

'Terrorism and Asylum' Workshop Report

The 'Terrorism and Asylum' Workshop was held at the University of London's School of Advanced Study on Friday 8th December 2017, hosted by the Refugee Law Initiative (RLI). It featured three panel sessions, at which were presented 12 original papers that covered terrorism and asylum from the perspective of these three key legal and policy perspectives: securitisation; anti-terrorism measures; and, exclusion from asylum. The 39 registered participants actively engaged in the workshop proceedings and participated in panel discussions following the paper presentations.

This report provides a brief summary of the key findings and conclusions of the Workshop and identifies a number of new areas of research to address the apparent conflation of terrorism and asylum and the need to develop evidence-based public policies that not only address the security needs of States but uphold the fundamental human rights of those who are forcibly displaced by extreme violence, including terrorism.

Securitisation, terrorism and asylum

There was consensus in this panel session that researchers in the field of refugee law and practice have an obligation to expose the false association of 'terrorism and asylum' to the public and policymakers, so that the security concerns regarding terrorism are not conflated with the right to seek asylum. Moreover, the threat of terrorism has been the justification for highly restrictive public policy measures against refugees and other forced migrants, when the statistics indicate clearly that refugees and other forced migrants are more likely to be fleeing extreme violence and terrorist ideologies than espousing them. It was also argued persuasively that the consequences of this securitisation agenda across refugee receiving States has led to injustices that may have resulted in a greater radicalisation within the affected communities. The panel session concluded that more creative and constructive ways of addressing terrorist security concerns while, at the same time, upholding fundamental human rights and, especially, the right to seek asylum, must be found.

Anti-terrorism measures and asylum

The threat of terrorism has posed serious challenges to all governments. This panel session documented and discussed the impact of anti-terrorist measures on asylum seekers. In some instances, such as in Kenya, the State's security drive has led to numerous legislative changes directly affecting those in need of international protection, and the Kenyan Government's efforts to close two of the largest refugee camps in the world, the Dabaab and the Kakuma refugee camps, and, eventually, to expel all refugees from Kenya. This anti-refugee sentiment is also evident in other States such as the US, UK, Austria, and Hungary. The most common restrictive measures adopted against irregular migrants have been 'push-back' policies, accelerated asylum procedures, detention and removal. It appears that some politicians have utilised the 'terrorist threat' to advance their own political causes to the detriment of asylum seekers and without addressing effectively the threat itself, which has been increasing rather than diminishing. The surreptitious and not so surreptitious association of 'terrorism and asylum' appears to be driving the political and legislative agenda to more restrictive measures against asylum seekers without effectively dealing with the most obvious common 'root causes' of terrorism, such as civil war.

Terrorism and exclusion from asylum

This panel session made the point that if we are to address seriously either terrorism or mass forced displacement, then, we must address their common shared 'root causes' such as protracted non-international armed conflict. There is already an 'international crime of forced displacement' that includes deportation, forced expulsions and transfers and which the courts have interpreted to be 'arbitrary displacement'. It was argued that adoption of a definition of who is a refugee similar to that is found in the *1984 Cartagena Declaration* furthers protection by including all those who are forced to flee due to armed conflict. The session also addressed the exclusion of asylum applicants on the basis of their involvement in terrorism and recent jurisprudence in this area. It was noted that the leading jurisprudence on exclusion under Article 1F of the *1951 Convention relating to the Status of Refugees*, for either direct or indirect participation in terrorism, requires, as a minimum, the establishment of 'intent' and a 'significant contribution'. Membership in a terrorist organisation alone is insufficient to exclude the applicant from refugee protection. It was agreed that further research was necessary to determine

whether this rigorous international standard was being adhered to across States Parties to the *1951 Convention* and its *1967 Protocol*.

Workshop Reflections and Conclusions

The main Workshop reflections and conclusions, perhaps, could be summarised as follows:

- The association of ‘terrorism and asylum’ appears to be driving the legislative agendas of States to more and more restrictive measures against asylum seekers.
- There is a clear obligation on the part of researchers in the field of refugee law and practice and forced migration to expose the false association and conflation between ‘terrorism and asylum’ to the public and the policymakers alike. Security measures should address the actual threat posed by terrorism and be proportionate to addressing that threat.
- It is imperative that more creative and constructive ways of addressing legitimate security concerns, without compromising fundamental human rights and, especially, the essential right to seek asylum, must be found.
- Membership in a terrorist organisation alone is insufficient to exclude the asylum applicant from refugee protection. The international standard that is emerging across jurisdictions is that the asylum applicant must have made a ‘voluntary, knowing, and significant contribution’ to a terrorist activity/ies to be held liable for their serious criminality, that is, for their direct or indirect perpetration of serious criminality, in order to be excludable from refugee protection.

New Avenues for Further Research

The following were identified as the most promising areas for further research on the subject of ‘Terrorism and Asylum’.

- It is evident that the restricting access to asylum has not proven to be an effective strategy for dealing with the threat of terrorism. New research is required to identify possible creative and constructive ways of addressing

terrorist security concerns while, at the same time, upholding and advancing fundamental human rights and, especially, the right to seek asylum.

- If we are to address seriously either terrorism and/or mass forced displacement, then, we must address one of its 'root causes', protracted non-international armed conflict or civil war. Further research is required into the most effective peacebuilding, peacemaking and peace sustaining methods available and how these can be effectively applied and implemented in those situations where mass forced displacement is occurring.
- Leading court judgments have determined that mere membership in a terrorist organisation alone is insufficient to exclude an asylum applicant from refugee protection. What is required is reliable evidence that establishes that the asylum applicant had both the 'intent' and had made a 'significant contribution' to the alleged terrorist activity or activities. Further research is required to determine whether the evidentiary standard as well as the discretionary standard of 'significant contribution' is being applied in those cases where refugee applicants have been alleged to be involved, either directly, as perpetrators, or indirectly, as accomplices, in terrorist activities.

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