An Overview of the Western African Response to the International Counter-terrorism Legal Framework

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Terrorism is a phenomenon treating peace and security worldwide and is not a new phenomenon affecting many countries in West Africa. As such it affects the interests of the international community, calling not only for international action but also for the response of African States. The response of Western African States to the existing international counter-terrorism legal framework is the subject matter of the present article. It is not the aim of the article to provide a detailed account of African States responses but to provide an overview of the reaction of West Africa to the existing counter terrorism framework evident through UN action. In order to provide such an overview the article presents the existing international legal framework before it outlines the response of West African States to this framework.

Keywords: West African States, Terrorism, Counter-Terrorism, Legal Framework,, UN action

1. Introduction

Historically terrorism is not a new phenomenon and since its emergence it has called for the attention of the individual states affected by its lethal force. In fact acts of terrorism by non-state actors have triggered the adoption of a number of national instruments towards eliminating the threat. Especially from the 1960's onwards when the phenomenon appeared to have acquired a new international dimension – expanding beyond the borders of one state and affecting the interests of the international community – it has been internationally appreciated that a uniform legal framework is necessary in order to deal effectively with the threat of terrorism. Despite the fact that states experience terrorism differently in terms of victims and overall impact, it is now a reality that no state is immune from the threat, which ranges from victimisation as well as fear. Likewise, terrorism poses a security challenge also for Africa as evident by the African struggle not only against domestic[1] but also international terrorism. The 1998 Kenya embassy bombing and attacks against UN buildings in Algeria and Nigeria[2] are two indicative examples of the dramatic occurrence of terrorism in African soil.

At an international level the internationalisation of terrorism led to the adoption of international measures to combat it. The subsequent treaties that followed criminalized in thematic style the various offences contained therein and elevated them to crimes of international relevance. The model of that era could be best described as an inter-state cooperation suppressionist model as the thematic treaties of that era were

1 See relatively M. Crenshaw (Ed.), *Terrorism in Africa*, New York, GK Hall and Co, 1994.

2 See: Solomon, H, *Terrorism and Counter-Terrorism in Africa*, Palgrave Macmillan, 2015.

premised on a suppressionist approach, which was also endorsed by General Assembly resolutions of the time. Notably, all the anti-terrorism conventions adopt a suppressionist approach despite the traces of some preventive action. The purpose of the present article is to access the extent to which African states are ratifying international instruments and emphasize the importance of such a process. The extent to which African states had ratified existing UN conventions it is a positive step forward. However, it cannot guarantee a holistic appreciation of the fight against terrorism process.

This article is divided in to two sections: the first one outlines the international legal framework while the second examines the position of Western African states in relation to it. It is beyond the scope of the article to provide an extensive presentation of all the instruments related to terrorism but it will make reference to the most important ones while reflecting on their ratification by African states. The objective of the work is to reinforce the case for the use of the UN counter terrorism strategy by West African States as a strategy that addresses not only suppression but also prevention of terrorism. Despite the fact that there are limited terrorism incidents in Western Africa it has been argued that West Africa exhibits a number of characteristics that make it vulnerable to terrorism.[3] The mere fact that the region is yet to recover from a number of conflicts which had affected its development over the years, has encouraged the birth of transnational organised criminal activity. The latter can be exploited by terrorist groups who are looking to finance their activities.

2. The International Legal Framework against International Terrorism

2.1 Gradual Evolution of International Counter-terrorism Models Developed to Deal with Particular Manifestations of Terrorism[4]

Starting from the least ambitious threshold of the conventions regulating hijacking in the 1960's and 1970's, the 1990's finds the international community forming and adopting new instruments, dealing with more specialized forms of terrorism with increasingly advanced language. The United Nations General Assembly has played an important role in addressing some of the more specific manifestations of international terrorism, such as airline hijacking, unlawful seizure of aircraft and hostage taking, by adopting resolutions and conventions that require states to criminalize these acts. International cooperation between states for the suppression of international terrorism was manifested by a series of agreements dealing with a crime that threatens not only human life and safety, but also the existence of every civilized society.[5] An analysis of the subject matter of the international instruments dealing with terrorism reveals that they encompass

[3] See relatively; Yoroms, G, *Counter terrorism Measures in West Africa*, found at Understanding Terrorism in Africa:Building Bridges and Overcoming the Gaps, ed Wafula Okumu and Anneli Borth (Pretoria: Institute for Security Studiesm 2008,

4 R. Falk, *Rediscovering international law after September 11th*, 16 Temple International & Comparative Law Journal, 2002, pp. 359-69. See also: D. Zelman, *Recent developments in international law: anti-terrorism legislation - part two: the impact and consequences*, 11 Journal of Transnational Law & Policy, 2002, pp. 421-441.

5 See: N. Joyner, *Aerial hijacking as an international crime, Oceana Publications*, 1974; E. McWhinney, *Aerial piracy and international terrorism: The illegal diversion of aircraft in international law*, Kluwer, 1987; A. Evans, *Aircraft hijacking: its causes and cure*, 63 AJIL, 1969, p. 695.; *Aerial hijacking: what is to be done*, 66 AJIL 1972, p. 819*; J. Moore, Towards legal restraints on international terrorism* 67 AJIL 1973, p. 88.

different manifestations of violence upon civil aviation,[6] civil maritime navigation and sea based platforms,[7] as well as attacks upon persons including hostages, diplomats and other internationally protected persons.[8]

Among the most notable elements of the relevant conventions is the absence of universal jurisdiction in respect of the offences prescribed therein. For example, the provisions of the Tokyo Convention[9] provide for jurisdiction on a variety of bases, such as the registration of the aircraft, the nationality of the personnel harmed, but none of these amounts to universal jurisdiction. The necessity to suppress acts of hostage taking led to the adoption of the 1979 Convention against the Taking of Hostages. The latter Convention recognizes the grave nature of the offence[10] and obliges member states to define it as an extraditable offence under their domestic laws.[11] The Tokyo Convention makes no provision regarding the handling of hostage situations but requires member states to take all appropriate measures[12] to ease the situation and secure the release of the hostages.[13] It is evident that both in the case of civil aviation and hostage taking the emphasis is not on the protection of the victims once these are caught in the middle of a particular incident; rather, cooperation focuses more on the criminal justice dimension thus adopting a suppressionist model. The basic model followed by the international anti-terrorism instruments[14] is the following: a type of terrorist activity of particular concern at the time is identified; states are obliged to criminalize the conduct and impose penalties. Thus, the pre-September 11 model was utilizing international law to declare that certain acts should be criminalized in the domestic law of each signatory state. As it becomes evident from the above the overall success of the existing conventions rely on the levels of ratification by member states.

In 1996, the General Assembly established the *Ad Hoc* Committee, on the basis of resolution 51/210, with the aim of developing the international legal armoury against nuclear terrorism and terrorist bombings.[15] The *Ad Hoc* Committee has since elaborated the Terrorist Bombings and Terrorist Financing Conventions

6 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, 704 UNTS 219; 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 860 UNTS 105; 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 974 UNTS 177; 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, which extents and supplements the Montreal Convention on Air Safety, ICAO Doc.9518 (24 Feb. 1988).

7 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (10 Mar. 1988) and the Protocol of the same date for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, IMO Doc. Sua/Conf/15.Rev.1 (1998).

8 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, 1035 UNTS 167; 1979 International Convention Against the Taking of Hostages, UN Doc. A/Res/34/146 (1979). For a detailed analysis of the Convention see: L. Bloomfield, G. FitzGerald, Crimes against internationally protected persons: prevention and punishment. An analysis of the UN Convention, Praeger, 1975. See also: K. Rozakis, Terrorism and the internationally protected persons in the light of the ILC's Draft Articles, 23 ICLQ (1974), p. 32.

9 In particular, the convention requires **s**tates parties to take such measures as are necessary to establish their jurisdiction over crimes committed on board aircraft registered by them. See Art. 3. Other provisions concern such matters as taking offenders into custody, restoring control of the aircraft to the commander and continuation of the aircraft's journey. Arts. 6-15.

10 Art. 2.

11 Art. 10 (1).

12 The current official practice of states is to refuse to yield to terrorist demands although this is not always the case in practice. See: US Counter-Terrorism Policy Statement in J. Paust**,** International criminal law: cases and materials (Carolina Academic Press, 1996), p. 1176.

13 Art. 3 (2).

14 A du Plessis Sambei & M. Polaine, *Counter-terrorism law and practice: An international handbook*, Oxford: Oxford University Press, 2009.

15 G.A. Res. 51/210 (17 Dec. 1996) para. 9.

and with its mandate having been renewed annually by the Assembly[16], followed by the elaboration of two other agreements: one on nuclear terrorism[17] and a comprehensive convention on terrorism.[18] Particular dimensions of ideological violence such as terrorist bombings, terrorist financing, traffic in arms, exchange of information concerning persons or organisations suspected of terrorist-linked activities, disruption of global communications networks and technical cooperation in training for counter-terrorism, were subjects not covered by the twelve existing conventions on international terrorism. The International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention)[19] and the International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)[20] both are interstate in character, they adopt a much less-consensus based approach that it's other interstate counterpart. One of the innovative[21] elements of these conventions was that they treat the offences prescribed therein as a non-political offence for the purpose of extradition. The legal effect of this provision is that a normal defence that would be available to a fugitive offender to plead that an act was committed under political motivation is denied in the case of extradition proceedings relating to a terrorist bombing. The provision recognises that where there is recourse to indiscriminate violence against civilians, then the offender is not entitled to the protection provided by the laws governing extradition. We can therefore detect that the main theme underlying the Financing of Terrorism Convention is the abandonment of particular safeguards otherwise granted to the accused under domestic law and prior anti-terrorist conventions.

When the Terrorist Bombings Convention was adopted in early 1998 international law-makers had not yet witnessed the devastating effects of the US Embassy bombings of Tanzania and Kenya, or the 9/11 attacks, nor the later bombing sprees in Indonesia, Morocco and Spain – between 2002 – 2003. Other sporadic incidents, however, and particularly the failed attempt to destroy the World Trade Centre in 1993 had given some insights to security specialists of what was to follow. Otherwise, the adoption of the 1998 Terrorist Bombings Convention is questionable from a political perspective, since as most incidents were of domestic origin and effect, many countries did not wish to make applicable the international laws of armed conflict to bombing incidents perpetrated by separatist or other national liberation movements, with a view to depriving them of any claims to self-determination. This was the UK's position throughout the IRA campaign, where transnational elements were recognised only where UK secret agents were involved in clandestine operations to thwart bombing operations originating abroad,[22] or where extradition proceedings were concerned. This policy perspective also helps explain why the Terrorist Bombings Convention was poorly ratified up until the events of 9/11.

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16 Under the terms of G.A. Res. 55/158 (12 Dec. 2000) it was decided that the Ad Hoc Committee continue its mandate, at least during the fifty-sixth session, within the framework of a Working Group of the Sixth Committee.

17 UN Doc A/C6/53/l4, Annex I, 1998, Draft Article 4.

18 For the text of the draft comprehensive convention, see Report of the Ad Hoc Committee, Sixth sess. (28 Jan. – 1 Feb. 2002), UNGAOR 57th sess., UN Doc. A/57/37/Supp. No. 37 (2002).

19 Drafted on the 15th December 1997 and signed on the 12th January 1998.

20 Drafted on the 9th December 1999 and signed on the 10th January 2000.

21 This is the first case that the political offence exception was excluded in a convention negotiated in the United Nations.

22 McCann *v* UK (1996), 21 EHRR (1997).

2.2 The Financing of Terrorism Conventions as Evidence of Less Context Specific Interstate Model

At the global level one of the cornerstones of the struggle against terrorism was the International Convention for the Suppression of the Financing of Terrorism. This convention cannot be put in the same category as all the other UN Conventions, because it does not deal with specific manifestations of terrorism. In December 1999 the UN General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism[23] after negotiations that commenced in 1996[24] and which, unlike previous anti-terrorist conventions, does not focus on any one particular manifestation of terrorism (hijacking, bombing etc.), but is instead aimed at those individuals that: "By any means, directly or indirectly, unlawfully and wilfully, (provide) or (collect) funds with the intention that they should be used to commit terrorist acts."[25]

While notionally covered by the accomplice liability provisions of the various existing sectoral anti-terrorism treaties, the issue of the material support provided by these networks was considered to be of such importance in the fight against terrorism that it warranted its own treaty. The treaty, which was in part modelled on the Terrorist Bombings Convention, includes the now 'standard' anti-terrorism provisions evident in previous treaties, but also contains new provisions specific to the financing of terrorism with a view to providing states with the capability to counter these vast networks which commonly cross two or more international boundaries. For example, provision is made for the possibility of the criminal liability of legal persons,[26] as well as for the freezing and seizure of funds[27] and the prohibition of reliance on bank secrecy laws as a ground for declining mutual legal assistance.[28]

The mentioned Terrorist Financing Convention was particularly welcome as it recognised that the financing of terrorism is a matter of grave concern to the international community and required states to adopt regulatory measures. Article 2 defines an act as constituting a specific terrorist offence if it either constitutes a specific offence within the scope of one of the nine UN Conventions listed in the treaty annex that addresses various types of terrorism, or any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking part in hostilities involving armed conflict, when the purpose of such act was to intimidate a population or to compel a government or international organisation to do or refrain from doing an act.

Furthermore, Article 8 of the Convention requires every signatory state to take appropriate measures, in accordance with national laws, for the detention and freezing of any funds allocated for terrorist offences.[29] Article 11 requires states to render the offences prescribed in the Terrorist Financing Convention

23 39 ILM (2000), 270; see: V. Morris & A. Pronto, The work of the sixth Committee at the fifty-fourth session of the UN General Assembly, 94 AJIL (2000), p.582; see also: EC Council Recommendation of 9 Dec. 1999 on Co-operation in Combating the Financing of Terrorist Groups (O.J. C 373, 23/121999).

24 The Convention was adopted following a French proposal. See: Working Document Submitted by France on the Draft International Convention for the Suppression of Financing of Terrorism, UN GAOR, 54th sess., Supp. No.37, UN Doc. A/54/37, Annex II (1999), p.14.

25 Art. 2 (1), It is also an offence to participate, to organize, to direct, to act in a common purpose [Art.2 (5)] or to attempt [Art. 2(4)] any of the offences describe in Art. 2 (1). See also: Report of the Ad Hoc Committee established by GA Res. 51/210 (1996), UN GAOR 54th Session, UN Doc. A/54/37/Supp. No.37 (5 May 1999), p.3.

26 Art. 5.

27 Art. 8.

28 Art. 12.

29 The UK Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001 provide for a comprehensive statutory scheme to deal with terrorist property. More specifically, sections 15(3), 15(4), 17 (a), 17(b).

extraditable and to assume jurisdiction over such offences by making them punishable with appropriate penalties.[30] Moreover, the mentioned Convention removes the political offence exception by obliging contracting states to ensure that criminal acts within its scope are under no circumstances justifiable by considering of a political, ideological, racial, ethnic, religious or other nature.[31] The Terrorist Financing Convention entered into force on 10 April 2002 after the required 21 states – out of the 129 signatories - had deposited their instruments of ratification with the United Nations. It should be stressed that although only a few countries, such as the UK, ratified the Terrorist Financing Convention prior to 9/11, the vast majority of states expressed no desire to do so. The UK adopted secondary legislation to implement the Convention that prohibits any person from making "any funds or financial services available directly or indirectly to or for the benefit of a listed terrorist or organisation controlled by terrorists."[32] Ironically, the USA was not itself prepared to ratify the 1999 Convention and it was only after the events of 9/11 that it spearheaded a campaign to enshrine terrorist financing within an internationally binding legal framework. The principal reason behind the inhibition of states to ratify this Convention is obviously the possibility that private financial systems will be scrutinised by international bodies and sensitive information would have to be divulged to foreign investigative bodies. Such lack of trust and adherence to the unilateral internal approach did not survive long. The parallel existence of an interstate suppressionist model through the adoption of the Terrorist Financing Convention failed to subdue the unilateral internal model – through which states dealt with terrorist financing through control of their own financial systems.

2.3 Residual Forms of Interstate Cooperation Post September 11

In the aftermath of the Bali bombing attack, the Security Council reminded the member states of their obligation to cooperate among themselves and the Council itself on the basis of Resolution 1373.[33] The same was repeated in verbatim language in subsequent resolutions.[34] In all these resolutions, the Council inserted a preamble phrase that deserves particular mention. Thus, Resolution 1438 notes that the Council is "determined to combat terrorism in accordance with its responsibilities under the UN Charter."[35] Since, in the words of the Council, even domestic terrorist bombings are a threat to international peace and security, the Council views its potential role as encompassing both domestic and international terrorism.

The significant difference between the cooperation provisions of the 1998 Terrorist Bombings Convention and those contained in Resolution 1373 is that the former establishes an interstate approach, whereas the latter creates two new regimes:

a) interstate cooperation between particular states that would under other circumstances be unwilling to exchange information or succumb to each other's demands for mutual legal assistance, and;

b) cooperation between a state and the Council itself.

The first of these regimes may be problematic in practice, but it was certainly intended as the creation of an obligation towards countries that would otherwise not become parties to the 1998 Terrorist Bombings

30 See sec. 63 of the UK Terrorism Act 2000.

31 Article 6.

32 See: SI No 3365 (Mar.2001). UK law imposes further restrictions on terrorist financing in the Anti-terrorism Crime and Security Act 2001, amending the Terrorism Act 2000.

33 S.C. Res. 1438 (15 Oct. 2002).

34 S.C. Res. 1440 (24 Oct. 2002); S.C. Res. 1465 (13 Feb. 2003); S.C. Res. 1530 (11 March 2003).

35 S.C. Res. 1438 (14 Oct.2002), found at www.un.org/Docs (accessed October 2015).

Convention and which would never enter into bilateral relations with countries allied to the USA. Although from a practical point of view it is very difficult to monitor their efforts in exchanging information and other intelligence – it also defeats the purpose of the obligation – it may be invoked against such unwilling countries in the future as constituting a material breach of an obligation.

The adoption of Resolution 1373,[36] which is in effect a 'mini convention' on terrorist financing and terrorist bombings, changed the international legal landscape. All states are now under a strict and monitored obligation to prevent terrorist attacks, including by early warning systems and exchange of information cooperation; afford greater assistance to each other; find ways of accelerating and intensifying exchange of information regarding explosives and sensitive materials, including weapons of mass destruction. Resolution 1373 also called on states to become parties to the 1998 Terrorist Bombings Convention. An examination of recent Security Council resolutions dealing with the issue of terrorist bombings suggests a divergence from the Terrorist Bombings Convention. Whereas, this Convention is inapplicable where there does not exist an international element, in the cases of the 2002 Chechen hostage crisis in Moscow,[37] the February 2003 Bogotá bombing blast[38] and the Madrid train bombing incident,[39] the Council relying on its prior Resolution 1373,[40] characterised these incidents as threats to international peace and security and urged states to adhere to their obligations to cooperate on the basis of Resolution 1373.[41] All these incidents took place within one country and were committed by groups indigenous to these countries and would not normally have come under the scope of the Terrorist Bombings Convention. Since Resolution 1373 is binding on all states on account of Article 25 UN Charter, the jurisdictional and cooperative obligations established under the Resolution 1373 take precedence over obligations stemming from the Terrorist Bombings Convention. This again is defendable on the basis of Article 103 of the UN Charter, whereby obligations accruing from the UN Charter supersede all other obligations that a state may have assumed. This observation, moreover, reinforces the unilateral internal model and brings it closer to a form of universal jurisdiction. It also seems to unilaterally dispel the inhibitions inherent in the 1998 Terrorist Bombings Convention whereby states preferred to deal on their own with internal bombings.

Turning our attention to the UN counter terrorism strategy adopted in 2006 and its application to the sub-region we can trace the elements of a comprehensive strategy which emphasises 'the imperative for respecting human rights and promoting the rule of law as a sine qua non to the successful combating of terrorism.[42] The latter has been a positive step forward as it highlights the need to combine development with counter terrorism efforts. This is particularly relevant to the case of West African States where there weak development encourages the birth of criminal organisations able to acquire an ideological agenda which itself can lead to the formulation of terrorist groups.

36 See: *Second Progress Report on terrorism and human rights*, UN Doc. E/CN.4/Sub.2/2002/35 of 17 July 2002, para. 25-29.

37 S.C. Res. 1440 (24 Oct. 2002).

38 S.C. Res. 1465 (13 Feb. 2003).

39 S.C. Res. 1530 (11 March 2004). Although it later transpired that Al-Qaeda was responsible for the attack, the Council relied on the statements of the Spanish government and named ETA as being the culprit.

40 Rosand, E., Security Council Resolution 1373, the Counter-Terrorism Committee and the fight against terrorism, 97 AJIL (2003), p. 333.

41 From a practical point of view, what S.C. Res. 1373 cannot do is dictate the various procedures that are customarily attuned on the basis of bilateral or multilateral agreements, such as extradition (including the aut dedere principle) and mutual legal assistance, but it can demand for the lifting of bank secrecy as this has not traditionally been left to inter**s**tate settlement.

42 See: Bukun – Olu Onemola, Statement on behalf of Nigeria to the UN Sixth Committee, New York, 7th October 2009, found at www.globalcenter.org (accessed October 2015).

3. West African Response to the International Legal Framework

Turning our attention to the African states and the ratification of the universal instruments outlined above, one can point out that the levels of ratification are not consistent as there are indeed variations between states. It appears that all African Arab League states have adopted specific anti-terrorism legislation which not only criminalizes terrorism but it also covers incitement,[43] while all states are now parties to the Terrorist Financing Convention. On the other hand East and Western Africa appears to have variations amongst the states ratifying the universal instruments[44]. The relevant to terrorism in Africa literature suggests that the phenomenon is very prominent in the region.[45] In fact the geographical position of Africa becomes often an easy passage for the movement of terrorists or allows for the training and organisation of terrorist operations. Likewise the phenomenon acquires not only a national but also an international dimension. A detailed categorization of African countries reactions was presented by Kegoro who indicated the three categories within which African states ratification and legislative progress falls. According to him countries such as Uganda, Gambia and South Africa have implemented the requirements of UN Resolution 1373 by enacting supplementary legislation in the absence of relevant one within their jurisdiction. In the second category fall states such as Egypt, Tunisia whose pre-existing relevant legislation implied that there was not a need for the adoption of further legislative measures at a national level. More problematic appears to be the case of Kenya and Namimbia as both failed to implement the resolution in their respective legislation.[46] Of course one cannot argue that ratification itself can achieve victory over terrorism but it is definitely the first step indicating the willingness of states to take national action and cooperate with each other in order to collectively fight the phenomenon. The fact that African states have ratified the universal framework indicates a strong determination and a commitment to the international community of the views on the issue of terrorism. Irrespectively of the driving force behind such determination we can not overlook the reality that African States positively respond by taking action towards the adoption of the international legal framework. Kegoro suggests that "the debate on counter-terrorism legislation in pursuance of the UN resolution (1373) now questions the necessity for such legislation in the first place. The assumption that (counter-terrorism legislation) will reduce the threat of terrorism is severely undermined by situations where such legislation exists but is not invoked. It is simplistic to assume that countries that have in place specific counter-terrorism legislation are worse off from a human rights point of view than those that do not."[47]

However, one cannot overlook the importance of ratification as it is not only an indication of the determination of the state to fight terrorism but it is the vehicle by which international cooperation may be materialised. Therefore, the ratification of the existing UN conventions –presented in the first section –

[43] Ford J., *Beyond the 'war on terror': A study of criminal justice responses to terrorism in the Maghreb*, Pretoria: Institute for Security Studies, 2009, pp. 81-82.

[44] Yoroms G., Counter-terrorism measures in west Africa, in W Okumu & A Botha (eds), Understanding Terrorism in Africa: building bridges and overcoming the gaps, Pretoria: Institute for Security Studies, 2008, pp.90-97.

[45] Le Sage A., *Terrorism threats and vulnerabilities in Africa*, in A Le Sage (ed), *African counterterrorism cooperation: Assessing regional and subregional initiatives*, Washington DC: NDU Press/Potomac Books,2007; Also see: Yoroms G., *Defining and* mapping threats of terrorism in Africa; S Makinda, History and root causes of terrorism in Africa; Cilliers J., Terrorism and Africa, African Security Review 12(4) (2003), pp. 91-103.

[46] Kegoro G., The effects of counter-terrorism measures on human rights: the experience of East African countries, *Understanding Terrorism in Africa: In search for an African Voice*, Pretoria: Institute for Security Studies (ISS), 2007, p. 56.

[47] *Ibid.*

creates a mechanism for international cooperation by making direct reference to extradition and mutual legal assistance. In the absence of a universal definition on terrorism, ratification may also be an indication of the ratifying state towards a common understanding of the threat. If fact it is a common shared argument that states define terrorism according to their own interests both internally and externally. This has been traditionally creating obstacles in the cooperation of states as in the absence of common understanding.

Following the US reaction to the 9/11 and the gradual abandonment of the '*war on terror*' doctrine it seems that the international community is acknowledging the criminal scope of terrorism which results in serious form of human rights violation. From an African perspective, therefore, terrorism must be prevented and terrorists overcome not only for principled and security-related reasons, but because the bulk of Africa's people require governmental and international attention to a range of other problems and possibilities.[48]

As it has been determined in the first section of the article the contemporary counter terrorism model is a suppressive one which exhibits both an internal and external dimension. However, the strong emphasis of the international instruments has resulted in neglecting issues of prevention. Of course legal responses to terrorism are necessary yet they do not constitute an absolute cure for the problem. The inherent limitations of any legal framework do not imply that ratification of continental and global instruments remains important. As it has been argued law and fidelity to the rule of law are part of the wider strategy to overcome terrorism in the long term.[49] The fight against terrorism cannot be won via ratification which establishes a forum of stability and certainty in combating terrorism as it provides the foundation upon which international agreements are made and national strategies are developed in accordance to international standards.[50]

4. Conclusion

From the 1960's political violence began manifesting itself beyond national frontiers and threatened the security of civil aviation. The introduction of this international element alone shifted the counter-terrorism approach from a fully unilateral domestic to an interstate cooperation model. Since the early 1960s, much of the physical conduct comprising terrorist acts has been criminalized in numerous sectoral anti-terrorism treaties. Each contracting party is under the duty to cooperate in and give assistance to the repression of terrorism, the apprehension and punishment or extradition of alleged perpetrators of terrorism acts. The effectiveness of specific anti-terrorism conventions is questionable since the enforcement of the existing instruments depends much on the political willingness of states parties to support the international cooperation in criminal matters. Often the exceptions provided under the political offence exception, have allowed terrorists to find safe heavens. However, the adoption of the Terrorist Bombings Convention and the Terrorist Financing Convention is an evidence of the determination of the international community to deal with the phenomenon of international terrorism.

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[48] J. Ford, *Beyond the War on Terror*, Institute for Security Studies, Pretoria, 2009, p. 2.

[49] E. Rosand, *Enhancing counterterrorism cooperation in southern Africa,* African Security Review 17(2) (2008), 43-60.

[50] B. Bowden & H. Charlesworth & J. Farrall, *The role of international law in rebuilding postconflict societies: Great expectations*, Cambridge: Cambridge University Press, 2009.

Resolutions of the General Assembly since the 1970s, and of the Commission on Human Rights since the 1990s,[51] have stated that international terrorism may threaten international peace and security, friendly relations among states, international cooperation, state security, or UN principles and purposes. The preambles to the 1999 Terrorist Financing Convention take a similar position, while various regional instruments also highlight the threat to international peace and security presented by terrorism.[52] Fortunately, an obstacle sustained in the past and relating to the '*political offence*' exception to terrorist offences, has gradually been removed from contemporary treaties, while its application in the traditional anti-terrorist conventions has lost favour among signatories.[53] The anti-terrorism conventions do create a very useful and strict legal regime, and post 9/11 some 80 states have become party to all of them. Africa has responded to terrorism by ratifying international instruments which makes the country part of the wider

An examination of the various forms of action and cooperation contained in the UN anti-terrorism conventions indicates the formation of cooperative or unilateral models and delineates their precise content and spartial duration. The adoption of the Terrorist Bombing Convention and the Terrorist Financing Convention represented a more effective rendition of the suppressionist model against terrorism as both of them contain an expanded, wide range of obligations on member states. It became evident during the course of the article that there is now a strong legal framework capable of addressing the modern manifestations of terrorism. Therefore, what is mostly needed in the fight against terrorism is not the development of new norms but the enforcement and consistent application of the existing international norms by all states including Africa.

[51] UNComHR Res. 1995/43, 1996/47, 1997/42, 1998/47, 1999/27, 2000/30, 2001/37, 2002/35, 2003/37, UNSubComHR Res. 1994/18, 1996/20, 1997/39, see also 1993 Vienna Declaration and Programme of Action, UN Doc A/CONF.157/24.

[52] Inter-American Convention, Special Summit of the Americas, Declaration of Nuevo León, Mexico, 13 Jan. 2004; OAS Convention; ASEAN, Declaration on Joint Action to Counter Terrorism, Brunei Darussalam, 5 Nov. 2001, OSCE, Bucharest Plan of Action for Combating Terrorism, 4 Dec. 2001, MC (9).DEC/1, Decision on Combating Terrorism (MC (9).DEC/1); EU Commission Proposal, Explanatory Memorandum, op cit, 3, 8.

[53] Arts. 5, 9, 11, 1998 Terrorist Bombing Convention, 37 *ILM* (1998), 247; and Arts. 6, 7, 11, 2000 Terrorist Financing Convention, 39 *ILM* (2000), 270.