

SIMPOSIUM VÍCTIMOLOGÍA,  
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**VICTIMS OF CRIME HOW TO ADDRESS THEIR RIGHTS BETTER:**

My name is Arantza Mota, responsible for International Affairs Fundacion Victims of Terrorism in Spain. When five years ago we realised that there was no space for victims of terrorism within international organisations we decided to lobby within UN and European Union organising side events to the Human Rights Council in Geneva, promoted together with the Spanish government a panel on Victims of Terrorism in June 2011 human Rights Council which is part of the Annual report of the United Nations High Commissioner for Human Rights, December 2011, seminars as that organised with the CTITF in New York, meetings with officials...

WE realised about the importance of with technical and moral arguments, ideas, questions... We believed that we should help change the opinion iuris on this issue. This hard and quiet work in the shadow is starting to fructify. Ben Emmerson special rapporteur will present a report to the Human Rights Council and the General Assembly next month of June recommending the adoption of a Statute for Victims of Terrorism.

I short our claims stand for:

- 1.The promotion of an International Statute for victims of terrorism
- 2.Working to ensure that the issue of the human rights of victims of terrorism is considered by United Nations human rights mechanisms and procedures in Geneva.
- 3.Promotion of a specific directive for victims of terrorism at EU level.
- 4.The recognition of terrorism as an international crime falling under the jurisdiction of the International Criminal Court.

My presentation is going to focus on victims of terrorism, whose rights have been neglected by States and International Organisations.

The international community has made a firm commitment to stand up to terrorism. However, scant attention has been paid to its victims.

As we know them today UN resolutions (adopted by the General Assembly, the Human Rights Council or even the Security Council) are mere declarations of solidarity, deprived of any legal obligation.

Additionally and since September 11<sup>th</sup> Member States and UN institutions are focussed in the promotion and protection of human rights and fundamental freedoms while countering terrorism, that is of alleged perpetrators.

It is interesting to point out that the role to be played by victims in countering terrorism is increasingly recognised. Such as in resolution 1963 of the Security Council acting under chapter VII:

*"Expressing its profound solidarity with the victims of terrorism and their families, stress the importance of assisting victims of terrorism, and providing them and their families with support to cope with their loss and grief, recognizes the important role that victims and survivor networks play in countering terrorism, including by bravely speaking out against violent and extremist ideologies, and in this regard, welcomes and encourages the efforts and activities of Member States and the United Nations system, including the Counter- Terrorism Implementation Task Force (CTITF) in this field.*

**If victims of terrorism are to play an important role in countering terrorism, should we not settle a legal framework providing social recognition, integral reparation and support to victims?**

II. Some say that rights of victims of terrorism are already addressed under the broader heading of victims of crime in general. However I don't think the same:

1. Victims of terrorism have a public dimension (they are victimized in order to achieve a political objective). They are an instrument used by terrorist groups to combat democracy, to impose by force a totalitarian project. This, requires a public response in terms of law: the recognition of their specific situation at the same time the recognition of the fundamental values of democracy and the rule of law

2. Scientific arguments provided in the report **"Assisting Victims of Terrorism" In 2008**, the EU asked a consortium of research groups lead by the Institute of Victimology of Tilburg University to conduct a study into the needs of victims of terrorism. On the basis of the research we may conclude that it is desirable to make a difference between victims of terrorism and victims of violent crime.<sup>1</sup>

**3. Victims of terrorism, invisible victims<sup>2</sup>** in contrast to other categories of victims

Victims of terrorism are invisible victims. Unlike other categories of victims there is no international norm on victims of terrorism and their rights.

Such a step is necessary to avoid discrimination.

1. Victims of crime and
2. Victims of abuse of power
3. Victims of gross violations of international human rights
4. Victims of serious violations of international humanitarian law.
5. Victims of enforced disappearance.

THE STICKING POINT OF THE CONCEPT OF TERRORISM

<sup>1</sup> Letschert, Steiger Pemberton, Springer 2010

<sup>2</sup> Prof fernández de Casadevante. Seminar rights of Victims. Side event human rights council. UN Geneva. 2010

Some say that the sticking point that impedes the recognition of the nature of the victim and the endorsement of an International Statute that would address their needs is the absence of a definition for the crime of terrorism.

Although terrorism has yet to be defined comprehensively and authoritatively at the international level, States have already agreed on some core elements. The basic elements have been established among others by the Security Council and the General Assembly in resolution 49/60 of 9 December 1995<sup>3</sup>. or from Resolution 1566 (2004)<sup>4</sup> adopted by the Security Council on 8 October 2004, acting under Chapter VII of the Charter of the United Nations. Numerous conventions deal with various acts of terrorism.

A comprehensive convention on terrorism such as that being debated at the General Assembly could provide a further basis for international action,<sup>5</sup> but defining terrorism is too filled with difficulties, that unfortunately are political rather than legal.

One of the main elements is an underlying philosophy son well expressed by Convention on Combating international Terrorism (1999-1420H), of the organisation of the Islamic conference on combating international terrorism.

**If Article 1 is very clear.**

"**Terrorism**" means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States

**Article 2 is devastating**

- a) Peoples struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.

This absence has not impeded the development of a whole set of mechanisms designed for the protection of human rights and fundamental freedoms while countering terrorism, designed to ensure that counter terrorist measures are implemented with scrupulous respect to human rights and democratic law. How could it impede to make progress towards the recognition of the condition of innocent victims of terrorism and the endorsement of an international statute for them.

I would also like to quote a decision of the Special Tribunal of Lebanon<sup>6</sup> which was given by its presiding judge Prof, Cassese that I believe may bring us one step closer to an agreed concept of terrorism. When specifying the Notion of Terrorism to be applied by the Tribunal

*The notion of terrorism to be applied by the Tribunal consists of the following elements:*

- i) the volitional commission of an act;*
- ii) through means that are liable to create a public danger; and*
- iii) the intent of the perpetrator to cause a state of terror.*

*Considering that the elements of the notion of terrorism do not require an underlying crime, the*

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<sup>3</sup> Declaration on Measures to Eliminate International Terrorism, adopted by the Assembly in the annex to its resolution 49/60 of 9 December 1995

<sup>4</sup> Resolution 1566 (2004) adopted by the Security Council on 8 October 2004, acting under Chapter VII of the Charter of the United Nations

<sup>5</sup> Report of the High Commissioner submitted pursuant to General Assembly resolution 48/141 Human rights: a uniting framework<sup>27</sup> February 2002

<sup>6</sup> Case No. STL-II-OIII 16 February 2011 PUBLIC SPECIAL TRIBUNAL FOR LEBANON R000492

*perpetrator of an act of terrorism that results in deaths would be liable for terrorism, with the deaths being an aggravating circumstance; additionally, the perpetrator may also, and independently, be liable for the underlying crime if he had the requisite criminal intent for that crime.*

**Victims of terrorist attacks should have a space in human rights mechanisms** and procedures.

"Apparently" here the controversy lies on the question: can non state actors violate human rights? It is true that after the II<sup>nd</sup> World War the international human rights system has been built on the idea that the only violator of human rights is the State.

This doesn't mean that non state actors don't violate and of course it doesn't mean that we must remain passive to this situation.

We have already witnessed the recognition of individual responsibility within the International Criminal Court. And terrorism is not part of the Crimes competence of the court again due to the lack of definition.

It has been a long time coming, but it can be concluded that the declaration that terrorism is a violation of human rights has found its place.

Since the 1993 Vienna Declaration and Programme of Action, proclaimed that "the acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy" this assertion has been repeated in resolutions of General Assembly, the Commission and Human Rights Council.

I would also want to recall the work of former Rapporteur on Human rights and Terrorism Ms Koufa: Terrorist acts whether committed by States or non state Actors affect the right to life, to freedom from torture and arbitrary detention, to democratic order, peace and security, the right to non discrimination. Actually there is probably not a single human right exempt from the impact of terrorism.

On 20 October, the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Ben Emmerson, made his first appearance before the General Assembly since assuming the mandate on August 2011, he devotes a whole chapter to rights of victims of terrorism An declares that he inspired by initiatives taken by States and international organizations will put the plight of victims of terrorism in the agenda and to promote a human rights-based approach in addressing that issue.

In a very recent seminar organised by our foundations in New York city in the month of april he announced that in the report to the Human rights Council in the next june session he will include the necessity of elaborating an international statute for victims of terrorism.

Emmerson's report will be presented to the UN human rights council in Geneva on 20 June and the general assembly in New York on 28 June.

ON the other hand we express that the special nature of the crime of terrorism determines the necessity of recognising certain rights.

Terrorism seeks the totalitarian imposition of its aims undermining systems, organisations and States. What the terrorists cannot achieve by participative and democratic means they transform into a target for terror.

To identify what rights are to be recognized a suggestion for a working model is that carried out by the Council of Europe in 2005 and that provided by the Spanish legislation on this question.

They concern:

1. Emergency and continuing assistance
2. Investigation and prosecution

3. Effective access to law and to justice
4. Integral reparation
5. Protection of dignity and security of victims of terrorist acts
6. Information
7. The right to truth and right to memory.

State compensation should not only relate to the mere need of victims to compensate the damages incurred, but is also an expression of State and societal acknowledgement for victims.<sup>7</sup> In varying ways the study has shown that this societal acknowledgement is an important consideration in the development of specific State compensation schemes for victims of terrorism. To give some examples, Spain and France developed such a scheme as an expression of solidarity with victims of terrorism, while Serbia and Macedonia have taken similar steps in the acknowledgement of the States' responsibility to prevent terrorist attacks from occurring.

On the basis of the study, it was concluded that it is desirable to differentiate between victims of terrorism and victims of violent crime in general at the political level. Victims of terrorism are different from victims of violent crime in that they may be seen as "instruments" used by terrorists in order to modify or intervene in the political process

Terrorism is not an ordinary violation of human rights it is an international crime. It cannot be included in the Rome Statute, be it as a subtype of international crimes against humanity or as a new international crime, at present time owing to the lack of a specific definition for the crime of terrorism. The worldwide awareness of the singularly reprehensible nature of terrorism is being felt more and more.

Crimes of terrorism afflict the entire international community and is one of the major security problems for the free co-existence.

Without doubt, the legal precisions must be assessed, analyzed and studied if only for a simple consideration for the international victims of terror, no matter how complicated it is to achieve decisions. We are aware of the dimension of the challenge.

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<sup>7</sup> *EU Recommendation on Assistance to Victims of Acts of Terrorism* This need for public acknowledgment is also explicitly included in the 'UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', of 16 December 2005. The document contains extensive forms of reparation, which goes much further than only financial compensation. The need for public acknowledgment is also included in the EU Recommendation in the form of commemorations.