

Legal System Governing the War against Terrorism and its Implications for the Victims of Terrorist Attacks

Mehdi Sabooripour, Ali Chahkandi, Seyyed Hassan Hashemi, Mirza Ali Adabi

Abstract--- Resort to interventions and procedures in conflict with citizenship rights has currently become pervasive under the title of fight against terrorism and, this is while, the UN has repeatedly emphasized on the necessity for observing the citizenship rights in the fights against terrorism (including in the resolution no.219 in the 57th meeting, resolution no.187 in the 58th meeting and resolution no.191 in the 59th meeting by the general assembly as well as resolution no.1624 by the security council). In this article, efforts will be seminally made to recognize the indispensable legal system in the fight against terrorism and, subsequently, investigate some of the procedures that have been adopted during the recent years in terms of the extent to which they are in accordance with the criteria of the corresponding legal system. Since the most frequent measures under the title of the fight against terrorism are being taken by the US, it is natural for most of the materials to be related to this country but references will be also made to the other countries depending on the discussion's expediencies.

Keywords--- Terrorism, War against terror, Victimology, Victim Support, Rule of Law.

I. INTRODUCTION

1. Investigating the Legal System Governing the War Against Terrorism

Amongst the determinative issues related to the offering of a comprehensive analysis on the antiterrorist interventions is the determination of an indispensable legal system for taking such measures. A legal system works like an index based on which ideas can be opined about the permissibility or prohibition of the various procedures. In the area of the so-called antiterrorism interventions, the idea being advertised by the countries claiming the fight against terrorism is that the legal system governing these interventions is the humanitarian rights (war rights). From this perspective, the fight against terrorism is introduced as an international armed clash and, due to the same reason, it obeys the war rights with human right that pertains to the peace time as claimed by these states are not being enforced about such fights. The benefit in these countries' realizing of the human right system as not being enforceable in this regard and their substantiation on the humanitarian rights is that they are provided with more freedom of action because many of the actions refused in the

Mehdi Sabooripour: Ph.D., Assistant Professor of Criminal Law and Criminology, Shahid Baheshti University, Tehran, Iran.

Ali Chahkandi: Ph.D., Professor of Criminal Law and Criminology, Birjand University, Iran.

Seyyed Hassan Hashemi: Ph.D., Professor of Criminal Law and Criminology, Birjand University, Iran.

Mirza Ali Adabi: Ph.D., Candidate of Criminal Law and Criminology, Birjand University, Iran.

human rights system are permissible in war situation and by the force of the humanitarian rights¹. An example of this issue can be observed in the detention of an unlimited number of individuals suspected for membership in Al-Qaida in Guantanamo. In this regard, the US officials reason that the armed clashes' rights allow this country and any other country engaged in war to detain the enemy warriors for no accusation and without granting them the permission for access to a lawyer till the end of the clash period. Such detentions are envisioned as these individuals' punishment solely for preventing them from picking up weapons again against the US². As it is clear, such a reasoning is laid on the foundation of two introductions: the first is that the US and its allies' fight against terrorism is considered as a war in the sense intended by the international laws and the second is that the human rights constitute a peace time-specific legal system and they cannot be enforced at war time. Then, it can be concluded from these two introductions that these countries are not obliged to observe the requirements of the human rights' rules and regulations in their battles against terrorism. To recognize the amount of such a reasoning's strength, each of the two abovementioned introductions will be separately investigated.

1-1. Is the Global Fight Against Terrorism a War?

As stated by the special correspondent of UN's specific human right commission about terrorism: "this issue that whether the government can be in war with a terroristic group has never been posited before 11th of september and it only happened to come about after that date and it is still being posited"³. The scales proposed by the UN's red cross in the course of time regarding the enforcement of Geneva Convention are all indicative of armed clashes in its traditional form. However, the international organization, as the primary supervisor of the four 1949 Geneva conventions and their appended protocols which are the primary sources of the armed clashes' rights, does not realize the global fight against terrorism as a war. In a report by the workgroup on support of human rights in the fight against terrorism that was established on March, 2004, in Copenhagen, Denmark, it has been stated that if prevention of terrorism leads to the use of force, the situation is considered as an armed clash if it is qualified for the following conditions:

- A) The volume and duration of the clashes should be to the extent that they can be realized as being beyond a temporary unrest or tension.
- B) The two clashing parties can be specified and distinguished.
- C) The geographical realm of the clash can be determined.
- D) The onset of the clashes should be clear and an end can be imagined for them.

In the absence of each of these three conditions, speaking about war occurrence is annulled⁴. However, in what US calls war against terrorism, if it is laxly accepted that the clashes are so huge in volume that the first property can be considered actualized for them, the three other properties are definitely missing. First of all, the clashes' parties are not clear because the US government calls terrorist whoever it wants in a selective behavior; thus, it cannot be determined that which is the group of terrorists with which this country knows itself in war. The testimony to this claim can be seen in the various lists the government of this country occasionally offers about the terrorist organizations; in every time of this list's publication, some new organizations have been usually added to the previous ones. Second of all, the US has not limited this his so-called war against terrorism to a given country or a certain region. The US president formally announces that their war

¹ Warner, Daniel, (2003), "human rights and humanitarian rights: an attempt for globalization", tr. Solaleh Habibi Amin, Tehran, Gerayesh Publication Institute, p.155

² http://www.news.bbc.co.uk/1/shared/bsp/hi/pdfs/16_02_06_un_guantanamo.pdf

³ Document no.E/CN.4/Sub.2/2002/35, human right commission of the UN's social and economic council, issued on 17th of July, 2002; [http://www.unhcr.ch/huridocda/huridoca.nsf/AllSymbols/001AAAE707436642C1256C140036981B/\\$File/G0214282.pdf?OpenElement](http://www.unhcr.ch/huridocda/huridoca.nsf/AllSymbols/001AAAE707436642C1256C140036981B/$File/G0214282.pdf?OpenElement)

⁴ <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5XCMNJ>

against terrorism is expanded on a realm as wide as the whole world⁵; thus, the third condition of war actualization in its legal sense, i.e. clearness of the clashes' geographical domain, is also missing. Third of all, no end can be imagined for the interventions made by the US with such a justification as fight against terrorism meaning that it cannot be stated that the US would end its interventions beyond its borders with the excuse of battle against terrorism with, saying, detention and trial and/or destruction of Al-Qaida's leader. Considering the above-presented descriptions, the fourth condition, to wit the existence of an armed clash, is also nonexistent.

In fact, the term "war" in the expression "war against terrorism" which has been frequently used by the heads of the US and its allies does not convey a specific legal load rather it is just an excuse for not observing the human rights' requirements about the terrorism suspects. Terrorism is a phenomenon not a certain delegation or group of individuals and it is not possible to fight with a phenomenon from the legal perspectives.

1-2. Is Requiring to the Observance of Human Rights Specific to Peace Time?

It was explained in the previous section that the interventions that are globally made under the title of fight against terrorism lack the properties of a war in its legal meaning. But even if it is accepted that there is really a war in progress against terrorism, does this war situation allow the involved individuals to violate the human rights' regulations and requirements? In other words, is the human right system specific to the peace time or is it a pervasive system the regulations of which should be necessarily observed in war time, as well?

The UN's human right committee has the following words in this regard: "international covenant on civil and political rights [as one of the most important international human rights' documents] is to be enforced in the time of the armed clashes ... These two legal realm are supplementary and the enforcement of one does not negate the necessity of observing the other"⁶. A government is obliged to observe the human right regulations in war time not only for individuals living in its governance realm but also for all the individuals residing its effective authority and control domain⁷. Therefore, as an example, the US government is obliged to treat the individuals it has under control in Afghanistan, Iraq and/or Guantanamo properly in adherence to the human rights' requirements.

From the perspective of the ICJ, as well, a country's engagement in war does not spontaneously make it exempt from the observance of the human rights. The international court of justice explicitly asserts that the supports inserted in the international covenant on civil and political rights are also enforced in war time unless the state involved in the clash is found having adopted strategies in adherence to the article 4 of the treaty beyond the requirements stipulated therein⁸. The question that might strike the mind here is that can it be not said that the US government and the other states involved in the fight against terrorism are exempted from observance of human rights about the terrorism suspects based on the conditions mentioned in article 4 of the international civil and political rights' treaty? The answer to this question entails investigation of the aforesaid article 4. Corresponding to this article:

"1) Whenever a general exceptional danger is threatening a nation's existence and this danger is formally declared, the country members of the treaty can adopt strategies beyond the requirements stipulated therein provided that the foresaid strategies are not in contradiction to the other requirements they have to shoulder in adherence to the international laws and lead to no discrimination in terms of race, color, gender, language, origin and religion or social matters.

⁵ Please look at the text transcribed from a radio lecture by George Bush on 29th of September, 2001: <http://www.whitehouse.gov/news/releases/2001/09/20010929.html>

⁶ 31st explanation of the UN's human right committee about the international civil and political rights' treaty on 26th of May, 2004, recorded under number CCPR/C/21/Rev.1/Add.13; this explanation can be retrieved from the following address: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.21.Rev.1.Add.13.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.21.Rev.1.Add.13.En?OpenDocument)

⁷ Ibid

⁸ ICJ's assertion about the legal position of the threat to the use of nuclear weapon (8th of July, 1996) cited in the following source, p.17: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/101/34/PDF/G0510134.pdf?OpenElement>

2) The verdict inserted in the above paragraph does not prescribe any violations from articles 6, 7 and 8 (first and second paragraphs), 11, 15, 16 and 18.

3) The country members of this treaty that use their violation right are obliged to immediately inform the other member states through the UN's secretary about the regulations they have violated as well as the reasons for making such violations and they should again inform the same members in a new declaration through the same authority about the termination of their violations"⁹.

The regulations introduced in this article have been investigated in details in one of the documents issued by the United Nation economic and social council's committee for prevention of discrimination and support of the minorities under the title of "SIRACUSA principles about the delimitation and violation of the international civil and political rights' treaty" and the concepts inserted therein have been explained¹⁰; in order to be brief, the reflection of all of them in here has been avoided and it only suffices this article to express that the inviolable precondition to the permissibility of violating the regulations of the treaty is the existence of emergency conditions as stipulated in paragraph 3 of article 4 and it is the UN's secretary that notifies the other member states about the emergency condition a country is experiencing while the states claiming the global fight against terrorism have never issued any declaration after the incident on 11th of September. Therefore, their interventions are impermissible even based on the special regulations inserted in article 4¹¹.

As it was mentioned, US government violates the human rights for such an excuse as the fight against terrorism with this justification that it is in war with the terrorist groups and the human rights cannot be enforced in war situation. But, interestingly, this government does not even completely observe the war rights in its antiterrorism interventions. For instance, according to article 17 of the third Geneva Convention on the method of treating the war prisoners, any exertion of pressure on the war prisoners with the objective of acquiring information from him or her is forbidden. Article 102 stipulates that the war prisoner has the right in case of having perpetrated a crime to be tried in the same courts and based on the same procedures that the imprisoning country uses for the crimes committed by its military men. Article 103 requires the country members of the convention¹² to rapidly finish the judicial investigations about the war prisoner and try him for the alleged accusation inhesitantly.

article 104 stipulates that the imprisoning government that has accused a war prisoner of a crime and intends to try him or her should inform the international red cross about the trial subject at least six weeks before the hearing. According to article 105, the war prisoner has the right to take advantage of a lawyer's assistance during the trial and ...¹³ However, as it will be seen, none of these rights (and many of the other rights mentioned in the Geneva Convention for war prisoners) has been given a proper stance in the legal system considered by the US for the trial of Guantanamo's detainees.

2. Cases of Citizenship Right's Violation Under the Title of Fight Against Terrorism

"What there should be" was explained in the previous chapter and it was stated that the justifications offered by the states claiming the fight against terrorism for violating the human right requirements are not acceptable in legal terms and these states are obliged from the perspective of the international human right institutions as well as the legal matters to

⁹ Amir Arjmand, Ardeshir, (2002), "collection of the international human right documents", v.1, global documents, Tehran, Shahid Beheshti University, p.95

¹⁰ The aforementioned document can be accessed from the following internet address: http://hei.unige.ch/_clapham/hrdoc/docs/siracusa.html#_ftnref1

¹¹ It should not be concluded from this saying that the other conditions inserted in article 4 are actualized and, for example, if the US issued such a declaration, its violations of the treaty's regulations would be justified rather the intention is that the nonexistence of the substantive conditions is so vivid in article 4 that even this country has found the situation improper for resorting to this article hence it has avoided to make substantiations thereon.

¹² US has joined the convention on 2nd of August, 1955.

¹³ The complete text of Geneva's 1949 conventions, the explanations written about them, the protocols appended to them, the attachments of the protocols as well as the list of the member states and the membership date of each of them can be found in the following internet address in international red cross website: <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView>

remain committed to the responsibilities they have by the force of the human right system in the interventions they carry out under the title of the fight against terrorism.

There are two principles in this regard, equality of arms and adversarial nature of the trial¹⁴. The fair trial's components can be extracted from the analysis of the purports of the foresaid principles. However, in general, the actualization of the fair trial is suspended on the observance of two other principles: the first is that the formations considered for the investigation of the accusation subject should be independent and impartial; secondly, an individual's defense rights should be observed in the course of his or her trial. The forthcoming sections express the components of these principles and the performance of the states claiming the fight against terrorism will be investigated in regard of each of them. It is worth hinting that only the US's performance will be investigated in this section so the discussions will revolve about the US's 2006 commissions' law that has codified the trial criteria and implementation of punishment about the suspects of terroristic crimes.

2-1. Violation of the Trial Right by an Independent and Impartial Court:

According to the first paragraph in article 14 of the international covenant on civil and political rights: "... everyone has the right to have his or her plea tried fairly and publically in a qualified independent and impartial court in accordance with the law..." Independence and impartiality have very close significations but, in precise terms, independence pertains to the court while impartiality is the state that has to be existent in the judge. In this sense, when talk is made about the court's independence, it is intended that the court should not be under the influence of the executive branch and legislature, high-ranking authorities of the judicature and, finally, the lawsuit parties in its trial and it has to solely try the case "based on the lawsuit events and according to the law without any limitations, exertion of pressure, stimulation, threat or direct or indirect intervention by any individual or institution"¹⁵. The thing that matters more is the court's independence from the executive branch, on the one hand, and from the lawsuit parties¹⁶, on the other hand, especially the court structure, method of choosing the judges, sources of the judges' financial supply and others of the like should all be in such a way that the court remains independent from the executive branch.

But the judge's necessity of independence does not mean that he has to fulfill his duties without bias, prejudgement and discrimination in respect to the lawsuit parties. The prediction of cases under the title of the judge disqualifications (like what has been stated in article 46 of the criminal trial procedure law for the general and Islamic Revolution Courts in criminal affairs) serves the safeguarding of the judge's impartiality.

In order to try the accusations of terrorism suspects, US has taken measures in line with the formation of military commissions by the force of 2006 military commissions act. A glance at the process that has ended in the enactment of the previous act seems to be useful before entering substantive investigation thereof. On 21st of November, 2001, George Bush, US president, allowed the US's defense ministry in a military command to establish a military commission for trying the mentioned individuals but the US's Supreme Court ordered in regard of a lawsuit filed by one of these individuals, named Salim Ahmad Hamdan, against Donald Rumsfeld, the then defense minister of the US, that the trial of these individuals by special military commissions is against the regulations of the US and its international commitments and that the procedure adopted by the US government is illegal¹⁷. Naturally, when a procedure is declared to be against the law, the correct way is revising the procedure so that it can conform to the law; however, the reverse was adopted in this

¹⁴ Ashouri, Muhammad et al, (2004), "human rights and concepts of parity, fairness and justice", Tehran, Gerayesh Publication Institute, pp.8-327

¹⁵ The second act of the fundamental principles about the judiciary system's independence; from the documents suggested by UN's seventh conference on crime prevention and criminals' correction in 1985. The complete text of these principles can be accessed in the following internet address: http://www.unhchr.ch/html/menu3/b/h_comp50.htm

¹⁶ Ashouri, Muhammad et al, Ibid, p.332

¹⁷ Hamdan V. Rumsfeld, 126 S. Ct.2749(2006), 13

To see the 185-page text of the sentence issued by the US's supreme court in this lawsuit, please look at: <http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf>

regard. The US congress agreed with George Bush's proposition and granted a legal aspect to the performance of this country by approving the military commission act. It is read in the fifth paragraph of the foresaid article 2 that "... by approving the present law, the congress has removed the legal barriers on the path of trying the terrorism suspects in the military commissions. Suing these individuals by the military commissions formed based on this law is in perfect match with the US's constitution, its ordinary regulations, armed clashes' rights and also the treaties to which US is a member".

Furthermore, according to Paragraph (A) of article 3 in this law:

He might have himself been the superior authority of the agents who made the culprit confess; he expected him to make assertions about the credibility of the proofs against the culprit without bias and discrimination. How much optimism and even simpleness is required to be able to believe that the military members of these commissions would think about serving justice in lieu of being worried about their jobs and that they would make unprejudiced decisions about the culprit? The US's ministry of defense collects proofs against the culprit in a way or another; then, it appoints one of its subordinate officers as the judge, another one as the advocate and the third person as the prosecutor and tries the culprit and that based on the regulations it has stipulated itself. It seems that impartiality is the only thing that should not be expected from this system.

2-2. Violation of the Right of Presence in the Trial Course:

Every culprit accused of a crime should have the right to defend oneself against the alleged accusations. This primary right also has secondary parts that are called the culprit's defense rights with all of them pursuing a goal and that is helping the culprit remain not a mere welcomer of the conviction and have the possibility of taking active measures in the course of trial in line with rejecting the alleged accusations. The first paragraph of article 11 of the global human right declaration realizes the veracity of the conviction sentence issued against a culprit as being *inter alia* suspendend to the observance of his or her defense rights in the course of trial.

"Individuals accused of criminality will be considered innocent unless their guilts are lawfully verified in the course of a public hearing that has supplied all the necessary guarantees for their defense"¹⁸.

Paragraph 3 of article 14 in the international covenant on the civil and political rights has focused on the culprit's defense rights in greater details. Although not even all of these relatively detailed cases that have been mentioned in the foresaid third paragraph are the culprits' defense rights but the minimum rights a culprit should be enjoying, the initial part of the third paragraph in article 14 has the following words in this regard:

"The individuals who perpetrate a crime would have the right with perfect equality for the following guarantees ..."
(emphasis has been made by the present study's author)

Therefore, the absence of these rights in a criminal trial means that the trial system has not paid any attention even to the culprit's primitive rights¹⁹. The right to get present in the trial course is one of the culprits' minimal defense rights with its violation having been given a formal and legal aspect in the law studied in this section, i.e. the law on the US's military commissions.

There should have been probably no necessity for independently payin attention to the culprit's right to attend the trial course if there was a law other than the studied US's military commissions act. That is because the necessity for observing this right is so vivid that even the culprits were not deprived of this right in medieval trials the goal of which was the mere

¹⁸ Amir Arjmand, Ardeshir, *Ibid*, p.73

¹⁹ It can be stated in a sense that this minimal description holds true for all the rights enumerated in the international covenant on the civil and political rights because these rights constitute the first generation of the human rights in the course of history. For more information, please see Zakerian, Mahdi, (2002), "human rights in the new millennium", Tehran University Press, p.43

declaration and presentation of the proofs filed against the culprit²⁰. However, the thing that has not happened in that period has occurred in the US's military commissions act.

Section (D) in the third paragraph of article 14 of the international covenant on the civil and political rights stipulates it as one of the minimal rights of the culprits that they have the right to "prove presence in the hearing" but the first section of paragraph (E) in article 949d of the collection of the US's rules (that has been explained in the footnote on page 11 under the article 4 of the law on the military commissions) stipulates that "military judge [military commission] can allow the military commission formed based on this chapter to investigate the classified information in the absence of the culprit according to the regulations of this paragraph".

This paragraph has been composed in regard of the investigation of the classified information and so as to propose that the culprits may be inhibited from proving presence in the court but the second part of this paragraph shows that the American legislator had intended a deprivation beyond the mere investigation of the classified information. In the second part of this paragraph, the followings have been enumerated amongst the reasons for which the military judge can deprive the culprits from their rights of presence in the hearing:

2-3. The Violation of the Right to Enjoy an Advocate's Assistance:

Science of law has a lot of complexities, delicacies and niceties that make the individuals lacking the required experience and expertise in this regard be unable to dominate it. An ordinary person cannot be expected to respond to what s/he has been accused of only in his or her language and based on his or her personal knowledge rather s/he has to be provided with the possibility of taking advantage of the knowledge of this profession's experts thereby to not only improve his or her situation but also aid the criminal justice system, as well, in serving the justice. Based thereon, one of the culprit's defense rights is the right to have an advocate. The importance of the advocate's presence in the trial for the actualization of a fair trial is to the extent that the court is obliged in some of the cases albeit without the demand of the culprit to appoint a lawyer for him or her. Section (D) of the third paragraph in the international covenant on the civil and political rights expresses the culprits' right of presence in the hearing followed by realizing the following as one of the other rights each culprit has to have: "the culprits should be able to defend themselves personally or through their appointed advocates and, in case of having no lawyer, they are informed of the right they have for choosing a lawyer and, in cases that the justice department's expediencies render it necessary, the court personally determines a lawyer for them ...".

In the military commissions that the US government holds for trying the terrorism suspects, a military person is installed for each commission by the founding authority as the military advocate of the culprit (paragraph (a) in article 948k of the collection of US's regulations). It is clear that this position's title is devoid of any meaning and, considering his appointment by the culprit's opposite party, i.e. the US government, such an individual cannot be considered as the advocate at all in the sense intended in article 14 of the international covenant on the civil and political rights because his sentence issuance independence and his impartiality are intensively doubted and he cannot be essentially expected to appear in opposition to his superior and provide a deserving defense for the culprit. The prerequisite to the proper performance of the lawyer is that he should not have any dependency and commitment on and to the opposite party and feel no pressure from its side so that it can apply all his knowledge and ability for defending his defendant. The declaration of the basic principles on the role of the lawyers that was approved in 1990 in the eighth UN's conference on the crime prevention and criminals' correction emphasizes on the necessity of the lawyer's independence to the extent that it, in its introduction, realizes the ease of access to the legal services offered by the independent lawyers as the practical

²⁰ Louis XVI has stipulated in his penal command in 1670 that "the culprits, whoever they are, are obliged to personally provide answers"; cited in Ashouri, Muhammad, (2006), "criminal trial procedures", v.1, 11th ed., Tehran, Samt Publication Institute, p.309

prerequisite for the individual's enjoyment of the rights enumerated for them in various international human rights' documents²¹. But as it was observed, such an independence is missing from the individual who is installed as the military advocate by the US's ministry of defense for defending the culprit in the military commission.

Although the possibility of using non-military advocate has also been predicted for the culprits in these commissions, it has limitations making us unable to realize the right to enjoy the lawyer's assistance as being actualized perfectly. Amongst the conditions enumerated for a non-military advocate to be able to exercise advocacy in the commission is that "the advocates' qualifications for access to the classified information in confidential and higher levels has been confirmed" (the third part of the paragraph (b) in article 949c of the US's collection of regulations). This condition readily allows the US government avoid affirming the qualifications of the disliked individuals thereby to prevent their advocacy in the military commissions. The group of confirmed individuals are the US government's appointed lawyers more than being the culprits' appointed ones. Therefore, it can be concluded that the right mentioned in article 14 of the international covenant on the civil and political rights has not been supplied to the culprits for defending themselves through their appointed advocates in the trials by the military commissions.

In addition, there are even considered limitations for this recommended and confirmed lawyer the optimality of whose presence in the trial is accordingly overshadowed completely. As a specimen, the classified information that can lead to the culprits' exemption is normally made available to the culprit's military advocate and the non-military advocate's access to that information is suspended on his prior acquisition of the required confirmations and his awareness of such information should be also not contradictory to the regulations determined by the defense minister for the protection of the classified information (part four of the paragraph (c) in article 949j of the US's collection of regulations). The notable point in this regard is that the aforesaid confirmation here is in addition to the confirmation a non-military lawyer should seminally acquire to be able to attend the commissions' trials (paragraph (b) in article 949c of the US's collection of regulations). In other words, it is necessary for the individual's qualification to have been confirmed for access to the classified information so that he can not only enter the trial course as the non-military advocate but also, whenever certain classified information are posited in the trial course, he can gain access to them in case that he has previously acquired a separate confirmation certifying his qualifications for access to such special information²².

II. CONCLUSION:

Although the people of the western countries have constantly been considering the terrorism's threat as a danger even greater than the nuclear war risk to their lives during the recent decades²³, this fear was excessively increased during the ending years of the 20th century and the early years of the third millennium. More than being related to the real nature of such threats, the reason for such fears is the vast advertisement made in the western countries' mass media about them in such a way that, as an American author puts it, "hearing the terrorism threat has become a part of the daily dietary regime of the western countries' people"²⁴. Naturally, it is quite possible in such an atmosphere of horror and terror for the governments to misuse the people's worries because they display so intensively accentuated image of such concerns as the national security safeguarding and citizenship right protection that many individuals' minds are distracted from paying attention to this that whether the government observes the legal criteria, as well, in its antiterrorism interventions or not. The translegal interventions are confirmed by a larger group of the society's people particularly when the finger of

²¹ To see the complete text of these principles, please look at: http://www.unhcr.ch/html/menu3/b/h_comp44.htm.

²² <http://www.amnestyusa.org/news/docuemnt.do?id=ENGEUR450222006>

²³ L. Howard (ed.), *terrorism, Roots and Responses*, New York, Praeger, 1992, p.1; cited in Mir Muhammad Sadeghi, Hussein, (2002), "crimes against the public security and comfort", 2nd ed., Tehran, Mizan Publication Institute, p.131

²⁴ Cooley, John, K., (2002), "unholy wars: Afghanistan, America and International Terrorism", Pluto Press, Virginia, p.259

accusation points to the foreign individuals and groups because speaking about a country's defense against the foreigners and any opposite assertion can be followed by the treachery stigma for an individual. It is based on this same issue that it is seen after the incident on 11th of September that in spite of all the threats that were existent about the real attackers²⁵, Al-Qaida group is immediately introduced as its designer and executor and vast movements are subsequently commenced globally under the title of fight against terrorism. However, the neglected thing in this regard was this reality that terrorism is per se violation of human rights and if it is supposed to be effectively counteracted, it is feasible only through observance of the human rights. The violation of a value with the excuse of guaranteeing its support is not reasonable and acceptable. In the present study, the most important cases of citizenship rights' violations with the excuse of terrorism were dealt with and it was shown that almost all the fundamental human values that had found a position in the international legal system in a period of nearly half a century, i.e. after WWII, in a gradual movement and with the suffering of a lot of hardship and difficulties were rapidly disregarded within a few years and that by the states that are themselves the main claimants of the human rights and freedoms. This is while the various international organizations reputedly realize it necessary to observe the human rights in the fight against terrorism and remind that the international human right system does not allow the violation of its criteria under the title of the fight against terrorism. This is in addition to the idea that such autonomous performances create motivation for the perpetration of more terroristic interventions²⁶ because they result in such an imagination that everybody has the right to take any measures for accomplishing the goals s/he reckons to be correct. Probably, this is one of the reasons for the fact that the global fight against terrorism has not been so far so much successful and we are bearing witness to the various terroristic interventions worldwide everyday.

REFERENCES

- [1] Akhondi, Mahmoud, (2002), "criminal trial procedures", v.4, 2nd ed., Qom, Eshragh Publication Institute
- [2] Ashouri, Muhammad, (2006), "criminal trial procedures", v.1, 11th ed., tehran, Samt Publication Institute
- [3] Ashouri, Muhammad, (2001), "criminal trial procedures", v.2, 2nd ed., tehran, Samt Publication Institute
- [4] Ashouri, Muhammad et al, (2004), "human rights and concepts of equality, fairness and justice", tehran, Gerayesh Publication Institute
- [5] Stephanie, Gaston et al, (1998), "criminal trial procedures", tr. Hasan Dadban, v.2, tehran, Allameh Tabataba'ei University Press
- [6] Amir Arjmand, Ardeshir, (2002), "collection of the international docuemnts on human rights", v.1, global documents, tehran, Shahid Beheshti University Press
- [7] Zakerian, Mahdi, (2002), "human rights in the new millennium", Tehran University Press
- [8] Simonides, Janus, (2004), "human rights: modern aspects and challenges", v.1, tr. Muhammad Ali Shirkhani, Tehran, Gerayesh Publication Institute
- [9] Mir Muhammad, Sadeghi, Hussein, (2002), "crimes against the public security and comnfort", 2nd ed., Tehran, Mizan Publication Institute
- [10] Mason, Tierry, (2003), "the big lie of september eleventh", tr. Muhammad Taghi Yasini, 1st ed., Tehran, Jam-e-Jam Cultural Publication Institute
- [11] Warner, Daniel, (2003), "human rights and humanitarian rights: an attempt for globalization", tr. Solaleh Habibi Amin, Tehran, Gerayesh Publication Institute
- [12] Benedeck, Wolfgang et al, (2004), "revising the article on the antiterrorism measures and human rights", Netherlands, Martinus Nijhoff Publishers
- [13] Beyani, Chaloka, (2000), "human rights standards and the free movement of people", New York, Oxford University Press
- [14] Cooley, John K., (2002), "unholy wars: Afghanistan, America and international terrorism", Virginia, Pluto Press

²⁵ Mason, Tierry, (2003), "the big lie of September eleventh", tr. Muhammad Taghi Yasini, 1st ed., Tehran, Jam-e-Jam Cultural Publication Institute

²⁶

- [15] Crawshaw, R.; Devlin, B. and Williamson, T., (1998), "human rights and policing", Massachusetts, Kluwer Law International
- [16] Donnelly, Jack, (1993), "international human rights", Colorado, Westview Press
- [17] <http://www.unhchr.ch>
- [18] UN's office of human rights supreme commissioner: <http://www.icrc.org>
- [19] International red cross committee: <http://documents.un.org>
- [20] The formal center for the UN's documents: <http://hei.unige.ch>
- [21] The Geneva's institution for the international higher studies: <http://www.supremecourtus.gov>
- [22] US's supreme court: <http://www.law.georgetown.edu>
- [23] Law faculty of Georgetown University, US: <http://www.web.amnesty.org>.