

First International Conference on Radicalisation and Political Violence

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“Human Rights and Counter-terrorism: how the issue is framed”

Remarks by Mary Robinson

From a human rights perspective it is vital to counter acts of terrorism effectively, and bring the perpetrators to justice. Human rights advocates are not ambivalent or soft on those who carry out violent acts against innocent civilians – whether they are what we call non-state actors or the forces of the state itself. Those who work to protect human rights locally in situations of such violence know intimately and profoundly, the terrible impact on families and communities of acts of terrorism.

It is timely, therefore, to have a conference which focuses on what drives people – particularly young men – to radicalization and political violence, and how to balance countering acts of terrorism and upholding human rights. So far we have not done well because we have not understood some of the root causes and drivers of behaviour. As a consequence, the responses through counter terrorism may in some respects inflate the drivers of radicalization.

I don't claim to be an expert on counter-terrorism, so let me respond to Peter Neumann's kind invitation by reflecting on whether we could be much more effective in countering acts of terrorism if our response was framed and grounded firmly on rule of law and the values of human rights.

The opposite view was put forward by Michael Ignatieff in the aftermath of the terrible attacks of 9/11 2001 when he raised the question as to ‘whether the

era of human rights has come and gone'. I first answered that question here in London in June 2002, as UN High Commissioner for Human Rights, when I delivered the Fifth Commonwealth Lecture as follows:

Not gone, is my response, but we are challenged in new ways to respond to profound concerns over human security in our world today. My own sense is that there is an enormous responsibility to uphold rigorously international human rights standards, recognizing that they, too, are the object of terrorist attacks. At the same time, I believe there must be more commitment to the implementation of those standards in practice through strong support for human rights capacity building at national level.

As Arthur Chaskalson, former Chief Justice of the Constitutional Court of South Africa, put it, "We have to be vigilant from the very beginning; if you concede the first step, every next step will lead to the further erosion of the rule of law and disregard of human dignity."

The failure of the US Congress and the media, among others, to be vigilant in the aftermath of 9/11 led to an erosion of civil liberties and the misuse of immigration laws, the opening of Guantanamo without regard for the Geneva Conventions and ambivalence on torture which led to the disregard of human dignity evident in the mistreatment of prisoners in the Abu Ghraib prison in Iraq. This response by a world power provided other governments with an excuse to backslide on their own human rights obligations. The challenge now is to begin to repair the damage that has been done. Respect for human rights standards must be re-established. Doing so is not only necessary to comply with international law but crucial in order to protect the credibility of future counter-terrorism efforts.

I sense that the legal community in the United States appreciates the damage that has been done and is seeking to reverse it. The courts have been vigilant, leading law firms are taking cases for Guantanamo inmates and the American Bar Association has held meetings on Rule of Law, including a joint meeting with the International Bar Association. The ABA has also established the World Justice Project, on which I serve as one of the co-chairs, which will hold its inaugural World Justice Forum in Vienna on July 2-5, 2008. One of the outputs being prepared is a Rule of Law Index, which will be a tool to measure compliance with the rule of law in countries around the world.

We should recognize now that a key determinant of whether rule of law and human rights standards will be upheld in a country is how that country characterizes acts of terrorism and frames its response.

When a terrible, unwarranted attack takes place, killing and wounding a large number of civilians, we know instinctively that justice must be served, that security and order must be restored, that such acts must be prevented in the future. The question, of course, is how best to achieve all of these while remaining true to our core values. How, precisely, should we respond?

I said on many occasions over the years, that language is vital in shaping our reactions: the words we use to characterize an event may determine the nature of the response. In the immediate aftermath of 11 September, while still serving in the United Nations, I stressed the duty on all states to find and punish those who planned and facilitated these crimes. I described the attacks on the United States as constituting a crime against humanity.

It is worth recalling why that description is appropriate. The 9/11 attacks were mainly aimed at civilians. They were ruthlessly planned and their execution timed to achieve the greatest loss of life. Their scale and systematic nature

qualify them as crimes against humanity within existing international jurisprudence.

But as we know, despite efforts to frame the response to terrorism within the framework of crimes under national and international law, an alternative language emerged post – 9/11. That language, which has shaped to a much larger extent the response at all levels, has spoken of a war on terrorism. As such, it has brought a subtle change in emphasis in many parts of the world; order and security have become the over-riding priorities. As in the past, the world has learned that emphasis on national order and security often involved curtailment of democracy and human rights. Misuse of language has also led to Orwellian euphemisms, so that ‘coercive interrogation’ is used instead of torture, or cruel and inhuman treatment; kidnapping becomes ‘extraordinary rendition’.

I should make it clear that characterizing major terrorist attacks as crimes against humanity does not rule out the possible need for an appropriate military response, such as the invasion of Afghanistan when the Taliban refused to hand over Osama Bin Laden and his associates.

However, the conflict there and, in particular, the subsequent decision to go to war on Iraq, have re-enforced the perception of a war on terrorism which goes beyond the rhetorical use of the term, as in a “war on poverty” or a “war on hunger.” The reality is that by responding in this way the United States has, often inadvertently, given other governments an opening to take their own measures which run counter to the rule of law and undermine efforts to strengthen democratic forms of government. The language of war has made it easier for some governments to introduce new repressive laws to extend security policies, suppress political dissent and stifle expression of opinion of

many who have no link to terrorism and are not associated with political violence.

Hans Corell, former Legal Counsel of the United Nations, made this point at a conference on *International Law in Flux*.

“To suppress terrorism is not a war. You cannot conduct a war against a phenomenon. As a matter of fact to name the fight against terrorism a “war” was a major disservice to the world community including the State from where the expression emanates. The violations of human rights standards that have occurred in the name of this so called war – no matter how necessary it is to counter terrorism – have caused tremendous damage to the efforts by many to strengthen the rule of law.”

Yet despite these negative global consequences, many still believe strongly that such measures were necessary to guard against further terrorist attacks. The security argument maintains that the terrorist attacks on New York, Madrid, Sharm al-Sheikh, Bali, London and elsewhere were so heinous, so unprecedented, that new strategies and sometimes “exceptional measures” were required. In other words, fundamental principles underlying the rule of law could be put on hold to address the more urgent threat.

As Judge Richard Posner has suggested:

“...the scope of our civil liberties is not graven in stone, but instead represents the point of balance between public safety and personal liberty. The balance is struck by the courts, interpreting the vague provisions of the Constitution that protect personal liberty; and it is constantly being re-struck as perceptions about safety and liberty change. The more endangered public safety is thought to be, the more the balance swings against civil liberties. That is how it is and that is how it should be...”

But what is the limit? How far can the balance swing against the core principles underlying the rule of law? Comments like Judge Posner's could imply that the security imperative outweighs all other considerations. I do not believe that. Coming up to seven years after 9/11, I believe we must evaluate such assumptions and ask ourselves if all of the measures taken have been justified and consistent with the rule of law, and above all if they have been effective in winning the minds and hearts of those who might be tempted by radicalization.

Another reason to uphold standards of rule of law and human rights is that they are essential to the credibility of any message to other countries about upholding democracy and freedom. Indeed there is huge cynicism even among moderates in countries of the Middle East as they listen to speeches extolling the virtues of freedom and democracy. This was brought home to me at the recent International Women Leaders Global Summit on Security in New York.

This was a breakthrough summit where women leaders launched a process to amplify the efforts of women leaders and to facilitate collective action on global security. A Women's diplomacy force will support the implementation of Security Council Resolution 1325, increasing the participation of women in peace and security initiatives, and there will be a concerted effort to support Liberia as the country prepares for an International Women's Summit in February 2009. The Summit adopted a Call to Action which is available at www.womenandglobalsecurity.org

It is important to note that those of us on the steering committee drafting that call to action were faced with women from the Arab and wider Muslim World telling us that we need to find language about upholding rule of law and standards of human rights without using the words 'freedom' and 'democracy', which had become tainted by the War in Iraq and fears of further

unilateral use of US military power. It was a sobering moment, and yes we did find other language instead. I recommend that Call to Action, copies of which are available, and urge participants to sign on.

To restore that credibility – which is essential to counter radicalization - what is needed is legislation that reaffirms the United States’ adherence to the Geneva Conventions, the UN Convention Against Torture, and the McCain Amendment which establishes an absolute ban on cruel, inhuman and degrading treatment of all detainees in US custody or control by any US personnel. It would be important to remove any provision which seeks to grant broad immunity from liability for war crimes back dated to September 2001. Rule of law requires that there be accountability for serious wrongdoing by those responsible.

Similarly, more must be done by European governments. A new report by Amnesty International, titled “Time for Accountability”, points out that EU involvement in the US-led rendition program involving kidnapping, denial of due process, torture and disappearance has, and I quote:

“irrevocably tainted all the EU’s counter-terrorism effort. While the fight against terrorism has been and shall continue to be a priority...the EU Council has yet to come to terms with the human rights implications of counter-terrorism measures and practices by the EU itself and especially by the Member States.”

The report calls on the EU to:

- provide concrete follow-up to the inquiries regarding European involvement in renditions and keep all counter-terrorism activity firmly within the bounds of international human rights law;

- ensure respect for the absolute prohibition of torture and resist any attempt to establish an EU position legitimising the use of diplomatic assurances to facilitate the transfer of persons to a country where they may be at risk of torture;

- amend the EU terrorist blacklist system to include effective safeguards against arbitrariness at all levels of the process and;

- in line with the Hague Programme, revive initiatives to protect human rights in the sphere of EU criminal law.

Fortunately, I believe there are signs that the international community is finally recognizing the need to reorient efforts to counter terrorism. At the UN level, the terrorist attacks in Algiers last month in which 17 UN staff lost their lives was a painful reminder of the need for renewed efforts to implement the Global Counter-Terrorism Strategy adopted by UN member states in September 2006.

It highlights many of the conditions conducive to the spread of terrorism, namely:

- Prolonged unresolved conflicts
- Discrimination and intolerance
- Xenophobia
- Poverty and economic inequalities
- Social exclusion and high youth unemployment
- Political exclusion
- Human rights deficits and lack of good governance.

As the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg has rightly stressed:

"Common for these conditions is that they tend to lead to injustices for the individuals and to cause deep frustration and a sense of personal humiliation... The point has been made that several of the most dangerous terrorists have not come from circumstances of poverty – though many of them appeared to have felt excluded from the broader society...Marginalization, misery and other human rights deficits seem to breed atmospheres in which extremist leaders can recruit young people for violent actions... These young people are desperate, feel deeply humiliated and have little hope for the future."

I am pleased to be associated with a number of new initiatives which have taken such views as starting points for further action. Earlier this week I participated in the UN Alliance of Civilizations Forum in Madrid which aims to find new ways to bridge the growing divide between nations and cultures and to establish new partnerships to promote global understanding. One outcome was a commitment by the Qatar Foundation to provide a \$100 million dollar investment in a new initiative to tackle youth unemployment in the Middle East and North Africa.

Another project involves the Club of Madrid, a group of former heads of state from countries in all regions, of which I am a member. We convened an International Summit on Democracy, Terrorism and Security to build a common agenda on how the community of democratic nations could most effectively confront terrorism while maintaining commitments to civil liberties and fundamental rights.

The Summit brought together leading experts, including Peter Neumann and a number of you here at this conference, who examined the underlying factors of terrorism, the effective use of the police, the military, the intelligence services and other national and international agencies to prevent and fight terrorism. Our aim was to construct a strategy against terrorism based on the principles of democracy and international cooperation and on strengthening civil society against extremists and violent ideologies. The resulting Madrid Agenda makes a compelling case not only for more effective joint action against terrorist organizations but also the need to increase resources aimed at tackling the humiliation, anger and frustration felt by many that can be manipulated to draw recruits for terrorist action.

Since then, the Club of Madrid has developed a project on Shared Societies, with components ranging from helping to promote freedom of association in the Middle East and North Africa, to encouraging women's political participation and leadership in a number of African countries as well as fostering inter-religious dialogue. These elements will be brought together at the General Assembly of the Club in mid-November 2008.

Over the past two years I have also been privileged to participate on the Eminent Jurists Panel of the International Commission of Jurists, which has held public hearings in some 30 countries around the world in order to consider the nature of today's human rights threats and the impact of new and old counter-terrorism measures on human rights. The press releases summarizing our assessment of each country at the end of the public hearing are available on the website of the ICJ (www.icj.org). Later this week the eight members, under the chairmanship of Arthur Chaskalson meet to work on our final report.

The process has brought home to us the extent of the damage that has been done to the fabric of rule of law and human rights standards in countries rich and poor, large and small. Can we say for a moment that the world is more secure? That radicalization is on the decline? That terrorism is being countered and is on the wane?

What is to be done?

Ironically, this century began well for international human rights. At the General Assembly in September 2000 the largest gathering of Heads of State and government adopted the Millennium Declaration. It is framed in express human rights terms, drawing on the Universal Declaration of Human Rights, and contains commitments to tackle poverty, promote equality, health, education and environmental standards. From this Declaration were drawn the Millennium Development Goals. A year later this agenda – which tackles many of the root causes that breed radicalization – was sidelined by the terrible attacks which evoked the response of a war on terrorism and its negative consequences.

Language and timing matter. We have an opportunity to return to the framing of our values for the 21st century as set out in the Millennium Declaration. This year, 2008 is the 60th Anniversary year of the Universal Declaration of Human Rights. The UN itself has placed emphasis on the need to review our commitment to the UDHR, and on 10th December 2007 the Elders launched a broad based campaign on Every Human Has Rights.

(www.everyhumanhasrights.org).

The Elders, brought together by Nelson Mandela and Graça Machel, with Archbishop Tutu as our Chair and including President Jimmy Carter, Kofi Annan, Muhammad Yunus and others has asking power which we have used to engage a broad range of organizations to adopt and lead on a human rights theme during 2008. Google Earth will launch next month a special human rights layer to record personal stories of human rights defenders and other information. Organizations like Amnesty, GCAP, UNICEF, Save the Children and hundreds of local groups will encourage individuals to go on line and sign up to taking responsibility in their own lives, their schools, their communities, to uphold the values of the UDHR. Major companies are also making commitments to the UDHR internally with their employees and externally in their supply chains and spheres of influence.

Why does this matter? Precisely because the UDHR was directed not only at states, but also “to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...”

It is a fact that every country in the world accepts the UDHR, and has participated over and over again in basing more recent international instruments on it, including the Millennium Declaration. States need to be reminded that these human rights belong – not to them – but to the individuals in their territory who expect these human rights to be protected and vindicated. If we can have millions of voices from Africa, Asia, North and South America, Europe – the remotest islands – saying these are our common and cherished values, these human rights are our birthright and we want them implemented

and upheld – might not this be the “tidal wave of justice” Seamus Heaney wrote about in “Chorus: The Cure at Troy”:

History says, Don't hope
On this side of the grave,
But then, once in a lifetime
The longed for tidal wave
Of Justice can rise up
And hope and history rhyme.
