Terrorism a curse or blessing to international humanitarian law

Society, Terrorism

This paper looks into terrorism and the effect it has had on international humanitarian law. Whether it has had a negative impact on the already existing laws that deal with conflict situations or whether it has had a positive impact. It also looks into the situations terrorism has led to and the various ways the fight against terrorism has been used to undermine human rights and given states a leeway to commit crimes and walk away without facing the consequences. It also looks into how prisoners or detainees who have been arrested because they have been linked to terrorism have a disadvantage if compared to prisoners or detainees of war who are protected under international humanitarian law. It also gives various solutions to the problem the world is currently facing of dealing with terrorism without undermining the current laws in place. The paper also provides for solutions that include using existing laws that complement each other to find a lasting resolution to terrorism.

Introduction

Terrorism is a relatively new phenomenon in the world. It became a great issue when the most powerful nation, United States of America, became a victim of this new phenomenon. Before the attacks on the United States of America, there were several attacks such as the bomb attacks in Kenya and Uganda. However after the attacks on the United States was when terrorism was taken as a serious issue and debates begun all over the world on how to solve the problem and eventually the term war on terror or fight against terror was born. This war on terror also led to a situation where existing laws were questioned on whether they can deal with terrorism efficiently.

Terrorism and International Humanitarian Law

The fight against international terrorism has also led to states ignoring and threatening human rights of their citizens and other people such as refugees and immigrants. States have ignored the fact that it is their responsibility and duty to make sure that their citizens are safe without undermining the basic human rights standards. Current initiatives being taken up by states to counter the problem of terrorism have no respect for human right and at times lead to the oppression of the people in the name of fighting terrorism. Defining the term terrorism has been discussed but no international definition has been decided and this gives room to states to use this to their advantage giving them a leeway to criminalize whomever they want to under the umbrella of terrorism. This can also lead to the states revoking certain rights such as the freedom of expression and the right to privacy all in the name of fighting terrorism.

States have also used the fight against terror as a front of making the world safer on the contrary the world is more dangerous than it was because international laws are being undermined, human rights are being ignored and governments are committing atrocities and breaking the law and hiding behind the fight against terrorism. The fight against terror has also caused more conflicts to do with religion and race. This has caused fear among the rich and also the poor because the impact is felt by all.

Attention to international humanitarian law has increased over the years because of the fight against terrorism since terrorism acts are now rampant

around the world. September 11th attacks in the United States of America and how the international community dealt with the attacks have led to various entities questioning the ability of or lack of provision in international humanitarian law to deal with terrorist attacks and other modern day acts of violence. International humanitarian law has been put on the spot light on whether or not it is still relevant.

These claims can only be clarified if the definition of the term terrorism can be looked at from the different sources of law that have defined the term. Terrorism has different definitions but no universal definition as stated above. Domestic laws and certain international conventions such as the international convention for the suppression of the financing of terrorism define terrorism as an act intended on causing death or serious bodily harm to a civilian or any other person not taking part in the hostilities in an armed conflict, when the purpose of that act is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. (Assembly, 1999) the basic principle of International Humanitarian Law is the principle of distinction which states that combatants in an armed conflict situation should be able to differentiate between fellow combatants and civilians and purposeful attacks on civilians and civilian property and use of human shields are not permitted. Hostage taking is also outlawed in international humanitarian law.

International humanitarian law does not permit measure of terrorism and acts of terrorism under article 4 and 33 of the fourth Geneva Convention and under additional protocol II. This clearly points out that under international

humanitarian Law some aspects of terrorism are dealt with especially acts that pertain to civilian and civilian property.

Differentiating between acts of terrorism and acts permitted during non international armed conflicts has been a difficult process because many leaders today have the tendency of labeling anti government groups that participate in non international armed conflict as terrorists. The labeling has somehow given a leeway for armed groups to ignore international humanitarian law during non international armed conflict because not all acts of terrorism are covered under international humanitarian law.

War against terrorism has become a big issue internationally because there is no day that will pass without the mention of war against terror in media tools. This war is not necessarily an armed war against terror but states using measures such as intelligence sharing and collection, economic sanctions, improving security measures on ground and assisting each other to arrest and prosecute terrorists. These measures do not entail armed fighting and do not give reason for any suggestion of international humanitarian law. In some cases however the war against terrorism has been implemented through the use of armed conflict for example the war in Afghanistan, and in that case international humanitarian law applied because it was an armed conflict.

Defining a situation as an armed conflict following the steps provided for under international humanitarian law sheds light on the legal issues that pertain to detainees that are captured being in connection with terrorism.

Under international humanitarian war prisoners of war maybe detained until the end of the armed conflict and civilian who engage directly in the conflict can also be detained following the right procedures. However there is no clear law under international humanitarian law that deals with the detainees who are detained of being in connection to terrorism.

There have been situations that certain international humanitarian law rules have been rendered none applicable but the situation was still categorized as an armed conflict and international humanitarian law applied generally. This has been problematic because international humanitarian law provides protection that can easily be disregarded in these situations. However in some situations that did not qualify to be armed conflicts where domestic and human rights laws applied, international humanitarian law was applied.

Many situations that have been going on around the world described as terrorism have been linked to network groups that believe and thrive in the same ideologies. The evidences collected from these situations have made it difficult to categorize the groups as actors of an armed conflict as described in international humanitarian law. In these situations as earlier stated domestic and international laws are applicable because they are committed outside armed conflict situations because international humanitarian law is not applicable.

Conclusion

The problem of terrorism can only be tackled by using both international humanitarian law and international human rights laws. International

humanitarian law and international humanitarian law when the attacks have been classified as an armed conflict and international human rights laws when the attacks have not been classified as an armed conflict. The two international humanitarian law and international human rights law are different however they work in harmony also with other laws where necessary to form a strong support for protecting victims of various conflicts including terrorist attacks.

Terrorism has not only questioned the efficient application of international humanitarian law but also brought about the debate of which comes first between state security and human protection. Most of the time state security is put first hence causing harm to human protection mechanisms such as international humanitarian law and international human rights law.

A good example of the above is the debate on permitting torture. Over the years the world has tirelessly worked on improving the standard rules that apply to handling of victims of violence and combatants during an armed conflict situation. The debate on permitting torture in some situations is taking us backwards and ignoring the fact that torture is considered a crime against humanity and is also considered a crime under international humanitarian law and other laws where applicable.

The war on terror has also brought about the unlawful detention of persons with the claims that they are connected to terrorism without following the proper procedures and providing council for the prisoners so that they can defend themselves. Other cases could be studied as well, such as the recent

examinations on whether questioning of prisoners really depends on the law applicable to them. This really depends on one set of law that governs the rights of prisoners and other detainees whether in an armed conflict situation or not, and these rules are international human rights law however there are some exceptions.

Balancing between human life and dignity and state security becomes a bit difficult when it comes to methods of questioning of detainees. The point is not a question of whether the prisoner can be questioned or not but what and how the questioning is done. Under international humanitarian law prisoners of war and other detainees are protected against acts that degrade human dignity such as torture and inhumane treatment. Acts such as these are outlawed international law and international humanitarian law. Under international humanitarian law the leaders of the side that the prisoners of war are subjected to the above acts bear full responsibility.

International committee of the Red Cross in a report on international humanitarian law and challenges of contemporary armed conflict believe that international humanitarian law can efficiently deal with the modern day international armed conflicts without being revised or the addition of other protocols or articles that specifically deal with any new form of a conflict or violent situation.

However there is need of improvement and development when it comes to dealing with the new conflicts and violent situations, but these can only be

done if the situations are really considered new and if no law existing can deal wholly with the situation.

The main problem facing the world at this particular stage is finding solutions to the new situations arising and complimenting the existing laws that deal with the existing situations without changing them or changing them for the better and without taking a step backwards.

There is also room for improvement when it comes to the implementation of international humanitarian law when it comes to non international armed conflicts most importantly when it comes to non state groups who are frequenting the media for causing what is considered modern day violence and conflicts within state borders and tend to ignore international humanitarian law. A good example is the atrocities that are being committed in the region of Darfur, where human dignity is not considered at all, where major human rights violations are taking place and international war crimes are being committed.

Yes in the past few years the international community has looked into the region it has now reached the point where international humanitarian law should be improved and developed further to come up with better mechanisms and methods to ensure that it is implemented and respected in non international armed conflict, such as offering incentives to the groups involved to observe international humanitarian law and also help governments set up negotiation meetings to avoid circumstances that lead to violent situations.

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