"TERRORIST LISTS" PROSCRIPTION, DESIGNATION AND HUMAN RIGHTS

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The Haldane Society of Socialist Lawyers, Statewatch and Campaign Against Criminalising Communities (CAMPACC) are holding a seminar series on the 'terrorist lists'. The latest seminar was entitled 'Terrorist proscription, self-determination and human rights: criminalising movements, criminalising solidarity?', and was held at the College of Law on 15th July 2008. There were over 100 participants.

The first presentation at the seminar was by Professor Bill Bowring. He recalled that in 1989 he was invited to a similar meeting, at which he spoke on a platform with representatives of the African National Congress and Palestinian Liberation Organisation. They were then 'national liberation movements' but would now be 'terrorist organisations' because of their use of armed struggle, we would be prosecuted for supporting them.

Bill outlined the idea of three generations of human rights. The first generation of the civil and political rights were born in the French and American Revolutions. These form the basis of the European Convention of Human Rights; their partial incorporation into English law through the Human Rights Act 1998 means that England has finally arrived in the Eighteenth Century. The second generation are the economic and social rights which were born out of the Russian Revolution, and were reluctantly recognised as rights by the West with the creation of the International Labour Organisation in 1919. The foremost right of the third generation, rights of interdependence, is the right to self-determination. This came to life in the bloody anti-colonial struggles following World War Two.

The conventional view of the origins of the right of self-determination is that it started with Woodrow Wilson. At the grand conferences at the end of World War One, President Wilson who raised these ideas as an important principle and legal right –

but not in relation to the colonial empires of the USA and its allies. Bill reminded the audience of the fact that it was Vladimir Lenin who advocated self-determination before World War One, and during and after the Bolshevik Revolution the right to self-determination was put into action. The Soviet Union went on to put enormous resources, financial, diplomatic and in the form of weapons, into self-determination in the colonial world.

The United Nations, dominated by colonial powers, did not recognise the right at first. In the Universal Declaration of Human Rights of 1948, the right to self-determination does not have a place. It was first declared a right in 1960 when the UN General Assembly voted through the Declaration on Rights of Colonial Peoples. The UN by then had twice as many members as it had at its creation – all the new members former colonies. There were somewhat predictably nine abstentions – all the colonial powers plus Israel and South Africa. The USSR and its allies, through tremendous efforts, ensured that the right of peoples to self-determination became the identical first article of the two covenants on human rights of 1966. This is and was a scandal for imperialism.

Increasingly, the conventional view of self-determination has become one of internal democracy within sovereign states, though minority rights or autonomy. But the shameful denial of self-determination to the Kurds, Palestinians and Chechens are examples where decolonisation has not yet been achieved.

Dr Susan Breau of the University of Surrey discussed the issue of self-determination and human rights versus terrorist proscription. She argued that self-determination or the desire for self-determination is viewed by the world powers as an act of terrorism by its advocates. However, the common first articles of the Covenants referred to by Bill clearly states that all people have a right to a political status and to pursue their economic, social and cultural development, and every state has a duty to respect this right.

Throughout the World Court cases that she cited, self-determination has been accepted as an international right and norm. Most recently in the Advisory Opinion

on the Wall, in Palestine, the World Court held that the right to self-determination applies throughout the world.

However, since the definition of terrorism has become broader the right to self-determination has come under threat. Since 2000 the list of organisations that have been put on the terrorist proscription list has grown and grown. Even when the inclusion of groups on these lists is challenged successfully in the courts, governments are not respecting those decisions and therefore are not respecting the right to self-determination. One clear example is the case of the People's Mujahedin of Iran who fought a long battle to be taken off the UK terrorism list and successfully challenged those decisions in court, right up to the European Court of Human Rights. The British Government took a long time to recognise and respect that judgment and have only recently removed them from the list of terrorist organisations.

Susan went on to say, however, that national liberation movements must respect international law and humanitarian norms. Concepts of distinction, proportionality and necessity are international humanitarian principles and must be upheld by both sides in conflict. The war on terror has been characterised by neglect of human rights and the rules of warfare by both sides and this is unacceptable, she argued. If an organisation is to be proscribed, it should only be proscribed on the basis of the acts that it carries out, namely the targeting of innocent civilians, and not because of a declaration by them of their right to self-determination.

Barrister Ed Grieves talked about what proscription has done to the refugee communities in the United Kingdom. He discussed how the Immigration and Asylum Act of 2006 has neutered the Refugee Convention. Section 54 of that Act defines when a refugee is to be excluded from the Refugee Convention. The Convention allows people to be excluded if there are serious reasons for believing that they have committed an act contrary to the United Nations' aims and purposes.

When the Terrorism Act 2000 came into force, section one was so broad in its definition of terrorism that some lawyers believed that it would be successfully challenged in the Court of Appeal. However, the case of *R v F* confirmed that terrorism is terrorism, no matter the motive of the individual. The Court of Appeal

ruled that it did not matter how tyrannical the regime of Gaddaffi was, taking up arms to influence a state or overthrow it was terrorism.

When the People's Mujahedin of Iran put its case before the Proscribed Organisations Appeal Commission the Judges in their determination said that what the Iranian regime was doing to its own people was irrelevant in deciding whether the PMOI was a terrorist organisation, or not.

Combining section 54 of the Immigration and Asylum Act 2006 and the broad definition of the Terrorism Act 2000, the Government can easily link what it calls terrorism to be the grounds for exclusion from the Refugee Convention. This means that any new arrivals seeking asylum may be denied their claim at the first instance on the basis that they had to flee their country because of membership or support or alleged support of an organisation that the Government now decides is a terrorist organisation.

Furthermore, many refugees who have been in this country for over a decade and who initially were given refugee status or indefinite leave to remain on the basis that they had been associated with one of those organisations are now finding that the rules have of the game have changed. Since proscription of the groups, when refugees apply for naturalisation, as is their right after being in the country for a number of years, the Government allege that they are no longer people of good character - one of the requirements for naturalisation – because of their previous association with a proscribed organisation. Therefore, the basis of their asylum claim becomes a reason to say that they are of bad character. There is no appeal right and judicial review the only remedy. However, no details of the reasons for why they have been declined are given due to 'national security'.

Alex Fitch of CAMPACC talked about how terrorism or the tag of terrorism has been used to de-legitimise self-determination movements. The fact that there is a lack of agreement across the world about the definition of terrorism is of benefit to governments who wish to de-legitimise these movements. Governments are of course willing to support self-determination in other countries when it suits their agenda.

The Kurds have been victims of this kind of ‘realpolitik’ in their struggle for self-determination. Their victim-hood has been used, without a trace of irony, by the same governments who now deny it: the issue of Halabja in Iraq in the campaign against Saddam Hussein is a shining example. Even when the Kurdish Workers’ Party (PKK) started voluntary ceasefires in their struggle against the Turkish state they were ignored by the West, which demanded that the Kurds abandon the PKK despite the PKK’s popular support. Ultimately the terrorist label justifies abdication of the need for a just and peaceful settlement to questions of self-determination.

All four speakers sought to remind us that the definition of ‘terrorism’ has not been agreed, yet it is used by governments to de-legitimise self-determination, to refuse the right to self-determination, and ultimately ends up supporting repressive and violent regimes.

The first seminar on ’The EU and UN “terrorist lists” and the European Courts – the slow road to procedural justice’ with Jan Fermon, Mark Muller QC, Steve Peers and Ben Hayes was a great start to the series. Jan Fermon is the lawyer for José María Sison exiled leader of the Communist Party of the Philippines and a ‘person supporting terrorism’. He spoke of the great struggle to defend Mr Sison and the recent decision by the European Court of Human Rights to delist him and reverse a decision by member governments to freeze his assets. Mark Muller QC talked about his experiences assisting the PKK in their legal battles to be taken off the terrorism lists. The seminar highlighted the obstacles that European governments have put up in trying maintain their terrorism lists. Even when there are judgments against member states, they do their best to ignore them and carry on as before. It was also noted that this process takes many years and for example has taken the PMOI, six years to be taken off the UK list. They are still however on the EU list pending a final decision.

The next seminar will take place on Tuesday 16th September and is titled ‘Proscription, designation and UK law - executive powers, extraordinary regimes’ with Henry Miller (Birnberg Peirce & Partners Solicitors), Anne McMurdie (Public Law

Solicitors), Imran Khan (Imran Khan & Partners, Solicitors), and Ed Grieves (Garden Court Chambers).

The last seminar is on Tuesday 21st October and entitled 'National security, proscription and foreign policy – "war on terror", new world order?' with Nafeez Mosaddeq Ahmed, Paul Rogers (Professor of Peace Studies at Bradford University and David Chandler. It will take place in: Room SG01, College of Law, 14 Store Street, WC1E 7DE from
6.30-8.30pm and entrance is free.

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