“Our responses to terrorism as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism — not privileges to be sacrificed at a time of tension.”

Former UN Secretary General, Kofi Annan

Introduction

Since terrorism is not going away, dealing with suspects of terrorism will be a major and very controversial issue for the international community for year to come. Since the 11 September attacks on the United States, the question of how to respond has been a difficult issue. How should UN Member States deal with terrorist suspects, without undermining their own values and principles? How can the international community continue to develop the international rule of law, while acting effectively to suppress terrorist threats?

These are problems that all 193 UN Member States must resolve. While sovereignty allows each to develop its own policies, attention to global principles and the Universal declaration of Human Rights requires the UN to try to articulate common principles and responses.

Successfully fighting terrorism requires understanding the aims, goals, and desired end state of the will of these extreme political groupings. However, matching the more and more brutal tools terrorists use require more sophisticated methods identified by governments. The focus of international action has significantly shifted from simply the stopping and punishing of terrorists to analyzing the pros and cons of the methods used to do so.

Can arbitrary imprisonment, torture and targeted killing (by drones or other means) ever be legitimate? When should counterterror be treated as a matter of law enforcement, and when is it self-defense? When does international law guide UN Member States, and when does counterterror require applying only domestic law, or maybe no law at all?

I. History: the Legacy of Guantanamo

When considering fighting terrorism, there is another angle that needs to be taken into consideration: Terrorism itself 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. Torture of prisoners might be one issue when skills of lawyers can be misused in the “cause of evil” to protect people from terrorists. One important example to this issue is the detention camp at Guantanamo Bay in Cuba.

1 Annan, Kofi. "Secretary-General's Statement.", The Special Meeting of The Counter-Terrorism Committee with Regional Organizations, New York, March 6, 2003.


3 Countering Terrorism, Protecting Human Right, OSCE Manual, p. 16.

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Guantanamo is a controversial location where the United States asserts it can “exercise complete jurisdiction and control”, because it is not in American territory. Cuba, which want control of Guantanamo back, refuses to acknowledge the legitimacy of American actions. This has been the US Government’s excuse over the years for not claiming responsibilities for the violations of human rights at the base.

American officials are divided about the facility. President Obama tried to close it and bring suspects to the United States for trials. President Trump defends it and has spoken of expanding it. The justification for keeping it is the suspects are suspected of planning serious terrorist crimes. Against the facility are previous global commitment, especially the Geneva Conventions. These humanitarian rules established in 1949 in the aftermath of World War II to protect civilians, warfighters and correspondents, the wounded and captured prisoners of war, POWs.

The four Treaties of the Geneva Conventions are the backbone to international regulation of warfare and therefore its violation means the failure to comply with international law. These international regulations amongst other treaties and principles of international law guarantee a prisoner’s rights for a just trial and adequate treatment. Groups such as the Human Rights Watch and Amnesty International have been pointing out that neither the prisoners’ nationality, nor their geographical location of where they are held can disregard these laws.

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6 Von Ness, Pamela M. "Guantanamo Bay Detainees: National Security or Civil...
The treatment of the prisoners at Guantanamo Bay is only one example in out of many situations where methods should be adjusted in the fight against terrorism to uphold international laws and standards. One relatively new technique used to monitor and counter terrorism has become the use of unmanned aerial vehicles (UAVs), and more commonly known as drones. The benefits of the use of UAVs are significant, as it radically shrinks the number of casualties on the side fighting terrorism, since it does not require military personnel risking their lives by being in the danger zone. Surveillance drones are able to acquire precise data concerning the activities of terrorist groups which then is passed on to be used by armed drones, that eventually carry out attacks on targets determined by surveillance drones. UAVs are also thought to be useful in scaring the heads of terrorist organizations with making them feel watched and threatened at all times. However, the detriments of the use of UAVs lead into two major conflicts that bring the protection of human rights and fundamental freedoms into question.

The Current Situation

Unmanned Aerial Vehicles have the technological advantage of being able to kill a terrorist suspect at extreme distance. But this also means murder without trial.

So is murder without trial moral? More specifically in the case of countering terrorism? When is it permissible? When not? Many UN Member States favor lose standards for their own security services, but expect other countries to adhere to tighter international law. Some expect freedom to operate in other country’s airspace, but refuse to allow attack by other countries there. How to reconcile such conflicting demands?

The United Nations General Assembly’s Resolution 68/178 adopted on 18 December of 2013 concerning this same topic highlights the importance of rights for trial for all human beings. It “Urges states, while countering terrorism: (b) To take all steps necessary to ensure that persons deprived of liberty, regardless of the place of arrest or detention, benefit from the guarantees to which they are entitled under international law, including the
review of the detention and other fundamental judicial guarantees…”

The second problem brought up by these means is the comparison of casualties caused by the war on terrorism versus the casualties caused by terrorism itself. It is undeniable that both of these cause the death of innocent civilians. As terrorist acts murder innocent victims, drone strikes kill civilians mistaken to be affiliated with terrorist groups, or innocent bystanders killed accidentally.

Resolution 68/178 also “Expresses serious concern at the occurrence of violation of human rights and fundamental freedoms, as well as of international refugee and humanitarian law, committed in the context of countering terrorism…” This brings up multiple questions that should be considered when addressing this issue. Is the use of Unmanned Aerial Vehicles efficient? Is bombing cities and buildings thought to have terrorist actors in them right even if there is a high chance that this will lead to the death of innocent humans? Is the murder of these actors the right answer for the war on terrorism, or would the capturing of them be a more sufficient solution?

Country and Regional Positions

African Union: Several African states face serious terrorist conflicts, including Kenya, Mail, Nigeria, Niger and Somalia. The extreme diversity of the Member States of the AU makes coordinated policy difficult. Many are authoritarian states where civil liberties are not well protected and state security services have great freedom of action. Others are democracies, more cautious in their attitudes, trying to reconcile the rule of law.

Especially in Central Africa, security cooperation with the United States as elevated their military capabilities and increased their willingness to deploy large military forces against terrorist threats, even in the face of allegations of attacks on innocent civilians.

Arab League: The 22 countries of the Arab League strong support measures to suppress terrorism. They also work to preserve distinct national policies and principles. Several support organizations that have been accused of terrorism practices, especially rival factions in Syria. Although they uphold international law and especially international humanitarian law, some have been known simultaneously to tolerate arbitrary arrest, imprisonment and torture.

China stresses the importance of domestic and international law. While to tries to maximize national freedom of action—sovereignty—it also tries to adapt international law to make this approach consistent for all countries.

The European Union: The 28 Member States of EU are committed to both aggressive counterterror cooperation and strengthening rule of law. EU Members, such as Germany, Sweden and the United Kingdom, are outspoken on the issue with civil liberties. They are not opposed to more aggressive methods, but usually require an imminent threat, not a merely suspected risk, before acting aggressively. They also are more willing to endure smaller terrorist attacks rather than sacrifice basic national principles.

Latin America: The counties of Latin America lean toward protection of civil liberties and human rights. Many were town apart by counterterror war and guerrilla struggles in the


8 Ibid

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1960s through 1990s. They endured both terrorist attacks and draconian suppression of civil liberties in response. To avoid both extremes, today they emphasize rule of law about all, reconciling stringent law enforcement and military capabilities with protections of rights of the accused.

Latin American countries find it easy to cooperate with the European Union to enhance the role of international law in counterterror.

Russia. Like China, is mostly preoccupied with preventing large terrorist attacks—it has endured several—and supporting the freedom of its security services. Russia is less concerned with domestic or international law than China or other countries.

The United States and its allies: Counterterrorism is a difficult issue for the United States and its allies, such as the 28 members of the NATO alliance. The US is dedicated to counterterror, and famous for maintaining the Guantanamo Bay prison in Cuba, where suspects of terrorism have been held without trial for as long as 16 years without trial, some even without formal charges. This violates international law and some American domestic law. But the policy is popular with the American public and has the personally support of America’s President, Donald Trump.

America’s approach to counterterror stresses its elimination and refusal to tolerate even small attacks. More than some of its allies, America has diluted domestic civil liberties to enhance its freedom to attack suspected terrorist. American leaders also support use of drones and special operations forces to kill suspected terrorists.

A major issue for the United States and its allies is the question of imminent threat. The United States does not require an imminent threat of attack before trying to kill or capture a terrorist suspect. Other American allies, however, refuse to arrest or attack a suspect unless there is a real danger, immanent threat.

Proposal for Further Action

There is a trade-off between civil liberties and counter-terrorism. Since both can obviously not be maximized, the question is:

- How to compromise between the two?
- Does your country prefer to emphasize the importance of countering terrorism or individual liberties?
- Does the country want to maximize freedom for its security services, or for its people?
- And how much freedom of action does your country expect when acted against terrorist threats and suspects outside its own borders?

As you write resolutions to serve your country’s national interests and international priorities, you will have to resolve these questions yourself and convince your fellow delegates on why that is the right action to take.

Essential Questions

- Human rights are basic freedoms extended to everyone in the world, how best is it for the world to apply these principles to those allegedly violating human rights themselves? Should their rights be considered?
- With limited authority on sovereign state territory, how can the UN ensure the applicability of human rights to everyone, including detainees?
- Is it best to tackle this issue with combatting terrorism as a reactionary cause, or to try to prevent terrorism from flourishing?
- When it comes to a terror attack or injustice, when should diplomatic
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- How to distinguish terrorism from other forms of guerrilla war and insurgency? It is tempting to deal with all violence against people and the state, but it may be overly ambitious. And different approaches may be required for dealing with terrorism, versus national or religious secessionism, for example. How to make sure that policy and law on terrorism does not worsen other disputes?

immunity and refusal to extradite suspects be voided?
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