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AND THE MORALITY OF EXTRA-JUDICIAL
KILLING: THE PHILOSOPHY AND NATIONAL
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Abstract

Within the second half of the twentieth century, the spate of terrorist attacks all over the world adopted such stride that warranted reaction of international community in form of several treaties and Conventions on counter-terrorism. Under these treaties, States have rights and duties to take counter-terrorism measures to prevent and deter terrorist attacks and to prosecute those responsible for carrying out such heinous acts. The significance of this paper is stressed by the additional duty to comply with State obligation under international law, particularly, international human rights, refugee and humanitarian laws. The purpose of this paper amongst others, is to draw attention to the awkward development arising from the fact that, in pursuit of these measures, various member states have adopted all kinds of counter-terrorism measures, ranging from targeted killing, extra-judicial killing and running of torture camps and chambers, especially in the aftermath of the *9/11 attack* on the United States of America; which sad event orchestrated permissive regime of rechristening every conceivable opposition as terrorism that must be addressed, by all forms of high-handedness. This dimension of counter-terrorism measures raise several human right questions, bordering on human right and humanitarian law on the one hand, and the question of morality of extra-judicial killing on the other. By doctrinal or theoretical approach, the paper observed and found that there is a gap in the International Law on counter terrorism, on the approach an aggrieved State may adopt where a terrorist is either evasive of the cause of justice or where the State hosting him is either unable or unwilling to bring him to justice. The paper lamented over too much emphasis on the human right of individual terrorist at the expense of peace and stability of the State. The paper thus recommended that counter-terrorism laws be amended to reflect this obvious gap and counseled that national policies on counter-terrorism should put security of other Nations into consideration for a more balanced administration of international justice.

Key Concepts: *Human Rights, Counter-Terrorism, Morality, Extra-judicial Killing and National Interest.*

Introduction

Over the years, the international community under the auspices of the United Nations has developed several Conventions on the prevention and suppression of terrorism, all of which constitute global legal framework against terror¹. Again and again, the United Nations Security Council has adopted resolutions to the effect that every act of terrorism constitutes a threat to international peace and security and that acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations². It is for this reason, various treaties and Conventions saddle member States of the United Nations with obligation to protect enjoyment of human rights from interference; adoption of appropriate measures including legislative, judicial and administrative measures, to protect human rights of persons within their State control, even if outside State territory, in cooperation with the United Nations, in line with article 55 of the Charter³.

It is in pursuance of this that various member states have adopted all kinds of Counter-Terrorism measures, especially in the aftermath of the *9/11 attack* on the United States of America, which sad event orchestrated permissive regime of rechristening every conceivable form of opposition as terrorism that must be addressed by all forms of high-handedness, including targeted killing and other forms of extra-judicial killing⁴. Various countries have, in pursuit of this, created concentration camps and torture chambers that have resulted in death and in some situations, into massive displacement in the character of ethnic cleansing and other kinds of offences against humanity⁵. This is done, oblivious of the State obligation to ensure that all counter-terrorism measures ought to comply with human rights standard⁶.

From the flagrant employment of targeted killing by Israel and the full-scale war in Syria and Yemen in the Middle East⁷; targeted killing of perceived terrorists by the United States of America, North Korea, Russia, Iran, Kenya, Rwanda and various other countries of the world⁸, it has become obvious that this dimension of response to the growing spate of terrorist movements in this century raise several human right questions. Such questions include the morality of targeted-killing under international human right and humanitarian laws, including the philosophy that informs such measure in the overall interest of peaceful co-existence within international

¹UNSC Resolution 1373 of 28th September, 2001.

² Ibid

³UNHCHR, Human Rights, Terrorism and Counter –Terrorism, Fact Sheet No. 32, P.5.

⁴The Syrian regime claims to be prosecuting its eight year old civil war in that country against terrorists while the Myanmar government hides under similar cover to commit genocide and ethnic cleansing against Rohingya Muslim. See BBC News, ‘Myanmar Rohingya: What you need to know about the crisis’

<<https://www.bbc.com/news/world-asia...>> accessed on 11-07-2020.

⁵Ibid. including America Guantanamo Bay Detention Camp. See Wikipedia;

<<https://en.m.wikipedia.org/wiki/Guant>> accessed on 09-07-2020.

⁶S.R. David, ‘Israel’s Policy on Targeted Killing’ <<https://www.law.upenn.edu/papers>> accessed on 09-07-2020.

⁷ C.S Rinehart, ‘Drones and Targeted Killing in the Middle East and Africa’

<<https://www.researchgate.net/publication>> accessed on 09-07-2020.

⁸New York Times, ‘The Killing of Gen. Qassem Soleimani: What we know since the US strike’

<<https://www.nytimes.com/middleeast...>> accessed on 09-07-2020.

community⁹. By doctrinal approach therefore, this paper seeks to assess extent to which prosecution of counter-terrorism measures may be carried out within the framework of State obligation, to comply with human right standards and yet, ensuring safety of the general public, in line with international law against terror.

Clarification

For brevity, the paper made clarification here on human right, counter-terrorism and morality as foundation for the main discussion on the morality of extra-judicial killing within the framework of national interest, as a measure for counter-terrorism.

Human Rights

Human right as a concept has philosophical connection to natural law which Crankston described as the twentieth century name for what was traditionally known as natural rights, or in a more exhilarating mode, rights of man¹⁰. From this antecedent, human rights came to be variously defined as “the right one holds by virtue solely of being a human person... right naturally inhering in the human being”¹¹; “those claims made by men, for themselves or on behalf of other men, supported by some theory, which concentrates on the humanity of man as a human being, a member of mankind”¹²; “rights and freedom which every person is entitled to enjoy, possibly deriving from natural law”¹³; “rights one has simply because one is a human being”¹⁴; “rights which all persons everywhere and at all times equally have by virtue of being moral and rational creatures”¹⁵. They are universal values and legal guarantees towards the protection of individuals and groups against actions and omissions primarily by the State agents that may interfere with fundamental freedom, entitlements and human dignity, with all the ugly consequences, reminiscent of the horrible effects of the Second World War, primarily recognized under the United Nations Charter and Universal Declaration of Human Rights (UDHR)¹⁶, and several other core international human right treaties; and in Customary International Law¹⁷. Some of these rights are recognized as having special status as *jus cogens* peremptory norms of customary international law, thus making them non-derogable¹⁸. The prohibitions of torture, slavery, genocide, racial

⁹ M, Mamsden, ‘Targeted Killings and International Human Rights Law: The Case of Anwar Al-Awlaki’ *Journal of Conflict and Security Law* vol.16 no.2 (Summer 2011) 385-406. <<https://www.jstor.org/stable/26295340>> accessed on 09-07-2020.

¹⁰ N. Crankston, ‘What are Human Rights?’ <www1.umn.edu/humanrts/.../what-are-human-rights> accessed on 10-06-2016; O.N. Ogbu, *Human Rights Law and Practice in Nigeria* (CIDJAP Press, 1999) 3; B.O. Nwabueze, *Constitutionalism in the Emergent States* (C. Hurst and Co.ltd; 1973) 41; P. Roscoe, ‘Philosophical Foundation of Human Rights’ (UNESCO, 1986); V. Karel, *International Dimensions of Human Rights* (Pendone, 1981).

¹¹ L. Rutherford, and S.Bone, (eds) *Osborne Concise Law Dictionary*, 8thedn (Sweet and Maxwell, 1993) 293.

¹² J. Donnelly, ‘Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights’. *American Political Science Review*. [1982] vol.76. 305.

¹³ Ibid.

¹⁴ B.Nwabueze, *Constitutionalism in the Emergent States* (C, Hurst &Co; 1973) p.83 See also Ogbu, *op.cit.*

¹⁵ Nwabueze, *op.cit.* at 83.

¹⁶ C. Oputa, *Human Rights in the Political and Legal Culture of Nigeria* (Nigerian Law Publications Ltd; 1988) 38-39

¹⁷ J. Donnelly, ‘Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights’. *American Political Science Review*. [1982] vol.76. 305.

¹⁸ Ibid.

discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms, as reflected in the International Law Commission's articles on State responsibility¹⁹. The International Law Commission also lists the basic rules of international humanitarian laws applicable in armed conflict as examples of peremptory norms²⁰. Similarly, the Human Rights Committee has referred to arbitrary deprivation of life, torture, inhuman and degrading treatment, hostage-taking, collective punishment, arbitrary deprivation of liberty, and violations of certain due process as non-derogable rights, while the Committee on the Elimination of Racial Discrimination, in its Statement on racial discrimination and measures to combat terrorism, has confirmed the principle of non-discrimination as a norm of *jus cogens*²¹. Thus, in the discussion on counter-terrorism and extra-judicial or targeted killing in this paper, effort is made towards deciphering legality and morality of such acts and then, the wisdom of insistence on the States' operation only within the framework of human right laws, in their counter-terrorism drive.

Counter-terrorism

The compound word, "counter-terrorism" will only make meaning by first, defining terrorism itself. As a result of varying interest of various member States of the United Nations, giving the term "terrorism" a precise definition has only been an evolving one²². In 1998, while drawing up the Rome-statute of international Criminal Court, delegates could not agree on the inclusion of terrorism within jurisdiction of international criminal Court, for lack of precise definition, thus warranting the recommendation of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court for a review, for precise definition of terrorism, amongst other concepts, to be included as part of offences within jurisdiction of the Court²³.

However, various functionaries of the United Nations, by resolutions have presented terrorism to include criminal acts intended or calculated to provoke a state of terror in the general public; a group of persons or particular persons for political purposes in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other measure that may be invoked to justify them²⁴. They are criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostage with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons; to intimidate a population or compel Government or an international organization to do or to obtain from doing any act²⁵; any action that is "intended to cause death or serious bodily harm to civilians or non-combatants when the purpose of such an act, by its nature

¹⁹ Oxford Bibliographies, 'Jus Cogens-International Law-Oxford Bibliographies'
<<https://www.oxfordbibliographies.com>> accessed on 09-07-2020.

²⁰International Law Commission, 'Peremptory Norms of General International Law (Jus Cogens)-Analytical Guide'
<<https://legal.un.org/ilc/guide>> accessed on 09-07-2020.

²¹ D. O' Donnell, 'International Treatise against Terrorism and the Use of Terrorism during Armed Conflict and by Armed Forces' <<https://www.cortsidh.or.ortablas>> accessed on 09-07-2020.

²² UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism'
<<https://www.ohchr.org/publications>> accessed on 04-06-2020.

²³United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Rome, 17th July, 1998. Accessed on 04-06-2020.

²⁴UN General Assembly's Declaration on Measures to Eliminate International Terrorism, Resolution 49/60 of 1972.<<https://www.un.org/sixth/int-terrorism>> accessed on 14-06-2020.

²⁵UNSC Resolution 1566 (2004) <<https://www.un.org/blog/document>> accessed on 14-06-2020.

or context is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act²⁶.

From this run down, it is obvious that this is one concept whose understanding by the United Nations and its functionaries make the society, governments, organizations and the general public the focal point, away from the posture of the Universal Declaration of Human Rights and all its protocols that make rights of individuals the centre, with minimal attention to the society, which situation has caused apathy against human right regime in several countries. In this paper therefore, the term terrorism is used to depict any act of individual or organization either political, religious, ideological, racial or ethnic, terrorizing governments, organizations, unarmed civilians and general public to do or refrain from doing an act, at the risk of death, serious bodily injury or being taken hostage. It is understood here as acts that threaten peace and security of the society on a scale that underrate governance and the essence of social contract between each society and their respective government.

Counter-terrorism, also known as anti-terrorism on the other hand consists of political or military activities designed to prevent or thwart terrorism²⁷. It includes the practice, military tactics, techniques and strategy that government and all its law enforcement outfit, including the intelligence agencies put in place to counter the surge of terror against individuals and state apparatus²⁸. It is a spontaneous but organized state response by which national power is employed to neutralize all forms of terrorist manifestations within a particular State boundary²⁹. As part of a broader insurgency, counter-terrorism may employ counter insurgency measures.

In this paper therefore, the term, counter-terrorism is used as state measures adopted to countering criminal acts, intended or calculated to provoke a state of terror in the general public, particular persons or group of persons, for political purposes or for whatever legally unjustifiable reason.

Morality

The word “moral” or “morality” has been variously defined as principles of right and wrong standard of behavior³⁰, pertaining to character, conduct, intention, social relation,³¹; a body of standard or principles derived from a code of conduct from a particular philosophy, religion and culture from a standard that a person believes to be universal³²; a code of value regarded in a community or society as a guide to choices and actions that determine the comic of life³³; and in the words of Pearson, it is:

²⁶Secretary General’s High Level Panel on Threats, Challenges and Change, 2004<<https://www.un.org/blog/document>> accessed on 09-07-2020.

²⁷UNODC, ‘The Doha Declaration: Promoting A Culture of Lawfulness’ <<https://www.unodc.org/terrorism/defini..>> accessed on 09-07-2020.

²⁸J. Ruperez ‘The United Nations in the Fight Against Terrorism <<https://www.un.org/ctc/2017/01>> accessed on 09-07-2020.

²⁹ Ibid.

³⁰A.S. Hornby, *Oxford Advanced Learner’s Dictionary*, 5thedn (Oxford; Oxford University Press, 1998)755

³¹Bryan, *op.cit* at 909

³² P. Gant, Wikipedia at <aynrandlexicon.com/lexicon/morality.html> accessed on 22-04-2015

³³Ibid

Set of norms dealing basically with humans and how they relate to other beings, both human and non-human with how humans treat other beings so as to promote natural welfare, growth, creativity and meaning as they strive for what is bad and what is right over what is wrong”³⁴.

According to Rustin, morality is a hard thing to measure. It cannot be quantified. It is the internal fire of quality inside us that leads us to make the right decision³⁵. For Kant, moral theory is deontological in the sense that actions are morally right in virtue of their motives driven by duty and not just inclination to act in a particular manner³⁶. As he reasoned therefore, the ultimate principle of morality must be a moral law, conceived so abstractly, in a manner that is capable of guiding people to the right action, in application to every possible set of circumstances, so that the only relevant feature of the moral law is its generality by which it can be applied at all times, to every moral agent³⁷. Such moral obligation he said, arises even when other people are not involved, like in the case of moral duty not to take one’s life, to waste one’s talent³⁸.

By this, morality is presented as advocating on a generalized note that it is always wrong to act otherwise than we expect of others, reminiscent of the Christian expression of the golden rule, to do to others only as you expect others to do unto you, which is a generalized concern for all human beings. What this means in Kant’s estimation is that men should “act in such a way that you treat humanity, whether in your own person or in the person of another, always all the same, as an end and never simply as a means”³⁹. This is what Edgar refers to as internal morality that gives its subject an inner drive to act well, even without any outward pressure⁴⁰.

Distinguishing morality and moral rules from legal rules, Samba said moral rules “do not, even in principle, admit of change by legislation, for it would mean that some acts, which have been morally wrong, shall by legislation become morally permissible”⁴¹. He said in moral arguments, final settlement is unattainable due to the nature of moral disputes, for the notion of adjudication is logically inconsistent with that of a moral conflict⁴². Looking at morals from similar perspective, Adaramola described morality as “a persuasive system” whose rules “in the last resort, are enforced by internal force”⁴³. As he put it:

³⁴H. Pearson, ‘The Nature of Morality’ <www.pearsonhighered.com> accessed on 15-11-2014

³⁵ N. Rustin, and N.T. Gilford, ‘Morality and Religion’ <<http://www.teenink.com/openion/spirituality/religion/article/40825/morality-and-Religion/>> accessed on 22-04-2015

³⁶I. Kant, ‘Law and Morality: A Kantian Perspective’ <www.jstor.org/stable/1122670/> accessed on 22-04-2016. See also Khan, H., ‘Law and Morality’ <trello.com/c/.../512-law-and-morality/> accessed on 21-04-2016

³⁷Kant, *op.cit.*

³⁸*Ibid.*

³⁹*Ibid.*

⁴⁰R. Edgar, *Jurisprudence: The Philosophy and the Method of the Law* (Harvard: Universal Law Publishing Co, 1962) 290-292

⁴¹J.N. Samba, *Fundamental Concepts of Jurisprudence* (Bookmakers Publishing, 2007)14.

⁴²*Ibid.*

⁴³ F. Adaramola, *Jurisprudence* 4thedu (Lexis Nexis Butterworth’s, 2008)73.

One of the peculiarities of morality is that its rules apply to conscience only, and require to be complied with, in any event, by the internal self-will of the addressee. Their eventual enforcement lies in social pressures and in overt and covert psychological pressures of the community⁴⁴.

Looking at morality from the perspective of internal force required for effectiveness of the law, Elegido said “morality can teach us that every man should contribute to the general need of the community” which is the normative force or obligation that the law requires to create effect⁴⁵. It is for this reason the learned author talked about morality as a complimentary part and parcel of the law⁴⁶. From the foregoing, it is obvious that all the scholars agreed that the realm of morality dwells only in the internal to humanity although most of the authors fail to relate their definitions to the reality of morality as forerunner of a sociologically acceptable law to each society as in the case of whether a State should engage in extra-judicial killing in its prosecution of counter-terrorism measure. Therefore, in this paper, morality would rather be defined as human tendency dictating that we do what is right and avoid what we believe to be wrong, thus creating inner compulsion which the law as in the case of counter terrorism necessarily requires as a normative force, guided by the national interest of each society, to maintain law, order and tranquility, within the larger populace of each nation state.

Legal Framework of Counter-Terrorism

As a result of the growing spate of terrorist activities in the second half of the twentieth century, international law on counter-terrorism has evolved over the years as a dispensational but systematic measure in containing the menace⁴⁷. This evolution has given rise to series of treatise and Conventions on State obligations on how to combat terrorist acts. But beyond the Conventions are also Protocols and United Nations Resolutions and other Declarations in that behalf, all of which sum up as legal framework on counter-terrorism⁴⁸. For the purpose of this paper, some of these Conventions are outlined to show how robust but inadequate they have become in the effort to contain the menace of terrorism, and to also decipher the morality of other measures adopted by various member states of the United Nations, in combating the upsurge.

The maiden measure was the Convention on Offences and Certain Other Acts Committed on Broad Aircraft, adopted in Tokyo in 1963, followed by five others in the 1970's, which included the 1970 Convention for the suppression of unlawful seizure of Aircraft; the Convention for the suppression of unlawful Acts against the Safety of Civil Aviation, 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; the International Convention against the Taking of Hostages, 1979; and the Convention on the Physical Protection of Nuclear Material, 1979⁴⁹.

⁴⁴*Ibid.*

⁴⁵ J.M. Elegido, *Jurisprudence* (Spectrum Books Limited, 2002)94-98.

⁴⁶*Ibid.*

⁴⁷O' Donnel, *op.cit.*

⁴⁸Asdf, 'International Instruments Related to the Prevention and Suppression of International Terrorism' <<https://www.undoc.org/publication>> accessed on 09-07-2020.

⁴⁹*Ibid.*

The three Treatise adopted in 1988 included, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; a protocol to that Convention, towards the suppression of unlawful Acts against the Safety of Fixed platform Located on the Continental Shell, and a Protocol for the Suppression of unlawful Acts of violence of Airports serving International Civil Aviation, supplementary to the 1971 Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation. The 1990s witnessed the adoption of three Conventions, including the Convention on the Making of Plastic Explosives for the purpose of Detection, 1991; the International Convention for the Suppression of Terrorist Bombing, 1997; and the International Convention for the Suppression of Financing of Terrorism, 1999. The International Convention for the Suppression of Acts of Nuclear Terrorism was adopted by the UN General Assembly in April, 2005, along with several protocols in that behalf⁵⁰.

At regional level, we have the Organization of American States Convention to prevent and punish the Acts of Terrorism taking the form of Crimes against Persons and Related Extortion that are of International Significance, adopted in 1971; the European Convention on the Suppression of Terrorism, as amended by its protocol, 1977; South Asian Association for Regional Cooperation (SAARC) Regional Convention on Suppression of Terrorism, 1987; the Arab Convention on the Suppression of Terrorism, 1998; Treaty on Cooperation among the State members of Commonwealth of Independent States in Combating Terrorism, 1995; Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999; Organization of African Unity (OAU) Combating of Terrorism, 1999; Shangari Convention against Terrorism, Separatism and Extremism, 2001; Inter-American Convention against Terrorism, 2002 and the protocol in 2004; the Convention of the Cooperation Council for the Arab States of the Gulf on Combating Terrorism, 2004 along with several other Protocols in 2004 and 2005⁵¹.

Apart from these are several United Nations Declarations and Resolutions of the Security Council, dating between 1994 to 2006, in addition to several Geneva Conventions in that behalf⁵². Furthermore, in the Declaration on Measures to Eliminate International Terrorism annexed to its resolution 49/60 of December 1994, the General Assembly invited relevant specialized agencies of the United Nations, Intergovernmental Organizations and other relevant bodies to make effort to promote measures to combat and eliminate all acts of terrorism and to strengthen their role in the field⁵³. Consequently, by resolution 551/210 of 17th December 1996, the General Assembly established an *Adhoc* committee to elaborate legal instruments for the prevention and suppression of international terrorism, following which the General Assembly adopted the International Convention for the Suppression of Terrorist Bombings (1997), the

⁵⁰*Ibid.*

⁵¹*Ibid.*; and UNDOC, 'The Universal Framework against Terrorism' <<https://www.undoc.org>>*1General*> accessed on 09-07-2020 and... 'Legislative Guide to the Universal Legal Regime against Terrorism-unodoc' <<https://www.undoc.org>>*English*> accessed on 09-07-2020.

⁵²Asdf, International Instruments, *op.cit.*

⁵³ UN, '4th Session (1994-1995)- General Assembly-Quick Links-Research doc no. A/49/812' <<https://research.un.org>>*quick>regular*> accessed on 09-07-2020.

Convention for the Suppression of the Financing of Terrorism, 1999 and the International Convention on the Suppression of Acts of Nuclear Terrorism, 2005 amongst other⁵⁴.

These instruments, as part of the key elements in the response of International Community against terrorism have defined about fifty offences, including some ten crimes against Civil aviation, sixteen against shipping or Continental platforms, several of them on crime against the person; crimes involving the use, possession or threatened use of bomb or nuclear materials, and issues relating to financing of terrorism⁵⁵.

Because of the strategic place of the issue of morality of extra-judicial killing and national interest in this paper, it may be imperative to mention that it is inbuilt in these treatise is the State obligation on human right security, especially as it relates to state obligation to incorporate the crimes defined in the treatise into the domestic criminal law, the endorsement of “universal jurisdiction” over these offences and obligation for extradition of offenders in each State Territory amongst other cooperation on investigation and prosecution. The treaties also call for protection of human rights as to non-derogable rights⁵⁶. The question that this paper attempts to answer here is the extent to which State parties may be said to be obligated to abide by these non-derogable rights, especially regarding right to life in the face of some narratives, either not necessarily envisaged by the various international counter-terrorism Conventions or impracticable in the special circumstances of each case.

Morality of Extra-Judicial Killing

Terrorism as a major threat to international peace and security cannot be properly appreciated outside the ugly experience of member States of the United Nations who bear the brunt of terrorism as primary victims. It is for this reason States adopt all forms of measures to contain the scourge of terrorism, including targeted killing, also known as extra-judicial killing, mainly so-called because the individual is killed through State-sponsored apparatus, without ventilating the charges against the terrorist before a properly constituted Court⁵⁷. No doubt, member States are committed to respect of basic principles of human rights in their prosecution of counter-terrorism measure but in extreme cases, some states have been known to resort to extreme measures like targeted or extra-judicial killing, which measures have resulted in international outcry by human right activists in particular⁵⁸.

Amongst other reasons for such outcry are the claims that extra-judicial killing amounts to a breach of international human rights against fair hearing, in the sense that the terrorist is executed without ventilating the charges against him before a properly constituted Court of Law⁵⁹; that death sentence has never been known to have any deterrent effect and that political

⁵⁴UNAVL; Declaration on Measures to Eliminate International Terrorism, 1994 and the 1996 Supplementary Declaration Thereto’ <<https://legal.un.org>>dot>dot-ph-e> accessed on 09-07-2020.

⁵⁵O’ Donnell, *op.cit.*

⁵⁶*Ibid.*

⁵⁷ B.M. Jenkins ‘should our Arsenal Against Terrorism Include Assassination?’ <<https://www.vand.org/pub/papers>> accessed on 09-07-2020.

⁵⁸ N. Rostow, ‘Targeted Killing of Terrorists’ <<https://ndupress.ndu.edu/ifq-74>> accessed on 05-06-2020.

⁵⁹ H. Khatchadourian, ‘Counter-Terrorism: Torture and Assassination’ <<http://www.degruyter.com/view/book>> accessed on 14-06-2020.

assassination is morally wrong, more especially because right to life as entrenched in the international human right Convention is a moral right and therefore inalienable in nature⁶⁰.

As Haig put it, for whatever reason, right to life is such a moral right that cannot be taken away from a person or forfeited by him as long as he lives or continues to be a person⁶¹. To this learned author, the sanctity of right to life dictates that not even the offender can voluntarily give it up⁶². According to Blackstone, rights are not *prima facie* entitlements, as to be open to forfeiture, being inalienable and consequently, cannot be wished away⁶³. As he queried:

*What could it mean to renounce, transfer, or waive one's rights to be treated as a person, for example? Such renouncement seems to make no sense as long as one exists as a person*⁶⁴.

This kind of dogmatism, it is opined, is oblivious of the fact that no right is absolute under international or national law anywhere in the world because, no matter the inalienability of any right, and right to life in particular, it cannot be secured outside the framework of the values of the larger society that make up each nation State. As Haig put it, "these rights, including right to life...are not absolute but form a set of interrelated rights that limit and sometimes, conflict with one another"⁶⁵. For instance, the right to be treated with dignity may be considered as inalienable but not in isolation from a man's status as human so that if by a man's attitude amongst his supposed human kind, he is reckoned as exhibiting animal instinct to the extent that he repulse humanity, he risks being extracted from his kind. In the end, it may be justified to hold that if, notwithstanding the non-absolutist perception of right to life, and even if the State is expected to exercises restraint, but whenever a stronger moral claim exists, as in the need to secure the peace and security of a larger society, extra-judicial killing should be justified, at least, as a last option.

But beyond this is the major missing link in the definition of terrorism and subsequently, the legal framework of counter-terrorism is the presentation of this inhumane act with individual terrorists in perspective, without any equally robust provision for a massive outing by terrorists and nation state response in the same stead. Looking at terrorist groups like Al-Qaeda, Al-Shabbab, Boko-Haram, Hamas, ISIS and the like, and assessing their kind of massive arms aggregation, it may be suggested that their entire outlook is on the scale of States at war with one another. And when we see the entire build up on such scale, the present legal framework on counter-terrorism is anything but adequate. This is because, no responsible government would fold its arms and watch governance being crippled and human rights of law-abiding citizens being trampled underfoot by a body of terrorist laying claim to any measure of protection under international human rights or humanitarian laws. This is the kind of situation that calls for a distinction between internal acts of terrorism and the more terrifying launch by outsider-terrorists which is more like a situation of war.

⁶⁰ H. Khatchadourian, 'The Morality of Terrorism-Conflict and Consciousness' <<https://www.amazon.com/morality-Terr...>> accessed on 14-06-2020.

⁶¹ H. Khatchadourian, 'Counter-terrorism...>*op.cit.*

⁶²*Ibid.*

⁶³ Blackstone, 'On Absolute Rights of Individuals' <<https://ou-libertyfund.org/pages/black...>> accessed on 09-07-2020.

⁶⁴*Ibid.*

⁶⁵ H. Khatchadourian, 'Counter-terrorism...> *op.cit.*

In a state of war, what is referred to as individual human rights are scaled down by the declaration of state of emergency under each national laws, by which collective rights of the society to live in peace takes precedence over individual rights that is the bane of international law on human rights⁶⁶. Under longstanding principles of international law, a State bears responsibility for uses of force from its territory about which it knew or should have known⁶⁷. That responsibility includes a duty to prevent and, if prevention proves impossible, suppress. When a state is unable or unwilling to discharge such international legal obligation, the victim State presumptively has right of self-defense. Thus, when Afghanistan was identified as the base from which the *9/11 attack* was conducted and when Afghanistan was unwilling or unable to take action against the perpetrators, the United States enjoyed the right to use force in self-defense, to attack those actors in Afghanistan⁶⁸. As Kai Neilson stressed, there are circumstances in which political assassination may be justified⁶⁹ and in the words of James-Rachael, since security uncertainty goes to the root of the people's social contract with the sovereign and since terrorism is morally wrong, every measure adopted to contain it should be considered as morally justifiable, for the sake of the larger population⁷⁰. As the learned scholar reasoned, "Hitler lost his right to life when he violated the rights of so many others" and therefore, even where some rights are said to be inviolable but such rights may be forfeited⁷¹.

Approaching this issue from a utilitarian perspective, Rachael gave a consequentialist rationale for the permissibility of forfeiture of a person's human right in certain extreme societal interest⁷². This concession that results of the assassination or conceivable death must be good enough to outweigh the evil involved in taking human life as the only, or at least objectionable option in achieving the desired result as the best overall balance of maximizing good by minimizing evil⁷³. While it may be regarded as immoral to deprive a person of his right to life but the other side is the immorality of allowing a morally depraved individual to continue to threaten the very basis of social contract of humanity to live as a lawful society. In such a case, where one moral question is weighed against the larger moral need of ensuring a safe society, individual moral consideration must not over-ride that of the society. Indeed, no matter the theoretical reservation of utilitarianism, including the issue of pleasure and pain or comparative measurement of happiness and unhappiness but the reality is that if government actions are based on such theories that emphasize restraint in every inch of circumstances, without ever creating a path for

⁶⁶As in the case of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) section 305.

⁶⁷N. Rostow, 'Targeted Killing of Terrorists' <<https://inss.edu/News/Article/tar...>> accessed on 09-07-2020. And T.B Hunter, Targeted Killing: 'Self-Defense, Preemption and the War on Terrorism' Journal of Stateic Security, vol.2 no.2 May, 2009.

⁶⁸*Ibid.*

⁶⁹K. Neilson, 'Targeted Killing: a 'dirty hand' analysis; Contemporary Politics' <<https://www.tandfonline.com/doi/abs>> accessed on 06-07-2020.

⁷⁰J.W. Rachael 'Targeted Killing' in H. Khatchadourian,, 'Counter-Terrorism: Torture and Assassination' *op.cit* and S.H. Stein, 'The Targeted Killing of Qussem Soleimani a Short Recapitulation' <<https://voelkerrechtsblog.org/the-target...>> accessed on 09-07-2020.

⁷¹James-Rachael, *op.cit*; and ODIHR, 'Comments on the Law on Combating Terrorism of the Republic of Uzbekistan' <

⁷²James-Rachael, ' Active and Passive Euthanasia <web.mustate.edu/gracyk/courses/Ra...> accessed on 09-07-2020.

⁷³*Ibid.*

action towards collective good, such one sidedness could be counter-productive. Therefore, it appears justifiable in the spectacle of this paper to hold that a terrorist must be held accountable for his action, if the society must remain obligated to whatever the rule of law imports in this century because, no matter the import of argument of utilitarianism or consequentialists on the duty to maximize the “general good” of every act, but in its strong doctrine of negative responsibility, utilitarianism cuts out the fact that each of us is specifically responsible for what he does, rather than what others do⁷⁴.

This is the only way utilitarianism could be given a human face, with its danger because, when the basis of the evil perpetuated by a terrorist is ideological, the actor will not be deterred in which case, killing him, even if for the good of the larger society as advocated by utilitarians may not be achieved nor will deterrence be achieved. That is the kind of situation in which the world must resort to retributive theory for a long term effect of a measure of deterrence or at least, for public safety. It is failure to adopt such amid-course that is principally responsible for Nigeria’s failure to effectively conquer the Boko Haram insurgency whose terrorist attacks have created the largest volume of mayhem and internally displaced people in Nigeria over the years⁷⁵. In the Nigerian situation for instance, because the basis the Niger Delta terrorist or insurgent movement was the neglect of their region, once government reached an agreement with the insurgents towards a better condition for their populace, the terrorists laid down their arms, taking advantage of government offer of amnesty in return⁷⁶. But the Nigerian government effort to adopt the same approach with Boko Haram movement would not work because the terror regime of that religious sect is ideological. Until the utilitarians understand this distinction, the basis of their proposition will remain valid only in theory.

National Interest Consideration

Another important perspective is that no national interest is as compelling as State security and that is where the issue of national self-defense comes in, and sometimes explaining why Nations go to war. This is because, some terrorist attacks having risen to such scale as put existence of the State itself under threat, singling out specific individuals of such terrorist organization for attack as a measure towards winning ‘war on terror’ should be justified. Such understanding put the issue of extra-judicial killing of terrorists outside the province of theories of punishment, to the rules of warfare, in the interest of State survival.

As a matter of practice, in a state of war, it is not everyone on the side of the enemy that is an armed fighter as some are ideological fighters or logistic personnel all of which total up to what determines success of each side. Under such a circumstance, targeting anyone from the ‘enemy’ side of warfare may be justified, except where civilians are clearly involved⁷⁷. Even in such situations, some civilians may fall victim where they cannot be adjudged as intentional target. This

⁷⁴J.J.C Smart and B. Williams, ‘Utilitarianism: For and Against’ <<https://philpapers.org/rec/SMAUFA-3>> accessed on 07-07-2020.

⁷⁵The Guardian, ‘Nigeria Begins Amnesty for Niger Delta Militants’ <<https://www.theguardian.com/ang/Nig...>> accessed on 11-07-2020.

⁷⁶A. Thurston, ‘The Many Question Around Nigerian’s Mooted Offer of Amnesty to Boko Haram’ <<https://www.worldpoliticsreview.com/th>> accessed on 11-07-2020.

⁷⁷L.E. Davis; N. McNermy, ‘Clarifying the Rules for Targeted Killing: An Analytical Framework for Policies Involving Long-Range Armed Drones’ <<https://www.rand.org/research-reports>> accessed on 09-07-2020.

is the principle for State survival, not any abstract theory of punishment that will always be faulted by human right activists. Looking at this position from the framework of Israeli counter-terrorism policy of targeted killing of perceived enemies of the State, Beckerman and Amos Oz opined that:

Fighting Palestinians or active terrorists is self-defense, and I justify it... Israel deserves very serious criticism when it kills civilians. It does not deserve criticism when in a state of war....it kills fighting enemies. In principle, when a country is attacked, it can choose among three ways: it can indiscriminately kill the 'others'; it can turn the other cheek to its enemies; or it can fight back against those who carry weapons. I prefer not to fight at all, but if there is a war, I definitely prefer the last way⁷⁸.

Reiterating the issue in similar tone, Crossman maintained that every country has the right to defend itself by resorting to violence as a measure that should foil an avowed promise to launch catastrophic attack against innocent citizens of such a State⁷⁹.

Some human right activists would rather give terrorism a 'bifocal' conception in the sense that some of the acts of violence may not, intrinsically be targeted at violence for the sake of it but intended to draw attention to some equally moral questions that the society fails to address, as in the case of the Palestinian struggles and the Rohingya Muslims attacks on Myanmar's security⁸⁰. But giving terrorism such defeatist baptismal christening would amount to begging the question because, for whatever reason, a nation that watches its innocent citizens being maimed or killed or its economy going down the drain, or the public life coming to a standstill because an *aggrieved* group wants to prove a point may, after all be considered too irresponsible to win the confidence of its populace. This is moreso, when as earlier said, the philosophy for a terrorist movement is ideological. In any case, to all intense and purposes, it must be stressed that any attempt to distinguish freedom-fighting from terrorism as in rechristening terrorism goes to no issue, especially because there is no international law justifying taking arms against innocent civilians of a sovereign State, thus explaining why definition of terrorism entails maiming, killing, wounding, hostage killing of innocent civilians without necessarily making any distinction as to motive.

On the issue of judicial ventilation of the charges against a killer or enemy of wellbeing of the State, it is the view of this paper that this option is only on the assumption that such a suspect is willing to submit to proper trial. If the suspect continues to be elusive of due process of law and he continues, in the process to cause further damage to lives and property, it would be a mockery of the philosophy of humanity upon which human right is built to expect the State to continue to exercise restraint in resorting to extra-judicial killing. The situation is further compounded by attitude of some States in harbouring such terrorists or that are too weak to confront them. Under such a circumstance, no responsible State would exchange its credibility with some lame-duck

⁷⁸G. Beckerman, Amos Oz, a Writer who loved the Dream of Israel and Charted its Imperfect Reality' <<https://www.nytimes.com/books/amos...>> accessed on 09-07-2020.

⁷⁹In A.A. Wilner (ed) 'Targeted Killing in Afghanistan: Measuring Coercion and Deterrence in Counter-terrorism and Counter-Insurgency' Journal on Studies in Conflict and Terrorism, vol.33, 2010, issue 4 <doi.org>....> accessed on 09-07-2020 and T.B.Hunter, 'Targeted Killing: Self-Defense, Preemption, and the war on Terrorism' <<https://scholarcommons.usf.edu/jss/iss2>> accessed on 09-07-2020.

⁸⁰H. Khatchadourian, 'The Morality of Terrorism' (Google Books, 1998) Accessible also at <<https://onlineibrary.wiley.com/doi/abs>> 09-07-2020.

international human rights that put individual rights in the centre, at the expense of the larger society. This is because, when we try to promote individual right over and above interest of the larger society, we encourage the society to put laws into its hands, anyhow. This explains why United States of America summarily killed Soleimani, the Iranian General reputed as his country's Axe-head in terrorist attacks on enemy position for several years⁸¹. In that case, it was obvious that with Russian and Chinese support for Iran against any resolution to condemn Iran's alleged sponsorship of terrorism at the Security Council level, America had to resort to targeted killing of General Soleimani in defense of her national interest. Under such a circumstance, to insist on due process was to surrogate American National Interest to the right to life of a single individual⁸².

This position derives from the fact that we cannot talk about human rights in exclusion of the society because if there were no society, we all could not be talking about rights we have against the rest members of the society. Therefore, to enthrone individual right over and above the corporate interest of the society is the height of sociological hypocrisy. For these reasons, a man who puts the society to which he belongs or any other innocent member of the society in oblivion and treats it as if humanity means nothing should be reckoned as dehumanized and therefore unworthy to jostle for a place in the committee of humans, all in the name of human rights.

Conclusion

This paper on human rights, counter-terrorism and the morality of extra-judicial killing approached it from the perspective of national interest. The paper took a position that notwithstanding that right to life is said to be inalienable but both under international and domestic laws, no human right is absolute and therefore can be overridden by the demands of criminal justice, if and when a heinous crime is involved. The paper found and took a position that where a person commits a serious crime like terrorism and it is either impossible or impracticable for the constituted state agency to arrest and ventilate the charges against him before a constituted Court of Law they cannot but employ non-conventional means to tackle such an elusive danger to the society. Similarly, in a situation where available evidence point to an advanced plan to launch attack at innocent citizens, the moral basis for extra-judicial killing of a terrorist cannot be questioned because, to insist otherwise is to cripple the entire National existence of the State.

Recommendations

For the foregoing reasons, the paper recommends as follows:

- a. That international law against counter-terrorism should be redefined to make it less amorphous for a more definite interpretation, putting State security above human right of terrorists, as failure to do so could be counter-productive.
- b. That in the spirit of United Nations Charter, Nation States should take internal measures that will secure security and peace of other Nations instead of inward looking posture that protect terrorists who pose threat to other Nations.

⁸¹A. Callamard, 'The Targeted Killing of General Soleimani: Its Lawfulness and why it Matters' <<https://www.justsecurity.org/thetargete...>> accessed on 09-07-2020.

⁸²*Ibid.*

- c. Where a state hosting a terrorist is either unwilling or unable to bring him to justice, intervention of international community to contain such a terrorist should be considered as a legitimate measure within the framework of International Customary Law.

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