The UK counter-terrorism strategy and international justice

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Abstract

This article critically assesses the UK counter-terrorism strategy and determines the extent to which there is international justice within the War on Terror. It investigates why war crimes are investigated and prosecuted differently, as well as how understandings of what terrorism is varied, according to who the perpetrators are. It argues that new legal mechanisms and institutions need to hold all perpetrators of war crimes accountable, both state and non-state actors.

Keywords: counter-terrorism, war crimes, state, justice, military

Introduction

International justice refers to principles set out by law, which require respect and entail the moral obligation to report serious violations of human rights and hold the perpetrators accountable. States and non-states have a duty to avoid committing crimes like genocide, war crimes, and crimes against humanity, which means that in any conflict actions that result in civilian deaths are subject to scrutiny. However, many victims of such crimes are denied justice and are neglected by the criminal justice system. When ordinary individuals commit terrorist offenses, sanctions and punishment are a default process, but when certain states like the UK commit such crimes, even through their counter-terrorism strategies, they do so with impunity.

Pursue, originating from the UK’s 2006 counter-terrorism strategy CONTEST, aims to reduce threats to the UK and pursue those who threaten its interests overseas. The main objectives of Pursue involve the detection and understanding of terrorist activity, investigation of the activity, and finally the disruption of terrorist activity through prosecutions and
other means (Home Office, 2018). In relation to war crimes and UK actions abroad, it is outlined in Pursue that foreign fighters, regardless of their nationality, will be brought to justice in accordance with the due legal process, if there is evidence to suggest crimes have been committed. It is also outlined that global reach will be maintained to disrupt individuals that directly pose a threat to the UK or UK interests (Ross & Lowe, 2019). The UK will do anything to protect its interests, even if this includes fighting wars abroad which will involve killing, torture, and military occupations of other states. As the UK brings terrorists or fighters to justice through the use of counter-terrorism policies, there is little or no justice for those crimes the UK commits abroad while in pursuit of its interests.

Pursue and indoctrination

In order to protect its interests abroad, the state plays a role in indoctrinating individuals, which creates a process whereby soldiers are recruited and prepared to fight, enabling them to kill, when told to do so, on behalf of the country. To indoctrinate is to instruct into a doctrine, principle, or ideology to instill a specific or biased belief or point of view through the learning of such concepts (Poutney, 2014). Despite sharing the same overall goal, military indoctrination involves an intense process where individuals are transformed into military service members who come to believe that their actions and reasons for joining are somewhat moral and desirable. The military has always recognized the importance of training to succeed in combat operations and the training itself is deemed decisive in defensive combat (Grabo & Goldman, 2002). Military indoctrination aims to remove characteristics that are detrimental to military life and help them engage in behaviors that represent a more radical worldview. Baron (2016) adds that this produces members who internalize the values of the armed services and show complete dedication toward being an active service member as a result of manipulation, coercion and social influence. McGurk et al. (2017) state that the main aims of this type of indoctrination are (a) to subordinate self-interest, in order to follow orders and to enable recruits to view themselves as members of a collective with similar goals, and (b) to make them willing to kill complete strangers.

This concept of military indoctrination has resurfaced recently and was even discussed in Prince Harry’s memoir, Spare, where he reflected on his time in the British military, writing that he was trained by the army to “other” the enemy and be able to kill them without feeling any shame. It can be argued that experiences and the processes involved in the military can create a great sense of desensitization, as recruited members begin to feel less of a negative emotional reaction toward casualties involved in war crimes and a diminished responsibility toward taking accountability for their actions (Mrug et al., 2016). In Spare, Prince Harry referred to the killing of 25 Taliban fighters in Afghanistan as “chess pieces taken off the board” (Cole, 2023). Filled with neither pride nor regret, he further explained how he was trained well and stated, “You can’t hurt people if you see them as people ...” (Rindner, 2023). Moreover, UK citizens are conditioned into thinking of British soldiers as heroes, and of British military campaigns as noble undertakings. Heroism, morality, and nobility are attached to UK warfare, which means that the opposition, the enemies are necessarily evil cowards. Hamourtziadou (2023) explores the language of war and observes that the language used promotes this idea of heroism further, within a biased patriotic approach that disguises and conceals the true nature of war, which is killing, suffering, poverty, mass destruction and displacement.

Much like military indoctrination, the process of radicalization also involves recruiting fighters and supporters for insurgent groups like the Islamic State, and also prepares individuals to fight, to kill, and to die. Both the military and terrorists adopt similar approaches and share attributes and motivations for fighting, so it could be argued that they both fit the “terrorist” label and so both can be said to commit terrorist crimes, including
genocide and crimes against humanity. Terrorists and soldiers commit inhumane acts, in the act of service or on behalf of a particular cause or ideology. It is argued by Ashford (2012) that a terrorist is best described as a person who uses unlawful violence, force, or intimidation against civilians, through the use of attacks in pursuit of their political aims, to maximize terror and gain widespread publicity for their actions. A war criminal is someone who has seriously violated international law and customs of war through their conduct in the military, which includes acts such as offenses against civilians, religious and non-religious property, sexual violence, torture, and murder (Gottbrath, 2022). Soldiers and terrorists, when they commit any of those acts, should be held equally accountable, or there is no justice.

Interests and war crimes

The main threats to the UK are terrorism, migration, espionage, the proliferation of weapons of mass destruction, and organized crime (George, 2002). These are physical, economic, and/or political threats with numerous implications for the UK, justifying the mobilization of security forces and political-security measures and policies. “Unwanted” migrants can be considered threats to the stability of the state, while policies that control and limit the inflow of migrants, illegal immigrants, asylum seekers and refugees often fail (Ceccorulli, 2009). With those migrants, especially the ones from the Middle East and Africa, comes the risk of terrorism, and political and economic insecurity for the state. Haftendorn et al. (1999) argue that genuine security requires absence and protection against a military threat, but also the management of a range of risks concerning the political, economic and social wellbeing of the state and its people. Security in this instance is not concerned with the survival, wellbeing, and rights of these individuals, but rather with the state’s internal and external interests, and its sovereignty. There are three fundamental UK interests that bind the UK and its citizens together: sovereignty, security and prosperity. These can only function and be best protected when there is democracy, equality, respect for human rights, rule of law and freedom of speech. The UK is a member of a global coalition that attempts to eradicate terrorism and Daesh, in order to protect national security and prevent the risk of radicalization.

One of the biggest controversial acts of the British government remains its decision to invade Iraq in 2003. As a result of military action and the UK’s support in the invasion and occupation of Iraq, thousands of innocent lives were lost. UK forces remained in Iraq from 2003 until May 2011, during which time hundreds of cases of torture, sexual abuse, and murder were reported in detention centers operated by UK forces. This criminal behavior was not addressed, which resulted in further abuses and deaths of detainees.

Classical realists argue that the international system is anarchic, and that conflict and acts committed during war are inevitable, in the pursuit of state survival, interests, and power. The behavior of the state is merely a reflection of the inevitability of human nature and lust for power in the face of powerful adversaries. So war – and all it brings – is natural and normal, when it comes to state actions.

More and more allegations are made, and evidence is produced about war crimes committed by the UK in Iraq and Afghanistan, which require investigation and judicial determination, as a legal obligation of the UK. The mistreatment of prisoners, the use of excessive force and drone strikes, the intentional targeting of civilian populations, and the torture of detainees in Abu Ghraib and Camp Bucca took place as UK soldiers defended UK interests and supported its allies. Shockingly, in both detention centers, Iraqis were tied and led with leashes and electrical wires (Shepherd, 2006).

The Chilcot inquiry found that military action by the UK was not necessary, not even as a last resort, and that UK–US relations would not have been harmed, if the UK had refused to be involved. Despite attempting to justify actions and involvement in the war as a response
to terrorism and as necessary for the protection of state security, the true aims were rooted in imperialism and the desire for dominance and control (Stohl, 2008). Even realists opposed the decision to invade Iraq, as the misuse of power did not and would not serve US or UK national interests, instead leading to resentment and tension in the region that continues to this day (Antunes & Camisão, 2018).

The UNDP 1994 Report (UNDP 1994) introduced the concept of human security, placing security at the people (rather than state) level. Human security emphasizes the need to protect individuals, their rights and freedoms, including their right not to be treated as “collateral damage” (Alkire, 2003). UK actions in Iraq, actions that violated every aspect of human security, were even presented to the British public as “support” for Iraqis, part of Operation Iraqi Freedom – the name given to an invasion that killed 7,500 Iraqi civilians in six weeks (Iraq Body Count).

Hamourtziadou (2014) illustrated the concept of inappropriate use of state action by noting:

They are the victims of our support. Direct victims, killed by our military, or indirect, killed by the insurgency and the terrorism that followed the invasion and occupation of Iraq, as well as the “democratic elections” also held with our support. More recently, direct victims of Iraqi government forces.

It is evident that states are not interested in justice or in ethics; they simply want to use their security services (military, intelligence, and police) to eliminate threats and to increase their own power, security and wealth, highlighting the need for further research in the crimes committed by powerful states.

Legislation and judicial courts

In terms of justice, states are not punished for war crimes they have committed in the same way that ordinary individuals are, due to the judicial courts and the use of legislation, despite evident breaches. According to Camus (2013), the state must be held accountable for crimes, for the conduct of their officials, agents, and notably their armed forces that have violated international law. Yet state compliance with international law falls primarily on the international community and is attempted mainly through diplomatic pressure and sanctions. In those cases, compliance is only achieved when the rewards of compliance outweigh the benefits of breaching international law. Hence it is much easier for states to opt for war or some type of force to pursue the state’s desired outcomes. Klobucista (2022) highlights that the International Criminal Court has the authority and jurisdiction to bring charges against individual state officials for war crimes, crimes against humanity, and genocide, but is unable to prosecute the states directly. Since its introduction, the court has faced setbacks and has been unable to gain the support of countries such as the US, China and Russia, on the grounds that it undermines state sovereignty. Goodman (2022) further explores the effectiveness of the court and points out that of the 45 cases ever brought to the International Criminal Court, 44 individuals have been indicted and only 14 of those cases have resulted in complete proceedings, at the end of which just nine individuals were convicted.

Jacobs and Schillemans (2016) write that where there have been cases involving the prosecution of high-level officials, heads of state and government officials, as a result of media interest and exposure:

The news media seem to be mostly important in public accountability as potential critical commentators (sparks) and as triggers for formal accountability. Their main role lies in connecting critical external scrutiny with organisations on the one hand and formal institutions of accountability to citizens on the other. (Jacobs & Schillemans, 2016: 16)
Media interest, rather than laws and courts, made those cases a matter of public interest and some justice was obtained. On the other hand, Freedman (1960) suggested that extensive media coverage has a detrimental effect on the judicial system, because the jury selection process becomes more difficult when cases become high profile. Media coverage can then lead to unfair trials.

Despite the multiple allegations of human rights violations committed by British soldiers against Iraqi detainees during and following the invasion of Iraq, there were no prosecutions for rape, torture, or murder of the male detainees, or for any other war crimes. Institutional failings, the difficulty of obtaining evidence due to the nature of the environment (the warzone), and the great cultural and social stigma associated with rape and sexual assault, made witnesses and victims reluctant to report the crimes, and ultimately hindered the process of achieving justice (Shaoul, 2020; Sivakumaran, 2007).

There was minimal media coverage of the ICC report on British war crimes in Iraq that was published in December 2020, a report that is crucial in establishing and punishing human rights violations, regardless of the gender or identity of the victims – or of the perpetrators. Further allegations were made in terms of cover-ups and a lack of transparency by the British military regarding human rights violations, which made the overall investigation process harder. The majority of inquiries and investigations that were conducted revealed instances where there was deliberate concealment of evidence, evident failure to sufficiently investigate reports of abuse, and numerous attempts to silence and intimidate individuals (Harvey 2011). Williams (2016) explored the case of Baha Mousa, an Iraqi hotel receptionist who was detained by British soldiers in 2003. Mousa suffered extensive injuries at the hands of the British: brutal treatment including forms of physical abuse which led to his death, as a result of torture, while in custody. The inquiry by Sir William Gage into Mousa’s death found that there was a culture of impunity and cover-ups by the British military, and overall great corporate failure, which led to the case not being sufficiently investigated and allowed the mistreatment of other Iraqi detainees to continue (Crawford, 2013). Seven British soldiers were charged in connection to Baha Mousa’s death and only one was convicted of a crime (Hawley, 2011). The soldier who was convicted served just one year in prison.

**Conclusion**

In recent years, there have been efforts to strengthen the legal framework for the prosecution of war crimes and violations of International Humanitarian Law. There are efforts to provide clarity on how war crimes should be defined, in order to expand and improve the jurisdiction of international criminal tribunals. There have been attempts to improve the enforcement and implementation of International Humanitarian Law through the recognition of the need for closer and increased cooperation among states and other actors, to ensure that the correct reporting mechanisms are successfully implemented to increase the support for victims of war crimes and improve the level of reporting (Schriijver & Herik, 2010). Violations of International Humanitarian Law continue, and the majority of war crimes remain unreported or unpunished. Continuous review and reflection on existing laws should be conducted to allow the support and development of new legal mechanisms and institutions that will hold all perpetrators of war crimes accountable.

**References**


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