

HUMAN RIGHTS AND TERRORISM

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Terrorism: frightening in its unpredictability, unsettling by its seemingly random nature - its capacity to strike apparently anywhere, anytime, anyone. The origins and nature of terrorism have generated much debate, but remain difficult to determine. What is it that explains this scourge ? Why is it that certain people – sons, fathers, mothers, daughters – seek to kill and maim as many as possible of their fellow human beings, including infants and children ? What kind of reason is capable of igniting such irrationality ?

To some, the answer, ultimately, is depressingly simple. Terrorism, they claim, is a means justified by its end. Those that will the end must will the means. For a revolutionary leader like Maximilien de Robespierre, acts of terror were a necessary means to obtain a morally imperative end: to break the yoke of oppression. In a speech on February 5, 1794, reflecting on the relationship between terror and virtue, he declared: "Terror is nothing other than justice, prompt, severe, inflexible; it is therefore an emanation of virtue." Robespierre's thesis has proved a popular one. Its echo reverberates through the ages down to our own time. Seductive as it proved to be, it is also deeply flawed. Far from contributing to a better world, the logic of ends justifying means has spawned disaster, depravity and barbarity, as the scholars and students of the Strassler Family Center at this university know only too well. All around us, from Africa to Asia, and from America's 9/11 to Spain's and Europe's 3/11, the price of terrorism has been abject and unjustifiable suffering.

Terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and stability. The greatest danger lies in terrorists succeeding in laying their hands on weapons of mass destruction. Bin Laden has called this a religious obligation for Muslims. Several groups, including Al Qaeda, have been actively trying to manufacture a radiological weapon - a so-called 'dirty bomb' - or to obtain chemical or biological weapons. It is the duty of states to protect and uphold security and basic liberties. It is therefore the duty of states to protect people within their jurisdiction from acts of terrorism. The UN Security Council in Resolution 1269 called upon all states to cooperate with one another, to prevent and suppress terrorist acts, to protect their nationals and other persons against terrorist attacks, and to bring to justice the perpetrators of such acts. The UN (Security Council Resolution 1373) also requires states, among other things, to prevent and suppress the financing of terrorist acts and to ensure, before granting asylum, that asylum seekers have not been involved in terrorist acts.

At the same time, however, states must ensure that any measures they take to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law. The fight against terrorism has to be fought within the boundaries of human rights.

The European Union and its member states take this issue very seriously. We are working hard to find the right balance between human rights and security. We want to be safe, but we do not want to jeopardize our values and principles. We are, after all, engaged in a struggle over values. Bin Laden and his supporters aim to destroy our way of life. Civil liberties are what Europe and America are all about. They are at the heart of what constitutes a humane society. We would do Al Qaeda a huge favor if we gave up on human rights. Michael Ignatieff is right when he describes what defeat in the "war on terror" - as some call it - would look like: "We would survive, but we would no longer recognize ourselves. We would endure, but

we would lose our identity as free peoples.” To jeopardize human rights in the fight against terrorism is not only morally indefensible, but also ineffective in the long run.

I have been asked today to address the relationship between terrorism and human rights. There are three questions I would like to explore. First, to what extent can the fight against terrorism be considered a fight for the full enjoyment of human rights? Second, do human rights prevent us from countering terrorism effectively? How are we to strike the right balance? Thirdly, to what extent does our strategy to counter terrorism require us to actively promote human rights?

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Thus states the Universal Declaration of Human Rights, soberly but movingly, in its opening Article. Central to the concept of human rights is the right to life, including the right, as President Roosevelt so clearly saw, to live one’s life free from fear. Article 3 of the Universal Declaration of Human Rights states that “Everybody has the right to life, liberty and security of person.” These ideas, of course, derive from the American Declaration of Independence of 1776 and the Déclaration des Droits de l’Homme of 1789. Terrorists deny these rights as rights to be enjoyed by all. Their indiscriminate targeting of civilians not only denies these rights to adults. Increasingly, children are the innocent victims of terrorist attacks, from Israel to Iraq and to Russia. Few crimes can be more horrifying and revolting than the wilful mass murder of infants and children. The European Union considers that acts of terrorism are criminal acts that aim at the destruction of human rights and fundamental freedoms and seriously affect their enjoyment.

The prevalent type of islamic terrorism also implies a criminal attack on religious freedom. “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom (...) to manifest his religion or belief in teaching, practice, worship and observance.”

(Article 18, Universal Declaration) Al Qaeda and those claiming to be inspired by its ideology seek to impose their interpretation of Islam on others. They arrogantly assume the right to adjudicate between “true believers” and apostates. This seriously impairs the right to enjoy freedom of religion. As Blaise Pascal trenchantly put it more than three centuries ago: “Men never do evil so completely and cheerfully as when they do it from religious conviction.” Moderate Muslims the world over prefer to decide for themselves how to interpret the Quran. The killing of hostages, for example, is believed by most to be incompatible with their faith. “Killing a soul without justification is one of the gravest sins under Islam. The blood of people under our protection is forbidden ... they are on a par with Muslims”, the high-ranking Iraqi cleric Sheikh Saleh bin Adbullah al-Humaid said in June. In Liverpool Muslims and Christians prayed together for the release of Kenneth Bigley.

Contrary to what Al Qaeda and its propagandists would have us believe, Muslims and non-Muslims are not engaged in a war of civilizations. On the contrary: both sides have suffered at the hands of terrorists. Muslims and non-Muslims share a deep and abiding interest in the prevention of terrorism. The real conflict is the one within Islam, between the terrorists and their apologists on the one hand, and the overwhelming majority of Muslims on the other. The more the hand of the moderates can be strengthened the more effective our defence against terrorism is likely to become.

Let me now turn to our second question: how to strike the right balance between the fight against terrorism and human rights. This is not easy. We in the EU do not have all the answers. But we are trying hard to come to grips with the issue.

First, measures required to fight terrorism need not enter into conflict with states’ obligations to respect human rights. For instance, persons suspected of acts of terrorism, when captured on the battlefield, can be detained and interrogated in full compliance with international human rights and humanitarian law. If their status is

uncertain, it must be determined by a competent court or tribunal. Sometimes people are inclined to conclude too quickly, and wrongly, that human rights stand in the way of effective measures to counter terrorism. It sets a bad example for other nations if western countries do not respect international human rights.

Second, there may be occasions where full protection of civil liberties may impede the fight against terrorism. But civil liberties can legally be derogated from for reasons of national security. Such clauses apply in “public emergencies”. You have, for example, Article 4 of the International Covenant on Civil and Political Rights, Article 15 of the European Convention on Human Rights, and Article 27 of the American Convention on Human Rights. These articles allow for derogations, but at the same time set limits and conditions on them. Article 15 of the European Convention on Human Rights, for instance, allows for such derogations only in time of war or other public emergency threatening the life of the nation, to the extent strictly required by the exigencies of the situation. Hence, only in very exceptional circumstances and only to the extent necessary. In the United Kingdom, which has invoked this derogation under the European Convention, a case is now pending in the highest British court, the House of Lords, concerning the UK's detention of foreign nationals suspected of terrorist acts. The Court has been asked to adjudicate on the lawfulness of these detention measures.

Also, it may be impossible to use certain types of information in particular circumstances because of human rights considerations. Take the case of prosecution of terrorists in courts. Our member states do not all have the same rules for the use of evidence: sometimes it will not be possible to convict suspected terrorists because strict evidence rules prevent the use of information gathered by the intelligence services against the defendant.

In such cases a balance has to be struck between the protection of human rights and security. This can only be done on the basis of careful debate within

democratic institutions and within society as a whole. Parliaments and the media have a particularly important role to play. While conducting this debate, we would do well to remember Benjamin Franklin's admonition: "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

Take an issue like data protection, for example. In certain circumstances, data protection rules might hinder the transmission of data for terrorism prevention purposes. European data protection rules allow for certain exceptions to be made in the public interest (such as public security) to the normal rights of the data subject (and the normal obligations of the data controller). There are limits to these exceptions, however. They must constitute "a necessary measure in a democratic society", which means they should be appropriate in order to achieve their aim, they must be necessary (which means that no less far-reaching alternatives are possible), and they must be proportionate in relation to their aim. The data subject has the right of access to data concerning him or her, and the right to have it rectified if necessary. Compliance with these rules must be subject to control by independent authorities. European rules on data protection differ from American ones. In spite of those differences, the EU negotiated an agreement with the US that allowed for Passenger Name Record data to be transmitted by airlines. While the European Commission and the EU Council of Ministers believe that the agreement does not violate our data protection requirements, the European Parliament is not of this opinion and has challenged the agreement before the European Court of Justice.

Difficult questions also arise in relation to the important principle of freedom of speech. Freedom of expression does not extend to incitement to violence or terrorism. But it is not always easy to determine where to draw the line. When do you start criminalizing incitement and hate speech? What about the Internet? Should the government intervene, limit the rights of some to protect the rights of others? The current chairman of the Organization for Security and Cooperation in Europe, Solomon Passy, summed up the problem thus: "We must not limit the freedom of

expression. We must not over-regulate. But we must not let the door be opened to abuses. Freedom does not mean an unrestricted right to spread hatred.”

There is a third category of cases. Some rights are so fundamental to human dignity that one must respect them in their entirety. Your Declaration of Independence calls certain rights “unalienable”. Today we would call them non-derogable rights – rights that have to be respected unconditionally, at all times.

The list of non-derogable rights in the ICCPR includes the right to life; freedom of thought, conscience and religion; freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to a fair trial, and the principles of precision and of non-retro-activity of criminal law (except where a later law imposes a lighter penalty). The UN’s Human Rights Committee, which monitors the implementation of the ICCPR, has identified additional non-derogable principles, including the prohibition of hostage-taking. Derogation from other rights is only permitted in special circumstances.

The peremptory nature of these rights has sometimes been called into question. This has been the case, for example, with the prohibition of torture. Does the ban on torture imply that the fight against terrorism will be less effective? We do not think so. Does torture actually provide good and useful information? Probably not. Mental and physical torture is illegal, morally wrong and counter-productive. To quote Ignatieff again: “If you want to create terrorists, torture is a pretty sure way to do so.” Or take the prohibition of extrajudicial executions. Not only are extrajudicial killings contrary to international law, they undermine the concept of the rule of law which is a key element in the fight against terrorism. Terrorists seek to provoke us into stripping off what they describe as the mask of law. They want us to show the blank coercion they claim is behind it. We must not let them succeed in transforming our societies. Let’s not deliver recruitment messages to Al Qaeda.

There are additional reasons why our response to terrorism must take account of human rights. There is a risk that the fight against terrorism could become a proxy for other purposes. In some parts of the world, political leaders may be tempted to use counter-terrorism measures as a means to silence peaceful opposition, independent or dissenting voices, or to crack down on religious or ethnic minorities. We must preserve our leverage here – and we only have leverage if we lead by example. Take the example of Uzbekistan. The government there has at different times resorted to torture, secret detentions and unfair trials against extremists in response to terrorist bombings. Innocent people caught up in the process have been maimed or killed by the security forces. Because of the lack of progress on human rights the European Bank of Reconstruction and Development has sent a message earlier this year by limiting its investment in Uzbekistan. The U.S. State Department has sent a similarly strong warning and cut its aid to the country.

This brings me to the third point I intend to address.

To fight terrorism effectively, we have to address its underlying factors. Defense Secretary Donald Rumsfeld once famously asked: “Are we capturing, killing or deterring and dissuading more terrorists every day than the Madrassas and radical clerics are recruiting, training and deploying against us?” Clearly, we have to do more than step up our intelligence and law enforcement capacities. We have to look at why terrorism is on the rise and what should be done to stop this trend. The EU is committed to addressing the factors which contribute to support for, and recruitment into, terrorism. Our response has to reflect the dimensions of the threat.

Let me clear about an important point: This has nothing whatsoever to do with justifying terrorism. The UN General Assembly that stated that terrorism is “in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious, or other nature that may be invoked to justify them.” Just over a week ago, the Security Council, in Resolution 1566, was equally

unequivocal. “(C)riminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols related to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.” Under no circumstances. The European Union could not agree more.

However, our rejection of any justification for acts of terrorism should not obscure the work necessary to identify the roots of terrorism, and to develop strategies to eliminate these. Again, there are no easy answers here. There are no simple, causal, automatic links between social or political developments and the decision of a particular individual to engage in an act of suicide bombing. Similarly, there are no simple policy prescriptions.

Some elements seem relatively clear, however. Among the factors that may contribute to recruitment, a recent CSIS report highlighted poverty, the role of radical Muslim NGOs, demographic developments, and the radicalization of education in certain Islamic countries. Political factors also play a prominent role. Regional conflicts such as the situations in the Palestinian territories, Chechnya and Iraq cause anger and resentment throughout the Muslim world. Such feelings are exploited in extremist propaganda which presents these conflicts as examples of a global campaign against Muslims. The Arab-Israeli conflict leaves the recruitment field wide open for the radicals. A revival of the Israeli-Palestinian peace process would not by itself eliminate terrorism; it would, however, deal a serious blow to jihadist propaganda. This is one more reason why we have to put all our energy into advancing the Middle East Peace Process.

Situations of endemic violence, lawlessness and ineffective governance are situations that offer opportunities for terrorists to hide, to train, and to plan for attacks. To fight terrorism, we must therefore strengthen the rule of law. In particular, we must help to provide stability and we must promote human rights.

The European Union makes a significant contribution militarily to the maintenance of stability in a number of crisis or post-crisis areas, whether this be through our own operations (which have so far been deployed in the former Yugoslav Republic of Macedonia, in the Democratic Republic of Congo and will soon be deployed in Bosnia), or through EU Member States' contributions to NATO operations. An important example of this is the European contribution to ISAF in Afghanistan where 23 out of the 25 EU member States have forces deployed and where we are working in close co-operation with the U.S. EU Member States command five Provincial Reconstruction Teams currently operating in Afghanistan. In August 2004 Eurocorps, which comprises military contributions from its framework nations, Belgium, France, Germany, Luxembourg and Spain, took over the responsibility for the NATO-led International Security Assistance Force (ISAF) in Kabul. For a period of six months it will command the operations of almost 7000 soldiers from 33 nations. This is in addition to the support being provided by individual EU Member States to the Enduring Freedom Coalition and the extensive EU support to the overall reconstruction effort in Afghanistan. Another important EU contribution to stability and conflict prevention is the creation by the EU of the African Peace Facility, worth 250 million Euro, which should support the African Union in its efforts to peace-keeping and conflict prevention on the African continent.

In addition to assisting countries to provide stability, there is much we can do to strengthen the rule of law in the world. These two policy issues, peace and human rights, are closely related. As Louise Arbour, UN High Commissioner for Human Rights, has argued, there can be no genuine personal security if people's rights are in peril. Today, almost one quarter of UN member states are not party to the

International Covenant on Civil and Political Rights, and almost a third are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is important to keep arguing the necessity of universal ratification of these instruments to protect human rights. The EU, as you know, is equally committed to the widest possible ratification of the Rome Statute of the International Criminal Court.

Terrorist movements tend to thrive in societies where human rights are not protected and where opportunities for political expression do not in practice exist. Freedom of expression, political opportunity, accountability and tolerance are powerful weapons in the fight against terrorism. Independent media, an independent judiciary, an impartial civil service, free elections and a vibrant civil society are crucial to a society's capacity to withstand and overcome terrorist-inspired propaganda. Free elections offer people a choice, the possibility to change their society through peaceful means. In Indonesia, 147 million mostly Muslim voters recently took part in free and peaceful elections for the parliament and presidency of their country. They did not vote for fundamentalism. In Malaysia, too, fundamentalism has been roundly rejected through the ballot box.

Of course, human rights and democracy are about more than political rights alone. Addressing economic and social exclusion, working for the realization of economic and social rights, helping to provide economic opportunities and education: all this is equally crucial. UNDP's Arab Human Development Report has sharply identified the need for such policies in the Arab world. The report was particularly clear about the risks of marginalizing women - 50 % of the population – in the Arab world and excluding them from educational, economic and political opportunities. One in every two Arab women still can neither read nor write.

Other countries can offer much-needed assistance to developing nations. Development assistance has an impact on the environment within which terrorist

groups flourish. It can erode the support base for terrorist networks and movements through its focus on poverty reduction, land reform, governance, the fight against corruption, post-conflict reconstruction and the promotion of participatory development processes. As you know, the EU and its member states are responsible for some 55% of official development assistance globally, and some 66% of grant assistance.

The ideological nature of terrorism is one of its most dangerous aspects. Al Qaeda and those that claim to be inspired by it provide explanations to the grievances of many groups within the Islamic world. One has to counter this ideology to fight Islamist terrorism effectively. I agree with Richard Clarke that bombs and bullets, handcuffs and jail bars will not suffice to address the source of that ideological challenge. We need to win the struggle of ideas, the battle for hearts and minds. To do so, we have to show the world that we are free societies that respect human rights and human dignity however threatened we are. We also need to address the legitimate grievances that Islamic radicals are striving to exploit. And we must continue to work for the realization of political, economic and social rights of all persons without discrimination. This includes improving the prospects for integration of third country nationals in the European Union. Here, the American experience may hold valuable lessons for Europe.

It is time for me to conclude. The fight against terrorism is a fight which involves all, Muslims and non-Muslims, who cherish a life lived in freedom - including the freedom to choose and interpret one's religion. Terrorism tends to thrive where human rights are violated. The fight for human rights therefore must be an integral part of the fight against terrorism. Colin Powell was right when he wrote: "We cannot fully embrace our own dignity as human beings unless we champion the dignity of others." If all democracies succeed in doing this, at home and abroad, I am confident we will prevail.