



**British Institute of
International and
Comparative Law**

Harry Weinrebe Annual Lecture: Contemporary Challenges of International Peace and Justice: Perspectives on Human Rights in the Fight Against Terrorism

Event Report

Date: 4 December 2014

Venue: British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London WC1B 5JP

Opening Remarks

- Professor Robert McCorquodale, Director, BIICL

Keynote Lecture

- Ben Emmerson QC, UN Special Rapporteur on Counter Terrorism and Human Rights, and Matrix Chambers

Chair

- Dr Andraž Zidar, Dorset Senior Research Fellow in Public International Law, BIICL

On 4 December 2014, the British Institute of International and Comparative Law (BIICL) hosted the first lecture in an annual series to honour the memory of Harry Weinrebe, a philanthropist and the founder of the Dorset Foundation. The series focuses on the protection of international peace and justice, values central to Mr Weinrebe's humanitarian activities. The keynote speaker for the evening was Mr Ben Emmerson QC, UN Special Rapporteur on Counter-Terrorism and Human Rights.

Professor Robert McCorquodale (Director of BIICL) commenced proceedings by speaking about Mr Weinrebe and the history of the Dorset Foundation, an institution that has funded public the Dorset fellowship in public international law at BIICL for over 11 years. Dr Andraž Zidar, the current Dorset Senior Research Fellow at BIICL, then provided an overview of the research and events BIICL pursued with a view to furthering peace and justice. Dr Zidar then introduced Mr Emmerson before inviting him to speak on the subject of 'Human Rights Perspectives in the Fight Against Terrorism'.



Mr Emmerson commenced by limiting the scope of his discussion to the role played by the UN in protecting human rights principles in the global fight against terrorism. He then provided a brief historical overview of the impetus for the UN Special Rapporteur on Counter-Terrorism and Human Rights role, noting that it is important to take stock of how we got to where we are before looking to where we are headed. In the immediate aftermath of 9/11, governments implemented security measures that grossly ignored human rights, dismissing as unrealistic calls for faithful adherence to certain basic minimum rights in confronting the new threat. In the intervening 15 years, the international community has, to a large extent come to accept, at least formally, that it is only by adhering to human rights standards that counterterrorism strategies ultimately succeed. Nonetheless, the practices of states, including states with a proud record of respect for human rights, democracy and the rule of law have been willing to abandon those core values on the pretext of defending them.

Mr Emmerson remarked that as an inter-governmental organisation with an asymmetrical power dynamic, it might be expected that the UN would replicate, or at least endorse, the patterns of thought that underlay state responses to the threat of international terrorism in the immediate aftermath of 9/11. While this may, to an extent, be true, human rights are now an inherent and integral part of the UN's work.

According to Mr Emmerson, this commitment to human rights is demonstrated by Security Council Resolution 1456, which introduced a provision requiring states to ensure that any measures taken to combat terrorism comply with their obligations under international law and, in particular, international human rights, humanitarian and refugee law. The reform effort was reinforced in 2006 with the General Assembly's adoption of the UN Global Counter-Terrorism Strategy, which is the single comprehensive international statement of obligations resting on states to combat terrorism and to promote cooperation within a rule of law framework. It was under this Strategy that the UN Human Rights Commission established the mandate of Special Rapporteur on Counter-Terrorism and Human Rights.

Mr Emmerson then turned to describing his mandate and the principle challenges he faces. Having described the central priority of his mandate as the oversight of practices that undermine international standards in the investigation, prosecution and punishment of those accused of acts of terrorism as well as the range of executive and military measures taken at a national and an international level to suppress terrorism, Mr Emmerson added that he also intended to ensure proportionate attention was paid to the human rights of the victims of terrorism. Thus, his first thematic report to the Human Rights Council (HRC) set out an international framework for protecting the rights of the victims.

At the core of his framework of principles delivered to the HRC, Mr Emmerson submitted that all acts of terrorism in which civilians are killed or seriously injured amount to gross human rights violations. To this end, Mr Emmerson argued that states have a legal obligation under Art 6 of the International Covenant of Civil and Political Rights and Art 2 of the European Convention on Human Rights to protect the lives of their citizens and those within their jurisdiction. Nonetheless, governments often remain unwilling to meet their responsibilities to the victims themselves; outside Europe, there is no systematic means by which those who have lost their lives or suffered very serious injury in acts of terrorism can claim compensation against their government.



Mr Emmerson cautioned that protecting the rights of the victims and potential victims of terrorism does not mean infringing the rights of those accused or suspected of involvement in acts of terrorism. He reasoned that human rights violations, such as indefinite executive detention or secret trials, each also amount to a denial of the victim's basic right to truth and accountability. He added that closely allied to the rights of the victim is the need to protect the next generation of victims by identifying and addressing the root causes of terrorism. In this context, respect for the rule of law is not solely a question of legitimacy; it is also a question of effective prevention.

Mr Emmerson then turned to address principal challenges faced in executing his mandate, the first being the absence of an internationally agreed upon definition of terrorism. He argued that labelling an armed group as a terrorist organisation is essentially political act aimed at diminishing legitimacy of its aims or methods. Drawing on country reports on Turkey and Chile as well as the the Report of the International Commission of Jurist's Eminent Jurists Panel (2009), he discussed the problems involved with over-broad definitions of terrorism. He concluded that, in the hand of a democratic state, there may be sufficient checks and balances but the risk that a repressive state would misuse counter-terrorism legislation to suppress dissent is very real.

Another key challenge discussed was the so-called global war paradigm, which holds that the United States and its allies has, since 9/11, been at war with a stateless enemy and the accordingly, its actions are to be judged by the laws of war, including the targeting rules of international humanitarian law. Under the Obama administration, a much more subtle version of that doctrine began to emerge. It was brought into sharpest focus through the use of drones as a means of targeted killing outside recognized war zones in Waziristan, the federally administered tribal areas of Pakistan, Yemen and in Somalia. Mr Emmerson reasoned that outside the situation of an armed conflict, international human rights law prohibits any counter-terrorism operation that has the infliction of deadly force as its sole or main purpose. However, there has yet to be clear international consensus on the subject.

Mr Emmerson concluded by highlighting a number of key areas of his work, which he invited the audience to discuss during question time, including: the question of accountability for Bush-era CIA violations; the shortcoming in the UN's own counter-terrorism sanctions regime which operates in a way, properly described by the European Court of Justice, as violating fundamental rules of due process and being unworthy of an international institution; a report on the post-Snowden revelations; and the extent to which counter-terrorism can be used as a legitimate justification for mass surveillance of the internet.

Responding to a question on the reason he chose to focus on victims, Mr Emmerson highlighted the fact that there are 19 international agreements under the auspices UN but not one touches on the rights of the victims. There is therefore an obvious protection gap. He added that effective, rule of law-compliant counterterrorism requires the discharge of human rights obligations by the state, including the rights of victims of terrorism.

The next question raised the issue of bringing civil proceedings against terrorists with a view to crippling them financially. Mr Emmerson articulated doubts about the effectiveness of such measures given the fractured nature of current acts of militant terrorism; as a law enforcement



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technique, there is more effective machinery in place for pursuing the assets of terrorist organisations. He added that civil proceedings should not be used by the state to shirk its own responsibilities to provide compensation.

Finally a question was posed as to whether the recent *Crown v AB and CD* could constitute a secret trial. Mr Emmerson described the trial as a strange hybrid between an open, closed and intermediate trial; parts of the trial were open, other parts were open to a group of specially selected journalists who could not reveal what they had seen and yet other parts were only open to the jury. Mr Emmerson claimed the case raises serious concerns about the rule of law. However, he acknowledged there was the possibility that the need for secrecy was motivated by the interests of defense.

This Report was written by Chanu Peiris.

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