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The Case for Defining Terrorism With Restraint and Without Reference to Political or Religious Motive

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People have been debating the definition of terrorism for a long time. Continued disagreement about a proper definition explains why terrorism is not yet a crime subject to the jurisdiction of the International Criminal Court and why the United Nations has not agreed on a comprehensive convention on terrorism. Some think that it is impossible to define terrorism. I do not. Nevertheless I argue that terrorism should be defined with restraint with a focus on intentional violence to civilians. The political, religious or other motives of the perpetrators should not excuse terrorism; conversely they should also not constitute part of the crime of terrorism.

Is the ordinary criminal law adequate?

I approach the issue of defining terrorism from a perspective that is rooted in the criminal law. Although many officials in Australia and Canada have repeatedly justified new anti-terrorism laws on the basis that the existing criminal law is inadequate to prevent acts of terrorism, we should not lightly assume that the existing criminal law is not up to the task. It is simply wrong to argue that the ordinary criminal law only applies after an act of terrorist violence has occurred. For example, Zaccarias Moussaoui, the so-called 20th hijacker, pleaded guilty to conspiracy to commit murder. Jack Roche was convicted of conspiring to bomb the Israeli embassy in Canberra. Richard Reid, the shoe bomber who was foiled on a transatlantic flight, was convicted of attempted murder. The ordinary criminal law can even apply to speech acts. Abu Hamza received a stiff penalty for inciting or counselling murder in relation to his calls for violence at the Finsbury Park Mosque.

This is a preview. Not all pages are shown.

that relate to the attempt to intimidate the public or compel governments to act exist more on the periphery of protected freedoms. A religious and political motive requirement authorises state inquiries into the deepest convictions and beliefs of the accused.

The closer that the definition of terrorism is to the basics of laws against murder and intentional injury that are accepted throughout the world, the less controversial anti-terrorism laws should be and the more consensus there should be on international definitions of terrorism. Overbroad definitions of terrorism are deficient not only from the perspective of protecting human rights, but also from the perspective of condemning terrorism. Overbroad terrorism laws that target the destruction of property or the disruption of essential services create an impression in civil society that those targeted as terrorists could include those involved in protest or civil disobedience. Overbroad terrorism laws that include religious and motive requirements play into dangerous ideas that the war against terrorism is a war against Islam as opposed to an effort to stop horrific violence against innocent civilians. The events of 9/11 and events in Bali, Madrid and London suggest that today's acts of terrorism do not involve activities that are on the margins of possible definitions of terrorism. Rather acts of terrorism involve the intentional murder and maiming of civilians that is intended to intimidate populations or compel governments to act. This should be the essence of any definition of terrorism.

Notes

- 1 *Suresh v Canada* [2002] 1 SCR 3, [98].
- 2 In *R v F*, the Court of Appeal rejected an argument that the *European Convention on Human Rights* was violated when British anti-terrorism laws were applied to acts of preparation for terrorism against the government of Libya and Colonel Gaddafi. It relied on the traditional idea that '[t]errorism is terrorism, whatever the motives of the perpetrators': [2007] 3 WLR 164, 172.
- 3 Ben Saul, *Defining Terrorism in International Law* (2006).
- 4 Lord Carlile, *The Definition of Terrorism* (2007).
- 5 Security Legislation Review Committee (Sheller Committee), *Review of Security and Counter-Terrorism Legislation* (2006); Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Review of Security and Counter Terrorism Legislation* (2006).
- 6 South African anti-terrorism law has added philosophical motive because of concerns that an anarchist or nihilistic terrorism might not be captured by British reference to political, religious and ideological causes: *Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004* s 1.
- 7 Lord Lloyd, *Inquiry into Legislation Against Terrorism* (1996) para 5.22.
- 8 Clive Walker, *Blackstone's Guide to the Anti-Terrorism Legislation* (2002) 21.
- 9 *R v Khawaja* [2006] OJ 4245, [73].
- 10 *Suresh v Canada* [2002] 1 SCR 3.
- 11 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maber Arar Analysis and Recommendations* (2006) 356.
- 12 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (2006) 438. The author served on the research advisory committee with respect to this report.