

The challenging scope of protecting and promoting Human Rights in the context of Counter Terrorism: Sri Lankan Perspective

Major D P Aluthge

HOD, Department of Military Law, Faculty of Law,
General Sir John Kotelawala Defence University, Ratnmalana, Sri Lanka

<aluthgedilantha@yahoo.com>

Abstract— *Protecting and promoting Human Rights is universally accepted conception. Any one should not be allowed to derogate Human Rights. State parties are bound to protect and promote Human Rights under any circumstances. And the other hand states are bound to stabilize the security of all the citizens and states should act against violations and eminent threats of any kind of terrorist activities. So the state responsibility comes to a dilemma as to how protect Human Rights while countering terrorism. States are obliged to find solutions to protect citizens from catastrophe of terrorism even without violating the rights of terrorist suspects. This paper strives to recognize an effective measure to counter- terrorism not conflicting with Human Rights. Researcher has mostly animated on the general obligations of the state parties with regard to human rights and existing laws against terrorism both international and Sri Lankan perspective. Main objective of this paper is to search ways and means to protect human rights in the context of counter terrorism and it tries to emphasize the responsibility of the state parties in this regard. This paper further discuss the limitations, derogations and violations of Human Rights accomplished by state parties and their pros and cons. Researcher adopts the legal research methodology and it is based on a library research. The researcher adopts quantitative research method where it is appropriate to establish the research objectives. However, it is important to note that this research does not include quantitative values in relation to establishing the conclusions of the research.*

Key words: Counter - Terrorism, Human Rights, State Responsibility

I. INTRODUCTION

United Nations Resolution adopted on 8 September 2006 indicated several measures to ensure respect for human rights while fight against terrorism. Very correctly it emphasize the fact that “..... effective counter-terrorism measures and the promotion of human rights are not

conflicting goals, but complementary and mutually reinforcing”¹

This paper intends to discuss ways and means to protect and promote Human rights while countering terrorism. The measures adopted by most of the States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres have often been disregarded. The independence of the judiciary has been undermined while the use of exceptional extraordinary courts to try civilians has had an impact on the effectiveness of regular court systems.

As a developing country in the south Asian region Sri Lanka has been undergoing very rigorous experience in relation to the terrorism for several decades. Though Sri Lanka could defeat the LTTE which is consider as the most fearsome terrorist group by force, the stem of the LTTE diaspora is still alive. Hence a proper and convenient solution is needed to combat and counter the terrorist diaspora while protecting the Human Rights of all the citizens of the country. This paper intends to discuss the existing laws of Sri Lanka in relation to counter terrorism and their effects on the Human Right concepts.

Further it urge to pay fair attention towards general obligations of the state parties with regard to Human Rights, terrorism and laws against terrorism and possible and practical ways of protecting Human Rights in the context of counter terrorism.

Moreover this study aims to explore the issues relating to state responsibility to protect Human Rights against terrorist activities, Limitations and derogations of Human Rights while countering terrorism and practical instances of Human Right violations by actions of the state parties.

¹ United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288)

Since this research is completely based on library research it does not include quantitative values in relation to establishing the conclusions of the research.

II. GENERAL OBLIGATIONS OF THE STATE PARTIES WITH REGARD TO HUMAN RIGHTS

State parties are bound to protect and promote fundamental freedoms, entitlements and Human dignity of individuals and groups against actions and omissions that may occurred by themselves and their cohesive agents. Internationally it is expected from the states to protect and fulfilment of civil, cultural, economic, political and social rights as well as the right to development. Human Rights are universal, belonging inherently to all human beings and are interdependent and indivisible. All the state parties are equally bound to respect it.²

The general legal obligation of the state parties to protect and promote Human Rights has been specifically denoted by the Article 2 of the International Covenant on Civil and Political Rights. Apart from that the legal obligation of the state towards the individuals and groups to protect their Human Rights has stated many international conventions particularly the International Covenant on Economic Social and Cultural Rights, International Covenant on the Elimination of All forms of Racial Discrimination, the Convention on the Elimination of All forms of Discriminations against women and it's optional protocol, the Convention against Torture and other cruel, Inhuman or Degrading treatment or punishment and it's optional protocol, the Convention on the Rights of the Child and it's two optional protocols and the International Convention on the Protection of the rights of all Migrant Workers and Members of their Families. Further obligations have been aggregated to the states in the recent past by International Convention for the protection of all persons from enforced Disappearance and the Convention on the Rights of Persons with Disabilities and its Optional protocols. Other than that several immerging protocols and regional treaties have introduced new trends to obliged state parties towards Human Rights.

The obligations and limitations of the state parties have been specifically declared by the Human Rights Law by implementing certain encumbrances and restrictions on state parties. Accordingly emerging international standards have been promulgated to respect, protect and fulfil Human rights of individuals and groups without interfering their natural habits. Further it has extended

the meaning of protection of human Rights up to taking positive steps to ensure the enjoyment of rights against interfere of others. As well the state parties are bound to adopt appropriate measures including legislative, judicial administrative or educative measures in order to fulfil their legal obligations in terms of protecting Human Rights within their territory. This positive expansion of protection of rights is promulgated under the International Covenant on Civil and Political Rights by stating State obligation to eliminate torture or cruel, inhuman or degrading treatment or punishments within their power. Furthermore Human Rights Law is ameliorated by most of the states by implementing essential provisions to punish Human Rights violators.³

Simultaneously most of the international legal provisions have been accepted and adopted by legislature and customary laws of Sri Lanka which are appropriate to protect and promote Human Rights. Considerable amount of Human Rights have been recognized by the Fundamental Rights Chapter of the Sri Lankan Constitution. Generally the Fundamental Rights Chapter comprise with Freedom of thought, Freedom from torture, Right to equity, Freedom from arbitrary arrest, detention and punishment, and prohibition of retroactive penal legislation, Freedom of speech, assembly, association, occupation, movement etc. Apart from that Sri Lanka has ratified several international and regional Human Right conventions and treaties.

This holistic approach of protecting and promoting Human Rights is reflected as a duty in the contemporary Human Right Laws which implemented obligations on state "to respect protect and fulfil". This obligatory duty to protect is internationally interpreted as a duty to prevent violations by third parties. "The latter obligation places a duty of "due diligence" on the state to prevent violation by Non state parties including the private and cooperate sector within the ambit of protecting and promoting Human Rights. This latter dimension is particularly important in the context of economic transformation and the growth of the private and cooperate sector activities in development work."⁴ Sri Lankan Constitution further provides remedies to infringement of Human Rights which is stated in chapter III and IV of the Constitution by executive or administrative actions.⁵

However particularly in every aspect state parties are obliged to protect rights of its people against any kind of

² Article 55 of the Charter of the United Nations, Article 2 of Universal Declaration of Human Rights

³ Human Rights Committee General Comment No. 31 (2004), <http://www.ohchr.org>

⁴ J Symonides ed. Human Rights concepts and standards UNESCO 2000, The poverty of Rights and development note 2

⁵ Article 17 and 126 of the Constitution of Sri Lanka

threats and the most important thing is to act against external and subscribed violations.

III. TERRORISM AND LAWS AGAINST TERRORISM

The term "Terrorism" has not been comprehensively defined with universal agreement. Various legal systems and government agencies use different definitions. Draft of the Convention against terrorism of United Nations General Assembly has defined the terrorism much comprehensively as "Unlawfully and intentionally causing, attempting or threatening to cause

- (a) Death or serious bodily injury to any person or
- (b) Serious damage to public or private property including a place of public use, state or government facility, a public transportation system, an infrastructure facility or the environment
- (c) Damage to property, places, facilities or systems., resulting or likely to result in major economic loss, when the purpose of the conduct by its nature or context is to intimidate a population or to compel a government or an international organization to do or abstain from doing any act "

The draft article further defines as an offence pertaining as an accomplice, organizing or directing others or contributing to the commission of such offences by a group of persons acting with a common purpose.

The term "terrorism" has been on the international agenda since 1934 and strived to eliminate terrorism with auspicious of the United Nations by implementing convention for the prevention and punishment of terrorism.⁶ Although the Convention drafted for the prime purpose was eventually adopted in 1937, it never came into force.

At present, there are more than 15 counter-terrorism international conventions in force and most of them are developed under the auspices of the United Nations. Moreover recently the UN General Assembly adopted a "Global Counter-Terrorism Strategy" in order to counter terrorist activities.⁷

Even though the "terrorism" has not defined with common agreed elements, most of the countries have enacted anti- terrorism laws in order to thrive the legislations with limbs of prevention, detention, investigation, prosecution and punishment and various

other countering fields. Although the international community is yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and universal "sectoral" treaties relating to specific aspects have defined certain acts and core elements.⁸

In this regard while respecting all the international anti-terrorism laws Sri Lanka have implemented two statutes particularly against terrorist activities named Prevention of Terrorism Act, No. 48 of 1979⁹ and Public Security Ordinance, No. 25 Of 1947¹⁰

At the very out set Prevention of Terrorism Act has drafted to affirm the security of a selected group of the community which was specifically mentioned as "Specified Person" ¹¹ and to act against various other terrorist activities such as armed robbery, damage to state property and other acts involving actual or threatened coercion, intimidation and violence. As well one of the main intention of the Public Security Ordinance is to empower the executive to make emergency regulations to counter terrorist activities.

IV. PROTECTING HUMAN RIGHTS IN THE CONTEXT OF COUNTER TERRORISM

At the very out set terrorism is a destructive performance against Human Rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of United Nations and other international instruments, respect for Human Rights, the rule of law, rules governing armed conflict and the protection of civilians, tolerance among people and nations and the peaceful resolution of conflict. Simply because this harmful impact on human Rights and the smooth functioning of society, state parties have a duty and ipso facto right to take effective measures to counter terrorism and at the same time to protection of Human Rights of both general public and even terrorists. Since human rights are non derogable. State's duty to protect rights of the individuals from terrorist activities within their jurisdiction is complementary and mutually reinforcing of objectives which must be pursued together as part of protecting Human rights. Any measure which state parties taken to combat terrorism complies with their obligations under Human Rights Law.

⁸ In 1994 the General Assembly's Declaration on measures to Eliminate International Terrorism, set out in its resolution 49/60 stated that terrorism includes "Criminal Acts intended or calculated to provoke a state of terror in the general public, a group persons or particular persons for political purposes."

⁹ Amended twice by No. 10 of 1982 and No. 22 of 1988

¹⁰ Amended five times by No. 22 of 1949, No. 34 of 1953, No. 8 of 1959, No. 28 of 1988 and No. 6 of 1978

¹¹ Section 31 Of the Prevention of Terrorism Act No. 48 of 1979

⁶ Lyal S. Sunga, *The Emerging System of International Criminal Law: Developments in Codification and Implementation* (Brill Publishers, 1997) pp. 191-203.

⁷ <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy> (Last Referred 01.06.2016)

A. STATE RESPONSIBILITY

Most of international and regional laws have affirmed the fact that states have both right and duty to protect Human Rights of their people from terrorist attacks. More specifically this duty is recognized as part of states obligations to ensure respect for the right to life and right to security.

As most of the international Human Rights inscriptions particularly express the obligation on the part of the state to protect the right to life of every person within its territory¹² and no derogation from this right is permitted even in times of public emergency. The protection of the right to life includes an obligation on states to take all appropriate and necessary steps safeguard the lives of those within their jurisdiction. Though the Sri Lankan Constitution do not directly recognize right to life, it has embedded in periphrastic manner by the directive policies of the state.¹³

Further in special circumstances states have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of terrorists.¹⁴ As well the states are bound to protect individuals where the threat known or suspected to exist.¹⁵ The General Assembly and the Commission on Human Rights have emphasized that states must ensure that any measures taken to combat terrorism; comply with their obligations under international Human Rights Law, Refugee Law and International Humanitarian Law.¹⁶ United Nations Security General has emphasized that effective counter terrorism measures and the protection of Human Rights were not conflicting goals, but complementary and mutually reinforcing ones. International and regional treaty based bodies have likewise frequently observed that the lawfulness of counter terrorism measures depends on their conformity with international Human Rights Law.¹⁷

Though the Constitution of Sri Lanka has expressly ensured the protection of Fundamental Rights most of the rights have been restricted subject to interest of national security, public order and the protection of public health or morality or the purpose of securing due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a democratic society and in the interest of racial and religious harmony and in the interest of national economy.¹⁸

Further in case of Sri Lanka, as per the Section 2 of the Public Security Ordinance executive president is empowered to derogate the existing rights of the people by a proclamation in view of the existence or imminence of a state of public emergency in the interest of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community. It has been further fortified by Section 5 of the Public Security Ordinance by empowering him to make emergency regulations. Even though it is terrible to empowering the executive branch enabling to derogate rights of the people at the same time it is essential to having such powers to counter emergency situations. Most important thing is to enclosing a mechanism to control the executive branch by any other organ of the state or implementing self-discipline provisions to the relevant laws.

There are many allegations against the Sri Lankan counter terrorism laws in this regard. Powers given to the executive by the Prevention of Terrorism Act falls foul of the important procedural safeguard of declaration, notification, periodic parliamentary oversight that usually govern the grant of such extraordinary powers to the executive. Another procedural defect is though the Prevention of Terrorism Act was enacted in 1979 as a temporary measure it was amended by Act No. 10 of 1982; making the PTA a permanent measure, although incongruously the short title of the Act continues to contain the words "Temporary Provision". As well the Justice Mark Fernando observed in *Weerawansa Vs. Attorney General*¹⁹ "when the PTA bill was referred to this court the court did not have to decide whether or not any of these provisions constituted reasonable restrictions on Article 12(1), 13(1) and 13(2) permitted by Article 15(7) because the court was informed that it had been decided to pass the bill with two thirds majority²⁰ the PTA was enacted with two thirds majority and accordingly in terms of Article 84. PTA became a law

¹² Human Rights Committee, views on Communication N° 859/1999 Luis Asdrabal Jimenez Vaca Vs Colombia, 25 March 2002 (A/57/40 - Vol. II)

¹³ Article 27(2) of the Constitution of Sri Lanka

¹⁴ European Court of Human Rights, *Kilic Vs. Turkey*, N°224 92/93, judgment of 28 March 2000

¹⁵ European Court of Human Rights, *Delgado Paez Vs. Colombia*, 195/1985, judgment of 23 August 1990

¹⁶ This provision has set out by resolution 1456 (2003) and reaffirmed by Security Council Resolution 1624 (2005)

¹⁷ Annual Report of the Inter American Commission on Human Rights 1990 – 1991 Chapter V Sect. II

¹⁸ Article 15, Constitution of Sri Lanka 1978

¹⁹ (2000) 1 SLR 387

²⁰ (SC SD No. 7/79 , 17.7.79)

despite many inconsistencies with the constitutional provisions.”²¹

However it is clear the fact that both executive and the parliament of Sri Lanka have been unconditionally agreed to derogate rights of the people for the sake of counter terrorism. Rationale of this absolute agreement was protecting the community in both general and emergency situations.

B. LIMITATIONS AND DEROGATIONS

The promotion and protection of human rights while countering terrorism is an obligation of States and an integral part of the fight against terrorism. National counter-terrorism strategies should, above all, seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law. At the outset, it is important to highlight that the vast majority of counterterrorism measures are adopted on the basis of ordinary legislation. In a limited set of exceptional national circumstances, some restrictions on the enjoyment of certain human rights may be permissible.

Ensuring both the promotion and protection of human rights and effective counter-terrorism measures nonetheless raises serious practical challenges for States. One such example is the dilemma faced by States in protecting intelligence sources, which may require limiting the disclosure of evidence at hearings related to terrorism, while at the same time respecting the right to a fair trial and the right to a fair hearing for the individual. These challenges are not insurmountable. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These two types of restrictions are specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances, while at the same time—provided a number of conditions are fulfilled—complying with their obligations under international human rights law.²²

During the 30 years of harsh experience of terrorism Sri Lankan government adopted highly balanced approach towards Human Rights. Frequently the rights assured by

²¹ Weerawansa Vs. Attorney General (2000) 1 SLR 387 PP 394-395

²² Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 32, <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

the Constitution were not totally derogated. Only thing happened even during the emergency situations was very limited terrorist suspects were searched, detained and questioned in order to control terrorist activities. Main allegation held against anti- terrorism laws is, it amounted to violate the rights of non-terrorist suspects. Though the government had to extend emergency regulations for a long period during the armed conflict it was lapsed as earliest on 31 August 2011, but the Prevention of Terrorism Act remained in force due to the persistent threat of the resurgence of terrorism. This Factual dilemma of identification of suspects will not settle, until anti- terrorism laws exists.

As provided for by international Human Rights conventions, States may legitimately limit the exercise of certain rights, including the right to freedom of expression, the right to freedom of association and assembly, the right to freedom of movement and the right to respect for one’s private and family life. In order to fully respect their human rights obligations while imposing such limitations, States must respect a number of conditions.²³ The fundamental chapter of the Constitution of Sri Lanka ensured the protection of these rights. But all these rights are exposed to derogate during the emergency situations. In addition to respecting the principles of equality and non-discrimination, the limitations must be prescribed by law, in pursuance of one or more specific legitimate purposes and “necessary in a democratic society.”

Moreover, any criminal law proscription must also comply with the principle of non-retroactivity. Retroactive penal legislations have been prohibited by the Article 13 of the Constitution of Sri Lanka. Article 15 of the International Covenant on Civil and Political Rights requires, in this regard, that any provision defining a crime must not criminalize conduct that occurred prior to its entry into force as applicable law. Likewise, any penalties are to be limited to those applicable at the time that any offence was committed and, if the law has subsequently provided for the imposition of a lighter penalty, the offender must be given the benefit of the lighter penalty.²⁴

C. VIOLATIONS

²³ Rights Committee General Comment No. 31 (2004), para. 6 <http://www.ohchr.org>

²⁴ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism E/CN.4/2006/98, para. 49

Under international and regional Human Rights Law, the protection against arbitrary deprivation of life is non - derogable even in a state of emergency threatening the life of the nation. Both the International Covenant on Civil and Political Rights²⁵ and the American Convention on Human Rights²⁶ prohibit the arbitrary deprivation of life, whereas article 2 of the European Convention states that no one shall be deprived of life intentionally and that the use of force which is no more than absolutely necessary may be used in defence of any person from unlawful violence.

Any International legal provision in this regard do not provide proper solution to dealing with suicide bombers. It is suggested to develop legal framework to properly incorporate intelligence information and analysis into both the operational planning and post incident accountability phases of state responsibility.²⁷

Use of lethal force to control terrorist activities must always comply with the principle of necessity and must be used in a situation in which it is necessary for self-defence or for the defence of another's life. It must always comply with the principle of proportionality. Law enforcement officers must acknowledge formally in this regard.

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is also absolute under international law.²⁸ States have often adopted policies and methods to confront terrorism that, in effect, circumvent and undermine this absolute prohibition. For an instance, the use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of "secret evidence" put forward by prosecuting and other authorities in judicial proceedings, in violation of the principle of non-admissibility of evidence extracted by torture, contained inter alia in article 15 of the Convention against Torture.

As same as the deprivation of liberty should be based on grounds and procedures established by law, that detainees should be informed of the reasons for their detention and promptly notified of the charges against

them, and that they should be provided with access to legal counsel. In addition, prompt and effective oversight of detention by a judicial officer must be ensured to verify the legality of the detention and to protect other fundamental rights of the detainee. Even in a state of emergency, minimum access to legal counsel and prescribed reasonable limits on the length of preventive detention remain mandatory. Moreover, national authorities have an obligation to prevent human rights abuses and to actively investigate and prosecute any allegation of practices which may involve the transfer or detention of individuals in a manner inconsistent with their obligations under international law.

As per the Section 9 of the Prevention of Terrorism Act in Sri Lanka relevant Minister has been authorized to impose detention orders upon any terrorist suspect up to maximum eighteen months subject to stipulated condition.

As well as according to the international legal principles all persons are protected against the unlawful or arbitrary interference with their liberty. This protection is applicable in the context of criminal proceedings, as well as other areas in which the State might affect the liberty of persons.²⁹ In practice, as part of their efforts to counter terrorism, States have adopted measures which have an impact on the liberty of persons, such as: pre-trial procedures for terrorism offences, including provisions concerning bail and the remand of persons in custody awaiting trial; pre-trial detention (detention before laying a criminal charge against a person for the purpose of further investigating whether that person was involved in the commission, or assisted in the commission, of a terrorist offence); administrative detention (detention to prevent a person from committing, or assisting in the commission of, a terrorist offence); control orders (imposing conditions on a person, short of detention, to prevent that person from committing, or assisting in the commission of, a terrorist offence, including the detention of a person awaiting determination of immigration or refugee status); and compulsory hearings (detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities). Sri Lanka also have adopted several provisions to protect Human Rights while having counter terrorism measures. Since the practical problems of the indictment process existing laws have to be amended accordingly.

²⁵ International Covenant on Civil and Political Rights - Art.6

²⁶ International Covenant on Civil and Political Rights Art. - 4

²⁷ Special Rapporteur - E/CN.4/2006/53, paras. 45 and 51.

²⁸ Articles 7 and 4 (2) of the International Covenant on Civil and Political Rights, Articles 3 and 15 (2) of the European Convention on Human Rights, Articles 5 and 27 (2) of the American Convention on Human Rights, Article 5 of the African Charter on Human and Peoples' Rights, and common Article 3 of the four Geneva Conventions

²⁹ Human Rights Committee General Comment No. 8 (1982), <http://www.ohchr.org> on the right to liberty and security of persons (art. 9), paras. 1 & 4

The human rights protections for all persons charged with criminal offences, including terrorism-related crimes, include the right to be presumed innocent, the right to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, and the right to have a conviction and sentence reviewed by a higher tribunal satisfying the same standards. International humanitarian law provides for substantially similar protections for the trial of persons in the context of armed conflicts. But mostly the states strive to inspect and try offences coming under terrorist scope under special category. In Sri Lanka identical offences stated in the penal code and various other statutes, have particularly mentioned again under prevention of terrorist Act and Public Security Ordinance for the purpose of differentiate.

The right to freedom of association and right to freedom of expression are platform for the exercise and defence of other rights, such as political participation rights and cultural rights. Human rights defenders often use this right as a legal basis for their action. However, it is often limited by States in their response to a real or perceived terrorist threat. While the right to freedom of association may be subject to derogations and limitations under most human rights treaties, clear safeguards must exist to ensure that they are not used to curb the rights of political opposition parties, trade unions or human rights defenders.³⁰

V. CONCLUTIONS AND DISCUSSION

As a general matter, given the impact of terrorism on Human Rights, security and the functioning of various aspects of international and domestic societies, there is no doubt that the countering of terrorism is an important objective which can, in principle, permit the limitation of certain rights. To be justifiable, however, the imposition of such a limitation must satisfy various requirements. Assuming that the right is capable of limitation and that the limiting measure is imposed within the bounds of certain procedural requirements, it must be necessary to achieve a particular counter-terrorism objective. To be necessary, a rational link must exist between the limiting measure and the pursuit of the particular objective.³¹

The existence of a rational link will normally be accepted if the measure logically furthers the objective, although

more evidence of this connection might be necessary if such a link is not plainly evident. In that regard, and 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, subsidiarily, its contribution to other national interests of the State.

However Sri Lankan perspective of countering terrorism is leading to quite excessive procedures which have been implemented by the existing legislations. It is recommended to having preventive mechanisms to counter terrorism with monitoring and balancing process of the judiciary. Otherwise preventive measures itself will become a boomerang to the same people who strived to implement without prejudice.

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³¹ Council of Europe, *Guidelines...*, Guideline III (para. 2); and InterAmerican Commission on Human Rights, "Report on terrorism and human rights" (paras. 51 and 55).

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BIOGRAPHY OF AUTHOR



Author is Head of the Department-Military Law in the Faculty of Law, General Sir John Kotelawala Defence University, Ratmalana. He is currently reading for his MPhil/Phd and he holds LLM and LLB from University of Colombo and Post Graduate Diploma in Criminology and Criminal Justice from University of Sri Jayawardenapura. His research areas are Criminal Justice, Human Rights Law, Environmental law and Military Law.