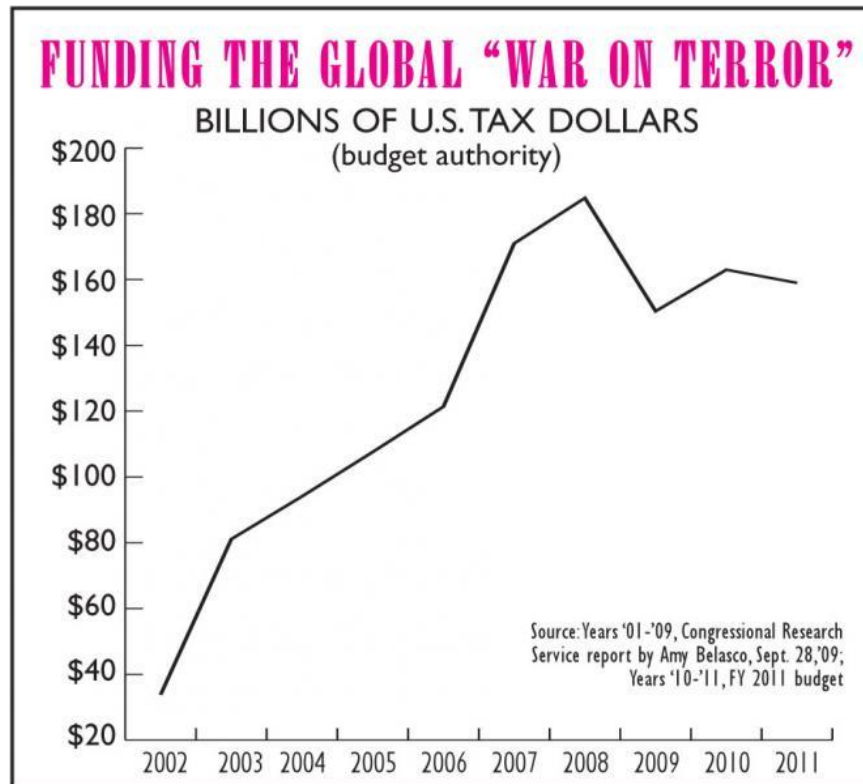




PORGMUN Research Paper

Ensuring national terrorism legislations are in order with democratic principles

The problem of appropriate counter-terrorism legislations is an ongoing problem in many countries. Even the word "terrorism" is hard to define. It is commonly understood to refer to "acts of violence that target civilians in the pursuit of political or ideological aims." Since many states define terrorism in slightly different terms, The General Assembly is currently working on developing a new and comprehensive definition that would include: "(a) death or serious bodily injury to any person; or (b) serious damage to public or private property, including a place of public use, a state or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities, systems, etc., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act."



Graph 1 shows the increasing budget of the US in fighting terrorism

Terrorism is an act that strongly affects targeted people and goes against the principles of the United Nations such as, but not limited to:

- a) endangering or taking lives, threatening security
- b) aiming at destroying democratic principles
- c) cooperating with transnational organized crime, drug trafficking, handling biological and nuclear weapons, and engaging in acts that accompany terrorism such as murdering and kidnapping
- d) endangering relations between states
- e) violating the principles of United Nations and threatening national security and liberty

Each state is obliged to ensure the safety of its citizens. According to the International Covenant on Civil and Political Rights, the right to live has been described as "the supreme right" because without its effective guarantee, all other human rights are meaningless. States must effectively prevent criminal acts and protect the life of every person within their borders. Moreover, states have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from a criminal act committed or likely to be committed by another individual. This cannot, however, come at the price of stripping terrorists or persons under the suspicion of terrorism of their human rights.

States are obliged to provide help to victims of terrorist attacks (or any kind of attack as well). This right has been stressed especially after the tragic events of 9/11 2001 (planes crashing into the World Trade Center in New York). In 2005, in World Summit Outcome (General Assembly resolution 60/1), Member States stressed: "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief." Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to "promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation."

The help that the victims need is:

- a) information about the problem, why the act was committed and what is done to prevent similar acts in future
- b) treatment with dignity, including the medical treatment
- c) protection of privacy
- d) compensation for their loss (for example pension for persons disabled by a bomb attack)
- e) receive any necessary material - food, drinking water, medicine etc.

PASSED RESOLUTIONS

Resolution 60/147 (General Assembly 2005) - calls for underscoring the need for victims to be treated with humanity and respect for their dignity and human rights, and emphasizes that appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.

Resolution 1189 (Security Council 1998) - unanimous, every Member state should refrain from organising, encouraging or participating in terrorist acts in other countries. Furthermore, there was a need to strengthen international co-operation between states to take measures to prevent and combat terrorism. All states were urged to adopt counter-terrorism measures to prevent further acts of terrorism, under the international law.

Resolution 1269 (Security Council, 1999) - unanimous, all countries were urged to take these steps: "to

- a) co-operate with each other through mutual agreements to prevent terrorist acts and prosecute perpetrators;
- b) prevent and suppress the preparation and financing of terrorist acts through all possible legal means;
- c) deny safe havens for those who commit terrorist acts through prosecution and extradition;
- d) ensure that asylum seekers are not terrorists before granting them refugee status through appropriate measures;
- e) participate in information exchanges and judicial co-operation to prevent terrorist acts.
- f) The main goal of this resolution was to call upon all countries to implement already passed legislations and urge countries that have not signed these legislations to do so immediately."

Resolution 1368 (Security Council 2001) - unanimous, called on all countries to co-operate in bringing the perpetrators, organisers and sponsors of the attacks to justice and that those responsible for supporting or harbouring the perpetrators, organisers, and sponsors would be held accountable. The international community was called upon to increase efforts of fighting against terrorism, especially in preventing them through the co-operation and stronger reinforcement of Security Council resolutions (mainly Resolution 1373).

Resolution 1373 (Security Council 2001) - unanimous, after September 11, valid for all UN member states, recalls provisions from UN resolutions 1189, 1269 and 1368, calls on states to adjust their national laws to combat terrorism better and to ensure terrorism is viewed as a serious criminal offense to domestic law. It also restricts refugee laws making it harder for asylum seekers to gain their refugee status. Unfortunately it failed in defining the word terrorism.

Resolution 1456 (Security Council 2003) - unanimous, calls on prevention and suppression of all support for terrorism, first that takes human rights into account - "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular, international human rights, refugee, and humanitarian law."

Resolution 1566 (Security Council 2004) - The text called on countries to prevent and punish "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act." Such acts were "under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature," according to the Council.

Convention for the Suppression of the Financing of Terrorism

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

Article 21 - says that the Convention cannot affect the other rights, obligations and responsibilities of States.

Problems concerning democratic principles

Since Resolution 1189, counter-terrorism legislations have been more and more in conflict with democratic principles. After a couple alarming violations of human rights connected with the "war on terror", the necessity of adding the importance of human rights into UN resolutions was obvious.

As there are some human rights that can be taken away from a person in special cases (see the next paragraph) there are some human rights that apply at any time. There are called the non-derogable human rights and they include:

- a) the right to life
- b) freedom from torture or cruel, inhuman or degrading treatment or punishment
- c) the prohibition of slavery and servitude
- d) freedom from imprisonment for failure to fulfil a contract
- e) freedom from retrospective penalties

- f) the right to be recognized as a person before the law
- g) freedom of thought, conscience and religion

There are special cases in which states may limit the exercise of certain human rights, such as the freedom of expression. The specific circumstances are not precisely described, but they are dictated by the rules of necessity and appropriateness (they must be appropriate for the situation and used only if it is necessary). According to the Guidelines on human rights and the fight against terrorism: "When the fight against terrorism takes place in a situation of war or public emergency which threatens the life of the nation, a State may adopt measures temporarily derogating from certain obligations ensuing from the international instruments of protecting human rights, to the extent strictly required by the exigencies of the situation, as well as within the limits and under the conditions fixed by international law."

Example problem: After US suspected Kenya of terroristic activity in 2003 they have imposed a travel ban on Kenya, which led to straining relations between the two countries. Because of this ban, Kenya was suffering from increasing poverty, as American tourism is a great part of their economy. Critics argued that the travel ban is counter-productive and that it will lead to an increase in terrorism due to poverty. The ban was lifted a year later.

Further reading:

[http://www1.umn.edu/humanrts/instreet/HR%20and%20the%20\)+6655fight%20against%20terrorism.pdf](http://www1.umn.edu/humanrts/instreet/HR%20and%20the%20)+6655fight%20against%20terrorism.pdf)

<http://www.ohchr.org/Documents/Publications/Factsheet32E0N.pdf>

http://www.idea.int/publications/dchs/upload/dchs_vol2_sec4_2.pdf