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### **Conference Services**

Please find attached the introductory statement by Brian Gormally, Consultant Researcher, Justice Associates, United Kingdom, delivered to the session I (The Victims) of the "*High-Level Meeting on Victims of Terrorism*", 13 - 14 September 2007.

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## **Victims of Terrorism**

There are now a significant number of international treaties, declarations and other documents that urge States to assist the victims of terrorism.<sup>1</sup> There has been a strong view from some quarters that victims of terrorism require specific forms of assistance and that it is right to express particular solidarity with them. This goes beyond a pragmatic understanding that victims in particular circumstances require tailored assistance programmes and seems to assert the importance of distinguishing, in principle, between victims of terrorism and other victims. Others have doubts about such a principled distinction and raise concerns about creating a "hierarchy of victims."

From a legal point of view, it seems that specific definitions of victims of terrorism in domestic law are fairly rare. France has considered victims of terrorism as civilian victims of war since 1990, according them some special rights and benefits but other states make no legal distinction amongst victims.

At an international level, most of the instruments that refer to victims of terrorism fail to define the term. One that does is the UN International Convention for the Suppression of the Financing of Terrorism adopted 1999 and entered into force in 2002. Article 8.4 reads: "Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families."

The Article 2.1 (a) referred to reads: "An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or..."

The treaties mentioned are a range of UN Conventions on such things as aircraft hijacking and maritime piracy. Subparagraph (b) reads: "Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

As far as the UN is concerned, then, a victim of terrorism is a person harmed by an action prohibited under the various treaties or an act defined in the above subparagraph. Although the legal definition of a victim of terrorism is completely bound up with a legal definition of terrorism itself, this is not the place for an extended discussion on that topic. A few points arising out of the above definition are of particular interest, however.

First, the definition refers only to acts causing serious death or injury, not to less serious crimes. Second it refers only to acts committed against civilians or other people not taking an active part in armed conflict. So, members of State armed forces taking part in a conflict, either on their own territory or in some country as part of the "war on terror," would not be regarded as victims. Third, the intention of the acts must be to intimidate a population or compel a government or international organisation to do or not do something.

Some States would consider that definition of terrorism unacceptably narrow. The UK Terrorism Act 2000, for example, is much broader in scope. It defines possible terrorist acts as the use or threat of action which:

"involves serious violence against a person, serious damage to property, endangers a person's life, other than that of the person committing the action, creates a serious risk to the health or safety of the public or a section of the public or is designed seriously to interfere with or seriously to disrupt an electronic system."

Any other action which involves explosives or firearms is also brought in. Such actions amount to terrorism if:

"the use or threat is designed to influence the government or to intimidate the public or a section of the public and the use or threat is made for the purpose of advancing a political, religious or ideological cause."

There is clearly scope for a great deal of debate on how widely or narrowly terrorism is defined. However, in so far as it is defined, in international or domestic law, it is obviously possible, in a legal sense, to define its victims. It then becomes a moral and political question whether that should be done and what practical effect should be given to the distinction.

### **Distinguishing Between Victims of Terrorism and Other Victims**

The assumption in this discussion is that there will be no division of opinion on the principle that support and solidarity for victims must be adjusted to suit their particular circumstances, including the character of their victimisation. Rigid uniformity in the delivery of services to any group of people in need will rarely amount to best practice. It is also unlikely that anyone will dispute that the social and political context will differ depending on the nature of the victimisation. What particular sensitivities and tailored approaches are involved in expressing solidarity with victims of terrorism will be the subject of the other three sessions of the meeting. It is important, however, to take into account of some of the issues that may arise when specific attention is given to the victims of terrorism.

In the most general sense, there is a danger of creating invidious distinctions between classes of victim. It needs to be considered that, if particular emphasis is to be given to the needs of victims of terrorism or their public recognition, there is an implication that something is to be denied to other victims. Should these other victims receive lower quality services or should their hurt be deemed to be less severe? Again, there are few areas of service provision where some method to determine priorities is not required. It is not hard to imagine disquiet if it were felt that one category of victims was given priority over another simply by virtue of the character of the perpetrators of their hurt.

Even if we are to assume that any practical services or compensation would be based on need rather than victim status, the literature and experience make it clear that public recognition or acknowledgement are of high importance to victims. If one category of victim is felt to be more deserving of such recognition than another, problems might well arise. Some might feel that it is to give terrorists further success to allow them to create

more divisions in the society they are attacking through the differential treatment of their victims.

There is, of course, a sense in which the demands for better treatment of the victims of terrorism, both by national publics and in international arenas, represent a critique of general provision for victims' support. If compensation is inadequate and slow, if dedicated services are few and if legal systems ignore victims' needs, these problems may be highlighted in the aftermath of terrorist atrocities. In such circumstances, a public outcry may be fully justified. There are bound to be political problems, however, if these inadequacies are remedied only for victims of terrorism while the victims of ordinary crime or, indeed, state abuses are left behind.

These problems are exacerbated enormously in cases where terrorism is generated by conflict within a State. During a conflict, and perhaps particularly in a conflict resolution stage, there is a danger of creating a "hierarchy of victims" which can increase or perpetuate social divisions. In the particular case of Northern Ireland, this alleged hierarchy has been described thus:

"at the top of the hierarchy of victims were those deemed 'innocent' – usually women and children, usually killed by paramilitaries [terrorist groups of various kinds]. At the bottom were members of those same paramilitary groups killed by state forces; they often attracted little widespread sympathy outside the communities from which they drew support."<sup>ii</sup>

In fact, State agencies in that region have tried to treat all victims of the conflict with some level of equality, whether the perpetrators of their hurt were pro or anti-State terrorists or legal State forces. Unfortunately, there are a number of areas, even within Europe, where the existence of past or continuing conflicts make the creation of a hierarchy of victims particularly problematic.

It is also questionable whether "international terrorism" is always truly external to the societies it victimises. The extent of interdependence in modern global society and the mix of ethnic, religious and ideological identities and allegiances in many societies mean that the dangers of creating division and alienation through the creation of a hierarchy of victims are significant both within States and internationally.

The issue of "victims of counter-terrorism measures" has been raised in previous discussions<sup>iii</sup> and is relevant to this discussion. In Turkey there is specific legislation providing for compensation for such people, especially internally displaced persons<sup>iv</sup> but this kind of provision is rare. In international law, and most domestic law, for a victim to be so defined, the harm done to them must generally be unlawful. In respect of State abuses, the UN 2005 Basic Principles say that they must be "gross" violations of human rights or "serious" violations of humanitarian law.<sup>v</sup> Where States act lawfully in taking counter-terrorism measures which nonetheless cause harm to innocent people it may be that these should be first, regarded as last resort measures, second, be taken in the context of rigorous safeguards and, third, that people harmed should be compensated. It is less clear whether a category of "victims of counter-terrorism" is appropriate to them. The consistent application of a human rights paradigm, as described below, should minimise the extent of this problem.

Having said all that, there is a widespread feeling that terrorism is uniquely threatening and dangerous. The UN General Assembly has said over and over that "acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy [...]"<sup>vi</sup> An act of terrorism is therefore a more serious threat to society than a simple crime, however horrendous. A crime creates an individual breach in the protection of human rights whereas a terrorist act aims to demolish the entire structure of protection of basic rights. In a general sense a victim is someone who's rights to live as a human being – their human rights – have been breached. Victims of terrorism have had their human rights breached in a particularly clear and flagrant manner. In the defence of fundamental freedoms, a special and public demonstration of solidarity with the victims created by terrorist acts seems appropriate. The question is how to do that without creating invidious distinctions.

It is perhaps within the overall paradigm of the protection of human rights that the answer lies. The other egregious threat to human rights is abuse by States. Again, where a State, which is supposed to be the guarantor of the rule of law and the protection of rights, commits an abuse it represents a much bigger danger than an individual criminal act. In that context, it is well understood that solidarity with the victims of State abuses is a core part of the continuing struggle to uphold human rights standards, domestically and internationally. It is logical therefore, that the solidarity extended to victims of terrorism is also seen as part of a consistent and comprehensive project of broadening and deepening the protection of human rights.

It may be, then, that solidarity with victims – and in particular victims of terrorism – may mean bonding together in the common enterprise of championing human rights. The concept of solidarity implies that a threat to one is a threat to all. The abuse of the human rights of a fellow citizen, anywhere in the world, is a threat to each of us in our enjoyment of human rights. Self-interest, as well as altruistic care for a neighbour, therefore demands that we proclaim and support victims as champions of human rights standards.

What could the application of this principle mean in practice? First, as the Background Paper states, it could mean that victims are seen not as passive recipients of philanthropy but as activists in the re-assertion of the importance of human rights. The empowerment of victims, the restoration of their human dignity might be best ensured by viewing them as leaders in the overall project of assuring the human rights of us all. The United Nations Global Counter-Terrorism Strategy, adopted in September 2006, speaks of the "dehumanization of the victims of terrorism," as one of the factors conducive to the spread of terrorism itself.<sup>vii</sup> "Re-humanising" victims might be seen, above all, as restoring their human rights as part of the process of reasserting their importance for all.

Second, this approach might help strengthen the protection of human rights in the fight against terrorism. It is a principle of the approach of OSCE and other international bodies that the interests of security should not override fundamental freedoms.<sup>viii</sup> If victims are seen as the champions of human rights their plight cannot be called in aid to unnecessarily restrict those very rights.

Third, the universality of human rights standards implies that there should be no counter posing of the "rights of victims" against the "rights of perpetrators." The subjective feelings of some, but by no means all, individual victims may tend to support this

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opposition but, objectively, neither victims nor the rest of society have an interest in miscarriages of justice or abrogation of the rule of law. In a more general sense, it is arguable that in combating terrorism along with a robust security response we should, as far as possible, remove the grievances upon which unscrupulous ideologues may feed. To put it more positively, the more fair, just, equitable and inclusive a society is, the less reason there might be for disaffection. It is this "terrorism-resistant" society that the application of human rights standards seeks to build.

If this approach is adopted, there will be no danger of a rhetoric of solidarity with the victims of terrorism being used to mount an assault on human rights standards. In that context it would not just be wrong but also illogical to take any "excessive steps which would violate fundamental freedoms and undermine legitimate dissent"<sup>ix</sup> in combating terrorism.

<sup>i</sup> These are listed in the Background Paper

<sup>ii</sup> Rolston, Bill in (eds) Brandon Hamber, Dorte Kulle and Robin Wilson, "Future Policies for the Past." Democratic Dialogue 13. Belfast. 2001.

<sup>iii</sup> Report of the Technical Workshop on Solidarity with Victims of Terrorism (Onati, March 2006) at <http://www.osce.org/odihr/documents.html?lsi=true&limit=10&grp=309>

<sup>iv</sup> Ibid. P.3

<sup>v</sup> UNGAR 60/147

<sup>vi</sup> UNGAR 49/60, 59/191, 59/195

<sup>vii</sup> A/RES/61/40

<sup>viii</sup> "While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that States strictly adhere to their international obligations to uphold human rights and fundamental freedoms." Joint statement by the ODIHR, the UN High Commissioner for Human Rights and the Council of Europe, 29 November 2001

<sup>ix</sup> See note viii.