'International Terrorists: What role should the law play?'

It is often claimed that the events of 11 September 2001 disclosed the presence of a previously unknown global menace. Yet the reality is that international terrorists have perpetrated many appalling crimes over the years. The bombing of the US embassies in Kenya and Tanzania in 1998, the Lockerbie bombing in 1987, the kidnapping of the OPEC oil ministers in 1975 and the massacre at the Munich Olympics in 1972 were all acts of international terrorism.

At first, it might seem logical to ensure that international terrorists are dealt with by an international tribunal. The inclusion of international terrorism within the jurisdiction of the new International Criminal Court (ICC) was debated at the recent Rome Conference which led to the court's establishment – but fears that it would politicise the court led to its omission from the ICC's jurisdiction.

There will inevitably be pressure on the international community to revisit this decision. However, even if it were to do so, the principle of 'complementarity' enshrined in the ICC Treaty means that it would still have no jurisdiction where there was a properly functioning national criminal justice system. Trying international terrorists before an international court as a matter of course, therefore, would require a truly global shift in policy involving the abandonment of national jurisdiction in such cases. It has to be questioned whether there is the global political will to achieve such a shift.

Those arguing for such an approach should bear in mind that domestic systems are already able to try international terrorists and to secure convictions. The infamous 'Carlos the Jackal' has been convicted in France and faces further charges related to his terrorist career. The Al Qaeda members responsible for the 1998 embassy bombings were convicted in the United States earlier this year. The Lockerbie bomb suspects were tried in a Scottish court, a case that highlights the flexibility of a domestic criminal justice system on both procedure and venue in an international terrorism case. National legal systems, then, can achieve results in the field of international terrorism.

Trying international terrorists in an international court presents both practical and political problems. It may be the case that large sections of society would be opposed to granting jurisdiction over such terrorist offences to an international tribunal of any sort. The death penalty is not available to the ICC, whereas many undoubtedly consider it appropriate for international terrorist crimes.

It is certainly not beyond the realms of possibility that Osama bin Laden and the members of the Al Qaeda network who are suspected of being responsible for the terrible events of 11 September could be tried in the domestic courts of the United States in the near future. At a time when the importance of ensuring that criminal courts are as proximate and as relevant as possible to the victims of crime is being stressed, is it really advisable to say that in future, international terrorists should be tried by a tribunal that may well be remote both geographically and in terms of legal tradition from the victims of their crimes?

Furthermore, the ICC has not yet tried a single case and is not likely to be established until the middle of 2002 at the earliest. To attempt to renegotiate the ICC Treaty at this stage would not only be unrealistic in practice but would also not give the ICC a chance to get up and running before such a major change was made. Moreover, as the United States has refused to sign up to the treaty, the ICC does not in the event have jurisdiction over crimes committed there.

An associated problem with jurisdiction would be the distinction between 'international' and 'domestic' terrorism. What if an Arab or Basque terrorist working on behalf of an Irish republican group were involved in bombing a target in the UK?[1] Would the terrorist be tried by a UK court or the international court?

It is always easy to propose legal 'quick fixes', but internationally it is all too often very hard indeed to implement them. This is not to say, however, that the law has no role in relation to international terrorists. But the priority for governments and legislators should not be the establishment of a new, separate international terrorism court.

As well as improving co-operation between national military and intelligence agencies, much can be done – and indeed much is being done – to improve the legal framework on money laundering and extradition, to take just two examples. The response of EU governments has been to move towards a streamlining of extradition procedures by the

[1] A point made by Iain Duncan Smith and David Trimble in their article, 'There's no such thing as a good terrorist, Mr Blair' (Daily Telegraph, 21 November 2001)

introduction of so-called 'Euro-warrants', which would abolish the double criminality rule and the requirement to prove a *prima facie* case.

Certainly, there appears to be scope for further simplification in extradition law – perhaps in the future moves will be made to end the exceptions that currently apply to 'political offences'. So too with the law relating to asylum procedures, which are open to abuse by international terrorists. However, it must be noted that the UK Home Secretary first proposed a wholesale revision of the Geneva Convention on refugees as long ago as June 2000. Nothing much – if anything at all – appears to have been achieved to date.

Better co-operation between jurisdictions must be the answer – at least in the short term. International terrorism requires an international response. But that response needs to be practical and to address the deficiencies in the current system. Ensuring that terrorists *can* be prosecuted for their crimes is not one of them. Ensuring that they *are* prosecuted and indeed ensuring that international terrorism is prevented in the first place should be the main aims of the international community. In that fight the law has a leading role to play.