

Strathmore Law School

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TERRORISM: CHALLENGES TO
EMERGING DEMOCRACIES IN
AFRICA

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DAY 1- AUGUST 4TH 2015

Prof. John W Odhiambo

Welcoming Remarks

Prof Odhiambo began his address by welcoming all the guests, and in particular the Hon Cabinet Secretary for gracing the conference with his presence. He then went ahead to express his expectation that the conference would be the beginning of collaboration between Strathmore University and the government, and more so the Ministry of interior and coordination of National Government, as many of the issues addressed in Strathmore Law School were relevant to the issues affecting the country. More specifically, the theme of the conference, as he pointed out, was a pertinent issue that the Cabinet Secretary was grappling with and the coming together of all the distinguished people in the conference was important so as to deal with this issue. He noted that this issue on terrorism is a complex and humanitarian one and encouraged the speakers present to deliberate on whether the our justice system is balanced, addressing the issue as to whether the government protects terrorists more than commoners, as is the common perception among many Kenyans. He closed by inviting the Honourable Cabinet Secretary to give his opening remarks.

Hon. Joseph Nkaissery

Hon Joseph Nkaissery was particularly glad to be part of this initiative, which brought together different stakeholders to critically examine the challenges and generate sound policy proposals, and counter-terrorism models for the region. He was quick to call attention to the real issue that we were up against: the allure of propaganda pumped out by Al-Shabaab and others to recruit and brain wash Kenyans through social media and modern communications. If the government is to dissuade those wanting to join this group and protect the vulnerable that might be at risk of radicalization, then it cannot work alone. He was insistent that there could be no 'one-size-fits-all' solution which would be effective across the globe and that every country has its unique security and cultural and social context. This however should not stop us from sharing ideas and experiences, as there are commonalities as well. He listed weak governance, collapsed state institutions and porous borders as some of the reasons that have made the East African Region vulnerable to terrorism. Moreover, though not the sole driver of violent extremism, he mentioned marginalized and alienated groups as providing 'seams of vulnerability' for terrorists to exploit in their efforts to recruit and seek support. Effective prevention of this would involve the focus, by everyone including the private sector, not in violent extremism 'hot spots' but at the periphery where they seek to penetrate as they expand their spheres of influence.

On democratization and terrorism, he agreed that it was possible to imagine why the former may be associated with an increase in the likelihood of war. As some scholars speculate, all kinds of regime change perhaps lead to instability and war as they are vulnerable and hence targets of attack. In his opinion, although some democratic

transitions are risky, the spread of democracy is a worthwhile long-term goal. Countries should therefore create favourable institutional conditions to foster transitions that result in peaceful and successful consolidation of democracy.

In the upshot, he identified the causes of terrorism, being demographic, socio-economic or political factors, and the implications of terrorism on human life, security, good governance, socio-economic development, infrastructure, global relations and investment. He then closed by wishing all the participants success in their deliberations and that they would enable the putting together of a more effective counter terrorism architecture for Kenya and for the region at large.

Mr Ndegwa Muhoro

Mr Ndegwa Muhoro commenced by commending the coming together of practitioners and policy makers to discuss issues on terrorism and proceeded to liken the situation of HIV/AIDS with the current situation of terrorism. In the past, no one wanted to talk about HIV/AIDS the same way no one wants to talk about terrorism- people only discuss about it in hushed tones. However, when people began talking about HIV/AIDS, the situation started reversing. The same, he believed, would be the result if we began to talk about violence extremism. He also suggested that since legal practitioners, human rights activists and the police look at the issue of terrorism differently, such a forum would help in understanding various perspectives.

The Garissa attack, he pointed out, was the tail end of the problem. The question that we must ask however is where it all started. We must consider whether it was at the family level, in training institution, at the religious level and so on. He added that unless we are able to identify the problem, we couldn't identify the remedy. In identifying the remedy, we need to ask ourselves how we will bring all the actors on the table, how we will engage the community, and how we would prevent terrorism so as to prevent the mass killing of people. Regardless, he appreciated that the forum sought to look at the issue from a holistic view.

Mr. Muhoro suggested that dealing with terrorism may become counter-productive when human rights are not protected hence there is a need for a balance between countering of terrorism and the protection of human rights. Also, he greatly emphasised on the need to build capacities among all the actors involved. As terrorism is a global problem, it would not be helpful for us to build capacities ourselves.

Prof Joseph Weiler

Global Trade & Global Security: A Common Challenge

He began by reflecting on his time at Strathmore Law School saying that it was one of the very best teaching experiences he had.

He then began his speech by stating that the perspective he would adopt was that of an academic. He admitted that he has learned that while academics are not good policy makers, they play a different role. He said that academics offer context, and analyse processes, they do not make or execute policy. He stated that it was necessary to keep the distinction in mind. He went on to state that he was also quite sceptical about the dialogue between policy makers and academics. This is because, academics have tenure and do not have to be re-elected and do not risk loss of jobs. For this reason, they speak the truth even if it is not politically correct.

He then stated that the context he would provide for the discussion was different given that he is not an Africa or Kenya specialist rather his context is global. Further, he stated that his address was not just touching on terrorism but security in the broader sense with his time context being the last 25 years, the watershed moment being the end of the cold war. He said that he would approach the matter by asking the question, how was security then and how is it different 25 years after the end? He provided the conclusion that it is not a safer world.

Professor Weiler stated that terrorism is not a new phenomenon despite the fact that some people will say it came in the 1950s with the liberation of Kenya. Rather, before 1989, terrorism was distinct and there were focal points of terrorism around the world. It was distinct in many ways.

Firstly, it was localised. He stated that terrorism was typically associated with wars of nationalisation and that the groups that fought for this liberty were usually connected with the superpowers of the cold war. The aim was to wipe colonialism away as it was unacceptable. That was terrorism as we knew it then and it was not central to security system.

He went on to state that at the time, there was also great moral ambiguity about terrorism. While people were horrified when civilians were dead, one person's terrorist was another person's freedom fighter. Even though people were horrified that children were dead, the issue was therefore more normatively and morally complex. While there was debate about the means used, there was greater division about the ends. In the end, the world came to accept that colonisation and oppression were unacceptable and liberation was acceptable. However, today there is far less moral ambiguity about it- societies and states reject terrorism on the whole. While there may be sympathy for the cause, it is still rejected.

Also, today, terrorism is ubiquitous. Professor Weiler stated that it could strike in Bulgaria, Australia, Sweden, and Kenya and for this reason; no country can say they do not have to fear terrorism. Further, in the previous society anyone could be a terrorist but today there is a change in context.

He also went on to explain that in a large way terrorism today is religiously driven. He then posed the question: How does this change how we deal with terrorism? He stated that he disagreed with those who argue that terrorism is economically driven- that it would end if only we closed the gap between rich and poor. He provides reasons for this. Firstly,

religion drives terrorism across income divisions. Secondly, he said that when we think about terrorism and about our response to terrorism there are two aspects- we want to combat it and we want to eliminate the root cause, which would mean that we do not have to combat it. In an immediate sense, we want to protect ourselves and in the wider sense we want to eliminate the causes. We therefore fight it in order to protect ourselves but ideally we want to eliminate the factors that cause it.

He also stated that in regard to religion, he was pessimistic about our ability to eliminate the driving cause. He said that while he didn't doubt the sincerity of Muslim clerics or Jewish Rabbis who condemn the attacks, the root causes go deeper. He went ahead to state that the too condemns the heinous acts committed in the name of Judaism. He stated that of the three Abrahamic religions, only Christianity has dealt in a serious way with the root cause that drives people to violence, which is that Christians do not force people to confess their faith.

He then gave a brief history of Christian-based violence, stating that Christians had a black record from the years of Constantine. For fifteen centuries it was common for Christians to enforce their religion by force and it was common to burn at the stake. However, according to Professor Weiler, in the 20th century there was a reformation. He stated that in the Catholic Church, at the 2nd Vatican Council, the Church declared as a religious proposition that there has to be freedom *of* religion and freedom *from* religion. That God created people with a freedom of choice and this choice necessarily allowed them to decided whether they will walk in the way of God or not. That God is not interested in coerced religion and that only a free choice of religion is a religiously significant act. The church made this proposition as a religious one, not a political or democratic one. Therefore, it was unacceptable to impose faith by force for one cannot say yes to God if they are not allowed to say no to him. Further, coerced religion has no religious significance. Therefore, the Catholic Church would not use the state to enforce religion.

Professor Weiler stated that this took (and continues to take) away the motivation for Christian driven violence, as it is not of religious significance. However, according to him, Islam and Judaism have not gone through the same process. While Islamic states speak out against extremism, it is still a crime to hold Christian Bible, to convert to a different religion or to blaspheme. Therefore, the state uses their power to force people into the religion. He also gave an example of the state of Israel where there is no civil marriage. Should one wish to marry they must do so in a religious ceremony, this effectively forces all people into such ceremonies.

He said that as long as all religions, in particular Islam, do not adopt the same posture-that God is not interested in forced, coerced religious- this will continue to breed people into terrorism in the same mistaken belief that they are doing the will of God. However, he said that he does not see these religions taking these steps. For this reason, he believes that religious driven terrorism, on the whole (because of that religious background) would continue to be with us for a long time.

He then stated that the ability of religious driven terrorism to recruit is particularly successful in societies where there are sections of people who are excluded. He noted that terrorism is rampant in areas where people do not feel like they take part in state governance and where they do not feel like equals before the state. This is because it appeals to communities who feel there are not stakeholders in the society. He however stated that this does not give moral justification for terror.

He then went on to pose the question, how do we explain the young people who join terrorism groups from countries such as Belgium, France, UK, and Canada? According to him, what are attractive are not the 7 virgins in heaven. Rather, it is the call to sacrifice, a call to meaning that attracts these young people. The young people feel like they get a life of meaning, to sacrifice and not just do what is in your self-interest. They are attracted by misguided beliefs that they will gain a life of meaning.

Aside from this, Professor Weiler stated that other aspects of security have also changed radically in the last 25 years.

The first aspect that has radically changed is cyberspace. He stated that cyberspace is ubiquitous and is not just our ability to Google. Our economy and public services are extremely dependent on it. He gave an example that if one intended to shut down a hospital; they could be just as effective by shutting down cyber space, as they would be by planting a bomb in this hospital. This has resulted in an entirely changed security environment as the Internet can be used violently by terrorist networks to cause economic and civil damage. He predicted that more and more with regard to human rights, the hot issue would not longer be torture but instead invasion of privacy due to the digital world we live in. He opined however that invasion of privacy does not prevent terrorism.

The second aspect that has changed is the end of the Pax-Americana. According to him, since the end of the cold war we have been living under the said Pax-Americana. He described the Pax- Americana as the ability of the United States to act as a constraining power and essentially to offer a defence shield to a whole range of countries. He said that he was stating this as a fact and not a moral question of whether this was good or bad.

However, according to him, the Pax-Americana is over. The reason for this is not disengagement. In fact the US has had heightened engagement in the world- for example, their involvement in the Arab Spring, the Arab-Israeli Conflict, the surge in the number of American troops in Afghanistan and Iraq as well as the 'red lines' drawn in relation to Russian interference in Syria.

The issue is that the capacity of the United States is not what it was. He stated that its global influence and authority in matters of security is in sharp decline. He then posed the question, why?

According to him, politics comes first. One of the dramatic changes is that the economy is no longer the deciding factor in United States' elections. (It is no longer "the economy stupid"¹).

The cleavage in American politics is now cultural and identitarian and is spilling over into foreign policy. He gave the example of 47 Republican Senators penning a letter to the leaders of Iran warning them that any nuclear deal signed with President Obama, could be overturned by the next president. According to Professor Weiler, this was unprecedented and illustrated domestic party differences affecting foreign policies. The second illustration he gave was that of the US Government nearly going into default due to a deadlock in Congress. He stated that in previous years one of the main things that were the mainstay was that American paper was sacrosanct. Yet the US government was one week away from a default. According to him, the fact that the US Congress was willing to risk the credibility of US paper illustrates the depth of the split. While admitting that the default would largely be a technical one, the fact that legislators were willing to let domestic party differences affect international policy was telling.

He stated that another dramatic change has been one of economics. Granted, the United States is still the most productive and by some measures the richest country in the world, the situation has still changed. He gave an example that twenty-five years ago when considering which market to invest, it was a non-issue to invest in the American market—an easy choice. However, today, if given the choice with China on the table, the choice is not so easy. This is because the consumption ability of the US market has changed. The power of consumption has moved to Asia. The US market is not quite the same and, according to Professor Weiler, one has to give cause if your biggest debtor is one of your major geopolitical adversaries. He stated that this affects one's credibility as a superpower.

The other issue at play is that of demographics. In jest, he stated that Europe is committing demographic suicide by producing cars and not children, which he saw largely as the effect of secularism. He went on to state that while the US has a healthy demographic growth, once compared to India and China the numbers are not encouraging. And while this didn't matter when most of the Indian and Chinese population lived in poverty, the parameter has changed. Therefore in the long term a country's major economic asset is their human capital. He states that a country can be thoroughly rich without natural resources giving examples of Switzerland and Canada. Therefore, with respect to demographics, 1.8 billion Indians dwarf 300 million Americans.

Professor Weiler, also stated that another dramatic change is the decline of moral authority of the US. Firstly, while 25 years ago there were very few democracies and the US was the leader of the free world, today there are 150 to 160 democracies (however fragile or corrupt). He reiterated that the US is no longer the moral leader giving examples of their activities in Guantanamo Bay as well as the issue of Edward Snowden. He stated that today the US is not associated with great moral leadership.

¹ This is in reference to one of Bill Clinton's campaign platforms in the 1992 United States Presidential Election

Having considered these factors, he stated that it is not surprising that the Pax-Americana is over.

He then went on to conclude that once we consider terrorism, Internet and geo politics we find the world is ultimately more dangerous than it was 25 years ago.

Professor then went on to make brief remarks about international trade. He stated that there is necessarily a forced marriage between international trade and security. He summarized his comments on the matter in three points.

Firstly, while he rejected the idea that the World Trade Organisation had failed he stated that it has reached its peak. He said that people should not expect much development in terms of the WTO. Instead, the current trade focus is now about regional trade agreements. He also stated that there is an internal and inherent tension between regional agreements and global agreements due to the fact that regional agreements create preferred partners outside the global square.

The second issued he addressed was that of investment and the move of money. While there are no international investment agreements, he stated that there are thousands of bilateral investment treaties between capital importing and exporting countries. However, he frankly stated that these agreements have been negotiated with an imbalance in power and are horrible. Further, there are no exception clauses in these agreements or social clauses. For this reason he did not find it surprising that people are turning to investment treaties to contest trade disputes. He stated that there is lack of confidence in Bilateral Investment Treaties and they are under attack in Europe. He stated that despite the fact that the same exceptions exist in treaties within EU, they are the heaviest users of treaties that do not have these exceptions in other regions. He argued that this illustrates European hypocrisy with these countries adopting the approach of "Don't do what I do, do what I tell you to do." He stated that in light of this, investment dispute settlement must be re-thought due to these double standards.

His third and final point on international trade was on the issues globalisation. He stated that there is no point in demonstration against the WTO. Rather, the problem is that the advantages of free trade are not justly distributed in the countries that benefit from them. He gave the examples of Sweden, France, US and Cuba. While these countries each have a different political-economic model, they are all members of the WTO. The problem is therefore not the WTO, which accommodates all the countries; instead the problem is what happens with the wealth created in those different states. The advantages of freed trade are not equally distributed with these states.

With that, he concluded that these are the problems he sees with regard to terrorism and global security in general.

Mr Isaac Ochieng

Modern Global Security Challenges

He began by stating that he pleased to be delivering his address to the conference and that conference was being held at a crucial time when Kenya is experiencing the effects of violent terrorism. For this reason, he hoped that the conference would strengthen the fight against terrorism.

He stated that states have traditionally viewed their primary responsibility as the protection of their borders. However there are now trans-national crimes such as money laundering, drug trafficking, environmental crimes and indeed terrorism. This has shifted the focus from just the territory of the state. In addition to this, there are now new and improved methods of committing crimes due to innovation and new technology-through the Internet for instance terrorists are able to access good infrastructure and share ideas and to plan attacks together. He also stated that governments must deal with globalization and that free trade areas have created opportunities for terrorist to commit crime.

He then posed the question of when terrorism started in Kenya and whether we knew the genesis of violent terrorism. He briefly described the story of Harun Fazul whom he describes as the critical thinker of terrorism in the region. He described his activities and networks in the country as spanning Lamu, Malindi, Mombasa and Nairobi. He lived in the country while planning the 1998 American Embassy bombing. Mr. Ochieng described how his movement in this region peaked the interest of the intelligence services that received intelligence that the planned target was the Embassy. However, this information was not acted on and the attack happened. Immediately after this, the man disappeared and the networks disintegrated.

Mr. Ochieng stated that this young man was a brilliant young man and this clearly illustrated that those who accept the ideologies are not fools but instead are brilliant people.

He stated that the final goal of terrorists such as Al-Shabaab is to establish a caliphate. In an effort to achieve this goal, they aim to create clashes between different people - different religions, different clans and different ethnic backgrounds. They identify an issue depending on the country they infiltrate. For instance, in Afghanistan, they are fighting ideology, in Kenya they are fighting with religion, in Somalia they are fighting with infidels and in Canada what they are saying is that if you are not an original Canadian you can never rise high positions. However, the ultimate goal is the establishment of a caliphate, which is a 40-year to 50-year plan. He stated that in Northern Kenya, within the communities they divide the people along clan lines and at the Kenyan coast they appropriate the narrative of neglect. He stated that the ultimate plan is to create clashes between clans and tribes in Kenya.

He stated that the international community we must address the issues of development and of isolation in order to fight terrorism. He went on to state that in order to fight the narrative of marginalization, we must develop the country. He stated that the government was pushing county governments to develop infrastructure and education in order to fight the allure of the extremists. He said that Kenyan society must live democratic ideals without leaving anyone in isolation.

He also stated that the nexus between crime and terror was becoming concerning as terrorists use criminal networks to advance their goals. He gave the example of how Al Shabaab use robberies, poaching and smuggling to fund their activities. He said that this illustrates that governments must take an integrated approach to these issues

He stated that Kenya remains vulnerable to attacks and that the country is also witnessing the recruitment and radicalization of the youth, which encourages them to use terror tactics. He warned that parents should be vigilant and watch out for telltale signs of their children becoming radicalized. He also stated that a large number of youths were being lured by ISIS websites that encourage radicalization. He said that the government was monitoring the situation and that the recruitment in one university in Kenya is appalling with several students going to Syria.

He posed the question of whether this jihad was our war, and stated that religion is a personal issue. For this reason, the war is not ours and should stay out there and that we should not join wars whose origin we do not know. Rather, we must collaborate and work with partners such as the AMISON mission in Somalia.

He stated that, while Al Shabaab is suffering losses, there was still more to be done. In this respect he said that the country had received strategic support. He said that the Kenyan government has also drafted the national strategy for countering violence. The strategy addresses strengthening of the role of civil society, media, entertainment and education in challenging extremist ideology and propaganda in order to win the battle of the mind.

He said that Kenya has taken steps to deny a safe haven for terrorists by taking several measures such as passing legislation, improving passenger-screening methods and restricting financing of terrorism.

He stated that the varied responses by the government to terrorism have brought out the nexus between security and human rights. He stated that the government has the duty to protect human rights and that it is ensuring that the measures taken respect these rights. He gave the example of a joint initiative by the government and the judiciary to provide training on human rights.

He concluded his remarks by stating that the Kenyan government would match and surpass the terrorists and would work with partners to be successful.

Ms Nardos Bekele – Thomas

Inauguration

Her presentation was based on her own experience in the field. She stated that what has created this problem is that youthful energy is being changed from something positive to be a threat to the socio-economic transformation.

She cited six of the causes. The first was a sense of disempowerment and marginalization based on culture, religion and socio-economic powers. She stated that in Africa it's not hard to find marginalized groups. In Kenya, for example, there is a sense of exclusion in northern tribes. She stated that hopelessness and despondency create helplessness in people's mind and this erodes our values. She said that we as states have not handled the issues that were localized but have now spread beyond this sphere. In her opinion, the issue is not only about employment and but also about the degradation of social values.

The second cause she gave was that of the spread of certain types of cults created within broad institutions such as religion using common areas of frustration as a background of recruitment. In this respect, terrorism is associated with identity crisis and makes use of these cults.

Thirdly, democratic deficits exist. She stated that if one looks at the democratic deficits, they translate themselves in lack of performance of governance, the crisis of legitimacy of rule and legitimization of the ruling political systems. Africa as a continent is in transition and it suffers from democratic deficits. Closely linked is the lack of justice; existence of economic poverty, lack of means of empowerment, which enhances incentives for organised terrorist groups. Corruption also plays an important role in reinforcing terrorism. For this reason the youth are used to perpetrate political violence and other forms of violence.

The fourth cause is that of the human development deficits whereby there is lack of human empowerment. The last cause is the absence of distributive justice whereby people are not given equal opportunities.

Having considered this she went on to state that terrorism can be fought both on the national level and regional level. On the national level, Ms. Bekele-Thomas argues that we need to have adequate legislation against terrorism that promotes deterrence of terrorism, engage in socio-economic reforms and engage in cultural and educative reforms.

On the regional level on the other hand, we need to implement regional laws on combating terrorism; develop mechanisms prohibiting the financing of terrorism; end double standards and inequalities by pressing on a human security centred approach; invest in the democratic transition and reduce ungoverned spaces through better structures and governments.

She concluded by stating that terrorism needs a change in lifestyle from individuals, communities, states and the region. She gave suggestions to help solve the problems and these were the development of adequate legislation against terrorism that pre-empts terrorism. This legislation must be aligned with principles of democracy, rule of law and human rights. The elimination of marginalization and lack of equality; cultural and

educational reforms; implementation of conventions; development of international mechanisms of financing terrorism and harbouring terrorists; enforcing human rights regime; investment in the completion of the democratic system and employment opportunities for the youth.

Mr Adama Dieng

Key Note Address

He said that he strongly believed that the topic on terrorism is the subject of critical and increase relevance to many African countries due to the fact that we are confronted with terrorism in one-way or another.

He began his speech by stating that terrorism is claiming the lives of Africans every day giving examples of organizations such as Boko Haram, Al-Qaida or Al Shabaab. He stated that many Africans are being killed and traumatised because the terrorists target the innocent and most vulnerable.

He gave the example of Kenya which has suffered multiple terrorist attacks including the 1998 US embassy bombing, Westgate attack, and Garissa attack, which cumulatively left hundreds dead. He stated that the targets of this attack have been ordinary citizens.

Mr. Dieng expressed that there can be no justification for attacking civilians. He said that the terrorists want to inflict maximum damage by targeting the most vulnerable such as women and children. He gave the example of Boko Haram whose tactics have included kidnapping girls. He said that he believes that the terrorists want to intimidate our democracies by taking away our rights and freedoms that we have painfully fought for in Africa. He said that this is not acceptable especially since Africa made considerable progress in human rights.

He stated that while the justification of the restriction of human rights is that governments have to limit the rights of some because of terrorists, he is of the opinion that we must not let the fear of terrorists restrict the enforcement of human rights.

He went on state that terrorist groups pose a great challenge to structures and unconventional forces of criminal networks. These groups have become increasingly sophisticated in the way they mobilize resources to garner support and resources in order to recruit young people or to get local community leaders to turn a blind eye.

He said that investigations have found that some Kenyan nationals have been involved in attacks against their fellow Kenyans. He said that states need not only an understanding on why and how the attacks happen, but must also adopt a broad approach that goes against the national strategy. National strategy can only be successful if there is support from regional groups such as The Intergovernmental Authority on Development (IGAD) and The Economic Community of West African States (ECOWAS). These, he said, are sub-

regional mechanisms that already provide a platform for coordination of intelligence and action including application of sanctions for financing or assisting terrorism groups. While this is helpful and encouraged, he warned that the cooperation of the African Union is also important to avoid the multiplicity of initiatives which tend to strain resources or overlap in function. He said that its time for us to explore use of a multinational taskforce. If resources were mobilised it would greatly enhance states' collective efforts in countering terrorism. He gave the example of the USA and other NATO countries, which have many strategies to deal with terrorist groups around the world.

He went on to explain that terrorist groups in Africa rely on sophisticated networks and communicate through Internet and social media therefore there is the need for multilateral and bilateral cooperation.

Mr. Dieng also stated that the United Nations has resolved that countering terrorism is a great objective. It also passed an anti-terrorism resolution, which is the corner stone for counter terrorism efforts by the UN. While the resolution does not define terrorism, its goal is to raise the average level of government involvement in fighting terrorism.

He stated that, at the time the UN was formed, global terrorism effects did not exist because the greatest threats at that time emanated from states themselves and not from non-state entities. However, presently, we must confront new challenges that were not necessarily anticipated.

He stated that the UN task force has different committees with different functions and it needs to build capacity on how to fight terrorism. In this same vain, national, international and regional strategies must be complemented by addressing fundamental issues in our own countries that lead to the radicalization of youth, leading them to move away from their countries join terrorist organisations.

He also discussed the measures that states take in counterterrorism efforts. He stated that if states launch a military campaign against a terrorist group but violate human rights while doing so, for example, unlawful arrests, sexual violence or looting property, this would create resentment and support for those it intends to defeat. For this reason, efforts to combat terrorism must uphold human right standards. Restriction of civil society or the media as well as the imposition of collective sanctions on communities will not increase the combating of terrorism in the long run and is instead self-defeating.

He stated that the state must find a balance between human rights obligations and national security. He challenged citizens to remind their policy makers that it is possible to defeat terrorism without abandoning respect for human rights and rule of law. He also stated that the government must work closely with local communities in combating terrorism and not associate a particular group with the terrorist group especially when the association is based on the identity of the community. This may lead to the targeting of innocent civilians.

Further, counterterrorism tactics should include a gender role. According to Mr. Dieng, women should be involved in the implementation of such tactics and in policy making from the community to the national and regional level as they have been deeply affected by terrorism.

He also stated that African governments must also fight corruption, which takes many forms and that it is not possible to fight terrorism when the security agencies do not have the resources that they need.

He mentioned that many sections of our youth are unemployed and feel left out. He termed this as a total waste of our youth, which is driving them into the hands of the terrorists. This is due to the fact that if they feel that they do not have an option, then they may turn against their communities and join these groups. Government should therefore provide opportunities for young people especially in vulnerable communities. Policies must also advance the aspirations of all people since if states do not do more to address the imbalance of resources in the country, it will not matter how they deal with terrorism as more people will still join these groups and the cycle will continue.

Mr. Dieng stated that he is a firm believer in the rule of law and that due process and international standards must be met while bringing terrorists to justice. The purpose of investigation is important to help the state design better responses to future attacks. He also stated that, in the eyes of many people, the state simply reacts quickly. However, there is a need to be transparent and open and to conduct proper investigations and give adequate information to the people. In his view, a responsible state will acknowledge and respond to findings in a way that will support and enforce security.

He concluded his remarks by saying that we must not sacrifice democracy and human rights at the altar of terrorism. If we do, we are helping these terrorist groups in demolishing democracy and human rights. Further, in honour of the victims and remembering our humanity and the AFRICAN history of Ubuntu, we must affirm our commitment to peace and human justice for all.

PANEL SESSION 1: THE ECONOMIC IMPACT AND SOCIAL COST OF TERRORISM

Moderated by Mr. Linus Kaikai

Mr Hassan Ole Nado

Religion And Terrorism

He began by stating that there is no doubt that one of the characteristics in our time is violence and that loss of innocent lives has become a common event. He stated that experts argue that 21st century terrorism is promoted by ideologies.

He then posed the question of what motivates terrorism and whether it is carried out based on goals. He then referred to terrorism as martyrdom. He explained that in history, all Abrahamic religions that is, Christianity, Islam and Judaism, have perpetrated violence at one point or the other in their history. He gave the example of the Jews who sought to incite people to rebel against the Roman Empire. In addition, during the Middle Ages there were the Christian crusaders. He then went on to state that in Islam, a small Muslim sect known as Ismailia, though very small, were by the end of the 11th Century considered to be one of the most brutal terrorist groups. The members of this group attacked people by stabbing them in the chest and back using daggers then leaving them to be killed by other people. They would mobilize individuals and carry out random attacks in markets in order to instil fear. He explained that these groups targeted individuals, as there were no means of mass destruction.

He then posed another question, asking what ideology is. He was of the opinion that it is a system of ideas that explains a set of options or beliefs of a groups or a people, conscious or unconscious idea that constitute one's actions. Ideologies contribute to mobilization. He stated that the current terrorism is associated with the mainstream Islam beliefs.

He suggested some solutions available to redress these problems. Firstly, he said that it was necessary to prevent Muslims from being indoctrinated in violence. Islam is always blamed for terrorist activities even though Islam doesn't advocate for killings. He quoted the Qur'an, which says, 'if a person slays a person unless the latter is guilty of murder then it will be as if he has killed humanity and where he saves a person, he will be viewed as saving humanity.' However, taking of a criminal's life by the state in order to administer justice is seen as upholding the rule of law. In sharia law there are instances when people have to be killed. Islam draws a clear line between combatants and non-combatants. Women and children should not be killed.

Given that these are instructions from Prophet Muhammad, Muslims should therefore not be involved in oppression. Islam calls for balance and innocent people should not be harmed.

Muslims for many years have lived and coexisted peacefully with other religions. He asked then what had resulted in the sudden change of attitude. He gave examples of nations like Palestine, Morocco and Lebanon that have a significant Jewish and Christian population and yet from media reports of these countries he said that one would imagine that not one single church or synagogue existed.

He spoke on the significance of ideology in mobilizing terror networks and posed the question of whether Islam could be used to conquer the terrorism. He stated that terrorism is ideologically motivated and that religious terrorism is terrorism that is based on religious principles. However, martyrdom is efficient, inexpensive and easily organized. The purpose is simply get an individual who is ready to die and who has nothing to lose. This he said attracts public attention and helps more recruitment and is therefore very risky and dangerous.

However, according to him, Islamic ideology could be comfortably used to defeat this kind of ideology wars.

Dr. Ochieng Lukes

Religion and Terrorism

He recognized the fact that religion motivates terrorism and that terrorist attacks in the name of God have become predominant. Religion interacts with people at three levels- individual, societal and global. He also said that religions are potentially violent and gives the example of religious songs that depict it as a war against good and evil. He pointed out that Islam as a religion is not terroristic but a number of terrorists associate themselves with it. The problem with religion is that it can be easily misinterpreted and this is what happens many times. People misinterpret the Koran and contextualize jihad in the real physical world. He clarified that the wars spoken about in religion are cosmic wars- they are spiritual wars between good and bad fought in the cosmos or spiritual world. He pointed out that the teachings on religious wars capitalise on this struggle so that they can create war in the real world. The connection between religion and terrorism is blurred and this, as Dr. Lukes stated that this is what has led to radicalization. He explained that this blurriness of the boundary has led to the notion that religion promotes war. The teaching of religion in a manner that confuses people and promotes terrorism and violence also enables the blurring of the line between the cosmos and the real world.

He concluded by talking about the role of secularism as an instrument that bridges diversity. That is, where we give up some of our religious freedoms to create a bigger freedom. He advocated for the use of secular language in the public sphere.

H.E John Feakes

Terrorism in Australia: Causes, Effects and Counter-Measures

He began his address by giving a brief recap of some of the terrorist attacks that have occurred on Australian soil and against Australian nationals in recent years. He mentioned that the most serious attack on Australia did not occur on Australian soil but rather happened in Bali. It was an attack on the Australian embassy in Jakarta that killed 88 Australians on 12th October 2002.

He also gave examples of recent attacks such as the Sidney siege, which resulted in the death of 2 hostages and after which the terrorist public alert in the country was raised to high. He mentioned that presently ISIL now pose the greatest threat to Australian interest and the Australian government knows of around 120 Australians who are fighting in Iraq and Syria while 160 other have provided support to the cause. He contrasted this with the period of 1990 to 2010 when only 30 Australians were fighting in this region. The number has therefore quadrupled in a few years.

He also mentioned that the Australian government has cancelled 120 Passports and that 500 people have been offloaded from aircrafts under the suspicion that they were going to commit terrorist acts.

High Commissioner Feakes also stated that in their counterterrorism efforts, the Australian government has made it clear that they are fighting the narrative as much as we are fighting violence itself. He stated that the first line of defence for a country is prevention and that towards that end, Australia aims at stopping the ideologies from taking hold.

He mentioned that since the September 11th Attack on the Twin Towers in New York, successive Australian governments have substantially increased funding to combat extremism. He stated that these measures enjoy bi-partisan support among national political parties in Australia. In this respect, the Australian government has committed 1.3 billion AU Dollars towards border security and counter terrorism. In addition, in 2011 laws to combat terrorism to fight extremism have also been enacted.

Also in a bid to boost its counterterrorism efforts, Australia has 900 Special Forces troops in Iraq and other troops in other areas of combat such as Afghanistan.

He posed the question of why many Australians are going to fight in Syria. While reminding the delegates that there is no one path to extremism and that the motivation and drive is individual and that the Australian government does not have all the answers, they did have theories. For instance, the profile of the Australian fighters who are leaving their country to join ISIS is that the vast majority are young men who have not succeeded in Australia. Often they have criminal records, long periods of unemployment or mental illness. They are dislocated from Australian society and do not feel like they fit in. HC Feakes stated that it is at this point that ISIS resents itself with a very clear message, which is that it promises them a status in life that they do not enjoy or are otherwise denied. He stated that coming into contact with extremists was the catalyst for departure and that without this catalyst, the government does not believe they would travel to Syria to fight. With that he concluded his remarks.

Dr. Robert Mudida

Economic Impact of Terrorism

He talked about the economic impact of terrorism and started by pointing out that a terrorist attack may have some less obvious effects, which may be easy to overlook. He spoke on how media may focus on the direct effects such as death whereas some medium term and long term effects may be undermined. He analysed the direct costs opportunity costs that are incurred while factoring in the costs of curbing terrorism into the budget. Some of the effects that do not receive ample media coverage include increase in risk associated with foreign investment in such a country and how such investors who want to consider investing are disadvantaged. He also mentioned that the media never mentions the spill over effects of terrorism. This is where the neighbouring countries of the affected country become disadvantaged, as investors tend to look at the risk profile of the entire region. Terrorism affects the regional economy.

He spoke on how the effects of terrorism on tourism tend to be blown out of proportion especially by the media when in reality the damage is not as significant when compared to

others; the more critical issues are less emphasized on. While speaking on counter terrorism measures, he emphasized on the need for strong policy actions that deal with recovery as well as solutions that deal with the root cause instead of simply spending money on nothing. He pointed out that some counter terror measures might be unproductive and have further adverse effects. For instance, travel advisories may lead to unemployment of people within the tourism industry. He emphasized on dealing with root causes as opposed to settlement. He explained that the problems in Kenyan tourist industry are not caused by terrorism, only aggravated.

He spoke on how security currently has a high allocation of resources in the Kenyan budget to the detriment of other sectors such as agriculture and health, which are equally important. Owing to the fact that Kenya has a high budget deficit, it will resort to borrowing. He mentioned that security has contributed to fiscal pressure and there exists a competition amongst many sectors of the economy for the fiscal space. Both the public and private sector are spending on security. He posed the questions whether spending on security will be effective against terrorism if it is a clash of civilizations.

He concluded by saying that spending may indeed reduce the short-term effects of terrorism but it is impossible to fight a global problem using local measures. We must look for long-term solutions that deal with the root cause itself and not depend on military solutions.

PANEL SESSION 2: THE INTERRELATION BETWEEN TERRORISM AND ORGANISED CRIME

Moderated by Dr. Monica Kerrets-Makau

This panel format differed slightly than the others. The panelists gave brief remarks after which the floor was opened to questions.

Mr. Fred Fedynyshyn

TERRORISM FINANCING: AN AMERICAN PERSPECTIVE

With regard to the movement of money from point A to Point B, the main issue is how to draw the line between a transaction that should be prohibited and one that should be allowed and how to help authorities to draw this line. This is because the two different kinds of transactions look very similar.

He also reminded the delegates that the regions that are considered hotbeds of terrorist activities are also regions that generally do not have funds circulating in the economy and therefore in order to support these societies, funding tends to come from outside. Therefore regulating the flow of money in these regions must be done delicately.

He also stated that it is both very easy and very hard to send money around without anyone noticing.

He also gave two suggestions on trying to stop the financing terrorism as well as the general flow of illicit funds. Firstly, he stated that it is important to think in terms of monitoring and not in terms of roadblocks. This is because it is too easy to cut off groups from the global economic universe and this creates more problems. Stopping these funds is a proxy in the fight against terrorism yet many of the citizens in these areas need access to the global financial system. Saying no cuts people off from the opportunities they need and this may aggravate some of these situations. This is because it is not a hard choice for people who do not have access to global financial markets to choose to make easy money in underhanded way.

His second suggestion was that cultural diversity must be recognised by the international finance community. He gave an example of the fact that in many African communities many people are not referred to by only one name and may fill in forms with different names than are on the national identification documents. However, to a western finance official or regulator, this may raise a red flag. There is also a need to recognise that people transact and deal with money differently. This will help avoid silly hiccups, which also have several transactional costs.

Mr Adama Dieng

Increasing Connection Between Terrorism and Organised Crime

The connection between organised crime and terrorism is growing and countries must focus on the need to combat terrorism financing and money laundering. In Africa, we have a beautiful convention to fight corruption but it doesn't serve the purpose if it is not applied. Corruption is hampering efforts to combat terrorism, for example, despite all the efforts put in place in the Central African Republic, unless drastic measures are taken to investigate the link between organised crime groups the elections in November will continue the cycle of violence. The same in Mali where there is a need to address drug trafficking. We need to look at all these issues to avoid conflict, there are a lot of people who are simply trying to make money but work with terrorist groups

Col (Rtd) John Steed, MBE

Terrorism as a Form of Organised Crime

He stated that terrorist groups are resorting to organised crime to finance terror. For example, Al Shabaab are funded by taxing the charcoal trade in Kismayu. Presently, due to the fact that the Kenya Defence Forces have intercepted this charcoal trade, the group has now entered the business of moving heroin around. He mentioned that in a bid to cut these financial flows, there have been efforts to convince gulf countries not to buy illegal charcoal from Somalia.

The connection between crime and terrorism is very strong. Africa has been the centre of criminal activity coming in from South America. Further, all terrorist groups are resorting to crime in order to finance their activities. The linkage between terrorism and crime is increasing and the ability to deal with the gap is becoming more and more difficult.

He gave what he saw as lessons to be learned. Firstly, the techniques used to fight organised crime can be directed to the fight against terrorism. Secondly there is a need for greater co-operation. This is because this is a problem of all countries and everybody is affected. For example, the fight against maritime piracy has been fought by co-operating and creating regional centres to share information, training investigators, training prosecutors, that sort of flexibility is what we need to bring to the fight in terror.

Ms Sarah Muthiga (on behalf of Mr Mohammed Murshid)

Police Reforms: A Potent Mechanism in the Fight Against Terrorism

She stated that in Kenya, our problem stems from identifying what triggers violent extremism and terrorism. She gave three approaches: the first is the law and order approach, which focuses on fixing governance structures. The second is the society approach which focuses making our societies more just. The third is the holistic approach, which combines the first two approaches.

She then gave a brief history of policing in Kenya, which began in 1886 after the establishment of the protectorate where the colonial police was created to protect the BIEA country and not to protect the natives.

She stated that the police force has been historically used to oppress Kenyans and making them more likely to be radicalised and for this reason people are not willing to trust the police or work with them to counter terrorism.

She then posed the question of how we can make the police helpful in combating terrorism. She suggested that it is necessary to transform the police from being an oppressor to being a service. She emphasised that we need accountability, anti-corruption and community policing so that the people feel that it is safe for them to report crimes and/or terrorism and they are obligated to do so, even crime that is not necessarily terrorism but that could be aiding it.

QUESTION AND ANSWER SESSION

- 1. A lot of money in Somalia comes from the outside, how can you identify terrorist money without affecting the remittances, which many people in Somalia, depend on?**

Mr. Fedynyshyn: It is impossible to get it correct 100 percent of the time. The right way to approach it, which is the international way, is to have good “know your customer” policies- birthday, additional information. It is also possible for banks and money sending services to check sanction list or lists of individuals who have been flagged and also to assist in monitoring the transactions.

It is also important to making it more culturally diverse- the way in which a Kenyan/Somali may fill in the forms may raise a red flag for a British officer but the way in which people deal with money is very culturally specific and sensitive.

Mr. Adama Dieng: It is estimated that Al Shabaab collected tens of millions of dollars from illegal charcoal exports creating a source of income. Most charcoal was exported from Kismayu. We associate AS with hostage taking, piracy and wider organised crimes. It was previously only felt in this part of the continent but now in the Gulf of Guinea there are new groups working with these terrorist groups. It is extremely difficult to research on these issues of transnational crime groups. Aside from money, what is the relationship between terrorism and organised crimes?

- 2. Andrew Franklin (Delegate): Governance is the issue. The structures that Kenya has only exist in name only. The state has lost ability to implement reform policy, mismanagement it rife and the institutions are a façade thriving in corruption. For example with the issues of the ghost Lamu owners of land (registered under 22 companies). One year later, we still don't know who they are yet they have pin numbers, audit accounts, were registered- we have companies but no one knows what is going on. You can have any manner of organised crime in the country for example the Artur Brothers, we still don't know about them. If you have a state that failing you will have organised crimes and terrorism thriving.**

IAU Representative responded to these questions: What we are trying to do, as police is to engage the community so that we can get a lot of information. The IG has started transformation bars, which communicate with the members of the public and telling them what to do.

- 3. Welfare of the police versus equipment and machinery- are we focusing on one side alone- if the morale and welfare is not taken care of, even with all the machines and guns we will not solve the problem. The conditions of the officers are similar to prison cells. The human element must also be considered. If they are given ten thousand shillings they are willing to turn a blind eye to the organised crime and terrorism.**

Ms. Muthiga: The commission is trying to have a clear job-task analysis, which will advise remuneration. The police service has never had a scheme of service. The commission has made recommendations to the national government on welfare issues- if welfare is addressed then policing will carry on in a conducive environment.

DAY 2- AUGUST 5TH 2015

PANEL SESSION 3: TERRORISM AND HUMAN RIGHTS

Moderated by Dr. Serge Brammetz

Dr. Mutuma Ruteere

Terrorism and the Resultant Human Rights Issues

He stated that since the onset of global terrorism in 2001, there has also been the rise of popular ideologies such as racism, xenophobia, islamaphobia and the fear of migrants, which leads to singling them out as part of the problem of terrorism. He also stated that multi-culturalism has come under a lot of strain with people becoming more and more suspicious and closed off.

He went on to say that he would make two points of interest in regard to the way we view terrorism. Firstly, Dr. Ruteere discussed the issue of viewing terrorism as exceptional. He stated that the problem of exceptionalism that terrorism poses has been debated in a lot of literature. The problem of this argument, that we are facing an exceptional moment, which requires that we take extraordinary steps, is that it propagates the notion that we need to do away with the law in defence of the law. This has led to the emergence of categories of individuals who are unclassifiable and rendered in legal limbo where rights are suspended. Even in moral planes, this has created a situation where certain groups are ungrievable—their deaths do not deserve mourning. He gave an example of the innocent civilian individuals who have died in the crossfire during counter terrorism wars who are remaining anonymous and unmentioned.

He also stated that there is also a political problem with declaring that terrorism is an exceptional problem. This is because violence becomes problematic when it is allowed to be its own expression and we do not critique it.

The second issue he mentioned was that there has also been a shift in the form of policing of terrorists. According to Dr. Ruteere, there has emerged a form of risk policing or actuarial profiling as a counter terrorism measure. He described this form of policing as one that seeks to predict threats and to manage the threat the way insurance companies seek to assess risk. This kind of policing proceeds on the basis of profiling individuals. They don't need to have committed any offence yet for them to be singled out for surveillance, for punishment or for elimination. This poses problems for human rights. This also poses problems for those who have grown up thinking of criminology since these methods are not based on common good through this actuarial policing of terrorism.

He did however admit that not all aspects of risk policing were necessarily a negative approach for instance installation of cameras. He stated that this is one aspect in which it can be used to protect human rights. However, he warned that in the broader context of

counter terrorism, these methods would probably be used to limit human rights. There are very worrying provisions, which single out individuals for sanctions even when they have not committed wrongs but simply on the ground that they are part of a certain groups.

He concluded by stating that some human rights provision may not be enough to solve the problem and that there is a need to engage many scholars and the people.

Mr Orina Mokaya

International Legal Regime Applicable To Terrorism

He began by reminding the delegates that terrorism is a global phenomenon and hence the state does not act in a vacuum and must act in accordance with the international legal regime. This he said was clearly illustrated by the fact that the UN has asked members to adopt measures in accordance with International Humanitarian Law, International Criminal Law, International Human Rights Law and Refugee Law among others.

He then posed the question of how these spheres of law correlate when it comes to combatting terrorism. He gave the example of a refugee who is a terrorist but has already been granted refuge status, or even a state must take action to safeguard its own security but is forced to expel a refugee or deny status. The different legal regimes interrelate in order to find a solution.

He stated that terrorist acts are crimes and hence there will be a question of where they fit in the sphere of crimes would they be considered crimes against humanity, war crimes or even transnational-crimes given that they take place in national jurisdictions but spill over to other states. He posed the question of how they should be classified so that the perpetrators are brought to book.

He went on to state that the whether terrorism is an international crime, has been in discussion over time. Specifically in the build up to the Rome conference, there was a problem in defining terrorism.

The Special Tribunal for Lebanon has also faced this problem due to the fact that it was created to apply international law but at the same time is governed by Lebanese law. Therefore would terrorism be defined under International Law or under Lebanese law given that defining it under International Law would impose ambiguous terminology under Lebanese law.

Mr. Mokaya then considered the question of how terrorism would be prosecuted under International Law. He suggested that acts of terror could be prosecuted under crimes against humanity in respect of murder, spreading terror and displacing populations. However he predicted that there would be some difficulty in placing them under this category given that in order to prosecute under this category, the attacks must be widespread or systematic. He wondered whether this would cover sporadic and one-off

attacks or whether such an attack that kills several people would fit in this definition. He proposed that if terrorism is considered armed conflict then it could possibly be prosecuted as war crimes.

The next issue he tackled was that of interstate cooperation to combat and prosecute terrorism. He asked on what basis suspected terrorists had been moved from Kenya to Uganda. While extradition is the legal mechanism to do this, he stated that what we are witnessing is that the same is not being applied as these aspects are taken under extra-judicial mechanism what he termed as, state-sponsored abduction. He stated that there are legal implications for this and that the state must follow the rule of law and should not take measures outside the fundamental requirements of human rights and should not act outside international law.

He then considered the issue of what the implications of considering terrorist activities to be armed conflicts would be. He stated that the Geneva Convention prohibits armed conflicts. He posed some of the questions that must be considered in this issue. For instance, what amounts to an armed conflict? Will a state be willing to accept that an armed conflict is happening in its borders? What are the implications of this acceptance? He stated that if states accept that an armed conflict is happening, this means International Humanitarian Law applies, would states be ready for this?

He also gave an example of a scenario where a state is of the opinion that its borders are not secure due to refugees who are suspected of committing terrorist acts in the country they came from. Would this state be allowed to return these refugees to their countries despite the principle of non-refoulement?

He concluded by emphasising that the measures taken to combat terrorism must observe human rights such as fair trial guarantees, the right to life and freedom from torture. Further, while we all agree that terrorism infringes on human rights, states must not act outside International Law, in legal black holes since infringing human rights will encourage rather than combat terrorism

Mr Elisha Ongoya

Prosecuting Terrorism: Challenges And Prospects

Mr Elisha Ongoya to begin with, pointed out the fact that, in gathering the information he was to present in his address, he actively engaged in open discussions with the police, prosecutors and various judges, on the prosecution of terrorism, its challenges and its prospects. From such discussions he was able to pick out that there is an element of frustration in the prosecution of terrorism contributed to by the fact that Kenya has an adversarial legal system.

He identified that the challenges in the prosecution of terrorism can be categorized into three levels; the normative level, the institutional level and the moral level. The normative level involves the challenges with regards to law and the legal system at large. This

includes, the inability of the current legal framework to meaningfully deal with the prosecution of terrorism; and the technical evidence of the evidence required. At the institutional level, challenges include weak institutions; lack of adequate infrastructure; lack of technical capacity and experience; poor cross border collaboration between security agencies of different countries; and the increased difficulty to identify men and women who are terrorists. At the moral level, the main challenges are the involvement of key players in the prosecution of terrorism in corruption and the infringement of human rights in the collection of evidence and prosecution of possible terror suspects.

Despite a focus on these challenges, he was able to suggest that a valid solution for Kenya would be to try increasing capacity by training of various entities in the country. He also commended the move towards professionalization of the function of prosecution as positive and necessary in the fights against terrorism.

Prof Alex Whiting

The Balance Between Prosecuting Terrorism and Respect For Human Rights

Prof Alex Whiting commenced his address with the call for reforms to facilitate the prosecution of terrorism while protecting Human rights. Human rights issues, he mentioned, were to be found on both sides; the prosecution's and the terrorists'.

He was of the opinion that terrorism, as compared to other crimes, is different for the reasons that it has an international component, is often not founded on a motive for personal gain, and has the potential of inflicting enormous damage. This poses two main challenges: challenges on the type of evidence that you are able to obtain and how to obtain it, and challenges arising from the reliance on confidential and sensitive intelligence as evidence. Drawing his example from the post-9/11 period, he pointed out various changes made in the arena of prosecution of terrorism cases in the USA. These included, firstly, the adoption of military commissions to prosecute terrorism crimes. These however did not pick up as they were considered to lack legitimacy to listen to the cases. Secondly, there was the change in the relationship between national security information and local security information. The challenge with this was that there was a great disparity in the quality and in the method of gathering these different kinds of information. Thirdly was the enactment of the Department of Homeland Security Act in 2002. Finally, there was the broadening of the principle of 'material support' to criminalize early participating in support of terrorism. This however posed the risk of promoting profiling.

In conclusion, he highlighted lessons that could be learnt from the experiences of the USA. These are: Involve all aspects of society in the debate of these changes so that they may be democratic hence legitimate; be creative within existing institutions: always result to the most narrow chance; always take into account all costs including legitimacy costs; always adhere to your central values; create voices within institutions that will check the powers of the institutions and raise issues on human rights concerns; adopt mechanisms to

ensure that there is always compliance with the rules; and finally learn from others' experiences.

QUESTION AND ANSWER SESSION

1. (a) **Is it possible or even necessary to have terrorism included in the Rome Statute? Should it be treated as a domestic issue or international issue?**

(b) **What is the advantage of getting the ICC to prosecute? Only the most responsible ("top dogs) are prosecuted anyway.**

Prof Alex Whiting: It is not a good idea to have Terrorism included in the Rome Statute because it would be very difficult to agree on the definition of terrorism. I also don't think that the ICC is designed to prosecute such cases; The ICC is famously limited in its powers. It requires cooperation by states and the prosecutor requires a lot more power to investigate- it relies a lot on state cooperation and terrorism cases really should be done by the states themselves. The difficult question is whether we can design procedure that is particular to crimes while respecting human rights

Mr Elisha Onyango: My take on this has been that we should not take new provisions and new procedures on law that can be dealt with possible frame works. There is a danger of legislation inflation. We see the tolls of the security agencies are those of the victim therefore their engagements are as that of a victim.

Mr Orina Mokaya: There are several international frameworks that address terrorism, states have agreed on some issues for instance it is prohibited to inflict terror on civilians. However, the issue of the definition on what terrorism entails is a great one and goes back to the fact that one man's terrorist is another's freedom fighter. This therefore has to be dealt with nationally.

Dr. Mutuma Ruteere: I do not see the possibility of terrorism being agreed upon in the international arena as a crime.

Serge Brammetz: While working in one country with a group of international investigators and prosecutors, we learned that in one country in the region a person from a terrorist cell had been arrested and had information on a crime we were investigating. He has been in detention for 2 years and he retracted his statement. They obtained the evidence after 3 weeks with military intelligence and so we could not use it in an international tribunal. We wanted to interview him. We found out that the particular country had a specific provision for terrorism to keep someone in custody for long periods without a lawyer. Not to criticize the country, but it is clear the approaches and values are very different. We clearly could not use the evidence given under these circumstances. International standards are not always understood in domestic context.

2. Does incompetence of security forces allow open-ended violation of human rights? Given the open legal framework can you prosecute terrorism cases?

Mr Ongoya: In Kenya, the feeling is that it is just one person, for example if we violated the rights of one person but prevent Garissa University then we might have been better off.

Serge Brammetz: On the issue of competence versus incompetence: the quality of legal knowledge is present- I was positively impressed while conducting a training session for prosecutors here in Kenya. The problem is the environment, the political climate and system in which they are functioning. The capacity is there but the environment is not permitting.

3. Is a state justified in overriding International Law to prosecute terrorists?

b) Terrorism is not just an offence but also an extraordinary phenomenon. Aside from just legal solutions to fighting terrorism are we also looking at the human rights of the victims?

Mr. Mokaya: The state is not justified in overriding International Law to prosecute terrorist. For example states are not justified in torturing people. State excesses in dealing with terrorism never end well for instance illegally abducting people and moving them across the border and hiding them from a legal process.

Mr. Ruteere: These are the effects of the consequentialist argument, that the end justifies the means. However, the people who advance this argument never accept to sacrifice their own rights, it is always someone else's rights. We need to unmask these people whose rights will be limited- most probably it will be people of a certain faith or region. This is the problem of compromise. It also undermines the entire democratic system; this is a road that is best not taken. We must expose the duplicitous nature of these arguments because when agreeing to them we have a particular community or faith in mind. The conclusion from liberal democrats and human rights is that this road should not be taken.

Prof Alex Whiting: With regard to limiting the human rights of the few for the sake of the rights of the many, the difficult question is whether we can design a procedure that is particular to terrorism crimes while respecting human rights. Where is the line for Human Rights? Also, the fact that you change the rules off prosecuting terrorism does not necessarily mean that there has been a violation of human rights.

Muga Apondi: Anybody involved in criminal trials in Kenya knows that one of the hindrances is to collect quality evidence- forensic labs do not exist (or money to build them disappears). What is the role of quality evidence in the US process?

Prof Alex Whiting: The point on forensics is important; there is the necessity of having basic good tools for evidence collection and intelligence. If you don't have them then human rights violations may begin to happen because the enforcers do not have evidence or good information so they begin using short cuts to get information. There is a direct connection between having the good tools and respect for the human rights.

PANEL SESSION 4: FIGHTING TERRORISM, THE WAY FORWARD

Moderated by Ms. Julie Gichuru

Dr. Arne Wulff

Dr Arne Wulff, briefly speaking on the way forward in this fight against terrorism, mentioned that there is a need for Kenya and other countries participating in the fight to; prevent terrorism propaganda; strengthen the police and the judiciary; integrate human rights in countering terrorism; support and civilize systems and institutions; maintain and strengthen the rule of law and finally to find a way to fight back without destabilizing our morals. In reply to a question, he expressed that the three things he would advise the government of Kenya to do is to; go on with fight but in an effective way, respect the human rights and the constitution, and promote education above all else.

For Dr Alex Schmid, the way forward includes, coming up with alternatives for youth who cannot find jobs easily; maintaining the moral high ground while fighting Terrorism; making efforts to counter detrimental ideologies.

In answering the same question posed to Dr Arne Wulff, he believed that the Kenyan government ought to: look at terrorism from a macro-level; reassure marginalized communities in Kenya; and strengthen the sense of human obligation among the citizens.

Dr Monica Kerrets pointed out that the way forward was simply police reforms. This includes; movement of the police from a force to a service- implying that we need to provide human rights to the public and the police themselves; Improvement of accountability of the police- to themselves and to the public; improvement of professionalism in the police and conditions of service; and improvement of logistics with regards to infrastructure.

On what the government of Kenya ought to do to ensure the success of this fight, she pointed out the need to get rid of every corrupt leader in the government and to change our policy systems to allow public servants to be the first beneficiaries of public services e.g. free primary education and free health care services first for nurses and police men.

Dr Luis Franceschi was able to categorize possible solutions into short term ones and long term ones. The main short-term solution he noted included finding a clever way of infiltrating the terrorist groups instead of brute infatuation. On the other hand, the most critical long-term solution includes the war of ideas. This involves the cultivation of values and the shift of the educational system. In summary, he advocated for a holistic approach, including the bettering of infrastructure to meet the most basic material needs, which unquestionably ought to take into account the rule of law.

PAPERS PRESENTED

Mr Allan Mukuki

Terrorism And Human Rights- A Key Focus On Cyber Terrorism

He covered his paper as follows:

- Introduction
- Cyber Terrorism: The Difficulty Of Defining It
- The Technical Aspect Of Cyber terrorism And How It Takes Place
- Cyber Terrorism & Human Rights
- Way Forward And Recommendations

Introduction

Terrorism has always challenged the security of societies, the threat of terrorism is still continuing and terrorism is one of the major threats of our time. On the human rights agenda, terrorism is not a new issue. For many years acts of terrorism in all forms have endangered and killed innocent people, jeopardized fundamental freedoms and impaired the dignity of human beings. States have therefore long been under an obligation to take measures to protect the fundamental rights against terrorist acts.

As correctly mentioned by Write-Neville: it is not possible to begin to understand the complexity of terrorism until you combine the idea of terrorism as something more than an act of 'evil' or 'mad' people. Nobody is born a terrorist; terrorists are made from a combination of social circumstances and individual psychologies. Terrorism does not spring forth spontaneously but it typically emerges only after a long gestation period whereby the anger of frustration eventually erupts into hatred and violence

Cyber Terrorism: The Difficulty Of Defining It

According to Dorothy Denning the phrase cyber-terrorism was first coined in 1982 by Barry Collin who argued the term meant the convergence of the physical and cyber world. Colin argued that this future cyber warfare would involve terrorists conducting a cyber-terrorist attack against critical infrastructure, for instance causing large civilian aircraft to

crash with the click of a mouse. Thus, it is important to attempt to define as to what really is cyber- terrorism in an attempt to link it and balance it as against human rights.

In defining cyber terrorism, we should look at two key concepts: The “convergence of terrorism and cyberspace.” Basically, the means and their application is the same as regular computer network attacks with the significant difference that in the case of cyber terrorism, the leading motive is to coerce the government or its citizens to comply with some political or social demands. Moreover, the act should result in violence or fear in order to be qualified as cyber terrorism

Implications Of Cyber Terrorist Attacks

Firstly, cyber terror is now the new language of war that we understand only vaguely as legal practitioners. We know that more and more of our daily lives revolve around a digital world on the Internet, our computers and our cell phones. We expect that the providers who sell us those digital services are taking steps to protect it against cyber attacks and we expect the government is doing the same. Secondly, cyber terrorism is basically a premeditated use of disruptive activities, or the threat thereof, against computers and/or networks, with the intention to cause harm or further social, ideological, religious, political or similar objectives, or to intimidate any person in furtherance of such objectives.

Cyber Terrorism And Human Rights

Arguably, the cyber world poses severe challenges to state sovereignty and governmental legitimacy. Governments around the world find it increasingly difficult to control, regulate or monitor the massive flow of data within the cyber-world and uphold human rights and fundamental freedoms at the same time more so in times of cyber terrorism attacks.

First there is the issue of the right to privacy of cyber users. The law of privacy is the recognition of the individual's right to be let alone and to have his personal space inviolate. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognized. Second there is the issue of the rights of a terrorist. A cyber-terrorist is a terrorist by all means in relation to the definition of terrorism. But should terrorists have rights? Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfillment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal— in other words, they belong inherently to all human beings—and are interdependent and indivisible.

The question then is, where then does cyber terrorism balance with human rights? With cyber attacks not qualifying as an illegal use of force, international human rights law remains technically in play. However, such attacks have not triggered human rights analysis. The difficulty of tracing the attacks back to any specific actor perhaps plays a role in the lack of human rights evaluation of such episodes. But identifying what human rights the attacks might have violated is not easy. Such attacks do not physically harm or kill anyone when they happen. Such attacks may disrupt computer-dependent services,

including government and financial services, and in some instances public and private computer infrastructures operating these services can at times not be permanently damaged.

Recommendations

- Reaching to a common definition of terrorism and cyber terrorism
- Development of international and regional agreements on countering cyber-terrorism
- Law enforcement agencies should work with Internet service providers to collect "key evidence" in cyber terrorism cases.
- Creation of an Intelligence pool
- Creation of Cyber defense expert teams

Mr. Cecil Yongo

In some cases, even in Kenya, States have taken, or have attempted to take, extra-constitutional and unconstitutional actions. This is the approach that this paper characterizes as arising from ‘the temptation of power,’ and in that regard, this interdisciplinary paper will—through an analysis of scholarship in Law, Sociology and Information/ Communication—be an attempt to investigate the origin, results and wisdom of such an approach in the war against terror, its effect on the Rule of Law and Minority Rights in society; and propose how it can be avoided. He began by mentioning the instances where Al-shabaab had carried out terrorism activities in the country starting from 18th April 2013 at Kwa Chege’ Hotel in Garissa, through Westgate Mall attack in 21st September 2013, 31st March 2014 where two explosions left six people dead in Eastleigh, Nairobi, 23rd April 2014 and a vehicle exploded at Pangani Police station up until the recent one where they attacked Garissa University.

What comes to mind from the catalogue is not that there have previously occurred much fewer terrorist attacks in Kenya but rather the way in which the attacks escalated, and then became common fold, so much so that only the ones in which a huge number of people lost their lives, or were injured, elicited response from the highest echelons of government. And since we will attempt to dissect, analyze, judge and correct, if necessary, government response to terrorism, it is prudent to begin by looking at how government did indeed respond to the terrorist attacks. And it follows that to successfully look at how government responded to the attacks, it is necessary that one looks at the events, and then examines the pressures that come with the different terrorist attacks in Kenya.

He stated that he would examine ‘public opinion’ as per the critical theory of information and communication. Under it, public opinion is an imaginary, ideal, and utopian referent that serves essentially as a legitimizing principle for political discourses and actions. More concretely, it is the fragmentary result of the public diffusion of speeches made by the political class and the media. Public opinion, though thought to be so, is not the sum of

individual opinions but is constructed by social actors interested in linking their plans to the people's will in order to increase their legitimacy.

Public opinion is captured partly or mainly through the press, moulded by it, influenced by it, or plainly created by it. Although the nature of the link between public opinion and the press remains ambiguous, the very existence of this link is incontestable. It can be said that the advent of the use of social media tools means that the press is relied on less and less to form public mood, but this would be missing the point that even the agenda on social media itself is formed by the reportage of the day and so it can be said that it is a closed loop that starts with the press. This is known as agenda setting, the theory that the more attention a media outlet pays to a certain phenomenon, the more importance the public attributes to such an issue. The trend of interpretive or advocacy journalism rather than reporting journalism has begun to seep in. This is the time when journalists come to see themselves as creators of news

He believes that the press should also use its power to back Human Rights and the Rule of Law more robustly. It must speak out when these are violated as loudly as it does when the State trains its sights on curtailing Media Rights. There is normally a gulf difference in the way that the State responds to minor terrorist attacks as compared to the way it responds to major terrorist attacks. Typically, a minor terrorist attack will attract a minor response from Government, and vice versa. Among the men who report and follow Government response to these major terrorist attacks, the initial reaction and response to the pressures that unveil the temptation of power has become almost predictable; a national address by the President that spurns themes such as unity, strength and a coming justice. It is the reaction that follows these public-relation assurances that is interesting because it is in those reactions that we see the reach of the temptation of power.

- i. The stretching of the membrane of Law and the damage done to the Rule of Law-
- ii. The rupturing of the membrane of Law and the damage done to Human Rights and Society- He gave the example of coast where there was key antagonism in the war against terror by the Anti-Terrorism Police Unit, which seems to have a record-breaking catalogue of actions rupturing the membrane of Law.

In conclusion he stated that he appreciates the existential threat that these terrorist attacks have come to pose to our nation. What is unacceptable to him is the charge that we must now be willing to sacrifice the Rule of Law and individual Rights, for human rights are by nature supposed to be person by person and indeed, that this can be done do without due process. We must address these pressures that lead to the temptation of power and then to the stretching or breaking of the membrane of Law. To address these pressures is to address the issue of public mood and the press. And to address the issue of the press is to address public mood. Yet on the issue of the press, the best one can do is to urge and hope that even with a profit motivation, it can understand its place in conditioning public mood and use its power responsibly. In this way one of the key pressures that lead to the temptation of power will be eased, and the pressure on those in power will be to act to fix the institutions, not to earn credit and preserve themselves through unconstitutionality.

He mentioned that terrorism is but a criminal action that is heightened; indeed, a 'normal' criminal wants to merely enrich him or so while a terrorist is a criminal who sees himself

a revolutionary. Not just a revolutionary, but a revolutionary of the confessional type, who is always the most difficult for the authorities to handle and that the government needs to turn its focus towards restoring the authority of the institutions that have a bearing on the security of Kenyans. Terrorism is indeed a skein of many threads and if one must pull a single root thread from the tangle, it is the author's opinion that it is well to start with positive action geared towards ending the hopelessness and joblessness in these areas. Only through the State vying to win the hearts and minds of the would-be recruits in this way will it be dealing with terrorism in the long term. And winning the hearts and minds is just as important because sometimes, amid all the mire, we forget that terrorism is a human problem.

Mr Emmanuel Nzaku

Understanding Terrorism To Find Its Perpetual Solve In Kenya

Terrorism is defined as violent acts or the threat of violent acts intended to create fear perpetrated for an economic, religious, political, or ideological goal, and which deliberately targets or disregards the safety of non-combatants. Another prevalent definition sees terrorism as political, ideological or religious violence by non-state actors, with some definitions including acts of unlawful violence and war. The use of similar tactics by criminal organizations for protection rackets or to enforce a code of silence is not labeled terrorism, though these same actions may be labeled terrorism when undertaken by a politically motivated group. The usage of the term has incessantly been challenged for its commonplace association with *jihadism*, while shelving non-Islamic organizations or individuals related to the same.

The paper presented on appraises and critiques the methods used to tackle terrorism and their effectiveness or lack thereof by establishing a legal causation basis of terrorism. It also called for a reform in Anti-Terror Laws' in drafting and implementation and for a proactive tackling of terrorism legally rather than a reactive tackle as practice dictates. Similarly, it recommended long-term solutions to this menace, which is terrorism. It is important to intermarry law with other disciplines in order to solve societal problems.

He quoted President Barack Obama's speech in the year 2009 where he said that, "history shows that nations that uphold the rights of their people (including the freedom of religion) are ultimately more just, more peaceful and more successful. Nations that do not uphold these rights sow the bitter seeds of instability, violence and extremism." He also quoted President Kenyatta as saying, "Kenya is reckoning a new kind of enemy against whom conventional methods would not work."

He defined an extremist rhetoric as the process by which an individual or group comes to adopt increasingly extreme political, social, or religious ideals and aspirations that reject or undermine the status quo, contemporary ideas and expressions of freedom of choice.

Conventionally, terrorists commonly employ three rhetorical structures to justify their reliance on violence:

- They have no choice but to turn to violence.

- Demonizing and de-legitimizing the “enemy”. Our violence is tiny compared to his aggression. Basque movement, ‘You fascists are the real terrorists!’
- Using the language of non-violence. Diplomatic settlements.

He gave the following recommendations: -

- Countering extremist rhetoric done by:
 - Promoting democratic values and human rights (Constitutionalism)
 - Reforming the education system i.e. madrasa’s in the country. Private Islamic education overhaul
- Increasing cross-cultural engagement and public diplomacy- for example through thoughtful debate
- A regional security regime for all the states in the region aimed at mutual diplomatic recognition, gradual withdrawal of foreign forces, and disarmament. Senate committee on security.
- Avoiding policies and pronouncements that feed grievance
- Strengthening our ability to manage the financial risks of terrorism through a combination of legal, public and private instruments. Laws on compensation, terrorism catastrophe bonds, multiple insurance pools and government insurance.
- Acknowledging that there are common links to Islamic terrorism that are economic in nature e.g. the Somalia case and the Arabian Peninsula. Entrepreneurs over tankers.
- Efforts to ensure that financial services are monitored to cut terrorism funding. Nigerian banking sector’s *Know-Your-Customer* initiative - tied to its anti-terrorism strategy. Cut off financial supply & trace the sponsors.
- Making foreign aid accountable. Laws to be promulgated in the international law scenario to provide for the proper audit of donor aid. Corrupt leaders or extremists.

If these solves are carefully thought, taken up and implemented by the government of Kenya, terrorism will be taught in History classes.

