

Peace in Kurdistan?

The role of terrorism law and the international community

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Turkey is in the international spotlight for its brutal repressions against mass anti-government protests across the country, triggered most immediately by the construction of a shopping mall in Gezi Park. These repressions include the deaths of at least four people, thousands of others injured, the targeting of journalists, and mass detention of protestors. These are neither new nor contained state abuses.

Less international attention has been paid both historically, and in recent years, to Turkey's systematic repression of its Kurdish population. Part of the answer to why the Kurdish question is marginalised by the international community lies with the 'war on terror'. How did a political movement for recognition, democracy and self-determination become so resolutely transformed on the global stage, as a terrorist threat to be defeated militarily? Negotiations between the Kurdistan Workers Party (PKK) and the Justice and Development Party (AKP) government reopened after the PKK's ceasefire in March 2013. There remain, however, complex barriers as to why lasting settlement of this 30 year armed conflict is fraught.

The PKK has begun withdrawing from Turkish territory in order to facilitate the 'first phase' of negotiations, in expectation that the government will respond with concessions. The PKK's 1999 withdrawal ended in the ambush and killing of its retreating fighters by the Turkish military and a return to hostilities. Now, the PKK's withdrawal has been met with an increased militarisation of the predominantly Kurdish south-east with the construction of at least 130 military outposts. Demonstrators

against military colonisation of Kurdish regions were met with open fire on the 28 June in Lice, killing an 18 year old and wounding 10 others. Provocations such as these jeopardise the fragile peace process.

Only the good faith recognition of the PKK's *political status* will ensure lasting transformation of the conflict. Permanent political status, however, clashes with another 'legal' and political formation which structures the Kurdish conflict – global counter-terrorism. The continuous sabotage of negotiations to date represents complex, multifaceted obstacles not considered here. But underlying these obstacles remains the characterisation of the PKK as a terrorist organisation, without recognisable claims or recourse to any form of legitimate political violence against military targets (as understood in international law).

The international community has had an integral role in preserving Turkey's counter-terrorism strategies to militarily annihilate the PKK whilst simultaneously calling for peace. The proscription of the PKK as a terrorist organisation by the United Nations, the European Union, the United Kingdom, the United States, Canada and Australia remains an obstacle to the peace process. I consider how proscription has undermined the PKK's political status by designating it as a terrorist entity, with specific focus on the United Kingdom.

The United Kingdom has been proscribing organisations since targeting the IRA, most notably through the *Prevention of Terrorism Act 1974*. As well as the PKK, there are 49 militant non-state actors currently banned in the UK (as of November 2012). Many of these organisations are engaged in armed struggle in self-defence against repressive regimes, and in political claims for statehood, regional autonomy or basic ethno-cultural rights; for example, the Baluch, Palestinians, Tamils, Basque, amongst other peoples. Proscription is not simply a domestic harm, which inflicts criminalisation on Kurdish residents and citizens of the UK. Banning organisations is a tool of British foreign policy which functions as a systemic state violence in three additional key ways: firstly, by denying the application of international law and principles of self-determination; secondly, by foreclosing opportunities for peaceful settlement of conflict; and thirdly, by legitimating and facilitating Turkish state terror against the Kurds.

In so far as proscription makes no distinction between armed conflicts and terrorism, it denies those targeted fundamental legal rights and protections relating to self-determination. In armed conflict, breaches of the laws of war such as killing civilians are regulated by international humanitarian law, including the Geneva Conventions. Proscription

criminalises an organisation and any individuals associated with that organisation. Proscription does not, and cannot, regulate the horrors of war and the atrocities that are committed by both sides to a conflict. Instead, by transforming non-state actors into *a priori* terrorists, proscription by the UK functions to valorise the state terror of others as ‘counter-terrorism’ and deny the right to resist state violence and exercise self-determination. This effect has been described by international law theorist, Antonio Cassese (1991), as institutionalised violence. Mark Muller QC discusses in detail the ways in which this institutionalised violence functions. Proscription has completely undermined the principle which prohibits the use of military force by oppressive states to suppress lawful self-determination. Proscription has also delegitimated the licence to use military force as a last resort as defence against oppressive regimes by peoples seeking self-determination. Lastly, proscription has fundamentally reversed the principle that prohibits third states from supporting oppressive states in denying the right to self-determination (Muller 2008).

Britain undermines the principle of self-determination by criminalising diverse forms of solidarity for armed resistance against oppressive regimes. The UK Terrorism Act 2000 makes it an offence to ‘belong’ to, or fund raise for, a listed organisation. The Act also makes it illegal to wear or carry any item that would give rise to a reasonable suspicion that you support the organisation. Inviting any sort of support for an organisation (including non-material support) is criminalised. Helping to manage or arrange a meeting of three or more people which supports the organisation, or helps further its activities, or is addressed by a member of the organisation, is also an offence.

There have been two prosecutions of Kurds in the UK in relation to the proscription of the PKK, both of which failed. On 16 March 2002, four Kurds travelling to France to participate in a peaceful Kurdish convey to the Turkish border, were arrested at Dover. They were carrying \$20,000 in contribution to the costs of the convoy, collected from the UK Kurdish communities. The men were detained at Belmarsh Prison for 9 months, and prosecuted under the Terrorism Act 2000 for providing support and funding to the PKK. The Court acquitted the defendants in November 2002. In March 2003, Gultekin Onur and Soner Koyuncu from the Halkevi Centre were detained in Preston for 2 months on charges that funds they raised for Kurdish TV were for a terrorist purpose. The judge dismissed the case for lack of evidence.

Proscription, however, largely polices Kurds in the UK informally and without prosecution. The UK positions itself ‘at the forefront of EU

Member States' action against the PKK' and it is 'very active' in targeting PKK supporters (FCO 2011 para 25). The Home Office identifies disruption, rather than prosecution, as the key object of the proscription regime. Kurdish activists are routinely harassed by police and intelligence agencies in the UK without charge, often as part of co-ordinated operations targeting Kurds across Europe. For example, in a co-ordinated harassment of at least 16 Kurds in the space of a month in 2011, Kurds were sent the message that their fundraising for charities, campaign work and their organising in community centres should stop, or face deportation or criminal charges. In the absence of any evidence that any one had broken the law, state threats seek to silence politics. Rather than recognise the importance of the diaspora in creating the political conditions which will help transform the conflict, proscription laws criminalise activists *because* such work is understood to 'legitimate' the PKK and, therefore, such work can only be understood as supporting violence. Despite the sustained efforts of the Kurdish movement towards peace, terrorist bans impose a dystopian militarised end.

The horrific events in Sri Lanka in May 2009, where tens of thousands of Tamil civilians were killed by Sri Lankan troops in the annihilation of the Tamil Tigers (LTTE), were aided by the international community's banning of the LTTE as terrorist. The Permanent People's Tribunal on Sri Lanka found that, in listing the LTTE as a terrorist organisation, the European Union engaged in conduct which undermined the 2002 ceasefire agreement, 'in spite of being aware of the detrimental consequences to a peace process in the making' (Permanent People's Tribunal, 2010: 12). After the listing of the LTTE by the EU, and then the UK, Sri Lanka increased its military offensive against the LTTE. While the causes for the breakdown of the ceasefire are complex and multifaceted, proscription of the LTTE by the international community played a key role in the return to war.

The UK denies that its proscription of the PKK escalates military conflict. In a response to submissions made by the Kurdistan National Congress (KNK) to de-list the PKK in 2009, former Home Secretary Alan Johnson stated that the banning of the PKK has had absolutely no impact on its inclusion in negotiations for peace. A key factor in past military escalations has been the refusal by Turkey to enter into talks with the PKK for peaceful resolution on the grounds that they are a terrorist organisation. Instead, in the name of 'counter-terrorism', Kurdish parliamentary parties have been banned, and thousands of Kurdish politicians, activists, journalists and lawyers arrested and imprisoned since the announcement of

the democratic initiative. Thousands of Kurdish children have been arrested and imprisoned in adult prisons for ‘supporting’ terrorism, by either throwing stones or simply being in the vicinity of a pro-Kurdish demonstration. The nature and extent of repressions and violent assimilations cannot be detailed here. There remains, however, either little or no public recognition in reports by either the UK and EU of the escalated repression of the Kurds. Despite the opening of negotiations again in 2013, the prosecution of journalists and Kurdish activists continues.

The denial of political status for the PKK illustrates how proscription by Western states legitimates and extends Turkish state terror against the Kurdish people. Proscription of the PKK by the G8 states directly supports Turkey’s strategy of stop-start negotiation with the PKK. Instead, the labelling of the PKK as terrorist by the international community allows Turkey to escalate repression against the Kurds as part of its ‘war on terror’. More broadly, the proscription regime as it is constituted globally means that G8 states claiming democratic credentials give impetus to state violence by less powerful nations. Proscription creates an international atmosphere in which some states are empowered to use more repressive tactics against movements for self-determination. While there are multiple factors that might derail negotiations between Turkey and the PKK, decriminalising the PKK would be a positive step by the international community towards a lasting peace.

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Editor’s note: *Ayse Berktay Hacimirzaoglu, Turkish peace activist and long-time friend of the Russell Foundation, remains in detention in Bakirkoy Women’s Prison in Istanbul (see Spokesman 119, 120). She has been detained with hundreds of other Peace and Democracy Party (BDP) activists since October 2011. Her next court appearance is scheduled for September 2013.*