

# Security Council Response to Human Rights Violation in Term of Combating Terrorism: Retrospect and Prospect

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## Abstract

The role of the Security Council to combat terrorism had obviously grown since 9/11. The Council adopted numerous resolutions which carry commitments upon the Member States to counter-terrorism. In turn, the States have enacted or amended laws. Some of these laws and measures have shown negative effects on human rights. As a result, the Security Council has gradually indicated to the significance of protection human rights while countering terrorism. However, the practice of States, besides the presence of some gaps in the decisions of the Council, is still reflecting violations of human rights. Consequently, the Council must take effective ways to guarantee human rights and to achieve positive results in the fight against terrorism. This paper examines the anti-terrorism efforts of the Security Council and its impact on human rights. It is concentrated on the Council's response to such violations. Resultantly, this study provides recommendations to ensure human rights while combating terrorism.

## Keywords

Security Council, Human Rights, Violation, Terrorism, Response

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## 1. Introduction

Terrorism is a rampant issue in the contemporary world. It represents a real threat and an obvious violation of human rights, notably the right to life. In response to this threat, States have concluded several agreements to combat certain aspects of terrorism, mainly under the auspices of the United Nations. Since the impact of terrorist acts became more evident after the terrorist attacks of 9/11 in the United States, the UN Security Council had used its mandatory power under Chapter VII of the UN Charter. It has passed various anti-terrorism resolutions

that carry various legal obligations upon Member States to amend their laws, enact new laws or take strict measures in fighting against terrorism without determining what terrorism is. As a result, some of these resolutions, besides some States' practices in combating terrorism, have shown direct and indirect negative impact on human rights. Several national, regional, and international organizations acknowledged that the violations committed during combating terrorism are as much serious as terrorist acts. In response to such violations, the Security Council emphasized the importance of respecting and protecting human rights and fundamental freedoms while countering terrorism.

Despite the efforts of the Council to oblige States to comply with international law standards, some of these efforts did not live up to the required level and current practices still reflect adversely impact on human rights. In this regard, this study tries to find out the consequences of anti-terrorism Security Council resolutions and practices on human rights. In addition, it examines the Council's response to such impacts and strives to point out the loopholes and obstacles facing the effective protection of human rights while countering terrorism. In general, the article aims to provide an essential assessment of the current anti-terrorism measures in the framework of the Security Council in order to reach more effective means to guarantee human rights during the fight against terrorism.

## 2. Counter-Terrorism and Human Rights Violation

In response to the increasing threats of terrorism, the international society has adopted various measures to combat the phenomenon of terrorism. The Security Council had used its powers, particularly under Chapter VII of the UN Charter in order to maintain international peace and security. It has passed several anti-terrorism resolutions covering numerous aspects of terrorism. The most critical resolution adopted under Chapter VII was Resolution 1373 ([SC Resolution 1373, 2001](#)). The Resolution imposed different obligations on Member States to counter-terrorism. The major commitments include prevention financing terrorism, criminalizing terrorist acts, promoting international cooperation, and the calling for the ratification of the relevant international treaties. According to their obligations towards the relevant Security Council resolutions, most States, as an example, have enacted or revised their domestic laws and over 170 countries have also engaged in freezing terrorists' funds ([Hickman, 2012](#)). Furthermore, a number of countries expanded the powers of their executive bodies. For instance, the United States has issued the PATRIOT Act after 9/11 which empowers the government's authorities to take several measures to combat terrorism. This includes an increase in surveillance scope and collecting of intelligence information in suspected matters of terrorism under weak grounds; allowing the detention of persons believed to be involved in terrorist acts without sufficient legal basis; freeze the financial accounts or confiscation of property without the presence of strong evidence; and the adoption of aggravated penalties for any relevant acts ([Human Rights Watch, 2003](#); [Setty, 2011](#)). The outcomes of these measures have shown substantial negative consequences on human rights, chiefly the right to a fair trial, freedom of speech, rights to property, liberty, and movement ([Olivier, 2004](#); [Sepulveda, Banning, Gudmundsdottir, Chamoun, & Cenugten, 2004](#)). It has also adversely influenced certain rights that are recognized as a part of *jus cogens*. For instance, freedom from discrimination and freedom from torture and inhuman treatment have been violated by a number of States ([United Nations, General Assembly, A/69/18, 2013](#); [United Nations, General Assembly, A/57/173, 2002](#)). Overall, this impact has been recognized by the different relevant bodies, including those of the United Nations.

In the meantime, the recent anti-terrorism resolutions of the Security Council, especially Resolutions 2170 and 2178, have additionally imposed various obligations upon Member States to prevent the flow of foreign terrorist fighters joining Islamic State in Iraq and the Levant, Al Nusrah Front, and all other individuals and groups associated with Al-Qaida ([SC Resolution 2170, 2014](#); [SC Resolution 2178, 2014](#)). In response to these decisions, many countries have taken legislations and emergency measures to counter these threats, including amendments to the detention procedures, withdrawal of traveling passports and nationality, and a review of the criminal rules ([United Nations, Human Rights Council, A/HRC/RES/29/9, 2015](#)). These procedures have led to negative consequences on, *inter alia*, the right to a fair trial, freedoms of movement, religion, opinion, and expression, the right to privacy, and the protection against arbitrary withdrawal of nationality ([United Nations, Human Rights Council, A/HRC/RES/29/9, 2015](#)).

In fact, the effect of the Security Council measures on human rights has become apparent before 9/11 attacks, in particular when it required Member States to impose sanctions against individuals and entities associated with

Al-Qaida and Taliban. In this respect, the Council has created a Committee with the purpose of monitoring the implementation of the sanctions regime (SC Resolution 1267, 1999). By the end of February 2016, the list established and maintained by the 1267/1989 Committee comprises approximately 253 individuals and 74 entities and related groups (United Nations, 2016). Most of these names included in the sanction list of the 1267 Committee have been submitted by the United States after the attacks of 9/11 (Sambei, Plessis, & Polaine, 2009). At the outset, the Committee accepted the names proposed for inclusion in the sanctions list without the presence of any legal evidence wherein it can evaluate the proposals (Hudson, 2007). As a result, this procedure faced many criticisms due to its conflict with human rights standards and the lack of judicial remedy mechanism (Moeckli, 2008).

However, the Security Council has been initially criticized for acting without emphasizing the importance of human rights compliance while countering terrorism. The Resolution 1373 did not refer explicitly to the importance of respecting human rights during combating terrorism.<sup>1</sup> Furthermore, it did not determine what exactly terrorism or terrorist act is. It just grants freedom for the States to define the concept of terrorism according to their vision which creates differences and collisions between them. Accordingly, numerous countries have justified their anti-terrorism measures or actions, some of which represent a violation of human rights, under their obligations to the related Security Council resolutions (Bantekas & Oette, 2013). Other States alleged that they had to take such actions in order to avert the military intervention by other powerful States (Amnesty International, 2003; Moore, 2014). For example, Yemeni officials recognized in a talk with Amnesty International that the government authorities were violating its international human rights obligations and national laws with the intention of avoiding the danger of the military action against Yemen by the United States after the attacks of 9/11 (Amnesty International, 2003; Moore, 2014). Afterward, the Security Council gradually indicated that such measures taken by States in the light of fighting terrorism must be consistent with the standards of international law, especially those of human rights, humanitarian, and refugee laws.

### 3. Security Council Response

As a result of human rights violations raised by the implementation of the relevant Security Council resolutions and States' practices as a whole, the Council has progressively emphasized the need to protect human rights while countering terrorism. In other words, after growing of voices calling for respecting international law as well as international human rights law, the Council has began since 2003 to incorporate certain provisions within its resolutions calling for respecting human rights.

Several resolutions have been adopted by the Security Council in attempts to enhance and reform the regime of Security Council's counter-terrorism. The first resolution that has evidently indicated the importance of protecting human rights while countering terrorism since 9/11 attacks was the Security Council Resolution 1456. The Resolution called Member States to make sure that any measures taken to counter-terrorism must agree with international law standards, particularly those of international human rights law (SC Resolution 1456, 2003).

In a related context, the Counter-Terrorism Committee, which was strengthened by the establishment of the Counter-Terrorism Committee Executive Directorate (CTED) in 2005 (SC Resolution 1535, 2004),<sup>2</sup> began to increase its effort towards human rights. In 2005, the Committee appointed a human rights expert to its Executive Directorate (UN News Center, 2015). Further, it issued the policy guidance for CTED in 2006 in the field of human rights that provides:

advice to the Committee, including for its ongoing dialogue with States on their implementation of resolution 1373 (2001), on international human rights, refugee and humanitarian law, in connection with identification and implementation of effective measures to implement resolution 1373 (2001); advise the Committee on how to ensure that any measures States take to implement the provisions of resolution 1624 (2005) comply with their obligations under international law, in particular international human rights law, refugee

<sup>1</sup>In 2010, the Special Rapporteur on the promotion of human rights and fundamental freedoms while countering terrorism has criticized the work of the Security Council. He argued that Resolutions 1267 and 1373 should not have been adopted under Chapter VII of the UN Charter and recommending that they should be formulated with more concern to human rights on one hand and law-making process on the other (United Nations, General Assembly. A/65/258, 2010).

<sup>2</sup>The Council, in this Resolution, reminds Member States that "they must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law".

law, and humanitarian law; and liaise with the Office of the High Commissioner for Human Rights and, as appropriate, with other human rights organizations in matters related to counter-terrorism (UN News Center, 2015).

The CTED has regularly raised human rights issues in its dialogues with Member States that include, among others, the definition of terrorism; the legality of anti-terrorism legislations; legal procedures in freezing funds; ensuring human rights standards within criminal procedures; non-refoulement issue; and respecting the relevant obligations concerning refugee and asylum (Counter-Terrorism Committee Executive Directorate, 2010).

In the last few years, the efforts of the Security Council towards protecting human rights while countering terrorism has escalated considerably through repeated references within its resolutions on the need to respect States' obligations towards UN Charter and international law, including international human right law. For instance, the Security Council Resolution 2178 contained many clauses in the context of respecting the principles and purposes of the United Nations and international law as well as human rights and fundamental freedoms. It reaffirms that

Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, underscoring that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort and notes the importance of respect for the rule of law so as to effectively prevent and combat terrorism, and noting that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization and fosters a sense of impunity (SC Resolution 2178, 2014).

It also calls States to guarantee that the rights of refugee should comply with the relevant international legal instruments. Further, the Council decides that the measures adopted to prevent movement of individuals who travel for the purpose of terrorist activities must be consistent with international law standards (SC Resolution 2178, 2014).

Moreover, the most recent Security Council Resolutions 2199, 2249, 2253, and 2255 provided that any action taken by the Member States to combat terrorism must be consistent with the objectives and principles of the Charter of the United Nations, international law, and international human rights law as well (SC Resolution 2199, 2015; SC Resolution 2249, 2015; SC Resolution 2253, 2015; SC Resolution 2255, 2015).

In connection with the reforms of sanctions system, the Security Council approved, in its Resolution 1452, several exemptions from the sanctions for humanitarian reasons (SC Resolution 1452, 2002),<sup>3</sup> which might weaken the perspective that this regime are incompatible with human rights standards, primarily the right to property (Bianchi, 2007). In spite of that, the new regime of Resolution 1452 did not meet the aspirations of national and regional judicial bodies that have been insisting on judicial guarantees in the sanctions regime on one side and still dealing with some relevant cases on the other (Pazereckaite, 2015).

In view of that, the Security Council has adopted Resolution 1730 which established a Focal Point with the aim of receiving de-listing requests from individuals and entities (SC Resolution 1730, 2006).<sup>4</sup> The Security Council Resolution 1735 additionally obliged Member States to provide more details of the case when submitting any name to the Committee intended for inclusion in the sanctions list (SC Resolution 1735, 2006). Furthermore, in Resolution 1822, the Security Council directs the 1267 Committee to bring to the attention on the Committee's website to the reasons that led to the inclusion of the names in the sanctions list (SC Resolution 1822, 2008).

After that, the Office of the Ombudsperson was established with the purpose of assisting the Committee in

<sup>3</sup>The exceptions that include in Article I of the Security Council Resolution are "1) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources, after notification by the relevant State(s) to the Committee established pursuant to resolution 1267 (1999) of the intention to authorize, where appropriate, access to such funds, assets or resources and in the absence of a negative decision by the Committee within 48 hours of such notification; 2) necessary for extraordinary expenses, provided that such determination has been notified by the relevant State(s) to the Committee and has been approved by the Committee".

<sup>4</sup>In this Resolution, the Council "committed to ensuring that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions".

addressing de-listing requests (SC Resolution 1904, 2009).<sup>5</sup> In addition, the Security Council developed the de-listing mechanism, by lifting the sanctions on targeted individuals or entities automatically after the passage of 60 days of the Office of Ombudsperson's recommendation for de-listing, unless the relevant Committee decides unanimously to keep the sanctions (SC Resolution 1989, 2011). Nevertheless, it seems that the excluding of any name from the list of sanctions demands the adoption of all the members of the Committee who are, at the same time, members of the Security Council. In this sense, the Special Rapporteur on the promotion and protection of human rights while countering terrorism noted, in many occasions, that the procedures of listing and de-listing under the 1267 Committee are still conflicting with the international human rights standards regarding the rights to a fair trial and due process (United Nations, Human Rights Council, A/HRC/29/51, 2015; Scheinin, 2015). In the Report of the Office of the Ombudsperson, it is also indicated that the task of the Office in de-listing process is facing several deficiencies, mostly access to secret information and transparency (United Nations, Security Council, S/2015/80, 2015).

On the other hand, it is worthy to note that the Security Council Resolutions 1963, 2129, 2170, and 2178 had demonstrated that the effective measures and means to combat terrorism come across many ways, including respect for human rights and fundamental freedoms. Therefore, respect for international law and international human rights law, in particular, is necessary to reach a successful method in the fight against terrorism.

Although some articles of the anti-terrorism Security Council resolutions oblige States to comply with their international human rights obligations when countering terrorism, some of these resolutions and current practices of several States still show negative impacts on human rights and fundamental freedoms (United Nations, Security Council, S/2009/620, 2009; United Nations, Security Council, S/2011/463, 2011). Several UN bodies continue to express concerns at the violations of human rights, especially regarding to torture and inhumane treatment of detainees, and the lack of fair trial which include arbitrary and indefinite detention without legal bases (United Nations, General Assembly, A/65/224, 2010; United Nations, General Assembly, A/65/258, 2015).

Hence, it can be concluded that there are legal breaches in the relevant Security Council resolutions which have been taken as an excuse by States to enact laws and take strict measures that are considered as a violation of human rights. The Security Council still lacks, *inter alia*, an independent judicial mechanism concerned with the sanctions regime. On the other hand, many States exceeded those commitments contained in the relevant resolutions and continue to apply such measures that diminish and infringe human rights and fundamental freedoms.

#### 4. Discussion

The Security Council, post 9/11 attacks, has adopted several anti-terrorism resolutions, mainly Resolution 1373 that imposes various commitments upon Member States. In accordance with their obligation under the UN Charter, most States have either enacted new laws or revised their domestic laws. Some anti-terrorism measures, which have been adopted in response to the relevant Security Council resolutions, have shown negative consequences on human rights. Many States have justified their anti-terrorism measures that represent a violation of human rights as part of their obligation to the related Security Council resolutions that call them to take all necessary measures. It is noted that such measures taken by States have exceeded the obligations of Security Council resolutions. Moreover, the absence of a comprehensive and specific definition of terrorism gave States the freedom to describe terrorism according to its own perspective and national interests. Consequently, several human rights have been significantly affected even those recognized as a part of *jus cogens*.

In response to such human rights violations raised by the implementation of the concerning Security Council resolutions, the Council has gradually emphasized since 2003 the need to respect and protect human rights and fundamental freedoms while countering terrorism. In spite of the inclusion of several provisions within the succeeding relevant Security Council resolutions that obliged States to comply with their human rights commitments, current practices of some States still be evidence for negative consequences on human rights.

Therefore, in order to enhance the role of the Security Council in maintaining human rights while countering terrorism, it should adopt innovative methods to deal with this issue. This includes firstly, providing a judicial mechanism for individuals or entities to demand compensations or remedies resulted by unfairness measures against them under the sanctions regime of the Security Council. It could be better if individuals or entities have

<sup>5</sup>The Office was authorized to receive requests from individuals and entities seeking to be removed from the Consolidated List in accordance with the procedures outlined within this Resolution.

the right to defend themselves before the relevant body or an independent judicial body prior to listing. In this regard, the Security Council can at the current time develop the Office of Ombudsperson to become independent quasi-judicial mechanism and its decisions could carry binding obligations upon parties. Secondly, the Council could call Member States to review their anti-terrorism efforts with the intention that any measures adopted since 2001 and even before should carefully be reviewed and where necessary modified to make sure that they are consistent with international human rights standards. Thirdly, although the importance that the Council should continue to ensure within its decisions that any measures taken to counter-terrorism should comply with international law, including international human rights law, the Security Council must focus on certain rights that are adversely affected by the relevant measures and dedicate resolutions that carry obligations to prevent the violation of those rights. These rights include, among others, the right to a fair trial, the right to property, the right to liberty, the rights of refugee, and the freedom of expression. As have acknowledged by various reports, including UN documents, those rights are violated while countering terrorism. Accordingly, the Council should specify a resolution to address each right or the affected rights and impose certain legal obligations upon Member States in the way to guarantee effective protection of those rights. Fourthly, the Counter-Terrorism Committee and its Executive Directorate should focus on those affected rights during their dialogue or assessment of States' implementation of the resolutions. Last but not least, the Council could successfully contribute in the beginning of this approach to conclude the long-term efforts to find a comprehensive and global agreed definition of terrorism. This would avert the wrong practices by States which result in many cases in violation of human rights under the pretext of fighting terrorism.

## 5. Conclusion

Terrorism represents a flagrant violation of human rights since it causes serious damage to the life of the individual and society as a whole. Thus, it was incumbent on the international community represented by the Security Council to take a number of measures to combat terrorist threats. Nevertheless, some anti-terrorism measures have shown a negative impact on human rights. Since the previous efforts of the Security Council fail, in somehow, to protect human rights while combating terrorism, it is required to adopting innovative and more effective ways to avoid the shortcomings and loopholes in the future. This would ensure human rights and fundamental freedoms during fighting terrorism, on one hand, and would lead to more effective results in the framework of combating terrorism on the other hand.

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