

ESRC SEMINAR SERIES: The Role of Civil Society in the Management of National Security in a Democracy

Seminar Four: The Role of Civil Society 8 March 2006

The current national and even global environment of fear has given rise to serious concerns about national security within the United Kingdom. These anxieties create tension points between democracy, civil rights, human rights and the rule of law. As various sectors of civil society have responded to the issues raised, it has become clear that each sector tends to speak with different interests and from particular perspectives. These sectors, whether they are government, the legal profession or NGOs, sometimes give the impression that they are not sufficiently seeking to understand other perspectives. It is with this in mind that a six part ESRC funded series on The Role of Civil Society in the Management of National Security in a Democracy has been established. The goal of these seminars is to facilitate a dialogue between government and civil society. The fourth seminar, held on 8 March 2005, focused on the role of civil society – specifically those involved in the field. More than two dozen individuals including NGO activists, government officials, academics, those involved in charitable organisations and others considered the following issues.

Terrorism and the narrowing of space in civil society

The paper tabled for the meeting dealt with this issue in the following way:

Part of the response to the threat of terrorism often involves new legislation. As well as introducing a definition of terrorism that is much wider than popular understanding of the term, recent legislation has given the police wider powers than they have ever enjoyed in the past. They can now detain suspected terrorists before charge for what are (at least viewed in historical terms) very substantial periods. There has also been a sharp increase in the number of groups banned under terrorism legislation, with such bans now presaging significant administrative action against the funds and infrastructure of the group. A common feature of the enactment of laws like these is that they produce what in the US is called a chill factor; that in the hands of enforcers their reach goes well beyond what was intended by those responsible for their design and enactment.

Members of the panel debated to what extent there is a chill factor and discussed how terrorism laws have made a difference to the way organisations in civil society go about their business. During this discussion, two issues in particular were focused upon. Firstly, the difference between how it was imagined the powers of the police would be

used when introduced and how those powers are actually being used, and secondly, the impact of these laws on organisations whose work involves activities abroad.

On the issue of how the police powers under the anti-terrorism legislation are being used a number of members from charities and organisations who support Moslem communities in the UK expressed strong opinions. For some, the term 'chill factor' was too weak, and the term 'terror factor' was more appropriate. It was said that, particularly in Northern England, certain parts of the Moslem and Asian communities are absolutely terrified. It was asserted that the police harass community members on the assumption that if they do so continually, eventually someone will provide them with information. Indeed, it was suggested that the stop and search powers and arrests under the anti-terror laws are used unduly to harass communities. One panellist referred to statistics that showed that from 600 arrests of Asians, only 90 were charged and 15 convicted and even then often the charges were not related to terrorism. Another panellist noted that he had heard reports of young Asian men, regardless of whether or not they were Muslim, being taken off trains and searched, adding that it only makes sense that organisations that work with these groups see the effect on their campaigns also.

While the majority of the panel agreed that certain communities are in fear, some felt it was necessary to distinguish what was happening as a response to the London bombs on 7 July and what was a response to the anti-terror laws. A government representative noted that the stop and search of Asian men on trains was more likely to be due to the London bombs and the way they were reported in the press. He also warned against oversimplifying the situation, noting that there are calls from members of the Moslem community to do something about those who hide information on terrorist activities. A representative from the police added that the primary aim of the police is to simply do their jobs, not to intentionally harass people.

For a number of panellists however there was no doubt that in the hands of police the reach of the powers goes well beyond what was intended. Several panellists pointed to the use of the powers to prevent a heckler, Walter Wolfgang, from re-entering the Labour Party Conference after he had been ejected for shouting "nonsense" during Foreign Secretary Jack Straw's speech on Iraq. Mention was also made of the fact that the House of Lords, on the day the discussion was taking place, had ruled that the use by police of anti-terror laws to stop and search demonstrators at an east London arms fair was valid. It was felt that incidents like the one at the Labour Party Conference happen too frequently. As one charity worker said "the police need to have the humility to stand up and say, 'things have gone wrong'."

A representative from the police force responded by noting that although these powers are being attacked on the basis of events such as that which occurred at the labour party conference, they are by and large not used in this way. While the House of Lords may have upheld the stop and search of the protestors, there was public abhorrence to

using those powers in a public order scenario. The police force now has far greater community accountability than before and public outcry has constrained the use of these powers; "We know we can cause more problems with these powers than we solve," he stated.

Further concerns were raised by a number of panellists with regard to the impact the legislation was having on certain individuals' freedom of speech. Not only do organisations have to change their practices due to the legislation, but even Imams have to be careful of what topics they discuss in Friday night prayers. There is a conflicting message being sent. While the leaders of the British National Party are freed, it was said that Imams are unable to speak freely. These communities have been sent a very strong message in a time of war; they have been silenced. It was asserted that these laws do not allow for political debate and as a result some activity has gone underground with some people now too frightened to discuss their views in the open. One charity worker saw New Labour as moving back towards a Victorian, draconian way of running the state. As a Muslim, she felt she had no freedom of expression, felt alienated and marginalised.

A government representative responded by stating that we should ask how much the chill factor was self-fulfilling. It was absurd, he said, for Imams to think they could not discuss Palestine in prayers. While the government should discuss the chill factor individuals need to take care not to escalate it.

Impact on organisations whose work involves activities abroad

A number of panellists from the charity sector said the laws particularly effect organisations whose work involves activities abroad. While the larger charities such as Liberty and Amnesty International can campaign on their issues, smaller charities that work with Kurds or Egyptians find their freedom of expression is considerably restricted as their normal publications come under the Act. However, one panellist added that even the larger well known charities had become concerned about restrictions on campaigning and had, in effect, begun policing themselves. Overall, it was generally felt there was a lack of clarity and hence concern about what exactly the legislation permitted and what it did not.

It was suggested that one obvious problem with the legislation was that it is open to political judgment. One panellist pointed out that if the ANC were based in the UK and there was still apartheid in South Africa, a meeting of the leaders would be illegal. He asked, "What happens when the Zimbabweans get together to fight Mugabe?" This raised the question of who is a terrorist and who is someone legitimately fighting their government. A representative from a Muslim charity said many community members feel now it is a case of guilty until proven innocent. They cannot offer help to those in need in

countries like Afghanistan or Chechnya anymore as the authorities often link refugees with terrorists and confuse people who are often legitimately fighting for their country with criminals. It was pointed out that this was a great shame as many community members feel it is their duty to help fight terrorism but they are not left to do so in a healthy way. The result of being guilty by association causes one of two reactions – firstly, resignation or secondly, people making a move towards the extremists.

The charitable sector, terrorism and NGOs

Many NGOs seek charitable status as the designation carries a variety of benefits, of a fiscal and non-fiscal nature. But there are strict rules as far as political engagement is concerned. Panellists discussed the difficulties charities face when deciding whether to seek charitable status and the problems which can arise in relation to the possible intermixing of the political with other goals, such as the charitable and educational.

One panellist spoke of reasons why her organisation decided not to seek charitable status. As a group that lobbies the government to reform immigration laws they thought their work would be deemed too political. Even when operating as an organisation they experienced difficulties when they received a community grant. After certain sections of the media started a campaign, the grant was frozen and restrictions were put on their political activities. The group decided that if they gained charitable status and then were accused misbehaving by being too political that would damage the organisation's reputation. On that basis, they decided against seeking charitable status, preferring "to stay up-front". (However, their grant is close to running out and the organisation may have to cease to exist.)

In the discussion that followed there was a contrast between those who were uncertain about what exactly is prohibited and those who felt that the Charity Commission's publications on political activity were helpful. A representative from the Charity Commission admitted that, although it is a rule that organisations cannot be involved in political activities if they seek charitable status, it is hard to clearly define the boundary between activities that are political and those that are not. The discussion demonstrated that there are a large number of charities that do non-charitable work as well, and who are allowed to act unhindered in the UK. It is fairly standard for charities to have two arms, one for research and education and one for political activities. For example, Liberty runs their research and education arm as a charity and they fundraise for their advocacy arm. Some panellists felt it was necessary to get charities to widen their own perspective. While they may feel restricted by the grey area of the law, charities can and should show initiative and widen free speech. Their role could be more imaginatively used.

There was some concern among panellists that certain organisations were using the label 'charity' in a misleading manner. It is obvious that many NGOs in other countries are essentially partisan political groups claiming to be charities in order to gain credibility, funds and access. This has dangerous implications, especially if these political partisan groups are claiming to be human rights organisations.

The panellists also discussed the consequences of the fact that different countries operate different rules for the designation of organisations as terrorist. An example was given of a charity that raised money in the UK and sent it to support partnership organisations in Palestine. After concerns were raised that some beneficiaries were the families of suicide bombers, it was designated a Specially Designated Global Terrorists Group in the US. The Charity Commission in the UK froze the organisation's accounts and launched an investigation. It later cleared the charity, finding the claims unsubstantiated. It was noted that while the categorisation of an organisation as 'terrorist' by a friendly nation does not necessarily affect charitable status in the UK, it can cause considerable disruption. On this point a number of panellists voiced their concern that "mud sticks". Once an organisation is blacklisted and an investigation is started, often without evidence, then the damage to their reputation is done. There was a general consensus that when this happens, it is very difficult for an organisation to clear their name.

Accountability of charities

There was considerable discussion by the panellists of the effect that the international counter-terrorism climate has had on the financial accountability of charitable organisations. A panellist who works for the Government argued that a charity is no different from a bank or *bureau de change* in terms of financial accountability. Recently there has been a heightened sense that charities could present some risk to national security due to their work abroad. While some responsibility and diligence is now required with regards to who the trustees are and how funds are spent, these obligations are no more onerous than those on any UK financial institutions. This level of responsibility is needed to safeguard the integrity of charities and NGOs.

The panellists generally agreed that post-9/11 there has been a sudden interest in the US in charity regulation, which has now filtered down to the EU and other countries, the proposed EU Code of Conduct for NGOs being evidence of this fact. However the code proved to be of considerable concern to a number of panellists. One panellist considered it quite frightening that EU regulations are trying to get all groups to register. He noted that in the US the situation is more frightening as there are due diligence requirements to check all the people on the board and working in an organisation in order to make sure they are not on a certain list.

There was a general feeling that if the UK moves in the same direction as the US, funders will become much more conservative. Most charitable foundations are already taking a more conservative line, which some panellists considered to be evidence of the chill factor at work. In fact, it was noted with surprise by one panellist that while the statutory framework has been going in one direction, practice is going in another. While the Charity Commission is much more liberal than it used to be, funders are becoming more cautious in terms of offering funding.

Another concern that was raised with regards to the proposed EU code of conduct was that there was little prior consultation with the not-for-profit groups. As a result now there is a good deal of uncertainty surrounding the document. The definitions of certain words are not clear in the guidelines. It is also unclear how the code works in countries where there is already effective regulation. Without first having a debate with NGOs it was felt that people might lose faith in the sector.

A suspect community

In a book written some years ago, Professor Paddy Hillyard described the Irish in Britain during the period of IRA violence as 'a suspect community'. The activities of the IRA generated the laws on terrorism and the extensive application of these laws helped create an atmosphere in which for quite a substantial period of time many Irish people in Britain found themselves presumptively suspect. The panellists debated whether there is a comparable situation with the Moslem community in the UK currently and, if so, whether there was evidence to suggest that any lessons had been learned from the Irish experience.

For the majority of the panel, there were clearly felt to be some similarities with Northern Ireland, and also some differences but, depressingly, many of the same mistakes. It was considered by some panellists that the pivotal question that needs to be answered is why it is that young people are willing to join up and becoming terrorists. There is a group of young Muslims who have no allegiance to this country. Often they have a wider Muslim allegiance, so when publications in Denmark cause outrage, there is a response here. It was suggested that there is hidden praise for Bin Laden as he stood up to the west. But no one is asking, how did this happen? Until this is understood counter-terrorism will get nowhere.

It was also asserted that stop and search patterns are the same now as they were in Northern Ireland. It only has to happen a number of times before it changes the way that those stopped see themselves. When they are repeatedly stopped, repeatedly searched, often charged and then released, their mentality changes. People can move from one position to another overnight, becoming prepared to take up arms. They go from being someone who enjoys British life to someone who does not, in just a few

steps. Until this is understood the police will keep on making the same mistakes. A civil society that is weakened by laws that undermine it will not be able to help fight terrorism. The balance needs to be right or else everyone will lose.

It was suggested that the failure to address the consequences of these police practices prolonged the conflict in Ireland by five, ten, or maybe even thirty, years. One panellist with a wide experience in the field argued strongly that the main problem was that no one listened to the sociologists. Today the police need to be trained in micro-sociology to understand the impact of even little events. As this speaker noted “when the police tell us that action has been taken to prevent some or another alleged act of terrorism, I always wonder how many more incidences they have created.”

The contrary view put forward was that the police force has changed since the Irish experience. The police have recognised that they can create alienation, that holding radical political views does not amount to an offence, but it must all be borne in mind that the world looks very different now. Contrary to popular belief the numbers of arrests have significantly decreased from post 9/11. Clearly the communities still feel the same but the statistics do tell a different story, it was asserted. Furthermore it was also claimed that the police do try to consider the communities concerns when deciding on policy and what action to take. The main problem they face however is getting all members of the force to take this on board. Further, politicians may not be talking about micro-sociological issues but it is being thought about. While it was admitted they were not yet getting it right, the government is considering all of the concerns raised.