Terrorism and International Humanitarian Law: An Analysis

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Abstract

This article examines the adequacy of International Humanitarian Law in dealing with current forms of violence widely known as "terrorism." Persons and institutions are all becoming potential targets of terrorist attack, regardless of race, nationality, color, religion, social, economic, political and educational status. Using the legal approach, particularly the provisions of the Four Geneva Convention of 1949 and their Additional Protocols of 1977 which deal with terrorism, this paper discusses the various definitions of terrorism, historical background of terrorism, forms of terrorism, goals and motivations for terrorism, perpetrators of terrorism, the prohibition of terrorism in International Humanitarian Law and the war on the terrorism. It concludes that International Humanitarian Law is adequate in dealing with acts of terrorism which may be committed in international and non-international armed conflict. Those terrorist acts, perpetrated by groups or individuals, which have not yet reached the threshold or level of armed conflict are to be addressed by criminal laws of individual states

Introduction

People in the world today, regardless of their race, color, religion, economic, social, political and educational status, face the common threat of terrorism. All are potential targets of terrorist attack. This has been exemplified by the September 11, 2001 attack where four commercial airliners were hijacked by suicide terrorists: two of the planes crushed the twin towers of the World Trade Center into rubble, the symbol of the United States economic supremacy. One plane destroyed a portion of the Pentagon, the symbol of United States

military superiority; and the fourth plane, was believed heading for the Capitol, a political symbol of the United States' world leadership. This terrorist assault killing more than 3000 people of different nationalities, the most devastating in U.S. history, marked the first time since the war of 1812 that foreign troops had attacked the continental USA.[1] The 9/11 incident was followed by other terrifying attacks on "soft-targets," in consonance with the warning given by Ayman Al-Zawahiri, Al Qaeda's number two leader, in October 2002: "We will strike at the nodes of your economy."[2] Since then, regional groups that are part of the Al Qaeda network have attacked a French-owned oil tanker in Yemen, a hotel in Kenya, a temple/tourist venue in Kenya, a nightclub in Morocco, the Hongkong and Shanghai Bank in Turkey, the Sari nightclub in Bali, Indonesia, the Marriott Hotel in Jakarta, just to mention a few. These attacks killed hundreds of innocent people and wounded hundreds more.[3]

One author commented, "Perhaps the most shocking aspect of postmodern war is the deliberate targeting of non-combatants, a practice that violates long-standing beliefs and international laws. Terrorists obviously do not distinguish between combatants and non-combatants."[4] The indiscriminate attacks on civilians strike the very cornerstone of International Humanitarian Law, the principle of distinction.

It is on this consideration that this study delves into the question of whether or not the existing body of International Humanitarian law is indeed capable of addressing terrorism with the end-in-view of protecting the civilians. Specifically, it seeks to answer the following questions:

1. What is terrorism? What are its forms? What is its historical background?

2. How is terrorism committed? What are some types of terrorism incidents?

3. Who may commit terrorism? What are their goals and motivation?

4. What does International Humanitarian Law say about terror or terrorism? Does it specifically mention terrorism? Does

it apply to both state-sponsored and non-state sponsored terrorist activities?

5. What does International Humanitarian Law say in some issues related to the fight against terrorism?

The findings and analysis of this study may be useful to those who question the adequacy of International Humanitarian Law to provide protection for all civilians from the horrors of terrorist attacks. They may be useful also to heads of states, political leaders, and government security agencies in designing proper measures on how to prevent and suppress terroristic activities. In the same vein, they may provide useful information to civilians and other members of society on how terrorism works, thus giving them insights on how they can avoid and protect themselves as possible collateral targets.

The study utilizes the legal approach in analyzing the status of International Humanitarian Law in relation to terrorism as far as the protection of the civilians or noncombatants is concerned. In particular, these are the provisions of the Four Geneva Conventions of 1949 and Additional Protocols of 1977, which focus on terror or terrorism.

Nature of Terrorism

This part discusses the difficulty of defining "terrorism" and proposes some definitions, the historical background or a glimpse of the past in the use of terrorism, the forms of terrorism, its goals and motivations, and the types of terrorist incidents.

Defining Terrorism

The term "terrorism" comes from the French 18th century word *terrorisme* (under the Terror), based on the Latin language verbs *terrere* (to tremble) and *detererre* (to frighten from).[5]

Terrorism is a controversial term with multiple definitions.[6] This controversy is often captured in the phrase "one person's terrorist is another person's freedom fighter"[7] or "one state's terrorist is another state's freedom fighter."[8] In this instance, terrorism is a relative term

and may be defined based on the perspective and the worldview of the one making the definition.[9]

Despite this difficulty, some definitions of terrorism are being proposed. One definition is: the intentional use of, or the threat to use, violence against civilians or against civilian targets, in order to attain political aims.[10] It is also a premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.[11] Further, it is one that involves the use of violence by an organization other than a national government to cause intimidation or fear in a target audience.[12] It can refer also to the use of violence for the purpose of achieving a political, religious or ideological goal through intimidation or by instilling fear rather than for specific military reasons.[13]

The United Nations, on the other hand, having acknowledged the debate among states on the question of the definition of terrorism in order for them to formulate meaningful countermeasures, has proposed the following definitions. In 1937, the League of Nations Convention defined it as all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public. In 1999, General Assembly Resolution 51/210, Measure to Eliminate International Terrorism, reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purpose are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them. In 1992, terrorism expert A.P. Schmid proposed a short legal definition to United Nations Crime Branch by emphasizing that if the core of war crimes – deliberate attacks on civilians, hostage taking and the killing of prisoners – is extended to peacetime, then acts of terrorism could be simply defined as peacetime equivalents of war crimes.[14] In November 2004, a U.N. panel described it as any action intended to cause death or serious bodily harm to civilian noncombatants when the purpose of such act, by its nature or context, is to intimidate a population or compel an international organization to do or to abstain

from doing any act.[15]

Most if not all, of the above definitions, in one way or another, contain at least three important elements:[16]

1. The essence of the activity – the use of, or the threat to use, violence. An activity that does not involve violence or a threat of violence will not be defined as terrorism.

2. The aim of the activity is always political – namely, the goal is to attain political objectives; changing the regime, changing the people in power, changing social or economic policies, etc. A violent activity against civilians that has no political aim, at most an act of criminal delinquency, a felony, or simply an act of insanity is unrelated to terrorism. Although some scholars tend to add religious or ideological aims, the concept of political aim is sufficiently to include them as well.

3. The targets of terrorism are civilians. Terrorism must be distinguished from other types of political violence such as guerilla warfare or civil insurrection. It is an act purposely directed against civilians.

There are some common threads of those various definitions identifying terrorism as political, psychological, coercive, dynamic and deliberate.[17] First, a terrorist act is a political act or is committed with the intention to cause a political effect. Second, the intended results of terrorist acts cause a psychological effect. Third, violence and destruction are used in the commission of the act to produce the desired effect. Fourth, terrorist groups demand change, revolution, or political movement. And, fifth, terrorism is an activity planned and intended to achieve particular goals. It is a rationally employed, specially selected tactic, and is not a random act.

Historical Background of Terrorism[18]

The evolution of terrorist movements dates back in the first century when the Zealots conducted a fierce and unrelenting terror campaign against the Roman occupiers of the Eastern Mediterranean.

They enlisted *slearii* or dagger-men to stab or strike down rich Jewish collaborators and others who were friendly to the Romans.

In the 11th century, the radical Islamic sect known as the Assassins employed systematic murder for a cause they believed to be righteous. For two centuries, they resisted efforts to suppress their beliefs and developed ritualized murder into an "art" taught through generations. Political aims were achieved through the power of intimidation.

The decade of the French Revolution (1789-1799) witnessed the most severe period of the rule of the Committee of Public Safety (1793-1995) which was labeled "The Terror" (1793-1794) because of Jacobin extensive use of death penalty by guillotine. This period was argued as an example of state terrorism as it induced fear and outrage not only among the French people, but also throughout the European aristocracy. The first known use of the term terrorism occurred during this time.

By the mid-19th century, two crucial events in Russia and Great Britain demonstrated the horrors of terrorism. Impatient with the slow pace of Tsarist reforms, the Russian intelligentsia had sough to transform peasant discontent into open revolution. Organized into secret societies like the People's Will, Russian terrorists launched a campaign of terror against the state that climaxed in 1881 when Tsar Alexander II of Russia was assassinated. Likewise, a revolutionary Irish-American group called the Fenion Brotherhood planted explosive devices around the city of Zordon and other parts of British mainland in the mid-1800 to protest the British occupation of Ireland.

In the World War II, the Germans terror-bombed British civilians and killed a million Jews while the United States and the United Kingdom bombed Japanese and German cities killing hundreds of thousands in the effort to break the will of the civilian population.

During the Cold War, the Superpowers, the United States and the Soviet Union, both held one another's civilian populations hostage in a nuclear balance of terror. Prior to the 9/11 bombing in the United

States, insurgent- and state-sponsored terrorism was common in civil conflicts. In the late 1990's for example, the Kosovo Liberation Army used terrorist tactics, kidnapping and killing Serbian police and their civilian collaborators, while the Serbs targeted Kosovar Albanians for rape, removal and murder. Added to these events are the reigns of terror in the Middle East countries.

Forms of Terrorism

There are at least three different forms of terrorism which terrorists may employ depending on the goals or objectives they want to achieve: demonstrative, destructive, and suicide terrorism.[19]

Demonstrative terrorism is directed mainly at gaining publicity, for any or all of these three reasons:

1. To recruit more activists;
2. To gain attention to grievances from softliners on the other side; and
3. To gain attention from third parties who might exert pressure on the other side.

The employment of hostage-taking, airlines hijacking, and explosions announced in advance are generally intended to bring issues to the attention of the target audience. The terrorists in these cases often avoid doing serious harm so as not to undermine sympathy for the political cause. They want a lot of people watching rather than having a lot of people dead. Examples of groups using this form include the Orange Volunteers (Northern Ireland), National Liberation Army (Columbia), and Red Brigades (Italy).

Destructive terrorism is more aggressive which seeks to coerce opponents as well as mobilize support for the cause. Destructive terrorists seek to inflict real harm on members of the target audience at the risk of losing sympathy for their cause. The nature of the political goal determines how groups strike the balance between harm and sympathy. For example, the Baader-Meinhopf group selectively assassinated rich German industrialists, acts which alienated certain

segments of German society but not others. The Palestinian terrorists often sought to kill as many Israelis as possible to result in the full alienation of the Jewish society but still getting sympathy from Muslim communities.

The last one, suicide terrorism, is the most aggressive form of terrorism which pursues coercion even at the expense of losing support among the terrorists' own community. What distinguishes this form from the first two is that the attacker does not expect to survive a mission. He often employs a method of attack that requires him to succeed, such as a car bomb, wearing a suicide vest, or ramming an airplane into a building.

In principle, suicide terrorists could be used for demonstrative purposes or could be limited to kill the largest number of people. While it is true that they maximize the coercive leverage, it is also equally true that they do so at the expense of losing support for the terrorists' cause from the target audience. Moreover, the act of suicide creates a debate and often loss of support among moderate segments of the terrorists' community, although attracts support among radical elements. For instance, when Osama Bin Laden released his third manifests in February 1998 urging his followers to start targeting American civilians, anywhere at anytime, some Al Qaeda members were reportedly distressed and left the group.[20]

Goals and Motivation of Terrorism

The key factor in understanding why terrorists or terrorist organizations do exist is ideology. Political scientists may define ideology as a set of doctrines or beliefs which purports to explain and justify the status quo or a movement for change.[21] It certainly influences the objectives of terrorist operations, especially on the type of target selections and the casualty rate.

For groups with secular ideologies and non-religious goals, professing secular political or social motivations, their targets are highly symbolic of authority. They attack government offices, banks, national airlines, and multinational corporations with direct relation

to the established order. They also conduct attacks on representative individuals whom they associate with economic exploitation, social injustice, or political repression. As for the casualty rate, they often attempt highly selective and discriminate acts of violence, thus keeping the casualties at the minimum level. This is necessary to avoid backlash that might damage the organization and to maintain the appearance of a rational group that has legitimate grievances.[22] In contrast, religiously oriented and millenarian groups also attack the same symbolic targets and religiously affiliated individuals, such as missionaries, and religious activities, such as worship services.

It is typical for them to inflict as many casualties as possible. Losses among their co-religionists are of little account because such casualties will reap the benefits of the after life. For the case of non-believers, killing them may be considered a moral duty.[23]

Aside from terrorist organizations, there are also individuals who undertake terrorist activities typically out of a mixture of ideology and personal grievances. They may be called "lone-wolf" terrorists.[24]

Types of Terrorist Incidents[25]

As commonly observed in the array of attacks perpetrated by terrorists, the most common type of terrorist acts include bombing, kidnapping and hostage-taking, armed attack and assassination, arson and firebombing, hijacking and skyjacking. Other types of violence that are considered within the framework of terrorism are robbery and extortion, cyberterrorism, and the use of nuclear, biological or chemical weaponry, otherwise known as weapons of mass destruction because of the extremely high number of casualties they bring about.

Perpetrators

States, groups, or individuals can perpetrate terrorism as an alternative to an open declaration of war. Regardless of who the perpetrators are, the target of the attacks is the civilian population. Intentional violence against civilians (non-combatants) is the type of action most widely condemned as terrorism.[26]

State-sponsored Terrorism

States supporting terrorism are usually called themselves "terrorist states" and their act is called "state sponsored terrorism." States are classified into three types according to their level of involvement in terrorism:[27]

1. *Supporter (or sponsor) of terrorism* refers to a government of a state that provides financial aid, supply, ideological support, training and military or operational assistance to a non-state terrorist organization or a number of such organizations. Other forms of state support are the provision of safe haven or physical aid for the terrorists from state services, such as, false documentation (passports, internal identification documents), financial transactions, weapons purchases, access to training facilities and expertise, and extension of diplomatic protections and services (e.g., immunity from extradition, diplomatic pouches to transport weapons or explosives).

A good example of this type of classification is Syria, which provides support for the Hamas organization in Palestine and the Hizbollah in Lebanon. Syrian resources and protection make possible the huge terrorist training establishments in the Bek'aa Valley.

2. *State undertaking terrorist operations* – this refers to a state that initiates, directs and performs terrorist activities through groups outside its institutions.

3. *Perpetrator of terrorism* – The state perpetrates terrorist acts on its citizens through its own official bodies or institutions, such as the police, military, members of intelligence services, and other government agencies.

This classification can be divided into two types, based on the arena of terrorist activities. One is that called governmental or "state" terror, sometimes referred to as "terror from above." The government terrorizes its own population to control or repress them. For example,

after assuming power, the official Nazi policy in Germany was aimed at the deliberate destruction of state enemies and the intimidation of the rest of the population. Also, during his reign in Iraq, Saddam Hussein used chemical weapons on his own Kurdish population and brutalized those citizens who were unwilling to submit to his government.

The second type (number 2 above) is one that is directed against other nations' interests or abroad. Terroristic activities are conducted under official sanction, although very rarely acknowledged by the state concerned. The Libyan and North Korean operatives downing airliners on international flights demonstrate this type.

Terrorist Organizations

Other perpetrators of terrorism are groups or organizations. An organization can be considered terrorist through its mode of operation and its target of attack.[28] The mode of operation is violence, directed against civilians or non-combatants.

Terrorist groups may be categorized into five typologies: nationalist–separatist, religious fundamentalist, new religious, social revolutionary and right wing terrorist. This group classification is anchored on the idea that terrorist groups can be categorized by their political background or ideology. It is possible that some groups may not fit neatly into any one category because of different terrorist campaigns. However, the mindset of the groups within the same general category tends to have more commonality than those in different categories. For example, the Irish Republican Army (IRA) and Palestinian terrorist groups have strong nationalistic motivations; Islamic fundamentalist groups are motivated by religious beliefs, such as the Al Qaeda of Osama Bin Laden.[29]

The top leaders of terrorist groups may be subdivided into contractors and freelancers. Contractors are those whose services are hired by rogue states, or a particular entity of a rogue regime, such as an intelligence agency. Notable examples are Abu Abbas of the Palestine Liberation Front and Abu Nidal of the Popular Front for the Liberation of Palestine. On the other hand, freelancers are those who

are operating independently of any state, but may collude with a rogue regime on a short-term basis. A prominent example is Osama Bin Laden.[30]

To evade detection from their enemy-states, particularly the United States, which has effective law enforcement agencies, terrorist groups developed a new-style leadership strategy. The Al Qaeda of Osama Bin Laden adopted some of the qualities of a "virtual network": a style of organization used by American right-wing extremists. Louis Beam of an American neo-Nazi group popularized this style, known as "leaderless" resistance. It eliminates the hierarchical organization that can be easily detected by electronic surveillance to reveal the chain of command. It espouses the "leaderless" organization, in which individuals and groups operate independently of each other and do not report to a central headquarter or single leader for direction or instruction. Small cells or individuals take action on their own initiative.[31]

The Individual as Terrorist

An individual who does not have any tie-up with terrorist groups or rogue states can also perpetrate terrorist activities. Because he acts alone, he is called a "lone-wolf" terrorist.[32] The lone-wolf terrorist acts out of a mixture of ideology and personal grievances.

Terrorism perpetrated by individuals have encouraged some psychologists to study terrorism in the micro-level of the individual terrorist. Otherwise known as the psychological approach, it is concerned with the study of the terrorist *per se*, his personality, beliefs, attitudes, motivations, and career as terrorist.[33] One author suggested four things to look at in deciding whether someone is a terrorist, and if he or she is, what kind of terrorist. These are biography, goals, methods, and context. Only the combination of the four will yield an answer.[34]

Prohibition in International Humanitarian Law

A leading authority in the field of international humanitarian law said that at present there exists no universal treaty that comprehensively prohibits terrorism and applies in all circumstances.[35] The League of Nations made the only attempt, in 1937, at its Convention for the Prevention and Punishment, but it never came into force.

Recognizing the need of combating terrorism, the United Nations, some regional organizations and states adopted international instruments, such as treaties, to deal with specific aspects of terroristic activities.[36] The United Nations formulated some of the most important conventions:

1. Convention of Offences and Certain Other Acts Committed on Board Aircraft, 1963
2. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970
3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil aviation, 1971
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973
5. Convention Against the Taking of Hostages, 1979
6. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988
7. International Convention for the Suppression of Terrorist Bombings, 1997
8. International Convention for the Suppression of the Financing of Terrorism, 1999
9. Comprehensive Convention on International Terrorism, 2004

In the regional level, the European countries signed in 1977 the European Convention on the Suppression of Terrorism. On the other hand, the Organization of American States (OAS) adopted the Inter-American Convention Against Terrorism.

These international treaties were meant to prevent, suppress, or if possible, totally eliminate the threat or danger of terrorism that may be committed in peacetime against the civilian population, properties and infrastructures.

Terrorism is usually part of, or is indirectly linked in some ways to, an armed conflict when peaceful ways of settling disputes among contending groups or states have failed to end the conflict.[37] When the armed violence reaches the level of armed conflict, whether international or non-international, the body of international law that applies is international humanitarian law. The best-known treaties ratified by state-parties as international humanitarian law are the four Geneva Conventions in 1949 and their two Additional Protocols in 1977.[38] As a matter of fact, terrorism became a dominant issue for the Diplomatic Conference, which brought about the adoption of the two Additional Protocols under the headings of wars of national liberation and guerilla warfare.[39] Other treaties came into birth also dealing with aspects of armed conflict and thereby indirectly with terrorism, like the 1997 Ottawa convention on landmines.

International humanitarian law[40] does not provide a definition of terrorism but prohibits most acts committed in armed conflict that would commonly be considered terrorist if committed in peacetime. This implies that international humanitarian law applies only to terrorist acts in wartime but does not regulate those committed in time of peace.

The principle of distinction, which is the heart of international law, requires parties to an armed conflict to distinguish at all times between civilians and combatants and between civilian objects and military objectives.[41] The express prohibition of all acts aimed at spreading terror among the civilian population is contained in Article 51, paragraph 2, Additional Protocol I:

> The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population is prohibited.

The above provision was adopted after considerable discussion between those who wished the article to cover only acts intended to spread terror and those who wished it to cover all acts actually causing or capable of spreading terror. In the end, a consensus was reached that acts whose primary purpose is to spread terror, based on an objective assessment, are the ones to be prohibited.[42]

With regard to non-international armed conflicts, Article 13, paragraph 2, Protocol II also stipulates strong prohibition against acts which mean to spread terror among the civilian population. The seriousness of this prohibition is shown through its repetition of the wordings in Article 51, paragraph 2 of Protocol I.

Moreover, international humanitarian law prescribes other acts, which are considered terrorist attacks:[43]

1. Attacks on civilian objects, Article 52, Additional Protocol I:

> Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives.

> Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects are concerned, military objectives are limited to those objects which by their very nature, location, purpose and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

> In case of doubt whether an object which is normally dedicated to civilian purposes, such as place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

2. Indiscriminate attacks, Article 51, paragraph 4, Protocol I:

Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a mixture to strike military objectives and civilians or civilian objects without distinction.

3. Attacks on places of worship:

3.1) Article 53, Protocol I

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(b) to use such objects in support of the military effort

(c) to make such objects the objects of reprisals.

3.2) Article 16, Protocol II

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort."

IHL and the War on Terrorism

The September 11, 2001 suicide attacks destroying the World Trade Center of New York and part of the Pentagon in Washington D.C.

with the use of hijacked passenger planes, and the subsequent armed response or campaign led by the United States against Afghanistan, and, later, on Iraq to destroy terrorism did bring a fairly widespread questioning of the adequacy of International Humanitarian Law to deal with current forms of violence.[44]

There are some issues in the war against terrorism that would be dealt with in this chapter, which may have some implications on contemporary international humanitarian law. First is the question on whether or not the war on terrorism constitutes an armed conflict. It can be answered on the positive. For an armed conflict to exist, there must at least two parities (such as states in international level or between a government of a state against an armed group with a military-life formation in non-international armed conflict).[45] The wars led by the United States against Afghanistan and Iraq under the banner of "war against terrorism" reflect the existence of parties and fall within the framework of international humanitarian law.

The second issue is the absence of a formal declaration of war. It crops up when the United States refused to grant prisoners of war status to those captured members of the Taliban forces, regardless of whether they were Afghans or foreigners. The Geneva Conventions do not require a formal state of war between two state parties to be applicable. What is only needed is that there is the existence of an armed conflict.[46]

The third issue is very much related to the one discussed in the preceding paragraph, but puts more emphasis on the status of those captured and detained in the wars in Afghanistan and Iraq. The alleged "inhuman" treatment they received from the American forces is an international knowledge, as exposed by almost all forms of media, local or international. The United States government refuses to recognize them as prisoners of war. For the captured Afghans, the US government justified the treatment by saying that the Taliban was not the recognized government of Afghanistan.[47] The third Geneva Convention rejects such justification since all persons in custody, regardless of their status, must be treated humanely.

Much of the ongoing violence taking place in some parts of the world these recent years have been perpetrated by non-state actors, such as loosely-organized terrorist groups operating in cells and lone-wolf terrorists. If arrested and detained, can they be subjected and protected by international humanitarian law? This question brings forth the last issue, which this article seeks to examine.

International humanitarian law cannot protect terrorists who are arrested and detained by security forces of a certain state. In the first place, based on factual evidence currently available, it is very doubtful whether their groups and networks can be characterized as a party to a conflict within the meaning of international humanitarian law. And, in the second place, most of the measures taken by states to prevent or suppress terrorist acts, such as intelligence gathering, police and judicial cooperation, freezing of assets and diplomatic or economic pressure on states accused of aiding suspected terrorists do not amount to armed conflict. These acts are not commonly considered acts of war.[48] However, although the laws of war may not cover detained terrorists, they are still subject and liable to domestic laws which punished terrorist acts as crimes.

Conclusion

With regard to the general question, which deals with the adequacy of international humanitarian law to address the current forms of violence threatening the lives and properties of civilians, it may be concluded at this point that the four Geneva Conventions in 1949 and their two Additional Protocols, plus some international treaties dedicated to the protection and preservation of mankind, are still sufficient to deal with acts of terrorism committed in international and non-international armed conflict. The war on terrorism, as demonstrated in the US-led wars in Afghanistan and Iraq and the subsequent capture and detention of Afghan and Iraqi combatants, is within the legal ambit of international humanitarian law.

Those terrorist acts committed either by groups or individuals but have not reached the threshold or levels of armed conflict are addressed by domestic laws of states which consider them as criminal acts.

NOTES

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[38] *International Humanitarian Law and Terrorism: Questions and Answers"* http://www.icrc.org/web/eng/siteengO.nsf/htmlall/terrorism (April 5, 2004)

[39] [Supra note 36, at 548.

[40] Supra note 39, at 1.

[41] Tomas Nono, et.al. *Respect for International Humanitarian Law* (Switzerland: Inter-Parliamentary Union, 1989)

[42] Hans Blix, "Means and Methods of Combat," MODULE III, p. 7

[43] *What Does Humanitarian Law Say About Terrorism"* http://www.Icrc.org/web/eng/siteengO.nsf/iwpList488/256CFA98BIDCE442C/256CF6002D6BFO (April 2, 2005)

[44] Supra note 36, at 548.

[45] Supra note 39, at 2.

[46] *"War Against Terrorism"* http://www.efionline,org/ofinnews September/International%20 Law.htm (April 18, 2005)

[47] Ibid.

[48] Supra note, 39, at 3.

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