

International Terrorists: What role should the law play?

Since 11th September legislatures have been passing and considering restrictive anti-terrorism legislation: the US 'Patriots Act 2001'¹, the UK 'Anti-terrorism, Crime and Security Bill', and the United Nations' resolution on 'Measures to eliminate international terrorism'.² Governments are purportedly taking the opportunity to protect their citizens and using the law to facilitate this. Yet can the law prevent terrorism? I contend that by itself it cannot. In fact, rather than prevent terrorism, such legislation may lead to its proliferation. Instead the law must be used together with politics, and where there is an international dimension to the problem, diplomacy.

The first difficulty with anti-terrorist laws is that 'terrorism' is a problematic term. A leading writer on the subject has stated that "terrorism can mean just what those using the term... want it to mean,"³ and recently Kofi Annan remarked that "terrorism is an immensely complicated phenomenon with... virtually limitless manifestations."⁴

Because terrorism is such a broad term, any legal attempt to criminalise or prevent it will be dogged by uncertainty. It is clear, however, that terrorism is politically motivated violence,⁵ and any definition must include this; but in order to capture its targets, anti-terrorist legislation needs to define 'terrorism' broadly. By doing so it endangers bringing ordinary citizens within its ambit. An example is the UK Terrorism Act 2000; the definition requires a use or threat of action which "creates a

¹ US Public Act 107/56

² Draft doc. A/C.6/56/L.22

³ Brian Jenkins *International Terrorism: A New Mode of Conflict*, Crescent Publications, Los Angeles 1975, pp.1-2

⁴ www.un.org/News/Press/docs/2001/sgsms8021.doc.htm

⁵ see on the subject, in particular, Alex Schmid *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature*, North Holland Publishing Company, Amsterdam 1988, p.5

serious risk to the health or safety of the public or a section of the public”⁶ which “is designed to influence the government...”⁷ and “is made for the purpose of advancing a political... cause.”⁸ Non-terrorists who would fall within this definition include nurses striking for higher pay. Therefore it would be inadvisable to pass draconian laws based on such a vague term thus endangering regular sections of the public.

Secondly, one of the best examples of where the law has been used in an attempt to eradicate terrorism is Northern Ireland under the Prevention of Terrorism (Temporary Provisions) Act. Far from preventing terrorism, measures like the proscription of organisations (e.g. the IRA),⁹ powers to exclude persons involved in terrorism from the UK as a whole or from part of it,¹⁰ and detention for 48 hours, further extendable by five days,¹¹ were perceived as an infringement of civil rights targeted at the republican community. Resultantly, the republican community felt more alienated from the government and security forces and the IRA received increased legitimacy. In short “[t]he suspension of the traditional rule of law in Northern Ireland led to more people supporting violence in preference to democratic means of struggle.”¹² Academics called for the government “to wean ... inactive supporters away from the gunmen, so as to reduce by a process of political reconciliation the core of his support.”¹³ Indeed, it was when this finally occurred under the Anglo-Irish and Good Friday Agreements that Northern Ireland's terrorists realised that they could no longer succeed by violent means.

⁶ The Terrorism Act 2001 s.1(2)(d)

⁷ *ibid.* s.1(1)(b)

⁸ *ibid.* s.1(1)(c)

⁹ Prevention of Terrorism (Temporary Provisions) Act 1989 s.1. This Act is the successor to the original Prevention of Terrorism (Temporary Provisions) Act 1974

¹⁰ *ibid.* ss.5-6

¹¹ *ibid.* s.14

¹² John Wadham, Director of Liberty *Is detention without trial simply unlawful?*, in *The Times* Tuesday November 20 2001

With the political agreements in Northern Ireland came an "escalation of reasonableness"¹⁴ and the resolution of the problem began. In the Middle East this was seen after the Camp David Agreement, before the latest round of violence commenced. If Israel insists that violence cease before political negotiations can resume,¹⁵ a solution to the Palestinian problem cannot be readily foreseeable. Furthermore, although (arguably¹⁶) entitled to use force against Afghanistan after 11th September under Article 51 of the UN Charter (concerning self-defence), by declaring the situation a 'war' the USA forewent any necessity to negotiate a political solution to the terrorist threat allegedly motivated by American support for Israel. Yet, unless America takes note of the underlying message and acts inter alia to prevent the use of force by Israel against the Palestinian people, the disease will not have been cured merely because a 'pro-terrorist' regime has been toppled.

A two-stage process is required: regular criminal law should be used to prevent the violence (the symptom) - this would cause less community alienation than specific anti-terrorist legislation and thus work more effectively; concurrently, political negotiation must be used to find a solution to the disease, political dissatisfaction. A political solution is required precisely because terrorism is politically motivated violence. What is significant about international terrorism is that it requires a further stage in the process: diplomacy. The Northern Ireland process was aided by greater links between the Republic of Ireland and the United Kingdom; any solution in the

¹³ Ewing and Gearty *Freedom under Thatcher* Clarendon Press, Oxford, 1990 p.253

¹⁴ Gearty *London Review of Books* 6 September 2001 p.18

¹⁵ e.g. as stated by Tal Becker, the Israeli delegate, at the UN 56th General Assembly, 6th Committee, 28th Session (AM) see www.un.org/News/Press/docs/2001/GAL3200.doc.htm

¹⁶ see A. Clark Arend and R. J. Beck *International law and the use of force*, Routledge, London, 1993 Ch.9

Middle East will require greater links between Israel and her Arabic neighbours. It is only by international diplomacy that the necessary political negotiations can take place to resolve the *cause* of international terrorism, political dissatisfaction over an international issue.

In conclusion, 'the law' has proved unable to eradicate terrorism. The 'terrorist problem' will not be solved by passing laws restricting civil liberties justified by national security. This will merely exacerbate the problem and cause more people to turn from political debate to violence. Also definitional difficulties will cause ordinary citizens to be endangered by provisions in such an Act. National laws must treat the violence as regular crime, rather than grant it special status as 'terrorist crime'.

National law can then be facilitated and co-ordinated by international law, which must take this role because any international criminal law could not take into account the diversity of national criminal laws worldwide. Thus the symptom, the violence, can be prevented.

At the same time, the disease must be cured through political and, where there is an international element, diplomatic, negotiations. By luring community support away from violence into political negotiation, terrorist groups will be forced to denounce violence or be recognised as criminals lacking political justification. These tactics have worked notably in Northern Ireland and should be used elsewhere around the globe. This two- (or three-) stage process is a tried and tested way of defeating terrorism. The alternative, draconian legislation restricting recourse to regular courts,¹⁷ is a tried and tested way of encouraging the harm it attempts to prevent.

¹⁷ e.g. as ordered by President Bush in his 'Military Order – Detention, treatment and trial of certain non-citizens in the war against terror' 13th November 2001