TERRORISM AND HUMAN RIGHTS

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ABSTRACT

Terrorism, as an institution, targets human rights and democratic states have the right to defend themselves, their citizens and values against terrorism. In a sense, terrorism advantage of the free environment created by the general respect for human rights. However, it would be a grave mistake if the measures taken by the state against terrorism violate human rights themselves. Any democratic state which resort to such measures would be in self-denial, and this would eventually lead to destruction of the state's own social structure. Therefore, states, in their fight against terrorism, should act in accordance with human rights and should never sacrifice the principles of democratic rule and the rule of law.

KEYWORDS

Terrorism; human rights; non-international armed conflict.

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1. Introduction

The main premise of this work is that terrorism violates human rights. Based on such a hypothesis, it is possible to cite countless examples showing how suppressive terrorism violates human rights. Although, it could have been a successful way of proving the point, since such an approach would fall short of a full explanation of the issue, this paper will start off by trying to give a definition of terrorism. It would also provide a good platform to explain the relationship between human rights and terrorism. However, in doing so, it does not aim to resolve the problematic issue of who is terrorist or independence fighter. Neither does it seek to come up with a common definition of terrorism. It only proposes a definition of terrorism that would be valid for the theoretical framework of this paper in order to show and examine the relationship between terrorism and human rights.

It is well known that suppressive terrorism clashes with the principles of democratic rule, rule of law and human rights. It is by definition that there is no such issue as suppressive terrorism and resulting human rights violations in democratic states that adopt those principles. The issues of recognizing, implementing and interpreting human rights involve accepting such principles from the beginning. However, the attacks targeting democratic states pose deeper fundamental problems to diagnose. Therefore, this paper tries to identify them and to present terrorism as an institution (phenomenon), which targets at human rights.

Ethimologically, the word terror comes from its Latin origin, terrere. Terror expresses a state of fear and horror. The words “terrorism” is the use of spreading fear and horror as a means. What violates human rights and targets them as an institution is terrorism, which is also called as objective terror. The word terror used in this paper refers to objective terror, or terrorism in other words.

This work adopts the framework definition of terrorism as “use of violence or threat to use of it to protect or change the political structure”, as it focuses on terrorism waged out of power struggle based on violence and subsequent human rights violations and issues.
Therefore, it excludes non-political terrorism, international terrorism, terrorism in international armed conflicts, and non-violent resistance and propaganda activities.

International humanitarian law is also applied when “non-international armed conflict” in terms of international law exists in a domestic political struggle based on violence within the territories of a state. Therefore, humanitarian law is also covered in this paper.

Although Human Rights Law and International Humanitarian Law constitute differently named normative categories, the article 60/5 of the Vienna Convention on Law of Treaties openly uses the term "humanitarian conventions" for both human rights and humanitarian law. Moreover, these two categories both protect the very same rights and are complementary to one another. The decision no XXIII taken by the UN-sponsored International Conference on Human Rights on May 12, 1968, and UN General assembly resolution no 2444 on December 19, 1968, have established relationship between human rights law and humanitarian law within the context of armed conflicts within a state and emphasized that humanitarian law is an extension of human rights. Taking these matters into consideration, this paper will also touch upon some issues concerning humanitarian law.

2It is possible to talk of “non-political terror”, for example as in the case of ordinary criminals to cause terror while committing crimes for the sake of individual interests through scaring, harassing and suppressing. It is also possible to talk of “irrational terror” as in the case of drug addicts spreading out fear. However, all these are excluded in this paper, as our approach here is political.

3Terrorism can easily gain an international dimension by spreading across borders.

4Terrorism can easily be resorted to during the conduct of international conflicts. International conflicts can be based on a terrorist strategy directed at states, as in the case of Iraq attacking Israel by Scud missiles to force Islamic countries withdraw from the coalition forces or stop supporting them due to what Iraq perceives as their common enmity towards Israel. However, this is, too, outside the scope of this paper.

2. Definition and Two Forms of Terrorism.

Various authors have used different definitions of terrorism depending on what aspect of the issue they look at. This paper will use the definition and distinction made by Brian Crozier and construed by Thomas Perry Thornton. According to this definition, there are two kinds of terrorism. The first is the kind of terrorism resorted to by the rebels, as part of their activities, who want to seize power in a state and terminate the existing rule and establishment. This could be labelled as "rebellious terrorism". The second form of terrorism refers to terrorist acts resorted to by those who want to maintain their rule and to suppress the struggle waged against their authority, 'counter-terrorism' in another word.

The difference between the two is not an issue of which one comes first or a matter of numerical order. The difference is between terror perpetrated by incumbents in power as an extreme means of enforcing their authority and by insurgents out of power with a view to provoking certain reactions from the incumbents or an otherwise apathetic population. Here we see two parallel behavioural processes. Therefore, an examination of the connection between human rights and terrorism should be made by taking both processes into account. After noting this distinction, the definition of terrorism used in this work could be summed up as follows: "Terror is a symbolic act designed to influence political behaviour by extranormal means, entailing the use or threat of violence". There are various

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9Crozier, The Rebels, p. 159.
10Thornton, "Terror as a Weapon of Political Agitation", p. 72.
11Idem.
12Ibid., p. 73.
13Idem.
aspects of terrorism that helps us to define an act as an act of terrorism. They are political motive, aiming to affect political behaviour, use or threat to use violence.

**Political motive**

The ultimate goal of terrorism is to influence political behaviour. Therefore, in order to achieve this goal, terrorists act upon a political motivation. Here we will exclude the discussion of the nature of that political motivation. The political conviction that a terrorist possesses, or acts in the name of, is not important in terms of defining terrorism although this is a contentious issue.

It is clear that a "traitor", who commits horrible crimes on the one side of a border, could be seen as a national liberation warrior on the other side of the border. The typical examples of such different approaches can be seen in the works of the *Ad Hoc* committee on International Terrorism of the United Nations. According to Algeria, Democratic Yemen, Guinea, India, Congo, Mauritania, Niger, Syria, Tanzania, Tunisia, Yemen, Yugoslavia, Zaire and Zambia, which have a common view regarding the definition of terrorism, the definition of terrorism should not harm national liberation struggles.\(^{14}\) Similarly, Malaysia proposed on behalf of the Islamic Conference Organisation during the preparatory works regarding preparation of a UN

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\(^{14}\)According to all these countries that have a common view on the definition of terrorism, international terrorism can be categorised under three groups:

- Violent actions and other suppressing actions by colonialists, racist and foreign regimes against nations who fight for self-determination, independence and other human rights and freedoms; aid given to and tolerance shown towards fascist organisations and mercenaries who commit international terrorist actions against other sovereign states; violent actions committed by individuals and individual groups violating fundamental freedoms or endangering lives of innocent people provided that they do not harm the right to self-determination, legality of independence fight and the national liberation movements, which are in line with the UN Charter and resolutions of its organs, by all the peoples under the rule of colonialist, racist and foreign regimes?. See United Nations, General Assembly, *Report of the Ad Hoc Committee on International Terrorism*, General Assembly Official Records: 28th Session, Supplement No. 28(A79028), New York, 1973, p. 34.
Comprehensive Terrorism Convention that national liberation struggles should be left out of any definition of terrorism. Those states who oppose this, stated that additional Protocol II to the Geneva Conventions mentions this and that the UN Comprehensive Terrorism Convention is not a suitable one for such distinction. In this paper, national liberation movements are excluded as we mainly focus on political struggles within a state.15

The biggest obstacle for fight against terrorism is the lack of a common definition of terrorism, which is accepted by sufficient number of states so that those who commit terrorist acts could be tried. As it has not been possible for states to come up with a commonly agreed definition of terrorism, states have signed agreements that single out various actions of terrorism that they suffer most, request that those actions should not be categorised as political crime and that those who commit them should not be given the status of political refugee, and instead should be tried or extradite. Therefore, such agreements let them fight terrorism only on certain crimes.

What defines terrorism is not the political thought it serves, but the method it resorts to. The method used by terrorism has no political thought or religious belief. Terrorism is terrorism, no matter on behalf of which thought or religion it may be resorted to, and what rights are violated. If we do not consider some terrorist methods as terrorism just because of the political thoughts they serve, then those who serve such a political thought would not be regarded as terrorist and we can not speak of violation of human rights despite their actions.

*The goal is to affect political behaviour*

Those who hold power and the mass over which they have a control are pieces of a single social structure. The way the political relations are run is in favour of those who hold power. On the other hand, the society tends to exclude the rebels. Therefore, the rebels would aim to break the relationship between the society and those who hold power. In order to achieve this, the rebels have to break those ties between the two, eliminate the structural underpinnings that strengthen

15Infra p. 47.
the society, and ensure such structural support fall short of resolving critical problems of the mass. This is an act of disorientation, which is the most typical kind of terrorism.\textsuperscript{16}

\textit{Use or threat to use of violence}

Fear and horror are learned through individual experiences. It is supposed that terrorism can not be continued without violence, at least until people learn what fear is like. After making sure that people learn what it is about, terrorism can be conducted through just threat of use of violence. Within this framework, use of violence or threat of use of it as a means is seen as one of the determinants of terrorism.

\textit{Anomaly of violence and human rights}

Terrorism is beyond norms of acceptable violence in a given society. Anyone who aims to destruct the structure of the society can achieve it best by resorting to deeds that involve abnormal violence, which has a disharmonising function. Anomaly of terrorism can also be expressed as a function of a state of political conflict. In environments where conflicting vital interests of those who hold power and of the rebels can be reconciled through constitutional means, no political conflict breaks out. If the conflicting sides agree on a formula that allows transfer of political power through peaceful means, there will be no need for violence.

\textit{Limitation of political spectrum}

Those who hold power can block legal channels in order not to share power. This prevents not only formation of democratic rules but also forces the rebels to resort to abnormal violence, and terrorism, both of which bring in suppressive terrorism. The extents of anomaly vary from one society to another, or in the same society over time. The question that emerges here is to what extent the political spectrum is open or closed. The extent of political spectrum is determined by the

\textsuperscript{16} Thornton, Terror as a Weapon of Political Agitation, p. 74.
laws of each society. This is not a search beyond democratic rule; rather it means that the specifics of every case should be taken into consideration in determining the extent of political spectrum while remaining within the boundaries of the principle of democratic rule. It could be misleading to take into account conjectural power slips caused by political turbulence, economic crises and hopelessness that lead to a temporary change in a given society's true legal structure.

It has been stated in the "Declaration on Principle of International Law on Cooperation and Friendly Relations between States under UN Treaty", accepted by the General Assembly on October 24, 1970, numbered 2625 (XXV), and in the Vienna Declaration and Action Programme accepted by World Human Rights Conference dated June 25, 1995 and numbered A/CONF. 157/24, that the principle of self-determination can not be resorted to in states that have governments that represent the entire society without discrimination. This provokes an inevitable question: Can self-determination be resorted to against governments that do not represent the entire society? There are interpretations suggesting that various peoples can secess through self-determination from states where all society is not represented. However, this is still a debatable issue and has not been supported by international law applied currently. Therefore, it is not possible to claim that current international law accepts the principle of self-determination for all communities.

In some other cases, the rebels may not have enough power to share power through constitutional procedure, which may be just and legal even if the ways of political participation are open to anyone. Therefore, they resort to terrorism in order to provoke the state to take suppressive measures. Such measures may be successful in the short-run, but lead to a reaction against already established political system as they affect innocent people through violations of human rights. This in the end serves terrorists' objectives.

**Suppressive terrorism**

There is another issue that needs attention here. To legalise or constitutionalise the "abnormal" violence, that is to turn into suppressive terrorism as a measure against rebels, would neither justify
terrorism that resorts to such violence nor human rights violations.\textsuperscript{17} In case of legalising such suppressive measures, one can only talk of the existence of legal and constitutional articles, which are in violation of human rights, given the universality and supremacy of human rights. International human rights principles bear supremacy over domestic law. A domestic law article, which is in violation of internationally binding criteria, can not gain validity even if it takes place in the constitution of a state.\textsuperscript{18} According to the European Human Rights Convention and the UN Convention Against Torture, the participant states are under the obligation of constantly harmonising their domestic law and the law of the principles of the Conventions mentioned.

There is another issue concerning the principle of universality: Legalising and even constitutionalising violence in a society by norms that are against that society’s ethics and social reality would not eliminate the anomaly of violence used by terrorism. Such norms or arrangements would also not represent law. In such a case, we can only talk of a police state and suppressive terrorism that is inserted in such norms, which in fact do not represent law. Here the statement “…norms that are against ethics and social reality of a given society in a given time,” does not indicate a desire to change the universal and no-time specific principles of human rights according to a certain society or time. On the contrary, it means that the characteristics of every concrete incident should be taken into consideration within these criteria mentioned above.

\textit{Symbolic action, human rights, and right to fight terrorism}

A symbolic action means an action that creates much bigger consequences than itself. The symbols indicating the underpinnings and normative structure of a society are very important. The rebels try to underline their strength and the weaknesses of those who hold power and their inability to provide support to the members of the society by


\textsuperscript{18}Akıllıoğlu, İnsan Hakları, p. 72.
showing the faultlines in the structure of the society. In such a situation, those who comprise the sub-groups and individuals within the society are atomised. Therefore, elimination of the symbol(s) would result in break-up of the pieces that make up a whole. At individual level, it is impossible to horrify the entire population. Additionally, separate pieces of the whole can stand and regroup to restructure itself as the terror destroys only fundamental symbols.19

This causes an attack by terrorism on fundamental values of the society. In democratic societies, these values are represented by the rule of law, democratic rule and respect for human rights. In order for terrorist strategy to be successful, it has to eliminate these fundamental values. To put it bluntly, terrorism as an institution targets at human rights and the values they are based on in democratic societies.20 To protect these values, every kind of terrorism, no matter what its cause is, has to be confronted. To put it in other terms, in the light of such values, no reason can justify terrorism.

Therefore, we can underline that terrorism has no political or religious belief: Let us assume for a moment hypothetically that human rights have no universal value. No matter what values keep social structure intact, terrorism by nature will attack those values in a political struggle that will be waged through terrorism. There is no value that terrorism would avoid attacking. Therefore, terrorism has no political or religious belief. As a result democratic state has the right to defend itself, its values and individuals.21

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3. Rebellious Terrorism and Human Rights in Liberal States

In terms of its development, human rights undoubtedly aim to protect the individual against the state. Over time, human rights have been applied to relations between individuals, too. However, human rights do not mean unlimited freedoms, free of every kind of duties. Individuals have to respect others' rights while exercising their own rights, and state has to ensure this. In this context and final analysis, state is undoubtedly the only one to have such a duty. However, an important question could be asked here: Is abnormal violence resorted to by terrorists a violation of human rights? If there is an article that punishes such action, this is a matter of criminal law, not of human rights.  

Nobody has the right to end the others' freedom. This rule applies to states, groups of individuals, and individuals. The article 17 of the European Human Rights Convention has a similar statement. However, no decision has been taken to include terrorism in this framework. Yet this rule has been cited when deciding to close down communist parties or cancelling candidacy from a racist party, based on the argument that there was no violation of the Convention. According to the Commission, the objective of the article 17 is to prevent totalitarian regimes to usurp the principles of the Convention for their own interests.

State has to pronounce the actions that entail terrorist violence as crime and should therefore punish them. However, the duty of state is not limited to this. State also has to carefully prevent violations of the rights of the innocent people that have been subjected to crimes. It

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25 Akıllıoğlu, "Terör ve İnsan Hakları", p. 16.
should even give priority to victims of terrorist crimes and handle their situation with urgency.

The General Assembly of the United Nations has also accepted a series of resolutions on this issue after the workings of its ad hoc committee on terrorism. These resolutions are about violent actions manipulated by states or groups of state. The approach adopted by the General Assembly in these resolutions accepts that racist (apartheid), anti-democratic and totalitarian states push the people in places they occupy illegally (occupied or colonised territories) into desperation and therefore terrorism. Therefore, the General Assembly call on states to become democratic in order to prevent such terror actions.\textsuperscript{27} The General Assembly is clearly concerned more with the state actions than with those of individuals, terrorist or otherwise.

However, in some other resolutions by the General assembly, an important and different approach seems to have been adopted. The General Assembly, in its resolution dated December 23, 1994,\textsuperscript{28} underlined that state-sponsored or independent terrorist actions were in violation of human rights and should therefore be eliminated.\textsuperscript{29} Here, the focus is clearly rest on the action and its results in forms of human rights violations.

Rebellious terrorism is a problem largely seen in liberal countries, as this kind of terrorism is an activity that could be conducted secretly by a small group. It is highly difficult to commit terrorist crimes in totalitarian regimes that control every phase of life. In a society where there is no respect for human rights, terrorist organisations can hardly achieve secrecy that they need for their actions. At this point, it is possible to argue that freedoms create an environment that ease terrorist activities. This does not mean that totalitarian regimes are healthier or far from such danger. Such regimes, which do not respect human rights, may prevent or suppress

\textsuperscript{27}Aktilloğlu, "Terör ve İnsan Hakları", p. 17.
\textsuperscript{28}A/RES/49/185: 'Human rights and terrorism'. The other succeeding resolutions of the UN General Assembly that include the phrase of "Seriously concerned about the gross violations of human rights perpetrated by terrorist", are A/RES/50/186, A/RES/52/133, A/RES/54/164.
\textsuperscript{29}Aktilloğlu, "Terör ve İnsan Hakları", p. 17; Aktilloğlu, İnsan Hakları, p. 101.
terrorism more easily, but face bigger dangers or political turbulence in the run.

To respect human rights while fighting terrorism is essential for a continued success in a liberal state, which has to avoid human rights violations. It is also not sufficient to look at the issue from the innocent people’s point of view. Human rights are for every one and this includes terrorists as well. The fact that terrorists attack on the fundamental values of state and do not respect the others’ rights, do not change this fact. However, the concept of human rights should also not be turned into a “law of protecting terrorists” for political considerations.\(^\text{30}\)

Internal turbulences and tension that may emerge in the form of separate and temporary violent actions in a political struggle based on violence within the borders of a state can not be regarded as an armed conflict from a legal point of view even if state may have to use police or military forces in order to ensure law and order.\(^\text{31}\) Terrorism alone does not create a state of non-international armed conflict. If there are no reasons that would lead to this, the law to be applied is the law regarding international protection of human rights and the domestic law of state.\(^\text{32}\)

However, terrorism may create a situation whereby the principle of exceptionality in human rights conventions could be applied. The criterion in human rights conventions that envisages a state of emergency is when public is in danger because it is targeted. Literature and decisions taken by international courts require the existence of an extraordinary and true or upcoming danger that targets the entire society or a part of it that live under the sovereignty of a state in order to consider it as a danger to national survival. It is seen that states regard terrorism as a “danger to national survival” under the Article 15

\(^{30}\)Çaycı, Uluslararası İnsançıl Hukuk, p. 67.

\(^{31}\)Ibid., p. 32.

\(^{32}\)In terms of Turkey’s own national law, there is no difference between the law concerning the usage of armed forces in peacetime and the law concerning the usage of the same kind of forces in non-international internal conflicts. This issue is examined below. See p. 50-51.
of the European Human Rights Convention and apply the exceptions in that article.

In general, it is accepted that terrorism is not a non-international armed conflict. However, intensified political struggle could turn into armed domestic conflict. In a political struggle, there could be elements that could create both terrorism and non-international armed conflict. Therefore, the situation that is related to determining the existence of non-international armed conflict should also be evaluated from the terrorism point of view.

4. Humanitarian law

Humanitarian law is the combination of the rules that are applied wartime or in a conflict between a warring side and the citizens of the enemy state (or between the citizens of the same state in internal conflicts). The term humanitarian law does not include all the rules concerning war. Regardless of justification of use of force or compatibility with law, law applied in war is limited to jus in bello. Jus ad bellum, the rules regarding the authority to go to war, was excluded by the concept of humanitarian law. Thus, the international humanitarian law does not cover the issue of justification or use of force or whether it is in compliance with law. A distinction has been made between exclusive humanitarian rules and non-exclusively humanitarian rules, such as the ones to be applied in armed conflict. The essential element of humanitarian law is the rules concerning treatment of victims of armed conflict.

Application of humanitarian law into non-international armed conflicts has started with “the 1949 Geneva Conventions” that consisted of four conventions. All four conventions regulate, in a common article 3, how states should treat its own citizens in a non-international armed conflict. The term and concept of non-international armed conflict has also taken place in the articles 4 and 19 of “the

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33Infra p. 45-46.
34Çaycı, Uluslararası İnsancıl Hukuk, p. 10.
Hague Convention on Protection of Cultural Assets during Conflicts”, dated 1954, and the 1977 Additional Protocol II to the 1949 Geneva Conventions. The 1949 Geneva Conventions include only arrangements that aim to protect victims of such conflicts, but on the contrary to the 1977 Protocol, entails no article concerning the conduct of conflicts.

Based on the fact that there is no definition of non-international armed conflicts in the 1949 Geneva Conventions and the 1954 Hague Convention, the literature suggests that the extent of the concept of non-international armed conflict as referred to in the above-mentioned Conventions is larger than the same concept in the 1977 Protocol. Therefore, it adopts that there is a distinction between the 1949 and 1954 Conventions and the 1977 Protocol in terms of content of non-international armed conflicts and the rules applicable to them.

The situation as described by the 1949 Geneva Conventions

The 1949 Geneva and the 1954 Hague Conventions do not define non-international armed conflicts. The common view in literature regarding determining objective criteria to define non-international armed conflicts that is mentioned in the common article 3 of the 1949 Geneva Conventions, is based on a report prepared by a commission of experts set up by the International Red Cross Committee in 1962. According to this view expressed in the report, in order to have an armed conflict as defined in the article 3, the rebellious action has to be a collective action and has to have an organised character. According to this view, the following criteria have to be taken into consideration in order to decide whether an armed conflict of that nature exists: the length of the conflict, the number of members of the rebellious groups taking part in the conflict, their settlement in a specific part of the country and actions, the degree of

insecurity, the existence of victims, the measures taken by the government to establish law and order.

The literature accepts that street movements, terrorism, banditry and internal tensions and turbulences that do not fall into the above-mentioned criteria can not be called non-international armed conflict.38

*The situation as described by Additional Protocol II to the 1949 Geneva Conventions*

The article 1 of the 1977 Protocol II that regulates in detail the rules of armed conflict to be applied in non-international armed conflicts is entirely devoted to the definition of non-international armed conflicts. According to this definition, a non-international armed conflict is an armed conflict "... which take place in the territory of a high contracting party between its armed forces and dissident forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations to implement this protocol." The paragraph 2 of the article 1 says that "this protocol will not apply to street movements, separate and unexpected violent actions and other similar actions such as internal tensions and turbulences, all of which are not regarded as armed conflicts."

Accordingly, in order to call a conflict non-international armed conflict as described in Protocol II, three conditions have to exist: First, the conflict has to take place between the government forces and armed forces of an organised rebellious group.39 The second condition is related to intensity of the violent actions and therefore domestic tensions and turbulences are excluded from Protocol II.40 The third condition is related to the level of military organisation by the

38Çayıcı, Uluslararası İnsançılı Hukuk, p. 32; Pazarcı, Uluslararası Hukuk Dersleri, p. 149.
40Çayıcı, Uluslararası İnsançılı Hukuk, p. 33; Pazarcı, Uluslararası Hukuk Dersleri, p. 151.
rebellious armed forces or groups and of their power to control the territory they are based. However, this requires three sub-conditions in order to be accepted under the Protocol II: (1) The rebellious armed forces or groups have to be under the command of a commander; (2) Such armed forces or groups must be in a position to ensure compliance with the rules of armed conflict as stated in the Protocol; and (3) Such armed forces or groups should be able to maintain a control over a part of the country, so they can launch regular and continuous military actions. It is clear that the Protocol seeks that the rebels should be controlling at least a part of the country.

Meanwhile, national liberation movements are excluded from the definition of non-international armed conflict. The Protocol regards the armed conflicts as part of self-determination (by the national liberation movements) against colonialists, foreign occupation and racist regimes as international armed conflicts. The Protocol II excludes the issues that fall into the framework of the Protocol I and do not regard them as non-international armed conflict. The conflicts between non-governmental organisations are also not considered non-international armed conflicts.

Clearly there is no independent mechanism to determine whether a conflict is a non-international armed conflict. To judge whether a conflict is non-international armed conflict is within the powers of international courts or arbitration committees, should the conflict takes international dimensions and the involved sides decide to take it to such institutions. Apart from that, it is states that would determine whether a non-international armed conflict has broken out. In recent years however, international jurisdiction regard every armed violent incident in a country between the government forces of state and rebellious armed groups as non-international armed conflict. The examples of this are the judgement by the International Court on former Yugoslavia in

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42 Taşdemir, Uluslararası İnsan Hukukta Siviller, p. 32-33.
what is known as the Tadic Case\textsuperscript{44} in 1997 and the judgement by American Human rights court in the Abella Case.\textsuperscript{45}

\textit{Law to be Applied in Non-International Armed Conflicts}

From the viewpoint of international law, it is not clear when an internal conflict starts. In terms of international law, the beginning of a non-international internal armed conflict requires the application of humanitarian law. Therefore humanitarian law (the 1949 Geneva Conventions and the 1977 Protocol II) rules regarding international protection of human rights and regulations and arrangements by states regarding protection of human rights are all applied at the same time in case of non-international armed conflicts.\textsuperscript{46}

However, there are also exceptions to the application of human rights in some cases. Many treaties on international protection of human rights recognise that some treaty rules may not be applied under the principle of exceptionality in cases of “wars” and “dangers threatening nation’s survival”.\textsuperscript{47} The examples of this are article 15 of European Human Rights Convention, article 27 of American Human Rights Convention, article 30 of European Social Charter, and article 4 of UN Convention on Civil and Political Rights.\textsuperscript{48}

The common article 3 of the Geneva Conventions\textsuperscript{49} take into account the most important and fundamental human rights and

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\textsuperscript{44}Doc. U.N., IT-94-1-T, p. 202 [quoted in Pazarcı, ibid., p. 292, footnote 868.].
\textsuperscript{45}Report no. 55/97, parag. 160 et seq. [quoted in Pazarcı, ibid., p. 292, footnote 868.].
\textsuperscript{46}McCoubrey, \textit{International Humanitarian Law}, p. 29 et seq.
\textsuperscript{47}Pazarcı, \textit{Uluslararası Hukuk Dersleri}, p. 191.
\textsuperscript{49}In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
\begin{enumerate}
\item Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be
freedoms. These include principles to be carried out by armed forces, which exercise or support internal security action aiming to ensure law and order and security even when there is no armed conflict.\footnote{Çaycı, \textit{Uluslararası İnsancıl Hukuk}, p. 51, 52.}

Protocol II makes three arrangements regarding non-international armed conflicts. First it states that everybody should be treated humanly. Second, it demands the injured, the sick and the victims of sea accidents to be protected specifically; and finally, it calls the civilian population should be protected against military operations.\footnote{Pazarcı, \textit{Uluslararası Hukuk Dersleri}, p. 188.}

The fact that international humanitarian law is applied does not mean that the members of the armed groups that rebel in internal armed conflicts \textit{ipso jure} qualify to gain the status of belligerent as a group and belligerent/combatant as individuals. In other words, international law does not grant the status of belligerent combatant or (belligerent combatant group) to those who rebel, unless belligerent/combatant status of those who rebel against the government and participate in non-international armed conflict is recognised. Therefore, those who get captured can not benefit from the status of prisoner of war (POW),

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\item treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria.
\item To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
\item (2) The wounded and sick shall be collected and cared for.
\item An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the Conflict.
\item The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
\item The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”
\end{itemize}
and are subjected to domestic (national) criminal procedures, even for their actions in a non-international armed conflict. However, if state is a signatory to some universal or regional human rights conventions, then domestic criminal laws should be in line with those conventions.

However, according to the common article 3 of the 1949 Geneva Conventions and the article 4/1 of Protocol II, the members of such armed groups should be provided with humanitarian treatment in cases of surrender, injury, sickness and when they are out of conflict for similar reasons. On the other hand, while there are no rules stated regarding means and methods of conflict during the conduct of non-international armed conflicts in both article 3 of the 1949 Geneva Conventions and Protocol II, the rules of international law about methods that can not be recourse to during non-international armed conflicts are clear. Article 4/2-d and article 4/2-h openly bans threat and use of terrorism. Literature even go further in its interpretation and find the roots of this ban in the common article 3 of the 1949 Geneva Conventions and refer to the principle of humanitarianism. Literature also construe the article 13 of Protocol II forbidding terror actions against civilians as binding for both the government and rebel forces.

**National law of the state concerned**

As far as the conduct of non-international armed conflicts is concerned, the government forces are obliged to abide by the rules of internal security operations as stated in national laws. The government forces have to organise the operation accordingly if, according to national laws, the state of internal armed conflict and ensuring internal security require the military to be part of the internal security measures. For example, according to Turkey’s national laws, it is possible for the Turkish Armed Forces to help government security forces in cases of non-international armed conflicts and in situations only concerning internal security. As far as provinces are concerned at normal times, the main legal foundation for this is article 11/D of the Law on Province Administration, numbered 5442 and dated June 10, 1949. As to towns, article 32/E of the same law provides legal

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foundation. However, in cases of state of emergency, the article 21 of the Law on State of Emergency, numbered 2935 and dated October 25, 1983, demands Turkish Armed Forces' help. If the armed conflicts necessitate declaring martial law, the duty and powers of security forces are transferred to the command of martial administration under the law on Martial Law, numbered 1402 and dated May 13, 1971. If the Turkish Armed Forces are assigned powers through Martial Law, the armed conflicts have to be conducted in accordance with The Armed Forces Internal Service Law, numbered 211 and dated November 4, 1961, and with the Law on State of Emergency and the Law on Martial Law.

5. Conclusion

It is clear that terrorism, as an institution, targets human rights and democratic states have the right to defend themselves, their citizens and values against terrorism. In a sense, terrorism takes advantage of the free environment created by the general respect for human rights. However, it would be a grave mistake if the measures taken by the state against terrorism violate human rights themselves. Any democratic state which resort to such measures would be in self-denial, and this would eventually lead to destruction of the state’s own social structure. In essence, taking such actions would be tantamount to the state shooting itself in the foot. Therefore, states, in their fight against terrorism, should act in accordance with human rights and should never sacrifice the principles of democratic rule and the rule of law.

Any measure taken by states in the name of the above-mentioned principles has to respect human rights of both innocent civilians as well as those who resort to terrorism. However, the concept of human rights should not be usurped or exploited in such a way that it would turn out to be a law of protection for terrorism.

Resorting to terrorism in a political struggle within a state does not create a state of non-international armed conflict. However, together with the causes that create non-international armed conflict, terrorism may also persist within an internal conflict. This necessitates an evaluation of terrorism in the light of humanitarian law that came into effect together with the concept of non-international armed
conflict. Humanitarian law openly forbids the use of terrorism by both government forces and anti-government forces. Those who engage in non-international armed conflicts are not entitled to being recognised as having the status of warriors or warring side engaged in war, either as individuals or as a group. Therefore, they can not demand to be treated as Prisoners of War.

Finally, it is possible by law, to refuse implementation of specific articles of the human rights conventions, so that they are not applied both in cases of violence caused by terrorism in peace-time posing threat to public life in a way to endanger the nation, and in the case of non-international armed conflict, under the principle of exceptionality.