HUMAN RIGHTS VERSUS PUBLIC SECURITY IN NATO'S COUNTRIES: COPING WITH RADICALISM AND TERROR ACTIVITIES AMONG INMATES

NATO ADVANCED RESEARCH WORKSHOP
EILAT, ISRAEL

Introduction

Increasingly, the use of terror as a means of political expression has becomes a more common occurrence in Europe and North America and civilians in these countries have come to be seen by certain extremist groups as a legitimate target. A consequence of this activity is that the number of terrorist prisoners held in prison is increasing. While traditional prisoner populations will periodically present management problems for prison authorities, the management of terrorist prisoners presents a unique challenge to the prison administrations in a number of NATO's jurisdictions while others, although not currently holding significant numbers of such prisoners, anticipate that it is inevitable that the number of terrorist prisoners will increase and the associated problems will develop in the near future.

The Dimensions of the Problem

The continuing war against terror - whether ideologically and nationalistically driven - has meant that increasing numbers of terrorists (or criminal offenders related to terrorist organizations) are now incarcerated in NATO correctional/prison systems. The incarceration of terrorist prisoners has provided these individuals with a number of unintentional networking and training opportunities, for example:

- enhanced levels of interaction;
- opportunities to develop and improve the connection between terror and crime - particularly organised crime;
- the opportunity to develop links between terrorist groups; and, importantly,
- the leakage of terror into the corrections/prison systems.

The presence of terrorist prisoners has also provided an opportunity for the radicalisation of certain prisoner groups and the opportunity to recruit previous non-terrorist prisoners to the terrorist cause. These aspects of the management of terrorist prisoners formed the basis of the ARW

Observations

The Workshop discussions revealed a wide range of levels of terrorist incarceration and radicalisation activity in prison - ranging from those jurisdictions with only one or two active terrorists held in custody to those with many thousands. However, even where jurisdictions currently had little experience of holding terrorist prisoners it is quite apparent that these systems had experienced an increase in radicalism among prisoners. It was also clear that active discussions were underway in all those jurisdictions represented in respect to how best to manage the security and control of terrorist and terrorist-affiliated prisoners within the correctional environment. Prisons now, increasingly, have to cope with radical terrorists whose interest, while incarcerated, is to maintain their challenge to legitimate State authority, recruit new members, establish terror cells among inmates and continue to expand and plan terror operations from prison.

Correction systems are today facing a new *modus operandi* posed by radical extremists. This approach, which differs in many significant respects from that of organised crime gangs (with which many correctional systems are already familiar) places an emphasis on proselytisation, radicalism, recruitment and training.

In managing this emerging threat it is clear that correctional/prison systems face a particular dilemma: how to cope with a mandate to maintain public security and law enforcement, while at the same time adhering to a need to maintain and uphold human/inmate rights. The dilemma for corrections is that certain law enforcement agencies within the State would see the incarceration of terrorist suspects or convicted prisoners as an opportunity to elicit as much information as possible from such individuals - irrespective of methods - while prison authorities in dealing with terrorist suspects pre-trial or convicted and sentenced terrorist offenders, as

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with any other groups or individuals, have an obligation to maintain that individuals human rights. The justification for the use of such measures has been that it is necessary weapon in the war against terror, preventing further atrocities and providing invaluable intelligence information. At a less dramatic level, prison Services are having to pay increasing attention to how terrorist prisoners are managed by staff and develop ways to train such staff in ways that are both effective and support human rights.

Coping with this new reality, corrections/prison systems find themselves, sometimes, short of:

- professional knowledge with regard the relevant terrorist inmate populations (terrorist motivation, background, characteristics, behaviour patterns etc.);
- a definition of the differences between organized crime/gangs and terrorists, and, importantly, any relevant indicators for the identification of a terror inmate (who was not suspected or convicted for terror involvement) or a radicalism / recruitment process among inmates in prison;
- operational tools (legislation, policy, procedures, operational readiness, experience etc.); and
- clear and articulated codes of ethics to govern the management and treatment of terrorist detainees and clear and articulated codes of ethics to cover the individual detainee's human rights.

The workshop provided a forum for the sharing of international knowledge & experience in this area by conducting expert presentations and group discussions in order to form a set of recommendations for NATO members which will address the following areas:

Discussion and Implications

1. Human Rights

One of the principal conclusions of the workshop was the clear and unequivocal recognition that any prison system charged with the responsibility of holding any person pre-trial suspected of terrorist activity, or sentenced and convicted of a terrorist offence must be able to expect similar rights to all other groups of prisoners, with possible minor limitations according to their dangerousness assessment. Increasingly, the prison systems of NATO countries and other similar jurisdictions have moved from a model where these rights are safeguarded by the authorities themselves to a model where they are subject to regular independent inspection by outside agencies. The conclusion of the workshop was that there is no reason to suggest that 'terrorist' prisoners should not be afforded similar rights (as mentioned before) and safeguards. The group was also very clear that prison staff must understand and accept the rights of terrorist prisoners to these avenues of redress are non-negotiable.

2. Staff Training

The importance of correctional staff in ensuring the rights and proper treatment of any incarcerated person - including those suspected or convicted of a terrorist offence - cannot be emphasized enough. In recent years, modern correctional systems have recognized the complexity of the role of correctional staff and have sought to recruit high caliber staff and to support these staff with appropriate training. In the case of the management of terrorist prisoners, a considerable amount of time was devoted at the workshop to discussions around the importance that needs to be given to staff selection and training. The group was very clear that the complexity of such training cannot be underestimated as it requires not only that staff are trained to maintain a vigilance to matters regarding human rights but also that they are trained to be alert to the possibilities of further terrorist activity, radicalisation and recruitment as well as issues of their own conditioning by terrorist prisoners.

At a specific level, the workshop concluded that officer training should ensure staff are made aware of and given tools to implement appropriate interventions in the areas of:

- human rights issues in the care of prisoner groups;
- issues around religious custom and practice, as knowledge of such customs and language would allow them to observe the development of any radicalization processes;
- the possibilities of conditioning by terrorist prisoners;

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- the possibilities of attempts to coerce staff to become involved with or to assist in furthering subversive activity; and
- issues around unintended collusion with terrorist groups.

A clear recommendation from the workshop is that ICPA revisit its Basic Training Manual to and explore the possibility of including a module (or modules) that sets out clearly the scope of staff awareness and training in dealing with terrorist prisoners.

The workshop discussed – at some length – the possibility and merit of developing a more structured approach to the risk assessment and risk management of terrorist prisoners. A recommendation that more work should be done in both these domains was agreed by the group.

A final point that that the group was agreed on was the strong belief that any system of staff training - whether specifically on the care and management of terrorist prisoners or in respect to other prisoners - requires to be seen against the requirement for staff to adhere to a set of **ethical standards and values** that would provide a set of guiding principles for responding to radicalism and appropriate interventions.

3. Legal Considerations

The workshop explored at some considerable length a range of legal considerations around the issues of terrorism; terrorists, and terrorism offences. It was recognized that while the focus of the workshop was prison-based, prisons are the end of the legal process. Before any terrorist suspect or prisoner encounters the prison administration ordinarily s/he will have already been heavily involved in the criminal justice process. That experience, which will typically have involved intelligence services, the police, prosecutors, courts etc. It goes without saying that any person's experience of prison will have been shaped by that person's interaction with these other agencies in the justice system.

A significant amount of discussion revolved around definitions (terrorism, terrorist etc.) and the issues of whether there is a need for the authorities to establish a legal basis for terrorist activity and terrorism. In some jurisdictions, for example, legislation has been enacted which allows the perpetrator to be charged as a terrorist or unlawful combatant committing a terrorist offence; but in others a perpetrator would be charged under existing legislation with a criminal not a terrorist offence. The issue of such definitions is not simply an academic one but the workshop was clear that how a perpetrator is legally defined does have an impact on how any prison Service is able to classify and manage such prisoners. Clearly, it is for each jurisdiction country to consider what the legal definitions may be but a clear view of the workshop was the need for prison Services to know who may be regarded as a terrorist or unlawful combatant which would allow these Services to develop the tools to deal with them. It may well be that the management of terrorist prisoners shares certain common characteristics with other prisoner groups but, equally, there are unique issues involved in the management of terrorists and prison staff need to be specifically trained in such issues.

4. Radicalisation and the Spread of Ideology

A clear conclusion of the Workshop is that many of the NATO jurisdictions are not well prepared to manage any significant increase in the numbers of terrorist prisoners in their care. Equally, such Services have only a limited understanding of the radicalization and proselytizing processes that some jurisdictions have experienced. There was also a clear recognition that even where there the evidence from some jurisdictions that the housing of terrorist prisoners has not resulted in the recruitment of new cadres of individuals to a particular cause, it is important that the organizations recognize the potential for such activity and take active steps to neutralize such a possibility. (Any intervention in this area needs to recognize that there are three types of people that are engaged within radicalization process: i. leaders who act as a magnate for others and who need to be identified by prison system and handled and monitored differently than other inmates - perhaps through isolation; ii. the pool of potential recruits who share many ideological and religious beliefs of the terrorist groups - who might best be managed by being integrated with other groups of prisoners in order to prevent radicalization (a fruitful future line of research might be how/when/why people join and leave such terrorist organizations during imprisonment and how they act as release approaches) and, finally, those inmates who do not ostensibly hold ideological or religious beliefs similar to terrorists and with no connection to terrorism but

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who join the terrorist group through radicalization process. There is a need for research on this last group to consider how best to neutralize their tendency to wish to become associated with the terrorist cause.

At a practical level the Workshop concluded that at a minimum all jurisdictions need to understand that in managing terrorist prisoners – particularly those Islamic radical extremists - any Service is engaged in a conflict in ideas with such individuals – something that is not associated with 'ordinary' criminals. As a result, staff training must given attention to the fact that an important element in the mindset of any radical terrorist prisoner is the requirement that s/he engage in a process of radicalisation and proselytization among other prisoners while in custody. Practical ways in which such activities can restricted might, for example, involve authorities monitoring all Islamic materials and restricting any radical materials, actively monitoring group interaction processes, and, usefully, building a counter-radicalization body that might, for example, involve an external committee of moderate Islam practitioners (clerics, sheiks, imams etc.).

5. Aspects of Management and Control

The workshop also considered what practical steps prison authorities might take to limit and prevent the spread of radicalism and influence. These will subsequently be explored in depth in the final NATO Report but can be summarized as follows:

- Visitors – control needs to be exercised on who is permitted and not permitted to visit any terrorist prisoners;
- Staff – thought needs to be given to the selection of staff who will come into contact with terrorist prisoners. Experience with other groups of prisoners shows clearly that staff can be conditioned by groups of prisoners into colluding or assisting them in subversive activity, smuggling goods or escape;
- Imams – criteria need to be established on who can act as an Imam and which Imams can visit and teach in prison;
- Studies – certain areas of study e.g. Chemistry should be limited;
- Leadership – the authorities need to work to preventing power cores with negative leadership developing and power cores of terrorist prisoners establishing links with organized crime;
- Money transfers – strict control needs to be maintained on the flow of money to and from terrorist prisoners; and
- Reading materials – all reading materials need to be carefully monitored (even if this involves complex and expensive translation) in order to prevent the recruitment process from progressing by the spread of such literature.

6. Intelligence - collection and analysis

A crucial tool in the fight against terror, both in prison and in the wider community, is the collection and sharing of information. As prison authorities in the training of staff, we must consider how to define, collect and analyze intelligence. We also need to promote intelligence as a management tool not simply as an activity. Systems also need to be developed to allow two-way intelligence flows among law enforcement agencies and a recognition established that intelligence held by security services is relevant to prison authorities. The workshop was clear that there was a distinct lack of data on the issue and a need for a basic assesment of the current picture on terrorism in correctional settings. The meeting proposed the building of a data base and a consistent process to identify trends for implementing strategies against terrorist groups as new practices and individuals emerge.

7. Organized Crime and the Management of Difficult Prisoners

Clearly, the Prison Services represented at the workshop have widely differing levels of experience in the management of terrorist prisoners ranging from jurisdictions with little experience to those jurisdictions (such as Israel) with extensive experience in this field. There was considerable discussion in the workshop about whether terrorist prisoners should be conceived of as a subset of 'difficult prisoners' – something familiar to all prison Services – or whether they represented a unique group of prisoners. There was no definite conclusion to

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this debate (much was seen to depend on the number of terrorists involved) but one general conclusion of the workshop was that while many of the strategies for the management and control of difficult prisoners could be read over to terrorist prisoners the emphasis among this group of prisoners upon the radicalisation of other prisoners made them unique on this dimension and served to underline a distinction between criminals involved organized crime and terrorist inmates.

8. Developing Best Practices

A number of initiatives were identified as meriting further work or sharing across participants. These included:

- Identify model laws/legislation that could be recommended:
  - Defining terrorists as "unlawful combatants";
- Media Protocols:
  - Develop media information releases to explain what actions are deemed 'best practice';
  - Stress human rights as opposed to interrogation techniques;
- Sharing of information with different groups to take advantage of each other's expertise and, in particular, create partnerships that meld different fields of expertise;
- Develop a NATO Database
  - Begin with a brief survey, on a pilot basis with participant jurisdictions to test for the components of the database that would allow NATO countries to identify and analyze trends;
- Development and testing of interventions with certain groups of terrorist prisoners that might serve to minimize influence and maximize rehabilitation options;
- Media Cooperation
  - Create a "covenant or charter" between Media and Prison Authorities – commit to transparency, integrity and accurate information on part of media
- Continue Dialogue in a similar forum that would look specifically at:
  - Effective practice in the management of terrorist inmates

9. Conclusions

While terrorist prisoners do not represent a homogenous group - some ideologically driven, others nationalistically driven – the problems they present to the prison authorities are similar. The challenge to law enforcement is to hold such populations in a way that maintains and respects their human rights but at the same time does not allow the period of imprisonment to be used as an opportunity to engage in the fomenting of further terrorist activity while in prison or to use prison as an opportunity to engage in further radicalism or to forge links with other criminal groupings. In most NATO countries the number of terrorist prisoners incarcerated is currently small however all the indications are that this will change as further terrorist attacks continue. Equally, as terrorist prisoners come to recognize the opportunities that prison offers them as a breeding ground for further radicalism and recruitment the threat that they will pose to the smooth running of the prison system will increase. The workshop provided the opportunity to explore the current state of knowledge, identify possible best practice and signpost directions for future work.

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