

The Political Realities of the War Against Terror

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Abstract:

Were the actions of the governments of the United States, the UK and Australia in relation to Iraq, and terrorism more generally, entirely appropriate given the new realities of international politics post September 11? In this political climate, is there any role left for international human rights law and its associated institutions, most especially the United Nations?

I hesitate to come before this audience today without reminding myself of Lord Northcliffe's definition of journalism.

It is a profession, he said, whose business is to explain to others what it personally does not understand.

For me, that seems the perfect starting-point to begin telling people with much more expertise than I how the international legal framework should best address the challenge of trans-national terrorism.

Let me begin with a blunt assertion: to me, the debate on terrorism seems too often to drift into a metaphysical funk. The show-stopper is always the same line: "one man's terrorist is another man's freedom fighter."

Inevitably, this ties us up in knots, and the result is a moral fudge that says the term "terrorism" is so imprecise and value-laden that it becomes all but meaningless under international law.

Today, I intend to try to steer away from the abstract, and focus instead on the practical and the urgent. This I can do. The Northcliffe dictum says so.

September 11 and its aftermath has brought the global security debate into our day-to-day preoccupations. In Australia, of course, this has been doubly reinforced by the Bali bombings, where many of the victims were young Australians, and all of them innocent in any meaningful sense of the word.

Whatever your perspective on the rights and wrongs of the response by the United States and its allies to the challenge of 'mega-terror', what is beyond dispute is that the world has been thrown into perhaps the most difficult, divisive and demanding debate since the formation of the rules-based system under the United Nations almost 60 years ago.

And I suspect many of those people working conscientiously to develop a credible body of

international law are having just as much trouble as the rest of us in grappling with the unfolding realities of the early 21st century.

None of us has the luxury of certainty.

Here, in a nutshell, is the challenge: asymmetric warfare, aimed often but not exclusively at undermining the power and symbols of the west, has become the strategy of choice for Jihadist Islam.

Like all revolutionary ideologies, its ambitions are global: the creation of a pan-Islamic super state.

To achieve this aim, it seeks to sow chaos and disorder among governments across the Middle East, the Maghreb, Central Asia, the Subcontinent, and onward into South-East Asia.

The Afghan alumni, appearing under the banner of Al-Qaeda, claims credit for itself as the force that brought the Soviet Union to its knees.

With one super power removed from the equation, it now sees American power as the main obstacle to its ambitions, and Western liberalism as its main ideological foe.

Assuming Al-Qaeda's behaviour is normative, we can guess that it is using the tactics of terror to generate fear and uncertainty among civilian populations, hoping that by imposing unacceptably high costs on societies it sees as pampered, materialistic and weak-spirited, it will force the Western powers, led by the US, into strategic retreat, and, in doing so, expose to great vulnerability the status quo in the Arab and Islamic worlds.

In other words, classic subversion.

But in the counter-terrorism literature, there is another scenario which attributes to Al-Qaeda an apocalyptic mind set. According to this theory, whether we accept or reject the conceptual underpinnings for Huntington's "clash of civilisations" is not really the point - what matters is that bin Laden and his followers appear to have embraced the proposition holus-bolus. And if that is true, why wouldn't they seek to use weapons of mass destruction to smite the enemy?

Now, we can take issue with various aspects of that analysis.

But wherever we may live, and whatever our pre-dispositions, this relatively new phenomenon of violent revolutionary Islamism means all of us have been required, at the very least, to examine and reassess often long-held assumptions about the nature of the global order.

Frankly, this imposes a new range of tests for all stakeholders in the international system, but this is especially so for those who happen to think the fruits of the Enlightenment were, on balance, not a bad thing.

How do you establish constructive dialogue with people who so vehemently and violently oppose secular government, liberal democracy, open markets, rational inquiry, sexual freedoms, artistic licence, gender equality?

Now, I'm not at all against exploring what might be called the sociology of terrorism, the search for root causes. In the eyes of many, much of the anger and instability in the world can be explained by the disparity between the world's poorest and richest nations, that what we are seeing is a backlash

in parts of the developing world, a resentment that globalisation favours the wealthy industrialised nations, an imbalance under-written by American strategic pre-eminence.

This is a phenomenon the US and its allies are going to have to take into greater account.

What are the practical responses? More generosity by Western aid donors. Freer access for developing economies to affluent markets. The Bretton Woods institutions remain crucial, but, as we learnt in Indonesia in the late 1990s, they probably have to improve their bedside manner.

But as much as these are critical factors to global stability, let's also be rigorous and realistic in our analysis of the problem at hand.

The motherlode of the current terror phenomenon is not poverty, or enslavement, or dispossession. It is a fanatical and exclusive ideology, Wa'habist in derivation. It is interested in power or, more to the point, the subversion of all power other than its own. It is a totalitarian creed. And it is founded not in the slums of the Islamic world, but in pockets of relative wealth and privilege within these societies.

Now, I don't want to sound too much like the movie character Chauncy Gardner here, but when we talk about root causes, it's worth remembering the unusual life cycle of the banyan tree.

In many cases, a bird will drop a banyan seed in the top branches of palms or other trees. The seed sprouts, and eventually sends roots towards the ground. These supports grow into trunks, which sprout new branches.

Ultimately, the banyan tree strangles the original host.

This may be over-working the metaphor, but when you look at the likes of Osama bin Laden and Abu Bakar Bashir, it is important to note they are not sons of the soil.

In Saudi Arabia, of course, the bin Laden family belongs very much to a tribal elite, and support for his ideology is known to be strong in the merchant classes of Jeddah.

Likewise, in Indonesia, Bashir represents something of an aristocracy within Indonesian Islam - trace it right back, and like bin Laden, he is descended from the Hidramutis from Yemen, who established themselves in the archipelago as wealthy spice traders, five or six centuries ago.

So, in some important respects we can see how this is very much a top-down, or banyan tree, phenomenon.

All that said, I don't question that they represent a certain model of leadership within the Arab and Islamic worlds. And while personally I doubt their chance of ever being more than another failed revolutionary movement, I acknowledge we are talking about currents of hostility that might run very deep in some of these societies.

This brings me to what I suppose is the essence of my argument today: that the free world is not a free ride.

Sometimes, the core principles of liberal democracy have to be defended.

Sometimes, regrettably but inevitably, that will involve the measured use of force, either against totalitarian regimes that maul and murder their own or other people; or in defence of civilian populations targeted by violent terrorist groups.

The democracies learned that lesson the hard way in the 1930s in Europe. And we promptly forgot it once ensconced in the comfortable delusions of the immediate post cold war era.

And here's something that hasn't changed, and will never change: if oppressed people are to be liberated, that will require more than just fine words and good intentions. Sometimes, inevitably, it will require armed intervention.

Now, when any one mentions the word intervention, we all start to get a little jittery. And so we should.

The world is not a Rambo movie and as someone who has seen war up close and personal, I can attest there is nothing more debilitating or dehumanising.

But intervention was needed in East Timor. It was needed in Kosovo. In both cases, to stop people's lives being crushed by violent marauders.

The same is true of Iraq. There is such a thing as liberal interventionism, even when it is espoused by a right-wing American president.

Ideally, the international community would find itself able to agree on a more effective means of responding to the immediate threat - whether against governments such as the Taliban who maul and murder their own people, or the transnational terror networks spawned by this same ideology.

It would adopt robust policies to isolate states that give comfort or shelter to fanatics. Because, of course, terrorist groups can survive and prosper only because certain state actors provide them with the infrastructure to extend their operational reach.

But all of this is problematical in the extreme as long as the world is unable to agree on a universal standard to define the crime of terrorism.

As the report of the International Bar Association's task force on terrorism acknowledged in September 2003, all attempts to settle on a definition under international law have so far failed. The UN has been on the case for many years, with little or no progress.

The most dismal part of this spectacle is to see otherwise sensible people caught up in an elaborate series of contortions, whereby terrorism, up to and including the obnoxious strategy of suicide bombings, can be excused, rationalised - even dignified and romanticised - in the context of a national liberation struggle.

Of course, as everyone here will understand only too well, what lies at the crux of this debate are long-standing disputes over territory such as the Israel-Palestinian conflict, or the fate of Kashmir, or Chechnya. But the phenomenon of Al-Qaeda, its franchise operations around the world, the shadowy network of linkages within and between insurrection movements across Arab and Islamic societies, means this lack of an international consensus can be exploited quite ruthlessly.

For this reason, I have become something of an absolutist in this debate: it is time all acts of terrorism were treated as crimes against humanity. A concise definition is surely not beyond us: to

me, terrorism is the planning or perpetrating of deliberate mass murder, targeting a civilian population, in order to further a political or ideological cause.

It is not the act of a common criminal. Nor is it, by any stretch of the imagination, the act of a freedom fighter.

To that extent, terrorism defines itself.

Where is the UN Security Council on all this?

The post-September 11 legal standard it has set requires that all member states "refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts."

Under the mandate of Security Council Resolution 1373, they must shut down terrorist financing and training, and arrest or exclude the actors who seek to maim and kill civilians to further political ends.

Sounds perfectly straightforward - unless you fall back into this black hole of defining what's in and what's out.

Listen, for a moment, to the letter from Syria, a current member of the UN Counter-terrorism Committee, to the President of the Security Council.

It states: "in as much as Security Council Resolution 1373 (2001) lacks any clear definition of the concept of terrorism or of the terrorist acts or entities to be combated, the Syrian Arab Republic has based itself, in the present reply, on its commitments under the 1998 Arab Convention for the Suppression of Terrorism, which distinguishes between terrorism and the legitimate struggle against foreign occupation ..."

On this interpretation of Syria's international responsibilities, it is entitled to give succour to terror groups, even though they target non-combatant civilians, provided the murder and mayhem is serving "political" purposes - presumably, this is to include all such undertakings in Israel and Iraq.

In effect, a serving member of the Security Council has elevated the Arab League Convention on Terrorism, adopted in Cairo in April 1998, above its obligations to the United Nations.

This unwillingness to accept the application of a universal standard is long-standing. I don't see it changing.

Yet I would argue that anything less than a universal standard is almost certainly a double standard. It is one clear example where international law under the UN system is very much an unperfected ideal.

This is one of the ongoing reasons for disappointment, if not outright despair, over the failings of the international system.

The UN's humanitarian agencies are indispensable, protecting and feeding civilian populations in distress, when and where they can.

Its focus on improving health and educational provision in the developing world will continue to be pivotal, if we are to lift standards of living, and make equality of opportunity more than just another meaningless mission statement.

Under the UN's auspices, a new International Criminal Court has come into being - although anybody who has logged into the video coverage of the Milosevic trial before the International Criminal Tribunal on Yugoslavia in the Hague will begin to understand that justice under these processes will be a long time coming.

The Security Council itself is in desperate need of reform.

It is the only international body with the legitimacy to authorise intervention to preserve or protect global security. But what is too often forgotten is that the Security Council has never been a substitute for Great Power politics - it is simply Great Power politics played under a different guise.

More often than not, it will struggle to produce unified and effective responses. To quote Michael Ignatieff: "The world that Roosevelt and Churchill intended, which was a world in which force would only be used with Security Council approval, has not happened. And Iraq isn't the first time; it hasn't happened most of the time."

It is very much in this context that before, during and after the military interventions in Afghanistan and Iraq, the US and allies such as Australia have been re-defining their doctrine on the run, in the search for a more credible pro-active response to security challenges.

In July this year, the Sydney Institute hosted a speech in Sydney by Prime Minister John Howard in which he articulated the reasons for some of the recent, quite dramatic, shifts in Australia's thinking about its relations, particularly within its own neighbourhood but also the world at large.

That night, we heard the beginnings of not so much of a doctrine but certainly of a new approach - John Howard talked about the need to ensure Australian governments had the flexibility to join and build coalitions of mutual interest to address some of the security issues confronting this region.

We now know this formula by the shorthand phrase, "co-operative intervention".

Was this a blanket repudiation of the UN system as we have known it? I don't believe so. Was it an expression of frustration and impatience with the institutional blockages, the inbuilt inertia, in the international system? Absolutely.

The bottom-line is probably this: can a system of law based on international norms be upheld without a credible threat of force?

The Australian-led mission in the Solomons has been a large and costly undertaking. Just as East Timor was and is. Both were controversial.

But, in some ways, the question is not so much why and whether Australia or the us or other like-minded can or should act in these cases. The question is cruder - who else is there?

We need only cite the grim failures in Bosnia, Rwanda and Kosovo to understand that unless the US is engaged and active, there is little or no capacity for the international community to deal with these problems.

I find the degree to which America is held uniquely responsible for the sins of the world truly remarkable. If only the Yanks would go home. If only we could stop Bush.

My answer to that is be careful what you wish for. An America in strategic retreat might well give us an opportunity to test all these wonderful post-modern constructs, the utopian “beyond all wars” theory of international behaviour.

But I doubt the warm inner glow would last for long. It isn't America sending ambulances to blow up aid workers.

I don't say human rights law is irrelevant or an optional extra. What I do say is that human rights jurisprudence has a bit of catching up to do on the issue of intervention.