Counterterrorism

Introduction

Terrorism has become one of the major concerns in the recent world in the recent times to the peaceful existence of people globally. Over the time, there has been different measured deployed in order to curb the menace and its threats to peace and violation of human rights. This has included the provision of adequate and suitable tools essential to intercept and barricade violence acts such as the enactment of the USA Patriot Act. This paper critically discusses the act in reference to the laws enacted in post-9/11 era against the terrorism menace. In addition, the paper looks to the countless measures deployed in order to curb the menace through the Bush and Obama administrations in United States. In addition, the paper looks into the relation between the laws enacted and deployed against the violation of human rights (Whittaker, 21).

Thesis statement: In the aftermath of attacks in USA in September 2001, the fear of more terrorist attacks has led to change and re-evaluation of security concern. However, many of the actions taken has left a durable repercussion in human rights protection, and one of the most serious wounded of post September 11th is the erosion of civil and political rights taken by States trying to protect their security. Compared to other policies deployed in Britain the United States move has been considered comparatively mild.

*Abstract*

Terrorism has become a common term in reference to human and property security in the world. It has been seen as an effective tactic for the weaker side in any given conflict. However, despite the popularity of the term within the human race in the world, terrorism can be a nebulous term or concept. Even within the United States government, agencies that are responsible in the fight against the menace have different definitions to it. The United States Department of Defense holds the definitions of terrorism as a calculated use of unwanted threat or violence which is intended to inculcate fear, with an intention of coercing or to intimidate societies or governments in the pursuit of goals which are generally political, ideological or religious. On the other hand, agencies like FBI defines terrorism as unwarranted use of force and violence against property or persons with an intention of coercing or intimidating civilian or a government  in furtherance of political or social objectives (Brysk et al, 52).

Despite the numerous definition of the problem, the basic point is that measures have to be deployed in order to protect people and properties both in different nations and in the entire globe at large. This has brought new term counter-terrorism. This incorporates tactics, techniques, practices, and strategies that different governments, military, police departments, and all other security agencies adopt to attack terrorist threats and or acts both real and imputed. For example in United States, there has been the bureau of counterterrorism whose primary mission is to forge a partnership with multinational organizations, Non-state actors as well as foreign administration in turn to advance the counter terrorism objectives and the national security of United States.

*USA Patriot Act of 2001 (US) and Terrorism Act 2000(Britain)*

The USA Patriot Act of 2001, which commonly referred to “The Uniting and Strengthening America by offering suitable Tools essential to intercept and Obstruct Terrorism Act of 2001” this is one of the numerous measures deployed by the United States government in the fight against terrorism acts in the country. The Act was enacted into law in October 2001 as a reaction to the September 11 terrorist attack in United States. This was after a proposal by the department of justice. The focus of the law developed enacted focused mainly on the reinforcement of the weapon store and tools available to the vital Central Intelligence Agency. The law also focused to the empowerment of the Federal Bureau of Investigation (FBI), and federal prosecutors for identifying and disabling terrorist networks working both within and outside the United States.

In reference to the Terrorism Act 2000, the USA Patriot Act looks comparatively mild. This is an act of the parliament in Britain which as well increased police powers for the vital purpose of countering terrorism. Similar to the USA Patriot Act, the Terrorism Act 2000 also extended the number of days for suspect detention without charge in Britain. This law annulled the British emergency legislation which had initially been directed to Irish terrorism, and in turn revised the legal tools against terrorism in Britain. The two Acts had the same agenda, which was to increase people security against the terrorism actions. In addition, ‘The Terrorism Act of 2000’ also consists of provisions for the detaining of persons alleged of taking part in terrorism and provisions regarding search and detention powers, among other things depending on the judges warrant. The development of the anti terrorism legislation in Britain since the years 2000 has been similar to the case of USA after the 9/11 incident. However, when the two cases are compared, the Terrorism Act 2000 in Britain looks more comprehensive than the mild United States approach.

A significant difference between the two cases of anti-terrorism legislation adopted in USA (USA Patriot Act) and Britain Terrorism Act 2000. Unlike the United States case, Britain failed to pass legislation that allowed the locking up of suspected terrorists as "illegal combatants."  This is considered is a downside to the USA case compared to the British legislation. In addition, both in Britain and United States, the counter-terrorism legislation that was adopted has led to prevalent public debate because it often denies the essential protections provided by constitutional and criminal law. This in turn has brought along numerous conflicts with the human rights laws. This has in turn made the USA approach to counter terrorism cases comparatively mild

However, despite the United States immigration policy being held responsible for the entrance of foreign terrorists into the country, and commit their awful act, the act (USA Patriot Act) treats the countries immigration policy as a late addition. The immigrations provisions that were included in the new law reflected two increasingly problematic and persistent perceptions shared by a good number of the elected representatives as well as the justice department in United States. I.e. the naturalization and immigration service’s key function is the admission of aliens in to the country. This is in contradiction to the desired enforcement of the laws regulating such admissions in the country. Secondly, the law posed the immigration policy as a political quagmire better left untouched.

One of the perceptions is reflected by the USA Patriot Act’s failure to identify that the enforcement of active migration bylaws is just as significant in the war on terrorism as better foreign intelligence and more diligent tribunal of those with terrorist ties, and its failure to hold the agencies liable for such enforcement. The subsequent observation is reflected all through the immigration-related portions of the Act: Rather than requiring immediate action by the INS and the State Department, many provisions simply require studies of potential future actions (Whittaker, 46). As an alternative of demanding that agencies straight away put into practice certain programs endorsed by Congress in 1996, the law entails progress reports. Undoubtedly, the ‘USA PATRIOT Act’ holds a number of migration requirements that will advance our capability to recognize and either exclude or prosecute aliens with terrorist ties. It is equally clear, however, that this new law represents only a first step in the immigration-policy reforms that are necessary to combat terrorism effectively and to protect Americans from future terrorist attacks (Whittaker, 36).

The American response to the 9/11 has been much criticized all around the world, but not fully understood within the United States context in terms of unique legal and political culture. After the 9/11 the American approach was dominated by the aspect of aggressive exertion of executive power as well as dubious claims of legality. For example, the most infamous conduct was directed to the non-Americans outside the country. This came as a wake up t the human rights issues as it was widely regarded as violation of human rights. For example, the measures that were adopted after the 9/11 menace included detentions without trial into the famous Guantanamo bay as well as torture, abuse and increased use of renditions directed to those countries with poor human rights records. In addition, some of the moves were directed to the American citizens such as spying of the NSA (national security agency) (Brysk et al, 66).

In addition, less appreciated is the fact that the American legislative response to the terrorism menace, in the years after the 9/11 incident was mild when compared to the response to other democracies. To be sure, the uniting and strengthening America by providing appropriate tools needed to intercept and obstruct terrorism Act also simplified as Patriot Act which expanded surveillance and look for powers and contemplated the use of immigration law as antiterrorism law. Nevertheless, the law didn’t make an attempt to derogate from rights by suspending habeas corpus or else enact new and controversial procedures such as preventive arrests, questioning warrants and investigative hearings which were introduced into Canadian Australian law after the 9/11 incident.

One of the reasons why the official American legislative response to the 9/11 appears mild in comparative perspective is that, the 1st amendment has restrained the making or the creation of criminal offenses against membership in terrorist groups or speech that appears to advocate the terrorism menace. Another reason for the relative mildness of the legislative and domestic and domestic American response to terrorism is the political and legal restrictions on what should or can be done in the United States with respect American citizens. The united states have no the agency in the name of domestic security intelligence but instead relies on FBI agency and other agencies in policing in preventing domestic terrorism.

Looking into the measures against the terrorism in the world, the fight has taken a number of measures including enactment of law in order to curb the menace. Many democratic countries have developed the willingness to take serious and severe measures against the rising threat of international terrorism. The 9/11 incident in United States among other major attacks throughout the globe has proved that the threat of terrorism is real and governments can no longer afford to ignore it. Key anti-terrorism legislation in Britain and the United States were enacted from the events of 9/11 to the present. The two nations have been on the fore front in the war against international terrorism. The legal tolls and measures that are taken by the two nations can be of great help to other nations and help in fighting terrorism effectively without unnecessarily compromising human rights (Brysk et al, 80).

*Developments in anti-terrorism legislation in the United States after 9/11*

After the 9/11 terrorist attacks, the country (United States) adopted rigorous instruments to battle terrorism by passing and enacting fresh legislation as well as amending the existing ones. Congress passed the main act of legislation against terrorism, the US Patriot Act, on October 26. This all-inclusive act of legislation largely revised dozens of existing American laws to permit the US security bureaus to take insidious measures, in searching, surveillance, arrest, and capture of assets and its elimination, which had previously been denied as they compromised human rights and basic freedoms. For instance, Section 412 of the US Patriot Act revised the Immigration and Nationality Act, and in turn added a provision on the confinement of suspected terrorists. This amendment to the act empowered the Attorney General in US to order an arrest for foreigners when there is a reasonable basis connecting them to be involved in terrorism or other activities that may pose danger to the country’s national security. Initially, the attorney general was only given an allowance of seven days to decide whether to deport the suspect or criminal measures should be taken against the detainee other he (detainee had to be released from detention). Nevertheless, the new-fangled provision permits the administrative detention of an individual, even in cases where their expatriation from the US does not emerge impending, for a period of 6 months at a time if the (AG) Attorney General thinks the discharge of that person would jeopardize the country’s security, public safety or the safety of any individual. It is important to note that as of today that provision of the law has not been used to detain suspected terrorists (Wilson, 33).

More to the point on the US Patriot Act, the American Administration also responded by enacting new legislation which gave way to detention of numerous Al-Qaeda and Taliban fighters in Afghanistan allowing their tribunal for war crimes. On November 13, 2001, United States President issued an order, giving authorization to the arrest of affiliates of Al-Qaeda and everyone who took part in, gave refuge to, helped, or schemed to commit acts of worldwide terrorism, as well as their prosecution in special military tribunals created for that purpose. Based on this order, the United States detained hundreds of individuals throughout the fighting in Afghanistan (Wilson, 78). The immense majority of them were Taliban fighters and members of Al-Qaeda. These captives were behind closed doors taken to a U.S. Navy confinement facility in Guantánamo Bay, Cuba, and detained there for an unlimited period, without judicial review and without the possibility of meeting and consulting a lawyer. The adoption of the numerous measures to curb the spread of terrorism in the world by the US agencies was highly active after the 9/11 incident in the country. This was during the regime of President Bush who moved swiftly to enact the policies and empower the agencies responsible for righting and protecting the Americans against the terrorist attacks. The security agencies underwent radical changes whereby they were empowered.

The response to the September attack in United States was for example responded by the adoption of a war paradigm for what the administration of President George W. Bush called the “war on terror.” Under this model, the United States sought to bypass criminal law and human rights safeguards for alleged terrorists by asserting that it was in a global armed conflict with al Qaeda and affiliated groups; that such laws were inapplicable; and that if any law applied to counterterrorism efforts, it was the laws of war for capture, detention, and attack. Under the Obama administration, both the rhetoric and practice have changed—the illegality of torture is recognized, as are other human rights protections—yet US counterterrorism actions, such as targeted killings outside of clear war zones, remain based on this war paradigm.

The counter terrorism and human rights project develops international law arguments and tools in response to the United States practices in curbing the terrorism activities, which goes against or negatively affects human rights. Through the policies that were passed after the incident in September 9/11, there has been a call to build networks that facilitates educational training as well as promoting coordination among advocacy groups. However, the numerous practices such as suspect detention, has been a hindrance to the development of human rights practices and development of lawful theories and helpful precedents based on global law through work on select litigation before U.S. courts, in international and local forum, and through other advocacy projects.

As it is the case with the fact that terrorist/terrorism has direct impact to human rights, the same case is seen when counterterrorism measures are taken into account, and as such, countries has an obligation in choosing effective counterterrorism measures. However, despite the magnitude and complexity of the challenges facing nations in the fight against terrorism, international human rights law is seen as a flexible enough channel which can address the challenges effectively. Effective counterterrorism measures and the protection of human rights are complementary and mutually reinforcing objectives, which in turn must be pursued together as part of a nation in protecting the citizens.

*Impact of the New Paradigm on International Human Rights Law (measures) in relation to Terrorism Act 2000*

There is little disagreement that human rights standards have been disregarded as legal constraints under the ‘new paradigm.’ The UN has expressed a consistent position that ‘all measures to counter terrorism must be in strict conformity with international law, including international human rights and humanitarian law standards.’126 The UN, meeting at the level of Heads of States or Government on the occasion of the 2005 Summit, recognized ‘that international cooperation to fight terrorism must be conducted in conformity with international law, including the Charter and relevant international conventions and protocols (Fenwick, 56). States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.’127 It should also be noted that the UN Commission on Human Rights has mandated both an independent expert on the protection of human rights and fundamental freedoms while countering terrorism,128 and a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.129 The human rights system allows for limitations and derogations, particularly those provided for in the International Covenant on Civil and Political Rights (Gearty, 61).

When viewed as a whole, the post-9/11 laws represent a dangerous expansion of government powers in terms of investigating, detaining, arresting and prosecution of individuals at the expense of due process, public transparency and judicial oversight. The laws in turn merits for close attention, not only many of them violates the human rights of the suspects, but also because they have been used any a times to stifle peaceful political dissent or else target given political, social or ethnic groups. Many of the laws in counter terrorism contains changes to the procedural rules which are meant to ensure the justice system gives a due process which jeopardizes basic human rights and a guarantee to fair trial (Foot, 98).

Some changes enhance the ability of law enforcement officials to act without the authorization of a judge or any other external authority. Others grant authorizing power to prosecutors, or other members of the executive branch, who may have a particular stake in the outcome of police investigations. These procedural changes not only increase the likelihood of rights violations, including torture and ill-treatment, but also decrease the likelihood that those responsible will be discovered and punished (Bonner, 45).

*Conclusion*

Despite the geographical distance as well as different circumstances that led to United States and Britain to act and pass the anti-terrorism legislation, there are some similarities between them. In United States the act adopted gave the security agencies broad powers in the name of war on terror. This was through the invasive measures such as supervision, detention, surveillance and seizure among many other actions. The detention practice of suspected terrorist was highly regarded as violation of human rights. Terrorism is real. It cannot be ignored. It will not simply go away. Any sensible response requires anti-terrorist laws that are broad and far-reaching. This creates its own dangers. Such laws can erode the very democratic freedoms that they are designed to protect.

It’s clear that the 9/11 for was a changing incident in the fight against terrorism in the country as well as the whole globe. Government efforts to curb terrorisms are often rife with human rights abuse. Moving from the Bush regime to the current Obama régime, the empowering of security agencies has been the in thing in the fight against terrorism. In summary, the United States actions in post-9/11 counterterrorism laws and practices including the various wars which were waged under the banner of fighting terror have widely been faced with condemnation for the way they have serious violation of human rights. Arbitrary detention, unlawful killing, torture, invasive surveillance and devastation of economic and health infrastructure are some of the many documented effects of the counterterrorism effort.

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