

**ST. MARY'S UNIVERSITY COLLEGE  
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**LLB THESIS**

**ANALYSIS ON ANTI-TERRORISM  
PROCLAMATION NO.652/2009 IN  
LIGHT OF THE FDRE CONSTITUTION  
AND HUMAN RIGHTS NORMS**

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**ADDIS ABABA, ETHIOPIA**

**JULY 2010**

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## Table of Contents

	Page
<b>Acknowledgment.....</b>	<b>iii</b>
<b>Introduction .....</b>	<b>iv</b>

### CHAPTER ONE

#### GENERAL OVERVIEW OF THE CONCEPT OF TERRORISM

1.1. Historical background .....	1
1.2. Types of Acts of Terrorism .....	2
1.3. Definitional problems of Acts of Terrorism .....	3
1.4. Common Features of Acts of Terrorism .....	8
1.5. Human rights and Terrorism .....	11
1.5.1. The Impact of Terrorism on Human Rights .....	11
1.5.2. Human Rights of Terror Victims .....	12
1.5.3. Human Rights and Counter Terrorism .....	13

### CHAPTER TWO

#### THE ANTI-TERRORISM PROCLAMATION IN THE CONTEXT

#### OF THE FDRE CONSTITUTION

2.1 The FDRE Constitution and Human Rights Norms it Recognizes .....	18
2.2 The Anti-terrorism Proclamation vis-à-vis Human Rights .....	19
2.2.1 Modification of Trial Procedures and Evidentiary Rules vis-à-vis the Right to Fair Trial .....	20
2.2.2 Penalties Imposed vis-à-vis Proportionality .....	21

2.2.3	Expanded Law Enforcement Powers of Arrest, Search, Seizure, Detention and Surveillance vis-à-vis Liberty and Privacy .....	22
2.2.4	Limits on Freedom of Speech .....	25

### **CHAPTER THREE**

#### **ACTS OF TERRORISM FROM THE PERSPECTIVES OF INTERNATIONAL LAW**

3.1	The International Nature of Acts of Terrorism .....	27
3.2	Early Attempts to Suppress Acts of Terrorism .....	28
3.3	International Instruments against Acts of International Terrorism .....	31

#### **CONCLUSIONS AND RECOMMENDATIONS**

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## **Introduction**

Terrorism has become a phenomenon that is posing serious challenges to states with many of them viewing it as an existential threat capable of shaking their very foundations as states and peoples. So many lives and a considerable amount of property has been damaged, not to mention about the many who are going through the painful traumas having survived heinous acts of terrorism and people who have been left in constant fear of potential terrorist acts. The proportion of terrorist acts has reached such a level that many countries have adopted a variety of measures to counter these acts and treat those involved in terrorist activities. Ethiopia, as a victim of a series of terrorist attacks, is one of the countries to adopt measures with the declared purpose to fight and counter terrorism.

As would be outlined in the paper in a fairly great detail later, as much as the serious threat terrorism caused and the enormous loss of life and property it resulted in and continue to be a source of these losses, the term terrorism is one of the most intractable and intriguing phenomenon incapable of universally acceptable and precise definition.

The largely emotional nature of the concept of ‘terrorism’ continues to make it harder for lawyers to come up with an acceptable definition. Because of this, despite the too many definitions forwarded by different scholars of every description from time to time , none of them, at least so far, has been able to formulate a precise legal definition which is inclusive of all the different perspectives that exist.

While one acknowledges the serious divisions among states as to what constitutes terrorism, no one disputes the enormity of the threat posed by terrorism especially lately. Several countries have taken a series of legislative measures as part of the drive to counter acts of terrorism. This has in turn brought about another challenge one could think with an even more serious nature. The supposedly anti terrorism measures taken by many countries found themselves in collision course with recognized human rights of citizens. Thus, it constituted a serious challenge to human rights despite the fact, and ironically, the fight against terrorism contributing for the exercise of human rights. The

danger came when the declared purposes of fighting terrorism created an apparently a conflictual situation with human rights and when abuse occurred in the name of countering terrorism.

Ethiopia had introduced an anti-terrorism legislation identified as Proclamation No. 652/2009 with a view to dealing with the declared threat of terrorism. This piece of legislation, the subject of this senior essay, introduces a number of interesting issues from the legal point of view and in particular , in the specific context of the human rights norms and values embodied in the constitution and recognized by a number of major international human rights instruments of which Ethiopia is a party and under an obligation to comply with them. While the desirability of such a legislation could be arguable,( because there are those who argue that the preexisting legal framework could suffice for cases of terrorism,) and even though we concede that such a legislation be promulgated, there are a number of issues that one believes should be addressed.

The first chapter of the paper tries to give the broader context by outlining the historical background and conceptual framework involving terrorism which in turn provides the general basis for the discussion of the following chapter which deals directly with the proclamation and its implications on important human rights norms recognized under the constitution and international agreements. The third chapter picks up on acts of terrorism from the perspectives of international law and treats efforts made at the international level, especially within the framework of the United Nations, the multilateral commitments and cooperation among members of the international community and some of the thematic international instruments and an over view of their objectives and purposes.

Finally in the conclusions and recommendations section, some suggestions are made by the writer on the Anti-Terrorism Proclamation.



# CHAPTER ONE

## GENERAL OVERVIEW OF THE CONCEPT OF TERRORISM

### 1.1. Historical background

The human cost of terrorism has been felt in virtually every corner of the globe. In recent years, armed groups have committed a number of bombings and other attacks in Ethiopia or on Ethiopia's diplomatic missions. A May 2008 explosion on a minibus in Ethiopia's capital Addis Ababa, for which an Islamic Guerilla claimed responsibility, killed three people on the eve of national celebrations.<sup>1</sup>

The terrorist attacks in many parts of the world especially the September 11, 2001 attacks in the United States shocked the conscience of humanity precipitating a number of measures including legislation with the declared purpose to counter what are termed as acts of terrorism. So much so that the current era has witnessed the use of the term 'terrorism' in such a scale that has never been the case before.

Acts of terrorism that have taken place recently have increased in their severity and victims. As much as it seems to be a new phenomenon, in actual case, it is not. Terrorism is as old as the existence of human polity.<sup>2</sup> It has developed along with the development of organized social structures of human beings. Assassinations, the capture of hostages, the destruction of property and other politically motivated violence short of war have been relatively common occurrences since the early days of human experiments in political action.<sup>3</sup>

Acts of terrorism have clearly a very real and direct impact on human rights, with the devastating consequences they entail on the enjoyment of the right to life, liberty and the physical security by the victims in particular.

In addition to these individual costs, terrorism can destabilize governments and civil society. It can jeopardize peace and security, and threaten social and economic development all of which are of course related to the enjoyment of human rights.

However the security of the individual is a basic human right and the protection of individuals is a fundamental obligation of government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice. However, states bear equally the obligation not to violate their human rights obligations in the name of protection of the human rights of nationals and others. In other words, states have the responsibility to ensure they don't abuse their powers.

## **1.2 Types of Acts of Terrorism**

Many authors classify terrorist acts based on their characteristics as individual or group terrorism and state terrorism. The former includes violent acts committed by terrorists however in small or large groups. This type of terrorism is the one which is commonly referred to when the term 'terrorism' is mentioned nowadays. It signifies acts of terrorism committed from below. This type of terrorism represents various groups having different manifestations. They may tend to be nationalists, separatists, liberation fighters, etc.

As opposed to individual / group perpetrated terrorist acts, state terrorism refers to acts of terror, such as torture, killings mass arrest etc... which are conducted by the organs of the state against its own population, whether the entire population, certain segments thereof (such as minority community or political opposition), or the populations of an occupied country.<sup>4</sup> The purpose of state terrorism is imposing the power of the government through coercion . This aspect of terrorism is similar to what was first recognized as being terrorism. The French Revolution which gave rise to the notion of terrorism, applied state terrorism or terrorism from above as the policy of the government to subdue the population to its rule.

There are sub categories of state terrorism known as state-sponsored and state-supported terrorism. State sponsored terrorism, as the name indicates, refers to a state aiding the perpetration of terrorist acts by others in various ways. It could take the form of giving training bases for individual and group terrorists providing financial assistance, or supply them with intelligence, weapons etc.<sup>5</sup> It is in fact a form of surrogate warfare,

allowing a state to strike at its enemies in a way that is relatively inexpensive financially and less risky militarily than conventional armed conflict.<sup>6</sup> This type of terrorism signifies governments attitude to others states by making terrorism their policy and undertaking in a covert manner, i.e., through sponsoring others to implement this policy. Having similar nature with state-sponsored terrorism is state-supported terrorism. The difference between these two categories is that a state is more involved in the perpetration of terrorist acts in the state sponsored terrorism, sometimes as direct as decision making and control of the groups' activities, whereas in state-supported terrorism, the state usually aids and abets an already existing terrorist groups that have degrees of independence or their own operational goals.<sup>7</sup>

However terrorism is classified, all acts of terrorism are abhorrent acts. Yet this research paper will only focus on individual/ group perpetrated terrorism, one which is commonly referred to.

### **1.3. Definitional problems of Acts of Terrorism**

Terrorism constitutes one of the most baffling topics that is incapable of a precise definition. Most scholars in the field are entangled in the problem of identifying who are the terrorist and who are not. Terrorism has become a phenomenon attributed to any kind of violence that human being encounter. Indeed, virtually any specially abhorrent act of violence that is perceived as directed against society- when it involves the activities of anti-government dissidents or government themselves, organized crime syndicates or common criminal, rioting mobs or persons engaged in militant protest, individual psychotics or lone extortionists is often labeled 'terrorism'.<sup>8</sup>

It is the concept itself, which is difficult to define. The term 'terrorism' is emotive for legal experts making it excessively difficult to define it in legal terms. Too may definitions have been forwarded by different scholars in the field from time to time but none of them, at least so far, have been able to formulate a precise legal definition which is inclusive of all the different perspectives that exist.

One of the primary reasons that make terrorism difficult to define is that the meaning changes within social and historical contexts.<sup>12</sup> Change in the meaning occurs because terrorism is not a solid entity. Like crime, it is socially defined and the meaning changes with social change.<sup>13</sup> According to terrorist analyst Alex Schmid: "No matter how we define terrorism, the definition will always fluctuate because the context of violent activity changes. We can not define terrorism."<sup>14</sup>

The meaning of terrorism has changed overtime from what it meant during the French revolution. As indicated in the previous section of this chapter, the concept of terrorism has evolved after the French Revolution. The French government was undertaking state terrorism. At a later time, the meaning of the term changed and it was employed to describe violent revolutionaries who revolted against governments.<sup>15</sup> By the end of the 1800's and early 1900's, terrorism was used to describe the violent activities of a number of groups including: labor organizations, anarchists, nationalist groups revolting against foreign powers, and ultranationalist political organizations.<sup>16</sup>

By the 1930's, the meaning of 'terrorism' had changed again. It was now used less refer to revolutionary movements and violence directed against governments and their own citizens.<sup>17</sup> Thus the term regained its former connotation of abuse of power by governments, and was applied specifically to the authoritarian regimes that had come to power in Fascist Italy, Nazi Germany and Stalinist Russia.<sup>18</sup> Following the Second world war, in another swing of the pendulum of the meaning, 'terrorism' war, 'terrorism' regained the revolutionary connotations with which it is most commonly associated today.<sup>19</sup> As people revolted from European domination of the time, rationalistic groups were deemed to be terrorist groups. At that time, the term was used primarily in reference to the violent revolts then being prosecuted by the various indigenous nationalist and anti-colonialist groups that emerged in Asia, Africa and the Middle East in the late 1940's and 1950's to oppose continued European rule.<sup>20</sup> During this time due to the continued European rules, countries started to resort to violence against such colonial rulers. It was also during this period that the politically correct appellation of 'freedom fighters' came in to fashion as a result of their political legitimacy that the international

community (whose sympathy and support was actively courted by many of these movements) accorded to struggles for national liberation and self-determination.<sup>21</sup>

This revolutionary connotation of terrorism also continued in the 1960's and 1970's. However this usage now expanded to include nationalist and ethnic separatist groups outside a colonial or neo-colonial frame work as well as radical, entirely ideologically motivated organizations.<sup>22</sup> The organizations, however, used violence as a means to achieve their goals. Many newly independent Third World countries and communist block states in particular adopted this vernacular arguing that any one or any movement that fought against 'colonial' oppression and/or Western domination should not be described as 'terrorist', but were properly deemed to be 'freedom fighters'.<sup>23</sup> This position was perhaps most famously explained by the later Palestine Liberation Organization (PLO) chairman Yasir Arafat when he addressed the United Nations General Assembly in November 1974as:

*The difference between the revolutionary and the terrorist lies in the reason for which each fights. For who ever stands by a just cause and fights for the freedom and liberation of his land from the invaders, the settlers and the colonialists, can not possibly be called terrorist.*<sup>24</sup>

Although the revolutionary cum-ethno-nationalist/ separatist and ideological exemplars continue to shape our most basic understanding the term, in recent years 'terrorism' has been used to denote broad distinct phenomena.<sup>25</sup> In the early 1980's for example, came to be regarded as a calculated means to destabilize the West as part of a vast global conspiracy. By the middle of the decade, however, a series of suicide bombings directed mostly against American diplomatic and military targets in the Middle East was focusing attention on the rising threat of state- sponsored terrorism.<sup>26</sup> Some states such as Cuba, Iran, Iraq, Libya Sudan and North Korea were found to be involved in some terrorist acts undertaken by some individual or group perpetrators.<sup>27</sup> These states were alleged to have sponsored and supported the perpetration of terrorist acts that transcended into borders of other states. The 1990's and the millennium were periods for a series of terrorist acts that took place, with religion being a motivating factor..<sup>28</sup>

Some terrorists have allegedly declared jihad or the so-called holy war on the west and its policy towards the Middle East in which the perpetration of terrorist acts were considered to be justified by their declaration of jihad.<sup>29</sup> This situation can be evident from the September 11<sup>th</sup> attack on the United State of America that was said to have been committed by members of the Al-Qaeda group. The fact that such types of terrorist acts and many more others have been carried out by Muslims has made the religion of Islam to be considered as a motivating factor to the commissions of acts of terrorism.

The other reason for the definitional problem is that actions that may be termed as act (s) of terror by individuals or group of individuals or state (s) may not be considered as act (s) of terror by others. Ideology has always had an ambiguous relationship with terrorism at one point justifying and at another time condemning the same act.<sup>30</sup> The term itself is subjective. For instance, Sederberg argues in the same way:

*A wary cliché, yet a most persistent myth in the study of terrorism stresses the subjectivity that supposedly afflicts efforts to define the phenomenon. The aphorism "one man's terrorist is another man's freedom fighter" suggests that all attempt to formulate the concept will be hopelessly compromised by essential arbitrary personal or political bias. Consequently, any analysis based on such dubious conceptual foundation will be distorted and most likely vacuous.<sup>31</sup>*

Terrorism is a 'politically loaded term', which should be discarded because one nation's terrorism is another people's national liberation.<sup>32</sup> This shows the pejorative connotation terrorism has. It is a word with intrinsically negative connotations that is generally applied to one's enemies and opponents, or to those with whom one disagrees and would otherwise prefer to ignore,<sup>33</sup> 'what is called terrorism', Brian Jenkins has written, 'thus seems to depend on one's point of view. Use of the term implies a moral judgment; and if one party can successfully attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral view point.<sup>34</sup> Some commentators have suggested that the labeling of a particular acts as terroristic tells less about that act than it does about the labeler's political perspective, that it is more a formulation of a social judgment than a description of asset or phenomena.<sup>35</sup> Hence the emotive nature of the term 'terrorism'

makes subjectivity inevitable in determining what acts is or are terror violence and who undertakes terrorist acts. In turn, this makes it very difficult to formulate any definition which is inclusive of the opposing views.<sup>36</sup>

The subjectivity and disagreement that exists and hence the absence of a universal and broadly acceptable definition of terrorism can not hinder any study on acts of terrorism. Nevertheless, there are some common and useful definitions used by many. For instance terrorism could be defined as:

*A strategy, method by which an organized group or party tries to get attention for its aims, or force concessions towards its goals through the systemic use of deliberate violence*<sup>39</sup>

In another definition, Liqueur says that terrorism constitutes the illegitimate use of force to achieve a political objective by targeting innocent people.<sup>40</sup> Terrorism, interpreted here as the use of covert violence by a group for political ends, it is usually directed against a government, less frequently against another group, class or party.<sup>41</sup> The end may vary from the redress of a specific 'grievances' to the overthrow of a government and the taking over of power, or the liberation of a country from foreign rule.<sup>42</sup> Terrorists seek to cause political, social and economic disruption and for this purpose frequently engage in planned or indiscriminate murder.<sup>43</sup> Wilkinson provides terrorism as being one of the oldest techniques of psychological warfare and tactics.

*The systematic use of murder and destruction, and the threat of murder and destruction to terrorize individuals, groups communities or governments in to conceding to the terrorists political demands...*<sup>44</sup> (Emphasis added).

Terrorism often includes, but is not limited to acts of violence or deprivation of freedom which are directed against persons or their property for a political purpose.<sup>45</sup> In particular, such acts of violence or deprivation of freedom are perpetrated regardless of the injured party's or parties' association or connection with the terrorist actors political purposes.<sup>46</sup> The main objectives of terrorist acts are to instill terror and fear in order to obtain certain

changes in governments' policy by using illegitimate force against third party civilians. Since an act of terrorism can not entail an immediate change, it achieves a psychological effect.

It is safe to argue that the inherent characteristics of terrorism as indicated above, the fact that the meaning of terrorism changes with social and historical contexts, the pejorative and emotive nature of the term impede to generate a working definition which is inclusive of the various circumstances surrounding it. To this effect, some writers assert the difficulty to arrive at 'a comprehensive definition' within the foreseeable future.<sup>48</sup>

#### **1.4. Common Features of Acts of Terrorism**

There is no agreement on the essence of terrorism or what constitutive elements it has. Although there is not as such a generally accepted definition, some features can be attributed as its common elements. Some violent acts can be identified as being an act of terrorism upon acquiring these features which will be discussed now.

According to Professor E.V. Walter, the quintessence of the terrorist process centers on three basic factors: the source of violence, the victim of violence and the audience (direct or indirect witness to violence).<sup>49</sup> As discussed in the previous section, the key characteristics of an act of terrorism are its political motivations. The notion of terrorism is a political concept serving as a motivating factor. This characteristic of an act of terrorism distinguishes it from other criminal acts. Terrorism, in the most widely accepted contemporary usage of the term, is fundamentally and inherently political.<sup>50</sup> It is also ineluctably about power: the pursuit of power, the acquisition of power, and the use of power to achieve political change.<sup>51</sup> The terrorist act is often one of political desperation rooted in the belief that violence is legitimated when it becomes a form of public protest designed to compel governmental entities to act in a particular fashion.<sup>52</sup>

Both terrorists and ordinary criminals may resort to violence to achieve a certain end. However, an act of terrorism is not undertaken for purely egocentric goals. Rather it is carried out based on a commitment to effect a change for wider constituency. Here, it should be clear that there is distinction between a criminally motivated act and a



politically inspired one. Criminal acts undertaken solely for various reasons, be it revenge, an act of robbery for financial gain or other, can not be strictly considered as an act of terrorism. An act has to be inspired politically in order to be considered as a terror-violence. In addition, a hijacking undertaken by a psychologically deranged person whose only wish is to go elsewhere or an assassination undertaken by a lunatic assassin solely to become famous can not be considered as a terrorist act. Therefore, all acts of violence are not acts of terrorism.

Another common denominator of a terrorist act is the victim. The victims of the terrorist act are innocent with no connection to the perpetrators of the act. In earlier times, terrorist acts primarily focused on heads of state and other governmental officials. Assassinations of people with a high profile was the norm. Now, indiscriminate terror has become widespread. The primary cause for this shift in victim can be that the deaths of innocent victims dramatizes the demands of the terrorists and they will instill fear and terror among the audience in order to invoke a desired response from the audience at large.

Although, terrorism is an act planned in advance rather than being an impulsive act of rage, it undertakes a treacherous attack by surprise. No one can be ready for a terrorist act. Terrorist act is gauged to occur when it is to nobody's expectations. Due to this intermittent nature, the deaths of innocent third party seem to be sought as a victim of a terrorist act. Innocence is the quintessential conditions of terrorist victimology, for terrorist victim is not the ultimate target.<sup>54</sup> An act of terrorism has a quality of not differentiating the end it desires from the victims of the act.

As terrorism expert Brian Jenkins bluntly put it, "terrorism is a theatre".<sup>55</sup> It is essentially, theatre, an act played before an audience, designed to call the attention of millions, even hundreds of millions, to an often unrelated situation through shock producing situations of outrage and horror, doing the unthinkable without apology or remorse.<sup>56</sup> The audience, from whom request is made on the part of terrorists are considered to be the direct audience. These acts are attributed to them on a primary basis. Indirect audience can be the public at large. They may be effective to fulfill the objective of the terrorist act as far as they discredit the government as incapable of suppressing the act. Thus terrorist acts

are often made spectacular on purpose. This helps to capture the attention of many audiences throughout the world. These acts are designed in a way to influence a wider range of audience although normally these audiences outnumber the immediate victims of the violence itself.

From the point of view of international Law, however, it may be convenient to use as working definition of terrorism, acts or threats of violence committed in the hope of instilling fear in or securing concession from some government or other authority, when the victim of the actor is innocent of any connection with the issue or the parties in actual dispute.<sup>57</sup> As provided above, the primary aim of a terrorist act is to ensure the prevalence of fear and dread among the audience. The psychological effect a terrorist act seeks is obtained through violence or threat of violence against innocent persons in order to obtain certain political objective. Thus, a terrorist act is basically a means to obtain ends by force.

Having dealt with some common features of terrorist acts, it could be concluded that these acts of violence or threatened violence that are always planned in advance and purposeful, having political aims and motivations. They are indiscriminate in choosing their targets and are designed in a way to result psychological repercussions that extends beyond the immediate victims of such acts.

Since there is no legal definition of any kind there has always been a debate on the nature of acts which happened to be abhorrent to the whole international community. The international community is hunted with the need to suppress and punish acts of terrorism. The nature of acts of terrorism as discussed above has created the greatest obstacle to take any measures in order to combat such types of acts. Despite this situation, measures that were taken by the international community against acts of terrorism in light of the application of international law will be discussed in chapter three of this research paper.

## **1.5. Human rights and Terrorism**

Human rights are universal values and legal guarantees that protect individuals and groups against action and omissions primarily by state agents that interfere with fundamental freedoms. Entitlements and human dignity. The general rule of human right involves respect for protection and fulfillment of civil, cultural, economic, political and social rights, as well as the right to development.<sup>58</sup>

International human right law which binds all state embodied a number of international human treaties and customary international law. These treaties include in particular the international covenant on economic, social and cultural rights and international convention on civil and political rights with its two optional protocols and other conventions and protocols.<sup>59</sup> As the human rights committee observed in its general comments No 24 (1994) and No 29 (2001) some rights in the international convention on civil and political rights reflect norms of customary international law.<sup>60</sup> To these rights there are no circumstances whatsoever in which derogation from them is permissible.<sup>61</sup>

The focus of this section is not to deal with state responsibility for human rights in general but specifically to illustrate the impact of terrorism on human rights, to establish obligation of state for human rights victims and the obligation of states on promotion and protection of human rights in counter terrorism.

### **1.5.1. The Impact of Terrorism on Human Rights**

Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the right to life, liberty and physical integrity, Terrorist acts can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development.<sup>62</sup>

The impact of terrorism on human rights is stated by UN member states as follows.

It threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights.<sup>63</sup>

It has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of the society, and destabilizes legitimately constituted governments.<sup>64</sup>

It has adverse consequences on the economic and social development of states, jeopardizes friendly relation among states, and has a pernicious impact on relation of cooperation among states, including cooperation for development.<sup>65</sup>

It threatens the territorial integrity and security of states which constitutes a grave violation of the purposes and principles of the United Nations.<sup>66</sup>

In summary terrorism aims at the very destruction of human rights democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments.

### **1.5.2. Human Rights of Terror Victims**

Most of the terrorist incidents and counter measures result in death or serious injury of person and damage to public or private property. In both cases there will be a victim from the incident. From a human right perspective, support for victims of terrorism is an important issue.<sup>67</sup> In the 2005 world summit outcome, (General Assembly resolution 60(1) member states stressed “the importance of assisting victims of terrorism of providing them and their families with support to cope with their loss and their grief. Similarly, the United Nation Global counter Terrorism strategy reflects pledge by member states to promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation.<sup>68</sup>

The declaration on Basic Principles of Justice for Victims of Crime and Abuse of power, set out in General Assembly Resolution 40/34 victims include persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering economic loss or substantial impairment of fundamental rights, through acts of omission that are operative within member states including these laws processing criminal abuse of power.<sup>69</sup>

The above declaration and other resolutions such as 60/1147 outline standard of the treatments of victims this include

- To be treated with compassion and respect for their dignity
- To be informed about, and have their views and concerns presented at legal proceedings
- To enjoy, proportional and appropriate compensation to ensure their and their families safety physical and psychological well being and privacy.<sup>70</sup>

In general, international and regional standards with regards to victims of a crime and victims of gross violations of international humanitarian law and serious violation of international humanitarian law may be instructive in addressing the needs of victims of terrorism.

### **1.5.3. Human Rights and Counter Terrorism**

Counter terrorism is an operation that includes the offensive measures taken to prevent, deter, preempt and respond to terrorism. It is an operation used to reduce the vulnerability of individuals property to terrorist acts.<sup>71</sup>

Until recent years counter terrorism refers to the law enforcement approach. This approach considers terrorist events as purely criminal acts to be addressed by the domestic criminal justice system and its components. This entitles domestic criminal law which is clearly within the authority of individual nations being applicable.<sup>72</sup>

Now a days US and Israel suggest a new approach to counter terrorism that is 'use of force' rather than exclusively from a law enforcement mechanism. Following US and Israel, several states by stretching the UN Charter arguing that they would legitimately use military force to counter terrorism.<sup>73</sup>

Due to the new approach and the growing threat of international terrorism many countries have introduced anti terrorism legislation. For example the USA's Patriot Act after the

9/11 attack, the United Kingdom's the Prevention of Terrorism Act 2006 and the Australian Anti-Reformism act 2005 can be cited.<sup>74</sup>

One of the primary difficulties of implementing counter terrorism is the waning of civil liberties and individual privacy that such measures often entail, both for citizens, and of those detained by states attempting to combat terror. At times, measures designed to tighten security have been seen as abuse of power or even violation of human rights.<sup>75</sup> Just as terrorism impacts on human rights and the functioning of society, so too can measures adopted by states to counter terrorism. As the former Secretary General, Kofi Annan stated at a special meeting of the Security Council's Counter- Terrorism Committee (herinafter called CTC) with international regional and sub-regional organizations on 6 March 2003.

*“Our response to terrorism, as well as our efforts to thwart it and prevent it should uphold that human rights terrorism aim to destroy. Respect for human rights fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism, no privileges to be scarified at a time of tension”<sup>76</sup>.*

Resolution 1373 also obligates states to implement more effective counter-terrorism measures at the national level and to increase international cooperation in the struggle against terrorism.<sup>77</sup> The Resolution created the Counter-terrorism Committee to monitor action on the this issue and to receive reports of states on measures taken.

Former Higher Commissioner Mr. Vieira de Mello. Speaking to the CTC urging that

*“The best the only strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law.”<sup>78</sup>*

From the above quotations of the UN officials it can be concluded that in order to protect human rights states have not only a right but also a duty to take effective counter terrorism measures. Effective counter- terrorism measures and the protection of human

rights are complementary and mutually reinforcing objectives which must be pursued together as part of states duty to protect individuals within their jurisdiction.<sup>79</sup>

The international community has committed in adopting measures that ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.<sup>80</sup>

Though the adoption of the United Nations Global counter-terrorism strategy by the General Assembly in its resolution 60/288 member states have resolved to take measures aimed at addressing the conditions conducive to the spread of terrorism, including lack of rule of law and violation of human rights, and ensure that any measures taken to counter terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.<sup>81</sup>

The world summit outcome, adopted by the General Assembly in 2005 also considered the question of respect for human rights while countering terrorism and concluded that international cooperation to fight terrorism must be conducted in conformity with international law, including the Charter of the United Nations and relevant international conventions and protocols.<sup>82</sup>

The ICJ/International Court of Justice/ declaration on upholding human rights and the rule of law in combating terrorism declared that in adopting measures aimed at suppressing acts of terrorism, states must adhere strictly to the rule of law, including the core principles standards and obligations of international humanitarian law.<sup>83</sup>

These principles, standards and obligations define the boundaries of permissible and legitimate state actions against terrorism. The obvious nature of terrorist acts can't serve as a basis or pretext for states to disregard their international obligations in the protection of fundamental human rights.<sup>84</sup>

To sum up the violation of human rights in the name of counter terrorism undermines the very international acceptance that terrorism is wrong. If it is fought by means similar to terrorism, it erodes the justification that the methods terrorists use are evil. Ignoring

human rights as part of the fight against terrorism undermines international cooperation and creates negative consequence for civil liberties, fundamental human rights, rule of law and the whole world order. Therefore, the counter terrorism measures should see human right not as inconvenient obstacles but as an essential values that are integral to the defeat of terrorism.



## **CHAPTER TWO**

### **THE ANTI-TERRORISM PROCLAMATION IN THE CONTEXT OF THE FDRE CONSTITUTION**

#### **General:**

Consideration of adoption of anti-terror legislation was made in 2006, and draft law was being prepared in 2008, and the proclamation came into force in 2009. <sup>1</sup>

According to the preambles of the Anti-Terror Proclamation , it was necessary to promulgate such law because the right of the people to live in peace, freedom and security had to be protected at all times from the threat of terrorism ; and also it had become necessary to incorporate new legal mechanisms and procedures to prevent control and foil terrorism, to gather and compile sufficient information and evidence in order to bring to justice suspected individuals and organizations for acts of terrorism by setting up enhanced prosecution systems. It is further stated that the proclamation is also needed since the laws presently in force in the country were not sufficient to prevent and control terrorism. <sup>2</sup>

When we take a look at our constitution, there are numerous provisions that guarantee fundamental human rights recognized under a variety of major international human rights to which Ethiopia is a party. These group of rights enumerated under an entire chapter 3 of the constitution constitute almost one third of the total constitutional provisions and are firmly entrenched into the constitution through a stringent procedural requirement to amend them.<sup>3</sup> Furthermore, the constitution under article 13 (2) provides that the fundamental rights and freedoms specified in chapter three shall be interpreted in the manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia. Pending the debates over the status of the human rights norms in the constitution , the foregoing provisions clearly look to international human rights norms as standards of interpretation and hence an explicit reference to them to meet the normative standards they set and the clear desire to comply with them in addition to being a signatory to them and under the obligation to meet them.

Even though the FDRE Constitution under Art. 55 empowers the House of People's Representatives the power to legislate on various matters <sup>4</sup> and even though the Anti-Terrorism Proclamation may well fill gaps in the existing criminal code , the proclamation needs a thorough examination.

## **2.1. The FDRE Constitution and Human Rights Norms it**

### **Recognizes**

The Constitution of the Federal Democratic Republic of Ethiopia, proclaimed under Proclamation No. 1/1995 came into full force and effect as of the 21<sup>st</sup> of August 1995.<sup>5</sup> Almost a third of its provisions are entirely devoted to fundamental rights and freedoms of citizens.

Article 10 of the constitution, in keeping with and clear reflection of the fundamental thoughts behind human rights which are held to inhere in the human person because of being a human creature *ipso facto*, enshrines that human rights and freedoms emanating from the nature of mankind are inviolable and inalienable.<sup>6</sup> In the same article it provides for the respect of what it refers to as human and democratic rights. It gives a collective reference of "human rights" to those group of rights enumerated under articles 13-28 and the remaining ones , i.e. 29-44 as "democratic rights" which reference makes no real consequence as the reference should be understood loosely because the references may not stand closer scrutiny.

Under the distinct category of human rights referred to above we have a broad range of rights including the right to life, the security of person and liberty ,etc.

Article 14 provides that every person has the inviolable and inalienable right to life, the security of person and liberty. <sup>7</sup>

Under the following article of the constitution regarding the right to life ,it is provided that every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law. Article 16 of the constitution provides relating to the security of the person that every one has the right to protection against bodily harm.<sup>9</sup>

Article 17 of the constitution , which is entitled, “Right to Liberty” clearly provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as established by law.<sup>8</sup> It further provides that no person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him. <sup>10</sup>

Art.19 of the constitution which deals with the rights of persons arrested enlists a host of rights an arrested person is entitled to despite his arrest. These are the right to be informed the reasons of their arrest , the right to remain silent and the right to be informed that any statement he may make may be used as evidence against him, the right to be brought to court within 48 hours of his arrest save the exceptions,the right to physical release(habeas corpus) the right to bail, the right not to be compelled to testify.<sup>11</sup>

Art. 20 of the constitution entitled as “The Rights of Accused Persons” makes a broad outline of the important elements that constitute the right. By so doing, it makes specific reference to the inventory of rights an accused person is entitled to. The right to public trial, the right to be informed of the charges brought against him, the right to be presumed innocent , the right to access to evidence, the right to have a legal representation of their choice , the right to appeal , the right to interpretation of court proceedings where the accused doesn’t understand the language used in the proceedings of the court.

## **2.2.The Anti-terrorism Proclamation vis-à-vis Human Rights**

The new Anti-terrorism proclamation which came into force in 2009 enumerates the rationale behind its promulgation in its preambles.<sup>12</sup>

It has historically and practically been evidenced that terrorism has a direct impact on the enjoyment of human rights. Hence, states have the duty to take effective counter terrorism measures. While the complexity and magnitude of the challenges facing states and others to combat terrorism can be significant, international human rights law is flexible enough to address them effectively.

Because terrorism has a serious impact on a range of fundamental human rights, states have not only a right but also a duty to take effective counter terrorism measures. Effective counter terrorism measures and the protection of human rights are complementary and mutually reinforcing, objectives, which must be pursued together as part of states’ duty to protect individuals within their jurisdiction.<sup>13</sup>

However, many countries, when meeting their obligations to counter terrorism by rushing through legislative and practical measures, have created negative consequences for civil liberties and fundamental human rights.

States should take the most relevant human rights concerns seriously to ensure that any measure taken to combat terrorism complies with their obligations under international law in particular human rights law.<sup>14</sup>

### **2.2.1.Modification of Trial Procedures and Evidentiary Rules vis-à-vis the Right to Fair Trial**

Under the Anti-terror proclamation, new trial procedures and evidentiary standards for terrorism cases are introduced. For example, if we see Art.23 of the proclamation the following are provided:

1. intelligence report prepared in relation to terrorism , even if the report does not disclose the source or the method it was gathered;
2. hearsay or indirect evidence;
3. digital or electronic evidence;
4. evidence gathered through interception or surveillance or information obtained through interception conducted by foreign law enforcement bodies, and ;
5. confession of a suspect of terrorism in writing, voice recording , video cassette , or record in any mechanical or electronic device .... This all shall be admissible in court for cases of terrorism. <sup>15</sup>

Under these new rules as we saw in the article stated here above hearsay, or indirect evidence can be admitted in court without any limitation.<sup>16</sup> Official intelligence reports can also be admitted even if they do not disclose the source or the method by means of which they were gathered.<sup>17</sup>

By making intelligence reports admissible in court even if the sources and methods are not disclosed , the law effectively allows evidence obtained under torture (if defense

counsel can not ascertain the methods by which intelligence was collected , they cannot show that it was collected in abusive way).

The proclamation deems confessions admissible without a restriction on the use of statements made under torture. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment clearly prohibits the use of any statement made as a result of torture as evidence in legal proceedings. The constitution also bars the use of statements obtained through coercion.<sup>18</sup>

The right to fair trial requires that measures should be taken to ensure a transparent listing and de-listing process, based on clear criteria, and with an appropriate , explicit , and uniformly applied standard of evidence. At a minimum , the standards required to ensure fair and clear procedures must include the right of an individual to be informed of the measures taken and to know the case against him or her as soon as , and to the extent possible , without thwarting the purpose of the sanctions regimes; the right to be heard within a reasonable time by the relevant decision-making body; the right to effective review by a competent and independent review mechanism; the right to counsel with respect to all proceedings; and the right to an effective remedy.<sup>19</sup>

### **2.2.2. Penalties Imposed vis-à-vis Proportionality**

As indicated earlier it is clearly known that terrorism or terrorist acts affect the enjoyment of human rights. Any person who commits a terrorist act should be punished since terrorism is a danger to the peace, security and development of a country and a serious threat to peace and security of the world at large.<sup>20</sup>

But for the purpose of determining the importance of a particular measure's objective , it will be instructive to determine how the measure is linked with the countering of an actual or potential threat of terrorism against the state; the measure's contribution to international and regional frameworks on counter-terrorism as well as , secondarily , its contribution to other national interests of the state. <sup>21</sup>

The provisions of the articles penalizing the terrorist act and the way in which they are applied , must be proportional. Even for each measure , one must determine whether, given the importance of the right of freedom , the impact of the measure on the enjoyment of that right or freedom is proportional to the importance of the objective being pursued by the measure and its potential effectiveness in achieving that objective.<sup>22</sup> The merit of any measure will depend on the importance of the counter-terrorism objective it pursues, as well as on its potential efficacy in achieving it.

When we take a look at the anti-terrorism proclamation it provides that anyone who, with the purpose of “advancing a political , religious or ideological cause” and intending to “influence the government” , intimidate the public or section of the public , or “ to destabilize or destroy the fundamental political , constitutional , economic or social institutions of the country” , commits: an act that causes death or serious injury; an act that creates risk to the safety or health of the public ; kidnapping or hostage taking , serious damage to the property; damage to natural resources , the environment, or the historical or cultural heritage ; or engagers, seizes or puts under control , causes for interference or disruption of any public service” is subject to punishment by “ rigorous imprisonment from 15 years to life or with death.<sup>23</sup>

But reasonably the concept of terrorism should be limited to acts committed with the intention of causing death or serious bodily injury , or the taking of hostages , and should not include property crimes. In addition, imposing death penalty for property crimes would violate the requirements under international law that the death penalty be imposed for the “most” serious crimes.<sup>24</sup>

### **2.2.3. Expanded Law Enforcement Powers of Arrest, Search, Seizure, Detention and Surveillance vis-à-vis Liberty and Privacy**

The anti-terrorism proclamation has expanded police powers in significant ways. Despite constitutional protections and guarantees, the police and armed forces have long been implicated in arbitrary arrests, *incommunicado* detentions and torture and other mistreatment of persons in custody. Thus, the expansion of police powers without a

serious effort to improve protections for those detained raises serious concerns that this law may facilitate further abuses.<sup>25</sup>

### **2.2.3.1. Powers of Arrest, Search and Seizure**

Pursuant to Art. 19 of the proclamation the police may arrest without court warrant any person whom he reasonably suspects to have committed or is committing a terrorist act.<sup>26</sup>

The proclamation under articles 16 and 17 provides for what it describes as “sudden search” and “covert search” and distinguishes between them.

According to the proclamation, a covert search requires a court-approved search warrant if an officer has reasonable grounds to believe that: a terrorist act has been or is likely to be committed; or a resident or possessor of a house to be searched has made preparations or plans to commit a terrorist act; and covert search is essential to prevent or take action against a terrorist act or suspected terrorist activity.<sup>27</sup>

Whereas a sudden search is where a police officer has reasonable suspicion that a terrorist act may be committed and deems it necessary to make a sudden search in order to prevent the act . With the permission of the Director General of the Federal police or a person delegated by him, he may stop vehicles and pedestrians in an area and conduct sudden search at any time, and seize relevant evidence.

However, a sudden “ search of body and property” can be authorized by the Director General of the Federal Police or his designee, without judicial oversight , if a police officer has “ reasonable suspicion that a terrorist act will be committed and deems it necessary to make a sudden search.<sup>28</sup>

This gives the police and other security services almost an unlimited power to conduct body searches, and search or seize property based solely on the belief that terrorist activity “will be” or has been committed. The provision contains no warrant requirement or any requirement of exigent circumstances that would make a warrantless search or seizure justified.

The National Intelligence and Security Services is also provided authority to “ intercept or conduct surveillance on the telephone , fax, radio, internet, electronic , postal , and similar communications of a person suspected of terrorism,” and to enter any premise to install and intercept communications after obtaining a court warrant. 29

Should a police officer believe a terrorist act “will be” committed at a particular place, he has the power to destroy property or restrict movement, even without any requirement of exigency. Those who fail to cooperate with the police are subject to three to ten years imprisonment.

The police have also the power to order “any government institution, official, bank, or a private organization or an individual to “provide information or evidence” which the police officer reasonably believes could assist to prevent or investigate terrorism cases” without any warrant.<sup>30</sup>

### **2.2.3.2. Detention without Charge**

The proclamation grants the police the power to make arrests without a warrant, so long as the officer “reasonably suspects” that the person is committing or has committed a terrorist act.<sup>31</sup> The constitution, however, requires that a person taken into custody must be brought before a court within 48 hours and informed of the reasons for his arrest. The proclamation reiterates the constitutional protection to be brought before a court within 48 hours of arrest, but then allows the police to request additional investigation for a period of 28 days , each from a court before filing charges , upto a maximum of four months.<sup>32</sup> There are many people who are detained by police without charge for months, and sometimes ignoring judicial orders for their release.<sup>33</sup> Providing by legislation a period of four months whereby individuals may be detained without charge is likely to lead to even further abuses.<sup>34</sup>

Major international human rights instruments to which Ethiopia is a party require that anyone arrested should promptly be brought before a judicial authority and criminally charged.<sup>35</sup>



To sum up, the laws of enforcement like powers of arrest , detention , seizure and surveillance which have direct impact on persons privacy and liberty must be lawful, i.e. they must be prescribed by law; the extent to which this occurs must not be arbitrary , which in turn requires that the legislation must not be unjust , unpredictable or unreasonable. The law authorizing interference with privacy must specify in detail the precise circumstances in which the interference is permitted and must not be implemented in a discriminatory manner.<sup>36</sup> This does not mean, however, that states enjoy an unlimited discretion to interfere with privacy, since any limitation on rights must be necessary to achieve legitimate purposes and be proportionate to those purposes.

#### **2.2.4. Limits on Freedom of Speech**

Many national counter terrorism laws contain provisions criminalizing speech that incites or supports terrorism. But important international standards on freedom of speech require that such restrictions be limited to speech that directly incites or is likely to result in an imminent crime.<sup>37</sup>

The anti-terrorism proclamation in its article 6 states that whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under art. 3 of this proclamation is punishable with rigorous imprisonment from 10 to 20 years.<sup>38</sup>

As regards the media, the proclamation places serious constraints upon them. This would add to the limited professionalism and outreach of the mass media and potentially narrows down the public space.

Although there are about 200 newspapers and magazines , few appear to be independent or trustworthy outlets. Low standards and partisan agendas taint the credibility of the private press. Government and party affiliated media are subservient. Few papers have sought or been able to strike the balance between government and opposition.<sup>39</sup>

Before 2004, private papers like Menelik , Addis Zena and Ethiop generally advocated opposition viewpoints , but courts regularly fine and imprison critical editors and publishers. In November 2005, fourteen, including the publishers of Hadar and Lisane Hazeb, were arrested and charged with violation of press law and “outrages against the constitution.” As a result the critical private media has virtually disappeared.<sup>40</sup> After six years of deliberation , the parliament adopted what is viewed by many as a restrictive press law in 2008.<sup>41</sup>

If the government were to place longstanding armed opposition groups such as the Oromo Liberation Front(OLF) and the Ogden National Liberation Front(ONLF)(which have already been banned) on the list of proscribed terrorist organizations, even an ordinary newspaper article describing an Oromo student protest could be deemed “encouragement of terrorism.” This scenario might potentially be the case given that attacks of the OLF and other insurgent groups have been characterized as “terrorist” activities. A journalist interviewing an opposition politician or a supporter of an armed opposition group could be deemed to be “encouraging” terrorism merely by publicizing the views of the interviewee.<sup>42</sup>

Summing up, the stated provisions would violate the right to freedom of expression under international law even if the definition of “terrorist act” were in conformity with the international standards. In addition to relying on the overly broad definition of “terrorist acts”, articles 3 and 6 of the proclamation are problematic because they criminalize speech ambiguously “encouraging”, “advancing” or “ in support of” terrorist acts even if there is no direct incitement to violence. Individuals who merely speak in favor of any of the “terrorist acts” could be convicted for encouraging terrorism, and sentenced to 10 to 20 years of “rigorous imprisonment”. For example, students participating in a peaceful demonstration seeking to influence government policy or even someone merely voicing support for such a demonstration without participating could be subjected to 10 to 20 years prison term. <sup>43</sup>

## **CHAPTER THREE**

### **ACTS OF TERRORISM FROM THE PERSPECTIVES OF INTERNATIONAL LAW**

#### **3.1. The International Nature of Acts of Terrorism**

The need to look at the internationalizing factors of acts of terrorism perpetrated by individuals and groups is that from a legal point of view, international law most of the time applies to acts of international terrorism. Dealing with the international nature of terrorist acts is not to mean that acts of terrorism that have a domestic nature are not grave as such.

Acts of terrorism as perpetrated by individuals or groups can be categorized as acts of terrorism restricted to a single state or region where the acts of terrorism are directed against the state by its own citizens.<sup>1</sup> It implies an act of terrorism undertaken by citizens of a certain state, in the territory of that state and against citizens of the same state.

On the other hand, in order for acts of terrorism perpetrated by individual and groups to become acts of international terrorism, some elements must be present. However, there is controversy as to what such elements are. In order to grasp the notion of acts of international terrorism, let us look at some of the criteria forwarded by some writers.

Laqueur asserts that the term “international terrorism” can refer to co-operations between terrorist groups and to make attacks against foreign nationals or property in the terrorist own country.<sup>2</sup>

Wilkinson writes an international terrorism to be an attack carried out across international frontiers or against foreign targets in the terrorists “state of origin” and adds that most of acts of terrorism could be considered international since most groups who perpetrate terrorist acts tend to get support , weapons , safe havens abroad.<sup>3</sup> He also suggests that acts of terrorism are international if the act is directed against foreign targets, or if the act is aimed at influencing the policies of a foreign government. <sup>4</sup>

Friedlander provides the list of elements acts of terrorism must have in order for it to attain an international nature.

1. The act or series of acts must take place in more than one state;
2. The act or series of acts must involve citizens of more than one state;
3. The act or series of acts must be directed at internationally protected persons;
4. The act or series of acts must occur outside of an exclusively national jurisdiction
5. The act or series of acts must be directed against internationally protected property.<sup>5</sup>

From the legal point of view, the distinction made between domestic and international terrorism is to maintain state sovereignty. Acts of domestic terrorism solely remain to be the internal affairs of that state in the territory of which the acts of terrorism are carried out and hence, international law could not be applicable to regulate such acts. However, the application of international law becomes inevitable when the character of acts of domestic terrorism take the form of armed conflict, genocide, etc.

It can be concluded that international law deals with acts of international terrorism. such acts should involve at least an international element.

### **3.2. Early Attempts to Suppress Acts of Terrorism**

The first organized attempt to deal with acts of international terrorism in the international arena took place in the 1930's. The assassination at Marseilles on October 9, 1934 of King Alexander of Yugoslavia and Mr. Louis Barthou, foreign minister of the French Republic led to a request to the Council of the League of Nations for an enquiry into the circumstances.<sup>6</sup> Based on the French government's proposal to the council as to the adoption of "international measures" for the suppression of political crimes, including the creation of an international criminal court,<sup>7</sup> the council passed a resolution stating "that the rules of international law concerning the repression of terrorist activities are not at present sufficiently precise to guarantee efficiently international cooperation in this

matter” and decided to establish “ a committee of experts to study this question with a view to drawing up a preliminary draft of an international convention to assure the repression of conspiracies or crimes committed with political and terrorist purposes.”<sup>8</sup> This situation led to the need to define terrorist acts in light of repressing through international law. Hence, the Convention of 1937 for the Prevention and Punishment of Terrorism was adopted.

The Convention for the Prevention and Punishment of Terrorism and the Convention that specifically dealt with the establishment of international criminal court, were open for signature on November 16, 1937. The Convention for the Prevention and Punishment of Terrorism was signed by representatives of twenty-four states. The second convention gave the international criminal court jurisdiction over terrorist crimes on the condition that one state could accede to or ratify this convention up on accession of or ratification of the state of the convention for the prevention and punishment of terrorism.

In the Convention for the Prevention and Punishment of Terrorism, the necessity of the elements of motive was made clear in its definition of terrorist acts. Acts of terrorism meant “criminal act directed against a state and intended or calculated to create a state of terror in the mind of particular persons, or group of persons or the general public.”<sup>9</sup> The main purpose of the element of motive is to exclude acts of terrorism from other ordinary criminal acts which have become adequately punishable within states’ domestic laws. As its disadvantage, it is considered by many, but not all, developing states to include acts automatically as an act of terrorism even if they are national liberation movements. This is the reason behind many of these states insistence as to the exception of certain acts from the element of motive.

From the definition of acts of terrorism provided in article 1 of the Convention for the Prevention and Punishment of Terrorism, what was intended was to suppress acts of terrorism having an international nature. Signatory states agreed to make acts of this nature criminal offences if they were directed at another state and if they involved the death or bodily injury to a head of state or a person holding a public position , the damage to the public property of another state, dealing with arms and ammunitions with a

view to committing an act of terrorism and any willful act calculated to endanger the lives of members of the public.<sup>10</sup>

The issue regarding the extradition of offenders was highly controversial at the 1937 Conference on the Repression of Terrorism that finally approved the Convention on Terrorism since European states were inclined to include the obligation of states either to try or extradite offenders without political offenders being the exception.

While offences under the convention were classified as “extradition crimes”, the obligation to extradite offenders was made subject to any conditions for extradition recognized by the principle of *aut dedere aut judicare*, i.e., extradite or prosecute the offender.

The 1937 Convention on Terrorism adopted a method of treating acts and not the causes of the act that resulted them whatsoever. The incident which led to this convention was the assassination that killed the Yugoslav king and French foreign minister carried out by a so called Yugoslav terrorist. This so called terrorist was also deemed to be freedom fighter by the fellow people of his country . The underlying cause which initiated the assassination was not dealt at any stage of the formulation of the convention. The convention was mainly concerned in the suppression of the act that had occasioned it by protecting heads of state and personalities.

The convention never entered into force. It received the ratification of only one state, India. It has also been suggested that a number of states were reluctant to ratify the convention because of the broad definition of terrorism.<sup>12</sup> The unfortunate approach of World War II before sufficient states had ratified the conventions inhibited the coming into force of the two conventions. Therefore, the conventions are not amongst international instruments to which the United Nations had assumed responsibility. Even though it will always be remembered as a significant initiative made by the League of Nations, the convention had long been dead.

### **3.3. International Instruments against Acts of International**

#### **Terrorism**

The United Nations progress towards effective international cooperation to prevent and punish acts of international terrorism has been halting because of fundamental disagreement within the world community over the issue. As is indicated there is no universally acceptable definition of terrorism and it seems unlikely that state will ever agree upon a single multilateral convention which treats all acts of terrorism in a comprehensive manner. There are however some pragmatic solutions to acts of terrorism which continue to occur.

There are twelve major multilateral conventions and protocols that are meant to codify and regulate international legal principles for prevention and punishment of acts widely considered as being acts of international terrorism. In addition to these treaties other instruments may be relevant to particular circumstances such as bilateral extradition treaties, and the 1963 Vienna Convention on Consular Relations.<sup>13</sup> There are also a number of resolutions on international terrorism by the Security Council and the General Assembly of the United Nations. The law of war is also relevant in the case of armed conflict when some acts of terrorism are carried out in the course of that. A number of conventions have been adopted at the regional level to combat acts of terrorism.<sup>14</sup>

The United Nations and its specialized agencies as the International Civil Aviation Organization(ICAO) and International Maritime Organization(IMO) have made it possible to adopt some of the multilateral conventions and protocols in which each deals with different segment of international terrorism.<sup>15</sup> The principal objective of these conventions is that acts of terrorism should be suppressed and punished without extending notice to the motive and cause of the perpetrator and behind the acts committed. Therefore no exceptions for national liberation fighters are incorporated in these multilateral treaties.<sup>16</sup>

The twelve anti-terrorism instruments do not define terrorism, rather, they define certain offences that are deemed to be acts of terrorism. The 1963 Convention of Offences and

Certain Other Acts Committed on Board Aircraft simply requires state parties to establish jurisdiction over offences defined according to its domestic law that are committed on board aircraft registered in those contracting states.<sup>17</sup> The offence to which the Convention was aimed at was an act of hijacking , the unlawful aircraft seizures. The 1991 Convention on the Making of Plastic Explosives for the Purpose of Detection is regulatory in nature and contains no definition for an offence and contains no strict penal provision.<sup>18</sup> This convention aims at the prohibition and prevention of the movement of unmarked plastic explosives by state parties.

The remaining anti-terrorism instruments, eight conventions and two related protocols, oblige states to penalize the offences proscribed in the instruments: The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and its 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, the 1973 Internationally Protected Persons Convention , the 1988 Safety of Maritime Navigation Convention and its 1988 Fixed Platforms Protocol, the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention. <sup>19</sup> The format used in each of these instruments comprise four elements.

1. The definition of an offence of a particular type of terrorist activity;
2. The requirement that parties to the instrument penalize those offences;
3. The identification of certain bases upon which the parties agreed to exercise their criminal jurisdiction to control the defined offences; and
4. The creation of the further jurisdictional obligation that state party in whose territory a suspect is found must establish and exercise competence over the offence and refer it to protection of extradition is not granted pursuant to the particular convention or protocol.<sup>20</sup>

Hence each instrument defines a certain terrorist act as an offence in that convention along with the obligation to make the commission of such offences punishable under domestic laws of the state party. Jurisdiction is established over such offences based on some principle as provided in the respective instruments such as state of registration of



aircraft or vessels, territoriality, nationality, etc. Furthermore, states are obliged to adhere to the principle of “no safe haven for terrorists” in that the convention obligates a state party that hosts suspects to either prosecute the offenders by the state’s national courts or extradite them to another country that has an interest to prosecute, i.e., the obligation of *aut dedere aut judicare* . Hence, those who commit such offences are either handed over for trial in the courts of the state bringing a claim or the necessary steps are taken to have the suspects brought to trial in a state’s domestic courts if extradition is not made. Therefore the offences provided in the Conventions are deemed to be extraditable offences in any treaty that may exist between two state parties or if such treaty is in-existent, state parties are to take these conventions as a legal basis to render such offences as extraditable .

These anti-terrorism instruments are developed by the United Nations and its specialized agencies to which states are called upon to be parties according to the Security Council Resolution 1373(2001) in order to combat acts of international terrorism that are against the purposes and principles of the United Nations.

## CONCLUSIONS AND RECOMMENDATIONS

While examining the proclamation under discussion, which has been the subject of critical remarks right from its inception in 2006 , there are a number of areas that could be cause for genuine and legitimate concern when one considers their potential implications for human rights because the way they are drafted clearly runs against constitutional provisions and in the unfortunate event of abuse because of the broad nature of the wordings of the legislation . One can say that the way they are formulated leaves no guarantees for protection. The inconsistency with constitutional provisions and international obligations with the introduction of new rules of arrest , search and seizure and evidentiary rules against the accepted standards of fair trial and the imprecise and broad nature of some of the provisions means that they run counter to the constitutionally guaranteed fundamental rights.

For example, the proclamation makes a modification of trial procedures and introduces new evidentiary rules. Thus, hearsay, or indirect evidence could be admitted in court without any limitation. Official intelligence reports can also be admitted even if they don't disclose the source or the method by means of which they were gathered. By making intelligence reports admissible in court even if the sources and methods are not disclosed , the law effectively allows evidence obtained under torture. They appear to go against Ethiopia's obligation under international law and also against constitutional provisions that prohibit torture and provide for fair trial.

The penalties imposed for the offences provided under the proclamation are disproportionately excessive and highly punitive and carry a serious potential for innocents or those who commit ordinary offences who would yet get themselves trapped under what could be a severe law with severe penalties which again goes against the constitutional guarantees and international obligations.

Powers of arrest, search and seizure are, as the provisions of the legislation stand, so loose that the police have virtually an unlimited power to exercise them leading again to potential abuses of privacy, liberty, right to property, etc..

The provisions of the legislation further carry a serious threat to freedom of speech with many of the areas otherwise within the legitimate scope of freedom of speech identified as only criminal and sanctioned with penalties including in most cases rigorous imprisonments. This would particularly prove a potential blow to what is only weak media in the country.

The potential implications of the proclamation for human rights of universal acceptability is clear. Thus, while recognizing the legitimacy of putting in place a legislation, pending the argument to use existing laws for the purpose, it should not override the values which we declare and commit ourselves to work for . Therefore the writer suggests that:

1. The legislation be reviewed in its entirety so that it complies with the constitutional provisions guaranteeing human rights and meets the obligations assumed by Ethiopia by being signatory to the major human rights instruments;
2. Transparency and accountability be an integral part of the law.
3. cases that limit human rights should be the exception rather than being the rule and the circumstances justifying these situations should be provided clearly; limit excessive powers given to enforcement institutions as they are traditionally the ones that are associated with the violation human rights;
4. Severity of punishment which seems to inform the whole legislation as the underlying measure of deterrence and penalty is now archaic and with less support across jurisdictions. Further more, what could apparently pass for an ordinary offence entailing less severe penalties, is the subject of excessive punishments. The penalties should be proportionate to the offences provided. An immediate amendment should be made .

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