

AN INTERNATIONAL WRONGFUL ACT OF AN INTERNATIONAL ORGANIZATION ON TERRORISM: THE UN HUMAN RIGHTS COUNCIL RESOLUTION 40/1 FOR SRI LANKA*

Terörizm Üzerine Uluslararası Bir Organizasyonun Yanlış Hareketi: Birleşmiş Milletler İnsan Hakları 40/1 Sayılı Sri Lanka Kararı

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Abstract

The UN Human Rights Council resolution 40/1 of 13 March 2019 should be defined as an international wrongful act of an international organization for giving impunity for the perpetrators of financing terrorism in Sri Lanka by not implementing the UN Global Counter Terrorism Strategy and not asking for an international criminal investigation in the operative clauses of its resolutions to achieve sustain peace.

Keywords: *Impunity, Finance of Terrorism, International Wrongful Act, Individual Criminal Responsibility, Sustaining Peace.*

Öz

13 Mart 2019 tarih ve 40/1 sayılı BM İnsan Hakları Konseyi kararı, Sri Lanka'da sürdürülebilir barışı sağlayabilmek adına BM Küresel Terör ile Mücadele Stratejisini uygulamayarak ve terörün finansmanı için uluslararası ceza soruşturması açmayarak, terörün finansmanını sağlayan faillerin cezasız kalmasına sebebiyet vermiştir. Bu nedenle de söz konusu kararın uluslararası bir organizasyonun gerçekleştirdiği uluslararası haksız bir fiil olarak tanımlanması gerekmektedir. Bu makalede de bahse konu olan karar incelenmektedir.

Anahtar Kelimeler: *Cezasızlık, Terörün Finansmanı, Uluslararası Haksız Fiil, Bireysel Cezai Sorumluluk, Sürdürülebilir Barış.*

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Introduction

One year after the end of the three decades armed conflict in Sri Lanka, in 2010, the Secretary-General of the United Nations (UN) appointed a Panel of Experts to advise him on options for addressing accountability in Sri Lanka, which reported in March 2011. Meanwhile, the Government appointed its own national Lessons Learned and Reconciliation Commission (LLRC). In March 2012, and again in March 2013, the Human Rights Council (HRC) adopted resolutions on Sri Lanka which urged the Government to implement the recommendations made by the LLRC and to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans.¹

On March 2014, by the resolution 25/1, “*Promoting reconciliation, accountability and human rights in Sri Lanka*”, the HRC requested the Office of the High Commissioner for Human Rights (OHCHR) in the operational article 10 (b) to organize a committee of inquiry on Sri Lanka for the last period of the armed conflict under the definition of “*combat terrorism*”.² A special investigation team established within OHCHR in Geneva, Switzerland, which began its work from 1 July 2014 and named as OHCHR Investigation on Sri Lanka (OISL).

1 “Sri Lanka Web Page”, OHCHR, <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/LKSummary.aspx>, (Date of Accession: 04.04.2019).

2 There exists a confession for the usage of the words, “*combat terrorism, combating terrorism, fighting against terrorism and counter terrorism*” within the UN system. Counter-terrorism in general accepted as measures designed to prevent or combat terrorism whereas fight against terrorism covers both preventing and combating terrorism. UN Global Counter-Terrorism Strategy (UNGCTS) in Pillar II uses preventing and combating terrorism as two different titles as asks member states “to fight against terrorism”. In its resolution 1373, UNSC uses combat terrorism in the form “the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts”. On the other hand, combat terrorism and combating terrorism most of the time are used as vice versa in the UN resolutions.

OISL finished and published its report on 16 September 2015 namely *“Report of the OHCHR Investigation on Sri Lanka”*. In paragraph 1141 of the OISL report, the past-armed conflict in Sri Lanka was defined as an internal armed conflict.³ In paragraphs 168 and 661 of the report, LTTE was defined as a non-state armed group (NSAG).⁴ Even if in OISL report, the LTTE was put under the definition of a NSAG, in paragraph 49 of the OISL report, universally accepted acts of terrorism,⁵ which were made by LTTE, were written in detail as:

3 The concept of “armed conflict” is not defined in the 1949 Geneva Convention-either for international armed conflicts in Article 1 or non-international armed conflicts in common Article 3. There is not a single definition of armed conflict under International Humanitarian Law (IHL). IHL distinguishes between international armed conflicts and armed conflicts “not of an international character”. Definition of an armed conflict for the purpose of the application of IHL as spelled out by the International Criminal Tribunal for ex-Yugoslavia (ICTY) in Dusko Tadic case Appeals Chamber, 2 October 1995 is as: An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. The ICRC proposes the following definitions, international armed conflicts exist whenever there is resort to armed force between two or more States. Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more-armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization. For detailed information please check the ICRC, *How is the Term “Armed Conflict” Defined in International Humanitarian Law?*, <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>, (Date of Accession: 03.04.2019).

4 Protocols II additional to the Geneva Conventions of 1949 in Article 1.1 defines a NSAG as: “Dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its [the High Contracting Party’s] territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”

5 Universally accepted acts of terrorism in the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994) in the operative article 3 defined the acts of terrorism includes: “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” and that such acts “are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them. In the Article 2 of the Statue of the ICTY for the Former Yugoslavia defines grave breaches of the Geneva Conventions namely the following acts: (a) willful killing; (b) torture or inhuman treatment, including biological experiments; (c) willfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power; (f) willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial; (g) unlawful deportation or transfer or unlawful confinement of a civilian; (h) taking civilians as hostages.

“The LTTE developed as a ruthless and formidable military organization, capable of holding large swathes of territory in the north and east, expelling Muslim and Sinhalese communities, and conducting assassinations and attacks on military and civilian targets in all parts of the island. One of the worst atrocities was the killing of several hundred police officers after they had surrendered to the LTTE in Batticaloa on 17 June 1990. The LTTE exerted significant influence and control over Tamil communities in the North and East, as well as in the large Tamil Diasporas, including through forced recruitment and extortion.”

In paragraph 154 of the OISL report, LLTE’s relation as a terrorist organization is mentioned as a point of view of some states but not as an OISL point of view. The footnote 68 for paragraph 154, it is written that:

“OISL did not focus on the issues of illegal acquisition of military equipment, extortion or other such matters, which should be the subject of separate inquiries in the respective countries.”

The OHCHR was one of the 38 entities of the Counter-Terrorism Implementation Task Force⁶ which was responsible for the implementation of the UN Global Counter-Terrorism Strategy (UNGCTS), and as a sub-entity of the OHCHR, the OISL had the same responsibility as the OHCHR to full fill the obligations on the implementation of the UNGCTS. The OISL report had changed the definition of the past-armed conflict from combat terrorism to an internal war and as a sub-entity of the UN Counter-Terrorism Implementation Task Force did not ask an international criminal investigation for the finance of terrorism in Sri Lanka. This

⁶ The Global Counter-Terrorism Coordination Compact replaces the Counter-Terrorism Implementation Task Force established in 2005 to strengthen coordination and coherence of counter-terrorism efforts of the United Nations system. The Global Counter-Terrorism Coordination Compact was established on 23 February 2018, is the largest coordination framework in the UN system. It brings together the heads of 36 UN entities plus Interpol and the World Customs Organization.

international wrongful act of the OISL report had given direct impunity for the perpetrators of the financing of terrorism in Sri Lanka.

The HRC in the operative clause used the OISL report as a pretext for not asking for an international criminal investigation for the finance of terrorism in Sri Lanka in its resolution 30/1 as written in the operative paragraph 5:

“5. Recognizes the need for a process of accountability and reconciliation for the violations and abuses committed by the Liberation Tigers of Tamil Eelam, as highlighted in the report of the Office of the High Commissioner for Human Rights investigation on Sri Lanka;”

The HRC resolution 40/1 even if asks the Sri Lanka government in the operative clause 1 to implement fully measures identified by its resolution 30/1 that are outstanding, there exists no text for the criminal responsibility of LTTE in the operative clauses. A total impunity had been given to LTTE by the resolution 40/1 even if all the crimes against humanity and war crimes were well written in the OISL report.

The main thesis of the article is built on the fact that in the operative clauses of the resolution 40/1, impunity is given to the perpetrators of financiers of LTTE by not asking for an international criminal investigation for the finance of terrorism in Sri Lanka which is an obligation and that the thesis carried out accordingly. The article analyses HRC resolution 40/1 within the UN principles of resolution writings and comes to the conclusion that if in the preambulatory clauses of the resolution, LTTE is defined as a terrorist organization⁷ than in the operative clauses there exists an obligation for an action against terrorism. The article examines

⁷ Terrorist organizations are constructions having some criminal actions, being in non-governmental actor category and having various external connections. For detailed information please check the Mehmet Seyfettin Erol, “Uluslararası İlişkiler Aktörü Olarak Terör Örgütleri”, Haydar Çakmak, ed., *Terörizm*, Barış Platin Publishing, Ankara 2008, p. 84.

the responsibilities arising from the UNGCTS. The article indicates the obligations to criminalize the individuals who are responsible for the perpetrating finance of terrorism as a preventive strategy to protect the right to life to achieve sustaining peace⁸ in any country. The article indicates that under the UN Peace Building Architecture, to end impunity is an obligation whereas resolution 40/1 gives a total impunity to LTTE which is a still living terrorist organization and collecting funds by the transnational organized crimes. In the conclusion part, the article emphasizes the international community as a whole has an obligation not to recognize as lawful the impunity given to the perpetrators of financing terrorism in Sri Lanka. The article defines in the conclusion part the HRC resolution 40/1 is under the definition of an internationally wrongful act of an international organization and a threat to world peace.

Analyses of the Human Rights Council Resolution 40/1 of 13 March 2019

A resolution is a document that offers a solution to a problem in the purview of the UN.⁹ Each resolution consists of one long single sentence. It begins with name of the main organ that is adopting the resolution (e.g., The General Assembly or UNSC). This is followed by several preambulatory clauses. These are not really paragraphing but clauses in the sentence. Each one starts with a

8 The concept "sustaining peace" based on the Report of the Advisory Group of Experts on the Review of the Peacebuilding Architecture, Challenge of Sustaining Peace (A/69/968 - S/2015/490). is defined as follows in the From the preambular paragraphs of the resolutions: *"Recognizing that 'sustaining peace', as drawn from the Advisory Group of Experts report, should be broadly understood as a goal and a process to build a common vision of a society, ensuring that the needs of all segments of the population are taken into account, which encompasses activities aimed at preventing the outbreak, escalation, continuation and recurrence of conflict, addressing root causes, assisting parties to conflict to end hostilities, ensuring national reconciliation, and moving towards recovery, reconstruction and development, and emphasizing that sustaining peace is a shared task and responsibility that needs to be fulfilled by the government and all other national stakeholders, and should flow through all three pillars of the United Nations' engagement at all stages of conflict, and in all its dimensions, and needs sustained international attention and assistance"*. "What is the Definition of "Sustaining Peace"?", UN, <http://ask.un.org/faq/203718>, (Date of Accession: 04.05.2019).

9 "How to Write a Model United Nations Resolution", *Bermun*, <http://www1.bermun.de/content/How%20to%20Write%20a%20Model%20United%20Nations%20Resolution%20BERMUN.pdf>, (Date of Accession: 04.04.2019).

verb in the present participle (e.g., Recalling, Considering, Noting), which is capitalized, and ends with a comma.¹⁰ Preambulatory clauses describe the problem being addressed, recalls past actions taken, explains the purpose of the resolution, and offers support for the operative clauses that follow.¹¹ Preambulatory – literally means *walking before*. The preambulatory section is where a resolution lists its justifications. It uses passive verbs like guided by, alarmed by, realized, recalling, noting, etc. The preamble does not actually do anything, but it is necessary because it provides a context for the operative section to draw from. This is also the place to reference (recalling) treaties and resolutions that have been adopted on the subject.¹² Preambulatory clauses serve to explain the basis for the action called for in the operative paragraphs. A resolution does not take note of or welcome its own past decision, uses a more appropriate verb, such as “*recall*” or “*reaffirm*”.¹³

After the preambulatory clauses, come the operative clauses, which are numbered, and state the action to be taken by the body. Operative clauses all begin with present tense active verbs, which are generally stronger words than those used in the Preamble.¹⁴ Operative clauses state the solutions that the sponsors of the resolution propose to resolve the issues. The operative clauses should address the issues specifically mentioned in the preambulatory clauses above it.¹⁵ Operative clauses contain all the solutions that the sponsor(s) of the resolutions proposed. These clauses set out actual solutions and initiatives for the committee to undertake. They implement new policies or make a statement.¹⁶

10 “Drafting Resolutions”, *UN*, <https://outreach.un.org/mun/content/drafting-resolutions>, (Date of Accession: 04.04.2019).

11 “How to write an UN Resolution?”, *loc. cit.*

12 “Resolution Writing”, *Munc*, <https://www.m-unc.org/resolution-writing>, (Date of Accession: 04.04.2019).

13 “Editing of Resolutions at the United Nations”, *UN*, <https://www.un.org/en/ga/second/69/editorialguidelines.pdf>, (Date of Accession: 04.04.2019).

14 “How to Write an UN Resolution?” *MUN*, http://www.mun.uzh.ch/session/gettingstarted/howto_res_uzh.pdf, (Date of Accession: 04.04.2019).

15 “Model UN Made Easy: How to Write a Resolution”, *Bestdelegate*, <https://bestdelegate.com/model-un-made-easy-how-to-write-a-resolution/>, (Date of Accession: 04.04.2019).

16 “Guide to Resolution Writing”, *Euromun*, <https://euromun.org/wp-content/uploads/2018/04/ResolutionWriting-Guide.pdf>, (Date of Accession: 04.04.2019).

Reaffirming is used in general for the citations affirming relevant treaties such as Reaffirming its commitment to the Treaty on the Non-Proliferation of Nuclear Weapons, the need for all States Party to that Treaty to comply fully with their obligations, and recalling the right of States Party, in conformity with Articles of that Treaty.

Recalling is used in general for the precedents from similar situations, statements from officials and others such as Recalling its resolutions.¹⁷

Resolution 40/1 reaffirmed in the preambulatory clauses of the resolutions 30/1 means resolution 40/1 reaffirmed the operative clause Article 5 of the HRC Resolution 30/1, as the recognition of *“the need for a process of accountability and reconciliation for the violations and abuses committed by the Liberation Tigers of Tamil Eelam, as highlighted in the report of the Office of the High Commissioner for Human Rights investigation on Sri Lanka”* But even if resolution 40/1 reaffirmed the HRC resolution 30/1, in the operative clause, only asked for the Sri Lanka government to implement the operative clauses of the resolution 30/1 as;

“1. Takes note with appreciation of the comprehensive report presented by the United Nations High Commissioner for Human Rights to the Human Rights Council at its fortieth session, pursuant to the request made by the Council in its resolution 34/1, and requests the Government of Sri Lanka to implement fully the measures identified by the Council in its resolution 30/1 that are outstanding”

Resolution 40/1 does not mention in the operative clauses, *a fortiori*, operative clause 5 of the HRC Resolution 30/1, on the recognition of the need for a process of accountability and reconciliation for the violations and abuses committed by the LTTE, as highlighted in the OISL report even if the resolution 40/1 recalled in the perambulatory clause, the HRC resolutions 19/2, 22/1 and

¹⁷ *Ibid.*

25/1, which defined the past-armed conflict as combat terrorism. Resolution 40/1 in fact defined one more time the past-armed conflict as combat terrorism by recalling the past resolutions but did not get into any action in the operative clauses. This is against the principle of the existence of the recalling and reaffirming of the past resolutions in the perambulatory clauses. The following resolution 40/1 for Sri Lanka comes to the conclusion of the total impunity for the terrorism in Sri Lanka.

The United Nations Human Rights Council – A Charter Based System

The UN is bound to respect international human rights law via the joint operation of Article 1(3) and Article 55 (c) of its Charter.¹⁸ The UN human rights system is made up of a broad range of human rights bodies and procedures concerned with the promotion and protection of human rights. To obtain an overview of these bodies and procedures it is useful to distinguish between the “*Charter-based system*” and the “*treaty-based system*”. The Charter-based system relates to those human rights bodies, which ultimately derive their mandate from the Charter of the UN, including where they are established by resolution of the UN General Assembly. Charter-based procedures and obligations, therefore, apply to all UN Member States by virtue of their membership of the UN.¹⁹

The HRC is an inter-governmental body within the UN system made up of 47 States responsible for the promotion and protection of all human rights around the globe. The HRC was created by the UN General Assembly on 15 March 2006 by resolution 60/251 and replaced the former Commission on Human Rights. In the first three operative paragraphs of the resolution, Charter-based responsibility of the HRC well defined as:

18 E. de Wet, “The Security Council as a Law Maker: The Adoption of (Quasi)-Judicial Decisions”, R. Wolfrum-V. Roben, ed, *Developments of International Law in Treaty Making*, Springer, Berlin 2005, p. 193.

19 UN Office on Drugs and Crime, *Human Rights and Criminal Justice Responses to Terrorism*, New York 2014, p. 14.

1. Decides to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years;
2. Decides that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;
3. Decides also that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote effective coordination and the mainstreaming of human rights within the United Nations system;

International organizations are quite different from States, and in addition present great diversity among themselves. In contrast with States, they do not possess a general competence and have been established in order to exercise specific functions (“*principle of speciality*”).²⁰ In its advisory opinion on the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt the Court stated:²¹

“International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”

20 “United Nations International Law Commission Draft Articles on the Responsibility of International Organizations with Commentaries 2011”, *ILC*, <http://legal.un.org/ilc/texts/instruments/english/commentaries/9112011.pdf>, (Date of Accession: 30.03.2019).

21 “Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt Advisory Opinion of 20 December 1980”, *ICJ*, <http://www.icj-cij.org/files/case-related/65/065-19801220-ADV-01-00-EN.pdf>, (Date of Accession: 30.03.2018).

The ICJ further pointed out that international organizations did not, like States, possess a general competence, but were governed by the “*principle of specialty*”, that is to say; they were invested by the States, which created them with powers, the limits of which were a function of the common interests whose promotion those States entrusted to them.²²

As written in the ICJ’s advisory opinion on the WHO and Egypt case, the HRC is the principal intergovernmental body established on the *principle of specialty* to implement Charter-based obligations to protect the human rights within the UN system. To implement in its resolution the UNGCT is not an act of choice but an obligation, the *raison d’être* of the HRC based on the *principle of specialty* to protect the UN system of human rights.

The UN Global Counter-Terrorism Strategy – A Charter-Based Obligation

Since 1963, the international community has elaborated 19 international legal instruments to prevent terrorist acts.²³ The UN system of treaties against terrorism has evolved from specific

²² *Ibid.*

²³ 1. 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft, 2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, 3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 4. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 5. 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 6. 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 7. 2014 Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft, 8. 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, 9. 1979 International Convention against the Taking of Hostages, 10. 1980 Convention on the Physical Protection of Nuclear Material, 11. 2005 Amendments to the Convention on the Physical Protection of Nuclear Material, 12. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 13. 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 14. 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 15. 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 16. 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, 17. 1997 International Convention for the Suppression of Terrorist Bombings, 18. 1999 International Convention for the Suppression of the Financing of Terrorism, 19. 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

threats, i.e. to civil aviation and maritime navigation. Gradually, the system became more generalized, starting with the protection against the taking of hostages, followed by the Convention for the Suppression of Terrorist Bombings.²⁴ By resolution 49/60 of 9 December 1994, the General Assembly reaffirmed its “*unequivocal condemnation of all acts, methods and practices of terrorism*” and declared for the first time that:²⁵

“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”

With a view to enhancing its involvement in counter-terrorism efforts, the UN General Assembly established pursuant to resolution 51/210 of 17 December 1996, an Ad Hoc Committee to elaborate two draft conventions aiming to combat certain types of terrorist activities (terrorist bombings and nuclear terrorism, respectively). Even though the Committee’s mandate did not include the issue of the financing of terrorism initially, it was subsequently rapidly broadened to include the issue. The work of the Ad Hoc Committee led to the adoption, in 1999, of the Convention for the Suppression of the Financing of Terrorism.²⁶

The Convention contains three main obligations for states parties. First, states parties must establish the offense of financing of terrorist acts in their criminal legislation. Second, they must engage in wide-ranging cooperation with other states parties and provide them with legal assistance in the matters covered by the Convention. Third, they must enact certain requirements

24 Mark Pieth, “Criminalizing the Financing of Terrorism”, *Journal of International Criminal Justice*, 4(5), 2006, p. 1077.

25 “Terrorism Prevention Branch”, *UNODCCP*, https://www.unodc.org/pdf/leaflet_2000-04-30_1.pdf, (Date of Accession: 04.04.2019).

26 Pierre Klein, International Convention for the Suppression of the Financing of Terrorism, *United Nations Audiovisual Library of International Law*, http://legal.un.org/avl/pdf/ha/icsft/icsft_e.pdf, (Date of Accession: 04.04.2019).

concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts.²⁷ The first is that of “*financing*.” Financing is defined very broadly as providing or collecting funds. This element is established if a person “*by any means, directly or indirectly, unlawfully and willfully, provides or collects funds [...]*.”²⁸

The criminalization of the financing of terrorism is mandatory in the Convention. By contrast, only a few general provisions of the Convention dealing with preventive measures, which are set out in Article 18, are mandatory. The states parties are required to cooperate in the prevention of the offenses established by the Convention “*by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories.*” Such measures include (a) “[*m*]easures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of the offences [established in the Convention],” and (b) “[*m*]easures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity.”²⁹

On 28 September 2001, acting under Chapter VII of the Charter of the UN, UNSC adopted resolution 1373, stating explicitly that every act of terrorism constitutes a “*threat to international peace and security*” and that the “*acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations.*” The resolution also requires all States to criminalize terrorist acts; to penalize acts of support for or in preparation of terrorist

27 Legal Department International Monetary Fund, Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting, *MJIB*, <https://www.mjib.gov.tw/userfiles/files/35-洗錢防制處/files/國際貨幣基金會文件/03-05-01.pdf>, (Date of Accession: 04.04.2019).

28 *Ibid.*

29 *Ibid.*

offences; to criminalize the financing of terrorism; to depoliticize terrorist offences; to freeze funds of persons who commit or attempt to commit terrorist acts, and to strengthen international cooperation in criminal matters.³⁰

While decisions taken by the UNSC under Chapter VII of the Charter are binding on all members, the exact nature of the obligations they impose depends on the language used in the resolutions. It is generally accepted that decisions of the UNSC are mandatory while its recommendations (e.g. when the Council “calls upon” member states) do not have the same legal authority. Of the three operative clauses of the resolution addressed to States, the first two are expressed as binding decisions of the UNSC.³¹ The Resolution contains two separate requirements with regard to combating the financing of terrorism, one relating to the financing of terrorist acts, the other relating to the financing of terrorists. The first requirement is contained in paragraphs 1(a) and 1(b) of the resolution. In paragraph 1(a), the resolution requires states to “prevent and suppress the financing of terrorist acts.” In paragraph 1(b), the Resolution requires states to “[c]riminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.” The second requirement is contained in paragraph 1(d) of the Resolution, which requires states to “prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.”³²

30 “Human Rights, Terrorism and Counter-Terrorism”, OHCHR, <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>, (Date of Accession: 04.04.2019).

31 Legal Department International Monetary Fund, Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting, MJIB, <https://www.mjib.gov.tw/userfiles/files/35-洗錢防制處/files/國際貨幣基金會文件/03-05-01.pdf>, (Date of Accession: 04.04.2019).

32 *Ibid.*

UNSC resolution 1373 already contained the main elements of a general obligation for states to either extradite or prosecute terrorist suspects. The obligation for states to ensure that persons responsible for terrorist acts are brought to justice and the request that politically motivated claims be not recognized as admissible grounds for refusing the extradition of terrorist suspects had already been included in it. The obligation to either extradite or prosecute was later expressly provided in the Declaration attached to UNSC Resolution 1456 (2003) where the UNSC stated that “*States must bring to justice those who finance, plan, support or commit terrorist acts or provide safe heavens, in accordance with international law, in particular on the basis of the principle to extradite or to prosecute.*”³³

UNSC 1456 is the first counter-terrorism resolution to mention State responsibility to uphold and protect “*human rights*”. It also notes the relationship between terrorism and criminal activity: “*terrorists must also be prevented from making use of other criminal activities such as transnational organized crime, illicit drugs, and drug trafficking, money-laundering and illicit arms trafficking.*”³⁴ UNSC resolution 1566 (2004) reiterated, albeit in a less compelling language, the duty of states to act on the basis of the principle to extradite or prosecute.³⁵ In Resolution 1624 (2005) the UNSC called upon all states to prohibit by law the incitement to commit terrorist acts, to prevent such conduct and to deny safe haven to any person with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct. In addition, it called upon states to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural and religious institutions by terrorists and their supporters.³⁶

33 Andrea Bianchi, “Security Council’s Anti-Terror Resolutions and Their Implementation by Member States”, *Journal of International Criminal Justice*, 4(5), 2006, p. 1054.

34 “Linkages between Organized Crime and Terrorism”, *UNODC*, https://www.unodc.org/documents/e4j/FINAL_Module_16_Linkages_between_Organized_Crime_andTerrorism14Mar2019.pdf, (Date of Accession: 04.04.2019).

35 Bianchi, *loc. cit.*

36 Jean-Paul Laborde-Michael DeFeo, Problems and Prospects of Implementing UN Action against Terrorism, *Journal of International Criminal Justice*, 4(5), 2006, p. 1095.

The General Assembly by its resolution 60/288 of September 2006 was adopted the UNGCTS as a form of a resolution and an annexed Plan of Action. The UNGCTS is a comprehensive instrument intended to enhance coordination of national, regional and international efforts to counter terrorism. The Strategy takes a holistic approach addressing four pillars as written in resolution 60/288: I) Measures to address the conditions conducive to the spread of terrorism; II) Measures to prevent and combat terrorism; III) Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and IV) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.³⁷

The Finance of Terrorism and the United Nations Global Counter-Terrorism Strategy

Terrorist financing involves the solicitation, collection or provision of funds with the intention that they may be used to support terrorist acts or organizations. Funds may stem from both legal and illicit sources. The European Union gives a definition in Article 1 of the Third Directive on money laundering and terrorist financing. It defines terrorist financing as “the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism”.³⁸

International efforts to curb money-laundering and financing of terrorism are the reflection of a strategy aimed at, on the one hand, attacking the economic power of criminal or terrorist organizations and individuals in order to weaken them by preventing their benefiting from, or making use of, illicit proceeds and, on the other hand, at forestalling the nefarious effects of the

37 “UN Global Counter-Terrorism Strategy”, *UN*, <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>, (Date of Accession: 03.04.2019).

38 “Official Journal of the European Union 5.6.2015”, *EU*, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=EN>, (Date of Accession: 03.04.2019).

criminal economy and of terrorism on the legal economy. The 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the first international legal instrument to embody the money laundering aspect of this new strategy and is also the first international convention which criminalizes money laundering.³⁹

When the criminalization of terrorism financing was first addressed in an international instrument through the International Convention for the Suppression of the Financing of Terrorism in 1999, drafters were faced with the challenge of establishing a regime that would criminalize the funding of an act that had not been previously defined in a comprehensive manner. Making the financing of terrorism a legal offense separate from the actual terrorism act itself gives authorities much greater powers to prevent terrorism.⁴⁰

UNSC resolution 1373 of 21 September 2001 amounted to an obligation to apply the operative parts of the UN International Convention for the Suppression of the Financing of Terrorism. Under resolution 1373, which reproduces the terms of the 1999 Terrorist Financing Convention, terrorism financing is defined as “the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.”⁴¹

Resolution 1373 also provided for the setting up of the Counter-Terrorism Committee (CTC) to monitor the implementation of

39 “UN Instruments and Other Relevant International Standards on Money-Laundering and Terrorist Financing”, *UNODC*, <https://www.unodc.org/unodc/en/money-laundering/InstrumentsStandards.html>, (Date of Accession: 03.04.2019).

40 “United Nations Counter Terrorism Implementation Task Force (CTITF), Tackling the Financing of Terrorism, *UN*, Retrieved November 19, 2018 from”, http://www.un.org/en/terrorism/ctitf/pdfs/ctitf_financing_eng_final.pdf, United Nations Office of Counter-Terrorism, UN, <http://www.un.org/en/counterterrorism/>, (Date of Accession: 03.04.2019).

41 B erence Boutin, “Has Countering the Financing of Terrorism Gone Wrong? Prosecuting the Parents of Foreign Terrorist Fighters”, *ICCT*, <https://icct.nl/publication/countering-the-financing-of-terrorism-gone-wrong-prosecuting-the-parents-of-foreign-terrorist-fighters>, (Date of Accession: 03.04.2019).

the Resolution by the states. In April 2002, the International Convention for the Suppression of the Financing of Terrorism became effective, giving the measures contained in Resolution 1373 a permanent existence.

A Preventive Strategy to Protect the Right to Life

Except for the 1999 Financing Convention, the universal anti-terrorism agreements define forms of criminal liability that do not apply unless a violent act is completed or attempted. The international cooperation provisions of those agreements would be unavailable with respect to an association or conspiracy that did not progress to an attempted or completed offence.⁴²

The necessity for intervention and cooperation against terrorist attacks in their preparatory stages had become apparent. If not by using the concepts of conspiracy or criminal association, how could the elements of illegal preparation or support for a terrorist attack be defined with sufficient precision to give fair notice to the public, without punishing acts that do not pose a significant social threat? In 1999, the Financing Convention answered this question with a strategic departure from the approach of previous anti-terrorism instruments. Instead of defining a violent offence punishable only if it succeeds or is attempted, Article 2 of that Convention criminalizes the non-violent financial preparations that precede nearly every terrorist attack. The subjective element required is spelled out in Article 2. It provides that “[a]ny person commits an offence within the meaning of this Convention if that person, by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” one of the subsequently listed violent acts. These acts, that the Parties to the Convention are required to criminalize, comprise any act “which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex”; or “any other act intended to cause death or serious bodily injury to a civilian, or to any other

42 Laborde-DeFeo, *op.cit.*, p. 1093.

person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or compel a government or an international organization to do or to abstain from doing any act.” Moreover, paragraph 3 of that Article 2 specifies, “[f]or an act to constitute an offence ..., it shall not be necessary that the funds were actually used to carry out an offence.”

In sum, criminalizing financial preparations for terrorism introduced a deliberate strategy of permitting intervention before any of these terrorist atrocities was committed or attempted. The policy choice underlying this strategy is evidently interdicting and interrupting terrorist planning and preparation before innocent civilians become victims is infinitely preferable to conducting autopsies and crime scene investigations after a tragedy has occurred. This interventionist approach enhances the ability to prosecute while implementing the mandate of Article 6(1) of the International Covenant on Civil and Political Rights, (ICCPR) that, as stated earlier, requires the right to life be protected by law, and guarantees that no one be arbitrarily deprived of his life.⁴³ The right to life, which is protected under international and regional human rights treaties, as the ICCPR, has been described as “*the supreme right*” because, without its effective guarantee, all other human rights would be without meaning.⁴⁴

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 another individual, which certainly includes terrorists. Also, important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This, of course, includes terrorist threats.⁴⁵

43 *Ibid.*

44 “Human Rights Committee, General Comment No: 6, 1982”, *Refworld*, <https://www.refworld.org/docid/45388400a.html>, (Date of Accession: 04.04.2019).

45 “Human Rights, Terrorism and Counter-terrorism”, *loc. cit.*

The concept of “*Sustaining Peace*” has emerged as a new and comprehensive approach to preventing the outbreak, continuation, and recurrence of conflict.⁴⁶ It marks a clear break from the past where efforts to build peace were perceived to be mainly restricted to post-conflict contexts. The concept, framed by the twin sustaining peace resolutions⁴⁷ and the recently adopted UN Secretary-General Report on peacebuilding and sustaining peace⁴⁸, recognizes that a comprehensive approach is required across the peace continuum, from conflict prevention, through peace-making, peacekeeping, and longer-term development. It, therefore, necessitates an “*integrated and coherent approach among relevant political, security and developmental actors, within and outside of the UN system.*”⁴⁹

The Individual Criminal Responsibility for Sustaining Peace

International Convention for the Suppression of the Financing of Terrorism 1999, the term, “*indirectly*” is used for the responsible for the acts of terrorism. The Special Tribunal for Lebanon (STL) definition of terrorism “*indirectly*” acts of terrorism are also put under criminal responsibility. The STL, in establishing the *raison d’être* of the tribunal to prosecute the crime of terrorism, recognized the customary international law prohibition of terrorism as an international crime imputing individual criminal responsibility. Any person who unlawfully and intentionally involved in any terrorist organization is under individual criminal responsibility for crimes of the terrorist organization. UN Security Council Resolution 1373 in the operative paragraph of Article 1 (b) indicated the individual criminal responsibility.

46 UN Security Council Resolution 2282, 27 April 2016.

47 UN General Assembly, A/RES/70/262 (2016); UN Security Council, S/RES/2282(2016).

48 UN Secretary-General Report on Peace Building and Sustaining Peace, A/72/707-S/2018/43, 18 January 2018.

49 “Geneva Peace Building Platform, The United Nations Approach to Sustaining Peace”, DCAF, https://www.dcaf.ch/sites/default/files/publications/documents/Summary%20Report_Sustaining%20Peace%20Event%20with%20PGA_2.pdf, (Date of Accession: 04.04.2019).

Ending Impunity

In the “*Updated Set of principles for the protection and promotion of human rights through action to combat impunity*”, submitted to the UN Commission on Human Rights on 8 February 2005 defined impunity as;

“The impossibility, de jure or de facto, of bringing the perpetrators of violations to account, whether in criminal, civil, administrative or disciplinary proceedings, since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and making reparations to their victims.”

The General Assembly by the Resolution 67/1 of 24 September 2012 “the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels”, in paragraph 22, ensure that:

“Impunity is not tolerated for genocide, war crimes, crimes against humanity and for violations of international humanitarian law and gross violations of human rights law, and that such violations are properly investigated and appropriately sanctioned, including by bringing the perpetrators of any crimes to justice, through national mechanisms or, where appropriate, regional or international mechanisms, in accordance with international law”

In paragraph 26 of the resolution 67/1, member states reiterate that:

“Strong and unequivocal condemnation of terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to

international peace and security; we reaffirm that all measures used in the fight against terrorism must be in compliance with the obligations of States under international law, including the Charter of the United Nations, in particular, the purposes and principles thereof, and relevant conventions and protocols, in particular, human rights law, refugee law, and humanitarian law.”

Action to combat impunity is one of the main principles relating to the promotion of truth, justice, reparation, and guarantees of non-recurrence to reach transitional justice by UN whereas the HRC had given total impunity for the perpetrators of financing terrorism by the resolution 40/1.

A Preventive Strategy – United Nations Peace Building Architecture

With its twin resolutions on review of the UN Peace Building Architecture in 2016, in both the General Assembly resolution 70/262 and the UNSC resolution 2282, the UN has made a commitment to taking a more comprehensive approach to peace. Following the high-level reviews of peace operations, the peace building architecture and the implementation of UNSC resolution 1325 in 2015, there is growing understanding that the international community often responds only after a crisis⁵⁰ starts-when lives have already been lost and fragile social fabrics undone. As a counterpoint, the 2016 resolutions place prevention of conflict at the core of the UN engagement with peace, and they call for partnerships with all stakeholders in service to a common vision of peace.⁵¹

50 For detailed information about notion of crisis please check the Mehmet Seyfettin Erol-Şafak Oğuz, “NATO ve Kriz Yönetimi”, Mehmet Seyfettin Erol-Ertan Efeğil, ed., *Krizler ve Kriz Yönetimi: Temel Yaklaşımlar, Aktörler, Örnek Olaylar*, Barış Platin Publishing, Ankara 2012, p. 345-369

51 “Sustaining Peace: Partnerships for Conflict Prevention and Peacebuilding, Concept Note”, UN, <https://www.un.org/pga/72/wp-content/uploads/sites/51/2017/11/Concept-note.pdf>, (Date of Accession: 19.03.2019).

LTTE – A Still Living Terrorist Organization

The Federal Bureau of Investigation of USA in its 10 January 2008 report said that the LTTE is one of the most dangerous and deadly extremist outfits in the world and the world should be concerned about the outfit as they had “inspired” networks worldwide, including the al-Qaeda in Iraq. There had been reports that the LTTE raised money through drug running, particularly heroin from Southeast and Southwest Asia. The LTTE was in a particularly advantageous position to traffic narcotics due to the highly efficient international network it had developed to smuggle munitions around the world. Many of these arms routes passed either directly through or very close to major drug producing and transit centers, including Myanmar, Thailand, Cambodia, southern China, Afghanistan, and Pakistan.⁵²

Since the end of the war, 13 LTTE supporters, several of which had allegedly planned attacks against USA and Israeli diplomatic facilities in India, were arrested in Malaysia in 2014. The LTTE used its international contacts and the large Tamil diaspora in North America, Europe, and Asia to procure weapons, communications, funding, and other needed supplies. The group employed charities as fronts to collect and divert funds for its activities. LTTE’s financial network of support continued to operate throughout 2014.⁵³

Conclusion

The right to life, as the ICCPR, has been described “the supreme right” because, without its effective guarantee, all other human rights would be without meaning. The HRC is an inter-governmental body, responsible, to protect the supreme right, the right to life and the human rights in the UN, created on the “principle of specialty”

52 “Liberation Tigers of Tamil Eelam (LTTE)”, *South Asia Intelligence Review*, <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/Ltte.htm>, (Date of Accession: 19.03.2019).

53 “Country Reports on Terrorism 2014”, *US Department of State, Publication Bureau of Counterterrorism*, <https://www.state.gov/j/ct/rls/crt/2014/>, (Date of Accession: 19.03.2019).

by the UN General Assembly. Implementation of the UNGCT in its resolutions is not an act of free choice but an obligation, the *raison d'être* of the HRC to protect the right to life.

Involvement in counter-terrorism efforts, the UN General Assembly adopted in 1999, of the Convention for the Suppression of the Financing of Terrorism. Except for the 1999 Financing Convention, the universal anti-terrorism agreements define forms of criminal liability that do not apply unless a violent act is completed or attempted. The criminalization of the financing of terrorism is mandatory in the Convention dealing with preventive measures.

With the Convention for the Suppression of the Financing of Terrorism, the criminalization of terrorism becomes mandatory with preventive measures before the realization of any terrorist act.

On 28 September 2001, acting under Chapter VII of the Charter of the UN, UNSC adopted resolution 1373, stating explicitly that every act of terrorism constitutes a “threat to international peace and security” and that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations.” The resolution also requires all States to criminalize terrorist acts; to penalize acts of support for or in preparation of terrorist offences; to criminalize the financing of terrorism; to depoliticize terrorist offences; to freeze funds of persons who commit or attempt to commit terrorist acts, and to strengthen international cooperation in criminal matters. The obligation for states to ensure that persons responsible for terrorist acts are brought to justice.

UNSC 1456 (2003) is the first counter-terrorism resolution to mention State responsibility to uphold and protect “human rights”. It also notes the relationship between terrorism and criminal activity: “terrorists must also be prevented from making use of other criminal activities such as transnational organized crime, illicit drugs, and drug trafficking, money-laundering and illicit arms trafficking

The UNGCTS as a form of a resolution and an annexed Plan of Action. The UNGCTS is a comprehensive instrument intended to enhance coordination of national, regional and international efforts to counter terrorism. The Strategy takes a holistic approach addressing four pillars as written in the UNGCTS. Pillar II established the measures to prevent and combat terrorism. Prevent terrorism is mainly focused on the criminalization of the finance of terrorism, originated from the UNSC resolution 1373.

International Convention for the Suppression of the Financing of Terrorism 1999, the term, “indirectly” is used for the responsible for the acts of terrorism. The Special Tribunal for Lebanon (STL) definition of terrorism “indirectly” acts of terrorism are also put under criminal responsibility. Impunity is forbidden for the victim-based approach as well the action to combat impunity is one of the main principles relating to the promotion of truth, justice, reparation, and guarantees of non-recurrence to reach transitional justice by the UN to achieve sustainable peace.

The UN Peace Building Architecture in its approach to peace aimed to change the concept of involvement only after a crisis starts but before to get into action with preventive measures. The UN Peace Building Architecture as a counterpoint, prevention of conflict is at the core of the UN engagement with peace. Criminalization of financing of terrorism is the corner stone in the fragile states after conflict to create sustain peace.

Only by criminalization of financing of terrorism, a sustaining peace can be achieved in Sri Lanka which is an obligation for the members States of the HRC to realize.

The HRC in the preambulatory clause of its resolution 11/1 had defined the past-armed conflict as “countering terrorism” in Sri Lanka while in the perambulatory clauses of its resolutions, 19/2, 22/1 and 25/1 defined armed conflict as “combat terrorism”. The HRC resolution 30/1 even if defined the armed conflict in the perambulatory clause as combat terrorism, in the operational clause 5 did not ask for the implementation of UNGCTS and

in fact had nullified the definition of combat terrorism of the perambulatory clauses of the past resolutions by giving reference to the OISL report which defined LTTE as a NSAG, not as a terrorist organization and the past armed conflict as an internal war, not as combat terrorism.

Although the HRC resolutions 30/1 mentioned the need for a process of accountability and reconciliation for the violations and abuses committed by the LTTE in the operative clause 5, the HRC resolution 40/1 only asked in the operative clauses to the Government of Sri Lanka to implement fully the measures identified by the Council in its resolution 30/1 that are outstanding; but did not ask any investigation as written in the operative clause 5 of the resolution 30/1, which comes to the conclusion that means a total impunity was given to the terrorism of LTTE in Sri Lanka.

Nothing can disappear for the ongoing resolutions from the past to the present and the future in the UN system. It must be recalled or reaffirmed. When it is recalled or reaffirmed, the operative clauses should address the issues specifically mentioned in the perambulatory clauses above it. When any HRC resolution recalled the past resolutions, which defined the past-armed conflict as combat terrorism then there exists the obligation to implement in the operative clauses the UNGCTS to protect the right to life.

LTTE is a living organization collecting funds from the transnational organized crimes and the existence of LTTE creates a threat to achieve sustaining peace in Sri Lanka.

Implementation of the UNGCTS is an obligation not only to protect the right to life but as well to achieve the UN Peace Building Architecture for the prevention of the reoccurrence of terrorism of LTTE. To achieve this, there exists the need for an international criminal investigation on the finance of terrorism.

At the core of the UN engagement the necessity for intervention and cooperation against terrorist attacks in their preparatory stages on the cutting the finance of the still living terrorist

organization LTTE for Sri Lanka. To criminalize the individuals responsible for sustaining peace is a need and on the other hand, impunity is not tolerated on the victim-based approach.

The responsibility of the HRC for the implementation of the UNGCTS and ask for an international committee of inquiry for the financing of terrorism under Pillar II of the UNGCTS on measures to prevent and combat terrorism against the recurrence to achieve sustaining peace in Sri Lanka under the UN Peace Building Architecture is an obligation whereas the HRC gives total impunity to the terrorism of LTTE.

The HRC resolution 40/1 is under the definition of an internationally wrongful act of an international organization and should be accepted as a threat to world peace and security for giving impunity for the perpetrators of financiers of a terrorist organization. The HRC and the international community as a whole has an obligation not to recognize as lawful the resolution 40/1.

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