COMBATING TERRORISM: CHALLENGES AND RESPONSES

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Abstract. To control terrorism, international community has been faced with legal problems. These problems relate to lack of universally accepted definition of terrorism, state jurisdiction, law on extradition, prosecution and punishment of terrorist offenders and use of force against state-sponsored terrorism. Peaceful measures involve ratification of international treaties to deal with various forms of terrorism. These treaties provide different provisions for arrest, prosecution, punishment and extradition of offenders. Even the enforcement system established by counter-terrorism conventions has not been successful in controlling terrorism. The use of force as a coercive means to control terrorism is not always preceded by peaceful ones. These responses do not always fulfill the preconditions laid down by international law for the use of force. To assess responses to terrorism, the doctrine of self-defense is employed as a measure of legitimacy for the use of force which established on the requirement of an armed attack under Article 51 of the UN Charter. International efforts in combating terrorism have not been much effective. In spite of the measures taken by international community in different levels, the problem is still with us and has become a major problem. This indicates the disability of international regulations and deficiency of international order.

Keywords: Counter-Terrorism Conventions, Self-Defense, Terrorism, Use of Force

1 Introduction

Terrorism is a major problem in the world today. This is not a modern phenomenon and it has afflicted human societies in different periods of history. The intensification of terrorist activities in the recent decades has made international community to take steps to find a solution for the elimination of terrorism. At the international level, international organizations have taken different legal measures to suppress this problem. They have provided a wide variety of conventions to articulate a framework for cooperative responses. Along with these measures the international community has taken coercive measures in combating terrorism. The use of force is prohibited except to be used under permission of the UN Security Council or as self-defense under certain conditions. The international Community has not been successful on both counts. This article tries to explore the challenges in combating terrorism and to offer suggestions to tackle the problem of terrorism more effectively.

2 Definition of Terrorism

There is currently no consensus regarding definition of terrorism. (Higgins, 1997: 14) Any efficient measure to prevent terrorism requires a consensus on the concept of terrorism. Attempts to reach a universally accepted definition of international terrorism has been frustrated both by changes in terrorist methodology and the lack of any precise definition of the term terrorism. However, definition is central to any international cooperation in developing the necessary machinery to suppress terrorism. It shapes states` understanding of the problem, delimits their responses to it and helps to distinguish lawful from unlawful responses. (Zeidan, 2004:491)

The nonexistence of universally accepted definition of terrorism has led to this point that a person who is terrorist to one country may be a freedom fighter to another. In 1985, for the first time, the United Nations adopted a total condemnation of terrorism in all its forms. The Resolution 40/61 of 9 December 1985 “unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whoever committed, including those which jeopardize friendly relations among states and their security.”

The UN Secretary General in his report on international terrorism, emphasized on the importance of articulation of the definitional components including: terror outcome (production of intense fear or anxiety); instrumental or immediate victims; primary targets (population or broad groups); violence and political purpose (Note 1).

Although there exists no universally accepted definition of terrorism but the anti-terrorism conventions at the regional or universal levels which are dealing with a specific methods of terrorist acts are providing definition on different aspects of terrorism. The definition of terrorism is conceivable from the overlap of the anti-terrorism treaties reflected in each of the conventions. (Bassiouni, 2001:15)

3 Controlling International Terrorism through Peaceful Means

International terrorism may be controlled through peaceful or coercive measures. In using both methods, international community has confronted different problems. The problem of establishing jurisdiction over terrorist activities is one of the problems in combating international terrorism. At present there exists the International Criminal Court, yet it has no jurisdiction on terrorism. The exclusion of terrorism from the Court`s jurisdiction largely resulted from inability to determine the elements of the crime. Therefore, the obligation for enforcement of international law rests upon each state. (Goldstone & Simpson, 2003: 13-14)There is no obligation upon states to extradite the offenders or to try them. The obligation of extradition arises out of an extradition treaty. Political offenders are exempted from extradition and territories of some states have become a safe haven for terrorist fugitives.

The main consequence of the legal response of the international community has been the conclusion of conventions which seek to regulate or extend criminal jurisdiction of the contracting states over different forms of terrorism. These conventions provide a legitimate basis for the international community.

The first international effort to deal with the problem occurred at the League of Nations primarily as a response to the assassination of the King of Yugoslavia which resulted in adoption of two conventions: Convention for the prevention and Punishment of Terrorism and Convention for the Establishment of an International Criminal Court in November 16, 1937 (Note 2).

After the formation of the United Nations some comprehensive attempts have been made to deal with the problem of terrorism. The result of these efforts was the conclusion of 16 anti-terrorism conventions which deal with crimes associated with terrorism, such as aircraft hijacking, crimes against internationally protected persons and hostage-taking have been adopted through the UN General Assembly, ICAO, IMO and IAEA. (Note 3)

In addition to the conventions, the UN General Assembly has passed numerous resolutions which call for cooperation against international terrorism. Though, the UN general Assembly resolutions are not binding instruments, but they have a political value of supporting the specific conventions and serve as a political reinforcement to counter terrorism conventions.

The counter-terrorism conventions which are similar in structure, define certain acts of terrorism, recognize them as international crimes and call for cooperation with other states in the prevention and suppression of stipulated crimes. They also try to establish jurisdiction upon terrorist acts. They obligate state parties in which the offenders are found either to extradite them to another state or to submit the case to its authorities for prosecution. For the purpose of extradition the offences enumerated in the conventions shall be deemed as extraditable offences and when necessary the convention shall be used as a surrogate extradition treaty.

The proliferation of legal instruments has been unable to prevent persistent acts of terrorism. This problem still prevailed in spite of all the efforts that have been made to suppress it.

1. State Jurisdiction

In the absence of an international criminal court with a jurisdiction over terrorism, it is important to determine whether states have jurisdiction to enforce domestic provisions of substantive and procedural criminal law which may be useful in dealing with crime of international terrorism.

When a state has criminal jurisdiction over an offender who is in the territory of another state, the only legal means by which a fugitive offender may be brought before the criminal court of that state is extradition. In the meantime, extradition is generally subject to an exception in the case of political offences. The extent of the exception is quite debatable. In regard to persons accused of committing offences which could be classified as acts of international terrorism, they are sometimes extradited and on other times released because it is considered that the offender has had a political motivation or it is to be feared that the accused being prosecuted for political offences. To deal with this problem and to be able to bring terrorist offenders to justice in the case of committing such crimes with political motives the anti-terrorism conventions explicitly stipulates that such crimes should be deemed as non-political for the purpose of extradition.

All of anti-terrorism conventions include provisions designed to promote efforts for prosecution and punishment of terrorist offenders. These conventions try to establish jurisdiction upon terrorist acts with an international dimension. All counter-terrorism conventions rely on the indirect enforcement system. This system is required to enforce provisions of conventions under the national law of states and to co-operate in prosecution and punishment of offenders by signatory states.

The indirect enforcement system is based on the principle of *aut dedere aut judicare*. This principle means that "contracting states on whose territory those reasonably suspected of terrorist acts happen to be must either try them or hand them over to whichever other contracting state request their extradition in accordance with treaties" (Cassesse, 1989: 593). Under this principle "international crimes established by conventional or customary international law must be enforced by the national criminal laws of that state" (Bassiouni, 1983: 29)

In sum, the counter-terrorism conventions have adopted four measures to ensure that terrorist offenders do not escape trial. First, all the conventions have been based on the principle of *aut dedere aut judicare.* Secondly, when it is required, the conventions will be used as a surrogate extradition treaty. Thirdly, the offences stipulated in the conventions shall be deemed as an extraditable offence. Finally, all state parties are obliged to establish jurisdiction over offenders, even if the only basis for prosecution is the offender's presence within the state party`s territory.

2. Prosecution and Punishment: State Responsibility

Extradition is a necessary but not a sufficient condition for elimination of terrorism. The principle of *aut dedere aut judicare* must apply appropriately to terrorists. When a state refuses to extradite a fugitive offender for any reason, the offender must be prosecuted by criminal court of the state. Under customary international law, states are obliged to prosecute and punish criminals within their territories.

The implementation of international obligations through effective enforcement of international law is the responsibility of states which have the duty to exercise jurisdiction for prosecution and punishment. Legal action on behalf of the international community after the commission of a serious breach of international law is only of the means to control terrorism. Punishment has to remain an element of discouragement to terrorists and should be able to help in eliminating terrorism.

Responsibility of states in prosecution and punishment of criminal offenders under customary international law has been codified in numerous multilateral conventions. The United Nations and other international organizations have indicated the issue of state responsibility for acts of terrorism in various anti-terrorist conventions. These conventions while requiring the state to take the offender into custody to try or extradite, for ensuring successful prosecution, they impose on the contracting states a duty to "afford one another with the greatest measures of assistance in connection with the criminal proceedings". (Note 4)

The conventions relating to terrorist acts against safety of civil aviation, hostage taking, crimes against internationally protected persons, etc. impose on state parties the duty to prosecute or extradite the criminal offenders and require states to take the offenders into custody to enable criminal or extradition proceeding. The New York Convention imposes affirmative obligation upon states parties requiring them to take all practicable measures to prevent terrorist acts against acts of state, officials and diplomats.

Even the enforcement system established by counter-terrorism conventions has not been successful in controlling terrorism. This system has been collapsed by those states which are not willing to prosecute and punish the terrorist offenders.

4 Coercive Measures in Combating International Terrorism

While talking about terrorism and methods to be used in combating terrorism, one of the solutions immediately comes to mind is the use of force in response to this problem. But whether the use of force by states in their relations with other states and as a means of solving international disputes is justified? If use of force in combating terrorism is legal under international law, are there any limitations in connection with using force? As terrorist acts have increased, the use of force by victimized nations as a necessary response to terrorism has become inevitable. In taking military action, a nation confronting a terrorist threat does not formally engaged in warfare but use force to enforce international legal norms and to maintain peace and security. In regard to this subject, various forcible responses to terrorism according to the UN Charter and the rules of customary international law must be evaluated.

1. Prohibition on the Use of Force Under International Law

Classic International Law recognized the right of a state to resort to war (jus ad bellum) for any reason. The rules on the use of force have gradually developed during the twentieth century. This development begins from a certain limitations of the right of a state "to resort to war" in the Covenant of the League of Nations of April 28, 1919, to the universal prohibition of aggressive war "as an instrument of national policy" and "for the solution of international controversies" in the General Treaty for the Renunciation of War (Kellogg-Brian Pact) signed on August 27, 1928. (Note 5)

In 1945, the UN Charter prohibited not only aggressive war, but also any threat or use of force. From this time, the principle of refraining from the threat or use of force has been confirmed and developed in other international instruments, such as the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the United Nations Charter Refraining from the Threat or Use of Force in International Relations of (Note 6), the 1974 Definition of Aggression (Note 7), the Helsinki Final Act of 1975 (Note 8), and the 1987 Declaration on Enhancing the Effectiveness of the Principle of Refraining from the Use of Force (Note 9)

The pacific settlement of disputes is a firm principle in the international legal order that is declared in Articles 2(3) and 33 of the UN Charter. The UN Charter requires the settlement of disputes by peaceful means. According to Article 2(3), "All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice, are not endangered. Article 33 requires nations involved in international disputes to first seek a solution by peaceful means. The principle of the prohibition of the threat or use of

force is stipulated in Article 2(4) of the UN Charter. Article 2(4) is a primary restriction on the use of force. It designed to ensure that international peace and security would be maintained and war would not be used as a means for conducting foreign policy (McCredie, 1986: 455-456). This Article provides that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes and principles of the United Nations."

International instruments such as the 1970 Declaration and the 1974 Definition of Aggression do not give an explicit answer concerning interpretation of Article 2(4). The 1970 Declaration invites states to settle their disputes in a peaceful manner. In addition, it asks them to avoid every measure involving the use of force. In this Declaration, terrorist acts directed against other states are considered as "intervention".

The decision of International Court of Justice in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Note 10) has an important role in developing the non-use of force principle. In this Case the International Court of Justice has referred to activities of the United States in Nicaragua as illegal intervention. The Court decided that that the U.S. by training, arming, equipping, financing and supplying the contra-force or otherwise encouraging, supporting and aiding military and para-military activities in and against Nicaragua, has acted against Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another state. The Court ruled that those acts of intervention which involve the use of force, against the Republic of Nicaragua are in breach of its obligations under customary international law not to use force against another state. (ibid)

In the Corfu Channel Case, (Note 11) two British warships were severely damaged during passage of the strait of Corfu, a channel located in the territorial waters of Albania. The incident also claimed the lives of seamen. The United Kingdom stated that its vessels had been exercising the right of innocent passage and was therefore entitled to compensation for damages sustained. Following the explosions of October 22nd, 1946, the U.K. without consent of the Albanian Government, did an operation to sweep mines from the territorial waters of Albania. The United Kingdom Government stated that the operation was one of the extreme urgency and that it considered itself entitled to carry it out without anybody`s consent (ibid, at 32-34). In reply, International Court of Justice rejected the UK`s argument and held that it "can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law" (ibid at 35).

2. Self-Defense as an Exception to the General Prohibition on the Use of Force

Article 2(4) that prohibits the use of force in international relations must be interpreted in the light of other articles of the UN Charter, such as Article 1 which provides that the first purpose of the United Nations is "the maintenance of international peace and security" by taking "effective collective measures to prevent or remove threats to the peace and to suppress acts of aggression or other breaches of the peace." With regard to Article 1, it can be deducted that although using force is not allowed, however, in some cases resort to force is permitted. The expression "or in any manner inconsistent with the purpose of the United Nations" seems to imply the right of nations to use force in limited circumstances as long as they conform to accepted purposes of the Charter.(McCredie, ibid: 227-228). Despite the requirements of all nations to attempt peaceful settlement of disputes, neither Article 2(3) nor Article 33 impairs the right of self-defense under Article 51. (ibid: 225).

As to other articles of the Charter the persuade nations to solve peacefully their disputes, context of Article 51 is an exception to the general prohibition of the use of force. Professor Brownlie has categorized the exception to the restrictions on the use of force as individual self-defense, collective self-defense and actions taken by the Security Council under Chapter VII (Brownlie, 1991: 43)

Substance of the Right of Self-Defense

Self-Defense has traditionally been regarded as a just cause of the use of force. The right of a state to defend itself is commonly believed to be an inherent attribute of sovereignty. (Paasche, 1987: 388) Grotius based this right on natural law when he said

"Self-defense derives its origin from the principle of self-defense which nature has given to every living creature…" (Bowett, 2009: 4).

The right of self-defense has gradually developed into an accepted doctrine of customary international law. To assess responses to terrorism, the doctrine of self-defense is employed as an exhortation measure of legitimacy of the use of force. (Paasche, ibid: 389).

Bowett believes that "the right of self-defense operates to protect essential rights from irreparable harm, in circumstances in which alternative means of protection are unavoidable; its function is to preserve or restore the legal *status quo*. (Bowett, ibid: 11). The right of self-defense is associated with traditional principle of just war and it legitimates the use of force to drive back aggression and restore order. (ibid). The UN Charter provides that force may only be exerted in cases of self-defense in response to armed aggression. The use of force is considered just if it is applied in a manner that is in accordance with internationally recognized standards (Nardin, 1984: 15). The just war tradition tends to be expressed in terms of outlawing aggression and defining a limited right of self-defense (Note 12).

Discussion of the customary right of self-defense must start with the classic formulation offered by US Secretary of State Daniel Webster to Great Britain's Lord Ashburton during the Caroline dispute. In 1837, a rebellion in colonial Canada was supported by American volunteers operating in the United States. The Caroline was a steamship supplying men and provisions to Canadian rebels (Bernhardt, 2014: 81). Because the rebels attacked British vessel, and British military force stormed the vessel, and two men were killed, the justification given for the raid was that of self-defense. In a diplomatic note to Britain in 1842, Webster referred to doctrine of necessity and challenged Britain`s claim that its 1837 attack on the ship Caroline, on the American side of the Niagara River was legally justified because the vessel carried armed men planning to support insurrection in Canada. (Note 13) Webster denied the necessity of self-defense and wrote that the British must prove that the need for self-defense was "instant, overwhelming, leaving no choice of means and no moment for deliberation" (Jennings, ibid, Brownlie ibid: 43). Webster indicated that "the act justified by the necessity must be limited by that necessity and kept clearly within it." In addition, the right of self-defense must be directed to a specific violation of the law (Kelsen, 1948: 784). Proportionality must be accompanied by the principle of necessity. Consequently, if peaceful means are exhausted, use of force in self-defense must be proportional to the initial use of force. Caroline Case had a significant role in developing the rules of use of force in self-defense.

The writings of publicists and the practice of states based on Caroline Case established four prerequisite for legitimate use of force in self-defense. These preconditions are as follows:

1. An infringement or threatened infringement of the territorial integrity or political independence of the defending state;
2. The failure or inability of the other state to prevent the infringement;
3. The absence of alternative means to secure protection; and
4. The strict limitation of defending state`s use of force to prevent danger (Bowett, ibid, 185-186).

Self-Defense and the UN Charter

The prohibition of using force expressed in Article 2(4) must always be considered in connection with the right of self-defense stipulated in Article 51 of the Charter. Article 51 of the Charter provides that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

In regard to terrorism, the debate over these provisions focused on whether terrorism constitutes an armed attack. The important question is whether Article 2(4) provides restrictions over provisions of Article 51 and to some extent the Charter is a usable guide for nations tend to respond terrorism by use of force. There are different interpretations on the scope of Article 51 and scholars have difference of opinion. Under Article 51, use of force is forbidden except in carrying out the inherent right of individual or collective self-defense if an armed attack occurs. Therefore, for self-defense by in victim states, occurrence of armed attack is essential.

Armed attack means a serious attack on the territory of a state. To evaluate as an armed attack, international law requires that terrorist acts must form a consistent pattern of violent terrorist action rather than just being isolated or scattered attacks. International interests and importance of maintaining international peace and security necessitate that states in their relations use the force as a last resort and do not use the force against every action. Thus, sporadic and minor attacks do not warrant such a serious response as the use of force in self-defense. (Cassese, ibid: 596)

Provisions of the Charter do not provide a clear guidance in connection with the use of force. This uncertainty has given rise to two different schools of thoughts on the scope of this right. The restrictive view asserts that "all use of force is illegal except in the exercise of the right of self-defense if an armed attack occurs. (Brownlie, ibid: 265) Brownlie contends that a restrictive interpretation of the provisions of the Charter regarding use of force would be more justifiable. (Ibid: 183)

In the Nicaragua Case, the International court of Justice did not accept the argument that the U.S. military and paramilitary activities against Nicaragua were the exercise of an inherent right of individual and collective self-defense. It confirmed that the right of self-defense existed only "in the case of an armed attack that has already occurred" (Note 10 at 70-110). It distinguished between "the most grave forms of the use of force" constituting an "armed attack" within the meaning of Article 51 of the UN Charter, and a breach of the principle of non-use of force by "lesser gravity" than an armed attack; mere frontier incidents and certain trans-border incursions do not constitute armed attack (ibid, at 87, 93, 103, 127) The court emphasized that "while an armed attack would give rise to an entitlement to collective self-defense, the use of force of a lesser degree could not….produce any entitlement to take collective countermeasures involving the use of force" (ibid, at 106).It thus rejected the broad interpretation of self-defense as well as various justifications for the use of force advanced by some writers and through practice.

The extensive interpretation of the concept of "armed attack" involves an extensive interpretation of the right of self-defense. A broad interpretation of the right to self-defense going beyond the framework of the UN Charter, with reference to the inherent or natural right of self-defense according to the customary law of the nineteenth century, must be considered incorrect. This school of thought states that the right of self-defense was left basically unchanged by the Charter (Bowett, ibid: 92).

The 2001 U.S Raid on Afghanistan

On September 11, 2001 terrorists conducted four attacks against targets in the United States that resulted in over 3000 civilian deaths and billions of dollars property damage. Investigations into this horrible event did show that Al-Qaeda quartered in the Taliban controlled Afghanistan was behind the attacks.

The US position as to this event was that the hijacking of airplanes by Al Qaeda operatives and crashing them into the Twin Towers and Pentagon constituted an armed attack by Al Qaeda on the United States and that this armed attack was on a such scale as to constitute an international armed conflict.

One day after the attacks, in 12th September 2001, the UN Security Council passed Resolution 1368 in which the "horrifying terrorist attacks' were condemned as a threat against international peace and security. It is interesting that the Council considered that a terrorist attack, not being an attack by a state, could constitute a threat to international peace and security. The Resolution is ambiguous and leaves some questions as to how the Council legally characterized the attacks of September 11. Moreover, the Council confirmed the inherent right to individual and collective and the need to combat by any means the threats to international peace and security caused by the terrorist attacks. (Note 14) The Resolution 1373 dated 28 September 2001which adopted under Chapter 7 of the Charter reaffirmed the position of Security Council in the previous resolution. The Resolution reaffirmed the inherent right of individual and collective self-defense stipulated in Article 51 of the Charter. Since the general view has always been that only armed attacks by a state trigger the right of self-defense does this mean that the Council was now recognizing that attacks by terrorist groups are also armed attacks applicable to armed attacks by non-state actors?

The response of UN General Assembly further clouds the legal characterization of the attacks. It condemned them as "heinous acts of terrorism," but did not describe them as attacks or invoke the right of self-defense in response (Note 15).

Article 51 of the Charter provides:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

The US Government justified its attack to Afghanistan as an act of self-defense by invoking to this resolution. The Resolution 1373 while confirming combating terrorism by using all available methods according to the Charter and raising its concern on expansion of extremism in all around the world is calling all states to fight against terrorism and become a member of anti-terrorism conventions.

Under Resolution 1373 and also Resolution 1624(2005), the Counter -Terrorism Committee was established with the purpose of strengthening of mechanism in combatting terrorism in the September 11 post era (Rosand, 2003: 333).The Resolution adopted after October 2001 that is after US and UK strikes into Afghanistan confirm these attacks as an act of self-defense.

The United States responded to terrorism through individual and collective self-defense. The UN charter provides for the right to self-defense in Article 51 which permits a defensive response to an armed attack. The defensive response may occur only in the case of an armed attack. Further, the Member State acting in self-defense must immediately report its actions to the Security Council. Both the US and UK compiled with this requirement when they commenced the strikes into Afghanistan. The states may act in self-defense until the Security Council has taken the necessary steps to restore international peace and security. In this case, the Security Council took steps in response to the attacks, for example, by authorizing measures necessary to suppress terrorist financing and later mandating the international security assistance force deployment to Kabul. (Note 16). However, because such measures cannot completely restore peace and security, states acting in collective self-defense continue to retain the right to conduct military operations against those who committed the armed attacks of 9/11.

The first question is whether terrorist attacks may amount to an "armed attack" such that states have the right to reply in self-defense. It is instructive to recall the judgment of the International Court of Justice in the Nicaragua case. In this Case the court held that acts of violence must be of a particular "scale and effects" before amounting to an armed attack. The court distinguished acts by armed bands on a "significant scale" from border incidents and the provision of assistance to rebel groups. Acts not rising to this level might constitute a prohibited use of force under Article 2(4), but not be an armed attack justifying a forceful response.

According to International Law, at least as it stood on 10 September 2001, as a non-state, Al Qaeda could not be considered legally competent to declare war on a state, so the attacks of September 11 could not have initiated an international armed conflict (McDonald, 2002: 206-207) According to common Article 2 of the 1949 Geneva Conventions, the least that is required for an international armed conflict is two states. Article 2 provides:"…the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them…" 1977 Additional Protocol I of the Geneva Conventions "which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in situations referred to in Article 2 common to those Conventions."(Article 1(3))Moreover under the UN Charter, only states are legally entitled to resort to force against other states and even then, under very restricted conditions. Al Qaeda is therefore simply not competent to launch an armed attack on a state within the meaning of the UN Charter. We have not yet reached the point in international law where armed groups or terrorists enjoy equal states with states. Characterizing the Al Qaeda terrorists' attacks as an international armed conflict also gives at least the attacks on the Pentagon some legitimacy. As the headquarters of the US armed forces, it can certainly be considered as a military objective. If this was an armed conflict, then the Al Qaeda attack on the pentagon could be legal.

If there is an armed attack, the victim state may respond in self-defense. However, any act in self-defense must meet certain requirements set forth in the 19th century Caroline case and cited approvingly by the International Court of Justice in the Nicaragua Case (Note 10) and the Nuclear Weapons advisory opinion. (Note 17)Pursuant to Caroline standard, there must be a 'necessary of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation" and the act must not be "unreasonable or excessive". (Note 18) Over time this standard has been construed as mandating necessity, proportionality and immediately.

5 Conclusion

Measures against terrorism have been affected by lack of any consensus upon the meaning of terrorism. It is clear that any efficacious measure in combating terrorism, without any precise definition of terrorism is doomed to failure. Meanwhile, in recent years, there is a growing commitment within the international community which unequivocally condemns, as criminal, all acts, methods and practices of terrorism whenever and by whomever committed. This position is a remarkable achievement towards the strengthening of cooperation in eliminating terrorism.

Despite absence of any consensus upon definition of terrorism, there is an agreement between states that terrorism as an inhuman act which endangers the lives and fundamental freedoms of innocents must be suppressed. In other words, while states agree on the need to combat international terrorism, they do not agree on its definition and scope.

To control terrorism, international community has been confronted with different legal problems. The problems which normally come on the way of combating international terrorism relate to state jurisdiction, law on extradition, prosecution and punishment of terrorist offenders. The anti-terrorism conventions have tried to solve this problem by using the principle of *aut dedere aut judicare* by which member states are obliged to prosecute or extradite terrorist offenders irrespective to their motives for committing such crimes. Thus any terrorist offender committing terrorist acts with political motives can be prosecuted or extradited to other countries. In this regard a competent, impartial and independent court will play a key role in combating terrorism.

The use of coercive responses to control terrorism is not always preceded by peaceful ones. These responses do not always fulfill the preconditions laid down by international law for the use of force. To assess responses to terrorism, the doctrine of self-defense is employed as a measure of legitimacy for the use of force. States` use of force in response to international terrorism is permissible under the doctrine of self-defense which is established on the narrowest parameter: the requirement of an armed attack under Article 51 of the UN Charter. Once terrorist activities reach systematic proportions to constitute an armed attack, a state may response to these acts with force based on the actual necessity and proportionality as established by Caroline Case. The victim states often breach the law itself under the pretense of self-defense.

The increase of terrorism has produced legal responses from the international community. The main response of the international community has been the conclusion of certain conventions which provide a legitimate basis to the international community to contain terrorism. The counter-terrorism conventions which have the similar structure, seek to regulate or extend criminal jurisdiction of the contracting states over different forms of terrorism. A key mandate of these conventions upon state parties us to extradite offenders or to submit them to its domestic court for prosecution. All of the anti-terrorist conventions are founded on the principle of *aut dedere aut judicare*. The conventions while recognize certain acts as international crimes, impose a duty upon state parties to prosecute offenders whenever extradition has not been granted and call for cooperation with other states in the prevention and suppression of such crimes. The offences enumerated in the conventions shall be deemed as extraditable offences and when it is required, the conventions shall be used as a surrogate extradition treaty. This system has a practical shortcoming. There is not a sufficient judicial assistance and other form of cooperation among states. When states refuse to execute their responsibility regarding extradition or prosecution of offenders then the legal system to deal with terrorism fails. In this regard, deciding on extradition of offenders who have committed offences with political motives may cause serious implications, even though under counter-terrorism conventions for the purpose of extradition, terrorist acts shall not be deemed as political offences. The present legal system often allows terrorists to escape from any prosecution or extradition. It is not always possible for a state to establish jurisdiction over an offender, and even when it is established, the terrorist may be able to escape from jurisdiction.

Although conclusion of the counter-terrorism conventions is an important step towards suppressing international terrorism, the proliferation of these instruments have been unable to prevent persistent acts of terrorism. There are four major problems with these treaties: (1) the usual problem that not enough states are parties to these conventions; (2) there is a lack of effective enforcement provisions, when the obligations under the conventions are frustrated by non-parties or are not fulfilled in good faith, there is no mechanism to force offender states;(3) the obligations of states parties to search for and arrest suspects are treated in an insufficient way. These obligations are crucial because the "extradite or prosecute" rule can obviously be rendered meaningless if states do not honor their obligations under the conventions; and (4) the scope of counter terrorism conventions is limited to a few terrorist acts such as hijacking or hostage-taking. International terrorism has manifested in various forms and conventions do not include all types of terrorism and to date, nations have not reached an agreement upon a

comprehensive means for solving the problem, through a single unified document.

International efforts in combating terrorism have not been much effective. In spite of the measures taken by international community in different levels, the problem is still with us and has become a major problem. This indicates the disability of international regulations and deficiency of international order.

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Notes

Note 1.UN Doc. A/C.6/418, 1972, pp.6-7
Note 2. For detail see L.M.Bloomfield and G.F.FitzGerald, Crimes against Internationally protected Persons: Prevention and Punishment, An Analysis of the UN Convention, Praeger Publisher, 1975, p.2
Note 3. www.un.org/Doc/SC/Comments/1373
Note 4. See the Hostages Convention, Art. 11; the Hague Convention, Art. 11; and the Montreal Convention, Art. 13
Note 5. League of Nations, Treaty Series, vol. XCIV, p. 57
Note 6. UN GA Res 2625, 25 UN GAOR, Supp. (No. 28), at 121, UN Doc. A/8028(1971)
Note 7. UN GA Res. 3314(XXIX) of 14 December 1974
Note 8. 14 ILM 1292 (1975)
Note9. UN GA. Res. 22(XLII)
Note 10. Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S) 1986 ICJ Rep. pp. 70-110
Note 11. Corfu Channel Case (UK v. Albania) 1949 ICJ Rep, p.4
Note 12. UN Charter, Arts, 2(4) and 51
Note 13. For details of the Caroline incident see R. Y. Jennings, "The Caroline and McLeod Cases," 32 AJIL 82 (1938); Schachter, "The Right of States to Use Armed Force," 72 MichLR 1635(1985)
Note 14. Sec Res 1368, ILM, 2001: 1277
Note 15. UN GA Resolution 56/1, 18 September 2001
Note 16. S.C Res. 1373(Sept. 28, 2001); S.C.Res.1386 (Dec. 20, 2001**)**
Note 17. Legality of the Threat or Use of Nuclear Weapons" (Advisory Opinion), [1996] I.C.J. Rep. Para. 41
Note 18. Letter from Daniel Webster to Lord Ashburton (Aug. 6, 1842) 24 Brit. & Foreign State Papers 1129, 1138(1840-1)

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