SPECIAL SECTION

Counterterrorism and expert regimes: some human rights concerns

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This article focuses on authoritative knowledge on terrorism and counterterrorism: its production, application, and legitimation. The question is as follows: What are the possible consequences for the application of internationally agreed human rights standards when democratic governments (are forced to) rely on expert knowledge in the planning and execution of their counterterrorism strategies? The specialty of the expert knowledge discussed in this article lies in the fact that the producers of the knowledge cannot be made accountable in a transparent and democratic manner for the expertise they advocate. Therefore, the main concern here is with the processes through which counterterrorism mechanisms become a ‘validation’ for the violation of human rights. This article problematises the relationship between states and the expert bodies chosen by governments to advise them in countering terrorism. It argues that the readiness of democratic decision-makers to rely on expert knowledge that deploys security as an opposite of freedom has the potential to increase terrorism.

Keywords: counterterrorism; authoritative knowledge; legitimacy; human rights; democracy

Introduction

This paper focuses on counterterrorism measures practised by governments and on what is called authoritative or expert knowledge on terrorism and counterterrorism, i.e. the knowledge that affects how the governments plan and carry out their counterterrorism activities. It contends that the expertise behind the governmental positions and actions taken to counter the phenomena defined as terrorism is problematic in various ways: many of the expert bodies are veiled in secrecy, and they cannot be made accountable for their advice. Therefore, there is a danger of abuse and false ‘calculation’ of risk, as well as a high danger that the experts act in political conformity with the dominant forces in the state. Accordingly, this article poses the following question: what are the consequences of unaccountable and secret expertise for the application of internationally agreed human rights standards? I am especially interested in knowledge which seems to produce a coherent and consistent ‘body of facts’ which is then used by governments and intergovernmental organisations alike in the creation and application of their counterterrorism policies and strategies. This ‘body of facts’ has been criticised by some scholars, because it seems to overemphasise non-state terror and to overlook terror that emanates from the states (Jackson 2009, Breen Smyth 2007, Miller and Mills 2009, Toivanen 2008). It is also said to resemble a political
ideology through which the actions taken by the government are legitimised and the acts of those opposing the governmental actions are discredited as terrorism. Some researchers have also blamed the terrorism experts for adopting an uncritical view of the sources of terrorism studies, i.e. the sources from which their ‘knowledge’ emanates (Jackson 2007, Silke 2004, Breen Smyth 2007, Gunning 2007).  

My recent research has addressed, from a legal–anthropological perspective, the ways in which the expert bodies contribute to the process which is here called ‘othering’, i.e. the practice of depicting potential terrorists as foreign and as strange as possible. It is through this process that they are stripped of their basic human rights. In this contribution, I shall argue that governments across the globe have adopted counterterrorism measures which have resulted in human rights violations. This is not just the case in countries such as Nigeria and Myanmar (which are regularly accused of human rights abuses in the media). All countries of the world, even countries with no direct experience of international terrorism, such as Finland, have adopted anti-terrorism laws and policies. As the phenomenon of terrorism is highly complex, the governments have relied on both international and national expert bodies to give them advice and consult them on how terrorist attacks could be effectively avoided.

**Democratic governments and unaccountable experts**

This article tackles two different but interrelated problems in relation to the peculiar relationship between the governments and expert bodies, which may result in the lowering of human rights standards or in a direct violation of inherent human rights. On the one hand, the governments have used the rhetoric of terrorism to advance their own goals in targeting unwanted groupings in the country by defining them (with the help of experts) as terrorists. On the other hand, and maybe even more fundamentally, the problem is that some of the expert bodies are veiled in deep secrecy and civil society has no effective means to determine the contents of their expert information which impacts the governmental policies in the ‘the War on Terror’.

Without discarding the fact that there is a historical continuum in governmental repression towards persons defined as national enemies, the rhetoric of the global War on Terror gives the phenomenon a new quality. More importantly, I shall tackle the question of the potential dangers of using covert security expert information to guide governments in their actions, from the perspective of internationally agreed human rights.

In the first part of this article, I shall ponder on the popular rhetoric of the ‘War on Terror’ and analyse the usefulness of such rhetoric in the production of expert knowledge capable of ignoring fundamental human rights standards. Governments all over the world are troubled in the face of national and international security challenges. However, in their efforts to create stability and security, they seem to carry an inbuilt weakness which results in serious harm to the human rights standards, as some individuals and groups become categorised as the ‘others’ who deserve less rights or no rights at all. I shall then introduce the theoretical framework for analysing counterterrorism as masked in something that can be called authoritative or expert knowledge. The focus of this section lies on the authoritative knowledge of the security experts who are pivotal in the production of the practice labelled here as ‘othering’. At the end of the article, the consequences of such rhetoric for the very core values of democratic societies – human rights and freedoms – are scrutinised. I shall argue that the fact that democratic decision-makers agree to rely on expert knowledge that casts security as an opposite of freedom has the potential to increase terrorist threats.
Countering terrorism locally and globally

It is clear that governments have eagerly used anti-terror measures in their efforts to create stability and security in their countries (and beyond), and have also shown a remarkable ignorance from Afghanistan to the United States of America towards the warnings given, for example, by the United Nations (UN). The former Secretary-General of the UN stated:

> International cooperation to fight terrorism must be conducted in full conformity with international law, including the Charter of the United Nations and relevant international conventions and protocols. It is an obligation of States to ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law. (Annan 2006a, para. 112)

It is striking that neither the UN nor the Council of Europe or any other intergovernmental organisation has been able to arrive at a lucid policy on the question of how the universal validity of human rights should be maintained in practice while countering terrorism. The peculiar rhetoric on ‘the War on Terror’, creating an image of potential enemies who need to be fought against ‘by all means’, makes it uncomplicated for governments to introduce new laws and policies, even ones which clearly discriminate against certain parts of their own population, and to reinterpret old laws in a way that best serves the security interests of the dominant part of society. In its 2009 report, the Eminent Jurists Panel assessed the current situation in the world in the following way:

> Terrorism sows terror, and many States have fallen into a trap set by the terrorists. Ignoring lessons from the past, they have allowed themselves to be rushed into hasty responses, introducing an array of measures which undermine cherished values as well as the international legal framework carefully developed since the Second World War. These measures have resulted in human rights violations, including torture, enforced disappearances, secret and arbitrary detentions, and unfair trials. There has been little accountability for these abuses or justice for their victims. (International Commission of Jurists (ICJ) 2009)

Despite the major role that the notion of terrorism plays in the world today, there is no agreement on the definition of terrorism (UN 2006b). The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (later UN Special Rapporteur on human rights and terrorism) has warned that confusion in terminology poses serious human rights risks, as some governments clearly exploit ‘the term ‘terrorism’ to justify repression of undesirable movements’ (Unrepresented Nations and Peoples Organization (UNPO) 2006). The definitional weakness (which may or may not be intended) expressed by international instruments has paved the way for the enactment of incoherent national definitions, which governments across the globe can rather flexibly use against those segments of society which do not fit the hegemonic understanding of the ‘national us’ (Toivanen 2008, p. 219). There is, arguably, newness in this process: the governments of the Western democratic states and their global partners, in particular, are willingly drafting conventions to guarantee human rights and to participate in the monitoring of their effectiveness. At the same time, however, the so-called margin of appreciation, i.e. the space for governments to interpret the functions of the treaties, has grown. I would argue that the gap between what the governments say they wish to do and what they actually do, has widened.

There are some international attempts to clarify the scope of the term ‘terrorism’. For example, Martin Scheinin, in his role as the UN Special Rapporteur on human rights and terrorism, has listed three main factors that outline the concept of terrorism. Firstly, the
degree of violence applied in the act or assault that is called terrorism has to have the intent to cause death or serious bodily harm. Secondly, the victims of the act of violence need to be ‘civilians or non-combatants’; and thirdly, the motivation of the violent act has to be ‘to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing certain acts’ (Scheinin 2005). The International Convention on the Suppression of Terrorist Bombing of 1997 states in article 2 (UN 2001) that a ‘terrorist unlawfully and intentionally delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility and has the intention to kill or seriously injure’.

One also has to pose the question of when, and under what circumstances, acts of violence are legitimate. There is no general agreement on whether there are forms of resistance that should be accepted. Most of the definitions drafted by intergovernmental organisations and national governments concentrate on non-state violence as terrorism, and practically exclude the role of states as sources of terror. For example, the International Convention for the Suppression of Terrorist Bombing makes the following distinction in its preamble: ‘[N]oting that the activities of military forces of States are governed by rules of international law outside the framework of this Convention’ (UN 2001). Richard Jackson has, together with his colleagues, gathered an extensive amount of evidence that proves that many of the experts appointed to advise governments and intergovernmental organisations tend to agree that state terrorism is a far more disastrous source of violence (when looking at the number and type of casualties) than non-state terrorism (Jackson 2009). They are, however, reluctant to elaborate on state terrorism any further; instead, they circumvent the question by arguing that state terrorism is simply not the kind of terrorism they want to examine (Laqueur 1977, p. 6, cited in Jackson 2009, p. 70).

One can ponder on the reasons for this reluctance: One reason certainly is that as governments finance a large part of the terrorism research, those receiving their pay from the governments are keener to look for other actors in the terrorism field than their funders (also Miller and Mills 2009). It is fair to conclude, in agreement with Jackson (2009), that ‘terrorism by states remains unstudied and mostly invisible’ (p. 70). In addition, as Jackson emphasises, there seems to be an underlying assumption distorting the big picture, which proposes that Western liberal democracies are free from terrorist methodology. This is of course far from the results of the factual analyses conducted by for example, Amnesty International and the ICJ, or the reports by the UN Special Rapporteur on human rights and terrorism. These reports draw a different kind of picture: a vicious picture which shows that the so-called Western liberal democracies are not above abusing violent strategies camouflaged as counterterrorism measures.6

The term ‘terrorist’ is also ambivalent in its practical meaning. It is often said that one person’s foe is another person’s friend. Similarly, the definition of a terrorist often depends on the interests of the person doing the defining. In the public discourse visible for example in the Western media, terrorists are labelled as generally bad, dangerous and unacceptable persons and groups (Jackson 2009, Toivanen 2008). The fact is, however, that inside this category we often also find political activists, freedom fighters, human rights defenders, and indigenous peoples who live in areas for which the state authorities have other (economically motivated) plans.

Traditionally, terrorist attacks have often been used as a response to the unequal use of force, foreign occupation, or heavy military action. Terrorists have used suicide attacks as one method to pressure the target society to demand from its own government a change of policy (Crenshaw 2002, pp. 21ff., Gunaratna 2000, Pape 2005a, 2005b). Some researchers
have thus defined terrorism as one form of political communication (Waldmann 1998): terrorist attacks wish to provoke through the international media coverage; this is linked to the wish to produce a negative psychological effect on an entire population and beyond (Schweitzer 2000). The ‘negative psychological effect’ has also influenced the entire human rights discourse in a striking way (see also de Graaf and de Graaff, this issue).

The use of the term ‘War on Terror’ has spread rapidly and become increasingly frequent since the original declaration by President George W. Bush:

> On September the 11th, enemies of freedom committed an act of war against our country. . . . Our War on Terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. (cited in ICJ 2009, p. 50)

It is the uncertainty and ambiguity of the meaning of the terms ‘terrorism’ and ‘terrorists’ which, at least to some degree, explains the enormous popularity of the concept of the ‘War on Terror’; a concept that has, ever since the Bush regime first introduced it in reference to the fight against the al Qaeda terrorism, become commonplace. The apparent freedom to call almost any act of violence perpetrated by the state a counterterrorism measure seems to provide states with the legitimacy to carry out acts in their own territory, and beyond that, strip away the humanity of persons considered a threat to the state (Toivanen 2008, p. 205).

**Expert bodies and the production of ‘the others’**

Expert knowledge can be depicted as knowledge that is generated around one specific issue. It is something that either individual persons or groups of experts can possess. The special quality of the kind of expert knowledge on terrorism discussed in this article is that it is not questioned or compared to other information, and its contents are not open for a public debate.

The experts, the carriers of something that is here called authoritative knowledge about security and the war against terror, warn the governments or, through the media, citizens, about the terrorist ‘others’. Referring to ‘expert consultation’, the media describes the young men and the few women who have committed their lives to terrorism as poor, uneducated, desperate, and brainwashed. In other stories, they are described as crazy, religiously fanatic, and evil (Toivanen 2008, p. 214). The following statement represents a typical characterisation of terrorists: ‘Their [terrorists] goal is to destroy liberal, tolerant, secular society in all its forms, and replace it with a rigid theocratic dictatorship that enforces a medieval interpretation of the most barbaric elements of Islamic law’ (*The Daily Telegraph* 2006). The perpetrator profiles used for tracking potential terrorists follow these lines (Magliocco 2003, p. 13). According to one of the leading legal figures from Germany, former Justice on the Federal Constitutional Court of Germany, Dieter Grimm, common citizens tend to believe that ‘terrorists are nothing like us and this enables us to accept that the same rights and freedoms we wish to enjoy as human beings do not need to be extended to them’ (Grimm 2006, p. 16).

Jackson, one of the founders of the strand of critical terrorism studies,7 argues, on the basis of his long-term media analysis, that the authoritative expert knowledge on terrorism is often circular by nature: the experts provide testimony to special commissions on terrorism, and later refer to the reports by these same commissions in order to legitimise their statements (Jackson 2009, p. 81). The body of experts, often diluted in its identity for reasons of protecting the experts as individual persons, advises the governments in the drafting of
their counterterrorism laws and policies and in the evaluation of the risk factors in a given moment. One of the problems with such a vague source of eminence is that it is hard to receive background information on the factors that have influenced their understanding of the specific issues under scrutiny. Even the US government-led The National Counterterrorism Center (NCTC), which publishes the yearly NCTC Report on Terrorism, emphasises the difficulty in gaining and comparing data, arguing that:

[T]allying attack data necessarily involves relying exclusively on frequently incomplete and ambiguous information. . . . The quality, accuracy, and volume of open source reporting can vary greatly from country to country. As a result, determining whether an attack meets the statutory criteria for a terror attack is often difficult and highly subjective. (NCTC 2008, p. 2)

My main concern is the process through which the expert knowledge leads to counterterrorism mechanisms and activities that become a ‘validation’ for the violation of human rights. This is the case when a counterterrorism action is used in ways which, instead of diminishing threats and increasing societal security in a given setting, undermine the internationally recognised human rights standards, legally binding on state parties, for example, in the area of the right to privacy, the right to family life, the right to a fair trial, and, most importantly, the right to life. In the validation of acts that derogate human rights, the persons whose rights are violated are often constructed as persons who, due to their role as potential terrorists, can legitimately be stripped of their basic rights. Such a view relies on arguments that imply that potential terrorists do not deserve such rights. This is exemplified in the following statement by the Leader of Opposition in the Delhi Assembly, Vijay Kumar Malhotra, given in the aftermath of the massive attack on Mumbai on 26 November 2009: ‘It is very surprising when people talk about the human rights of terrorists. Human rights are for human beings and not for those who take innocent lives.’ He also emphasised the need for a stringent law, such as the Indian Prevention of Terrorist Activities Act (POTA) (2002)⁸ to combat terrorism and to ensure that terrorists are prosecuted for their inhuman acts (The Hindu 2009).

The above citation agonisingly shows us how commonplace it has become to make use of the mechanisms of ‘othering’ (Said 1991, Hall 1997/2003), meaning the process through which those defined as posing a danger to the hegemonic values of a given society become depicted and treated (in public debate) as enemies of society in the rhetoric of anti-terrorism (Toivanen 2004). The machinery of ‘othering’ is employed by those representing power to construct both potential terrorists and actual terrorists as foreign and as odd as possible. This kind of ‘othering’ is evidently helpful in legitimating governmental acts, even acts that represent a direct violation of human rights.

In the discussion on counterterrorism mechanisms that involve ‘othering’, it is interesting to focus on those people who are pivotal in the construction of such assessments as who and what constitutes a threat and should therefore be ‘dehumanised’. In other words, who are the persons that make decisions on who and what is to be considered a security threat, and what are the circumstances under which this ‘othering’ takes place (Eckert 2008a)? The threat is depicted as being caused by persons who in the security terminology are classified as ‘suspicious’. The term ‘suspicious’ has evolved into new grounds for legal action. Suspicion necessitates prevention, and prevention ‘relates to the idea of controlling potentials, of surveying future possibilities, of controlling not what people did or are planning to do, but what they might at some point do’ (Eckert 2008b, p. 13). In order to assess the potential threats (i.e. to identify suspicious persons and ‘cells’) expert teams that evaluate risks and inform the governmental agencies (and the media) of the phenomenon have become
an essential element of any security policy in any country. Frank Peter underlines that even though the expertise of these experts (in his case experts on Islamism) cannot be considered to have any scientific value, they must be taken seriously by researchers, as they influence politics, policies and law-drafting; in other words, they shape the realities in which we live (Peter 2008, p. 85).

As Jackson (2009, p. 69) has stated, the current discourse on terrorism has not only political currency, but, even more importantly, cultural currency. This means that the narratives and structures of the discourse ‘function to construct and maintain specific understandings of (and approaches to) terrorism and counterterrorism and the “knowledge” generated in the field has academic as well as political and social consequences.’ The academic consequences are apparent when one pays attention to the absence of academic researchers amongst the circles of experts on counterterrorism. The political consequences are tied to the social ones: when a hegemonic positioning of those who potentially endanger the societal structures is strong enough, the voices of those trying to challenge the positioning remain unheard. When those who are responsible for the implementation of human rights are also the ones responsible for drafting laws that allow for the derogation of the same rights, the democratic order is seriously endangered. The knowledge, I will argue, that is gathered in the form of expert knowledge aimed at advising governments, fervently uses the method which I have here called ‘othering’.

Knowledge is power: expert groups and intelligence agencies

In anthropology, there is a long research tradition in the thematic field which can be called ‘authoritative knowledge’. Authoritative knowledge consists of the information on which decisions are based and actions taken (Davis-Floyd and Sargent 1997). It is something that resembles the truth, but only as it holds in a specific moment and place. It is a collection of facts in a given context, in a certain moment in time. The anthropological research on authoritative knowledge has often concentrated on medical environments, that is, on the production of authoritative knowledge related to medical environments such as childbirth or nursing (Browner and Press 1996), or, more recently, on city governments, development aid projects, international financial foundations or similar (Moore 2001). The research is aimed at understanding what expertise is and how it is achieved, adapted, challenged, modified, abused, and discarded. Authoritative knowledge is curious in the way that it is based on facts, but facts do not represent the truth. Instead, the emphasis is laid on the recipient of the knowledge: general knowledge becomes authoritative in the moment when it loses its vulnerability (or availability) to serious criticism, and becomes the basis for decision-making. Authoritative knowledge is associated with power: power is possessed by those who can define what knowledge is (Bourdieu 1989).

Power belongs to the basic terminology of the social sciences. It can be depicted as a multifaceted societal phenomenon that manifests itself differently in all aspects of human life. It is an essential component of any comprehensive analysis of current and historical interrelations (Lukes 2005). In order to understand the current power relationships, it is necessary to focus on institutions as bearers of social and cultural values that structure the social interaction around powerful knowledge. Knowledge does not, however, necessarily represent an intentional expression of power or control. Authoritative knowledge rarely appears as knowledge from above; rather, we tend to regard it as a just depiction of the way people think and are, or simply as ‘self-evidently true’: where power is invisible, its influence is at its most powerful (Lukes 2005, p. 92).
According to Garland (1990) (interpreting Foucault), power refers to ‘the various forms of domination and subordination and the asymmetrical balance of forces which operate whenever and wherever social relations exist’ (p. 138). This means that an analysis of power should not just look at decision-making but also at non-decision-making, meaning processes in which it seems that no decision-making is necessary, because there is such a high agreement on the policy or action/non-action (Bachrach and Baratz 1970, pp. 43–44).

Authoritative knowledge represents a field of research in which it is exceedingly difficult (or even unfeasible) to ask direct questions because the researcher may have no access to those people and institutions that carry the authoritative knowledge. She may not even know which persons and institutions are the guardians of the knowledge.

One point of departure for an analysis of the power structures is to take the expert groups and experts that advise the intelligence agencies as a research object. Expert committees and groups are always established in response to specific demands, which are often urgent. It is then expected that they will develop new strategies to tackle difficult issues in economics, politics, and other spheres of societal life. The expertise of the experts, expressed in their statements or advisory opinions, are also permanently present in the media discourse – even though the identity of some of the most prominent experts may remain well hidden. For example, difficult questions concerning national security are frequently delegated to the security experts for an answer. They are supposed to possess the required knowledge, which can be portrayed as authoritative: the legitimacy of their knowledge is not questioned, because, due to their role as experts, they are expected to possess the capacity to give policy advice, or even make decisions on behalf of the public.

Because democratic decision-making takes time and joint effort, it is – in a time of crisis – considered too ineffective. Handing the assessment of the situation, and the decision on the appropriate course of action, over to the experts is undemocratic, but clearly efficient.

**Terrorism experts and the problem with legitimacy**

Terrorism, as a horrendous phenomenon that endangers the life of the innocent and discards the rules of a functioning society, necessitates the existence of people with specific knowledge who can advise and guide the decision-makers. Ordinary citizens are practically forced to rely on the experts, who are labelled as owners of knowledge of security and the ‘War on Terror’. The terrorism of today is often described as a new kind of terrorism and it is thus a common perception that new methods provided by the experts are needed in order to combat it (Eckert 2008b, p. 9).

It is argued that the basis of the expert knowledge should remain unchallenged in order for it to work properly and to safeguard the citizens in an effective manner. This secrecy renders the authoritative knowledge even more powerful: a select group of people guards and fosters the specific knowledge and takes decisions on who can be trusted with this knowledge (Miller and Mills 2009, p. 417). They provide insights into the nature of potential terrorists and potential remedies against terrorist hazards. Moreover, this information is declared secret, because otherwise it could easily be abused by the terrorists and the supporters of terrorism. One of the main functions of such expert bodies is to:

- detect potential national security threats, including terrorist threats, by gathering data and information in such a way as not to alert those targeted, through a range of special investigative techniques such as secret surveillance, interception and monitoring of (electronic) communications, secret searches of premises and objects, and the use of infiltrators. (Scheinin 2009, p. 7)
The Venice Commission (2007) puts it in the following way:

As the expert body will rarely be in a position to reveal to the public the basis for its conclusions, the public have to trust it. One way of improving the basis for this trust is to reveal, as much as security considerations make possible, the reasons for its conclusions. Another way is to involve the parliament in both choosing the members of the body and by making, or letting, the body report to the parliament. (p. 50)

There is a clear difference between the kinds of authoritative knowledge possessed by, for example, medical experts and terrorism experts: almost anyone can become qualified in medical science, but access to the ‘knowledge’ possessed by terrorism experts is more complicated. Security experts – lawyers, policy experts, military personnel, police officers, intelligence agents, and academic researchers – receive specialised training, the contents of which are not secret as such. But it is something other than training or education that is required to become an expert on terrorism. Miller and Mills (2009, pp. 417–418), quoting Reid and Chen (2007, p. 43), have asserted that the terrorism experts can be called an ‘invisible college’ because they ‘communicated informally, convened periodic terrorism meetings, developed terrorism incident databases . . . shared ideas, and secured funding.’ It is a specific circle in which terrorism expertise accumulates. The same people dominate not only the area of expertise, but also the way it is discussed in the mainstream media (Miller and Mills 2009).

This hybrid character of the expert bodies on security and intelligence matters, and the potential they have in circumventing the human rights law, has also worried the Venice Commission (2007), which has stated that:

[i]f the problem for parliamentary accountability bodies can be summarised in the word ‘competence’, the problem for expert bodies can be summarised in the word ‘legitimacy’. This affects both how the body is established, how members of the body are chosen, and to whom or what the expert body reports. (para. 227)

In order to become selected to such a body, entity or institution, the experts need to be considered useful for the purposes they are chosen and for the positions of those who choose them as experts. The selection of the members of the expert circle is not random, but very difficult to analyse or theorise: it depends on time, place, and coincidences (Uruena 2007).

The Venice Commission has addressed the problem concerning the legitimacy of such expert bodies that cannot be made accountable for their work, stating in its 2007 report:

[E]xperts have special knowledge, and government is largely dependent upon these experts. In ordinary areas of administration, e.g. education, environmental control etc. various mechanisms exist for improving governmental control over the bureaucracy. But the necessary secrecy which surrounds the area of security can make this considerably more difficult. (para. 83)

The report discusses at length how the legitimacy deficit could be overcome by establishing methods to monitor and control power, but it makes clear that there are no easy solutions, because the governments or parliaments cannot be considered trustworthy as oversight bodies, as there is such a high potential for misuse. Thus, the conclusion of the Commission is that secrecy is necessary in order to allow the expert body to conduct their work effectively (Venice Commission 2007). The UN Special Rapporteur on human rights and terrorism has in his recent report tackled the human rights related problems concerning the accountability of the security agencies and stressed that a:
crucial first element in ensuring that States and their intelligence agencies are accountable for their actions is the establishment of a specific and comprehensive legislative framework that defines the mandate of any intelligence agency and clarifies its special powers. (Scheinin 2009, p. 8)\textsuperscript{10}

The role of the experts in the production of the discourse of ‘othering’ is pivotal: they provide arguments which legitimate the anti-terror measures of the security forces (in the best case through government) and explain both to the parliament and to the general public why certain measures, restrictions of liberty or new freedoms for the security forces are a necessity. They are fluent in the various languages in the rhetoric of the ‘War on Terror’ (Toivanen 2008, p. 210). The governments need to be convinced that security has to come first and freedoms second in order to safeguard the citizens. Similar arguments are given to the public, arguments that stress the responsibility of the government to protect the security of the citizens. The UN Special Rapporteur on human rights and terrorism, Scheinin (2009), notes in his report that:

After the events of 11 September 2001, some Governments insisted that clear distinctions between intelligence and law enforcement powers were no longer tenable, arguing that the extraordinary character of the contemporary terrorist threat demands that intelligence agencies acquire new powers to interrogate, arrest and detain people. (p. 11)\textsuperscript{11}

The various kinds of experts, whether part of the military government fraction or academic, do not lack their own agendas. But for the sake of simplifying the argument, they are here discussed as ‘tools’ in producing the kind of ‘othering’ that serves the hegemonic interest of the state.\textsuperscript{12} This is exactly the reason why the counterterrorism measures are so easy to abuse: they appear as fully legitimate – or one could even say natural – methods for stabilising the state and producing security. The problem that I am trying to address here is that the governments may – and I am not trying to advocate any conspiracy theory but simply look at the empirical evidence – establish such expert bodies that best serve governmental purposes. They may entrust the expert bodies with tasks which the state itself cannot fulfil, including the legitimization of violent state actions against certain people, movements and places which are, by the same expert bodies, labelled as potentially dangerous. What I am arguing is that it is not the expert bodies as such that are a problem from a human rights perspective, but rather the way in which governments use these bodies to undermine generally agreed human rights standards.

**Deployment of the ‘War on Terror’ against human rights – rhetoric and its legitimacy**

This article has focused on the ‘War on Terror’ as a field in which the authoritative knowledge of experts bodies direct and control the discourse on terrorism without the experts revealing the sources of their advisory conclusions on policy and law. The concrete access to the field is limited: it is difficult to identify who should actually be acknowledged as an expert. It is, in addition, seldom feasible to interview the security experts or observe their actions. What is more, gaining unbiased knowledge of what constitutes the expertise is difficult. The security experts could be called secret experts on this basis. The UN Special Rapporteur on human rights and terrorism addresses this secrecy and the legitimacy deficit connected to it in his report from 2009:

While the special rapporteur recognises that states may limit the disclosure to the general public of specific information which is important for the protection of national security, for instance
about the sources, identities and methods of intelligence agents, he is nevertheless worried by
the increasing use of state secrecy provisions and public interest immunities, for instance by
Germany, Italy, Poland, Romania, the former Yugoslav Republic of Macedonia, the United
Kingdom or the United States, to conceal illegal acts from oversight bodies or judicial authorities,
or to protect itself from criticism, embarrassment and – most importantly – liability. (para. 59)

He further expresses his concern about the fact that since the beginning of the global ‘War
on Terror’, power has shifted from the law enforcement agencies to the intelligence agencies
for countering and preventing terrorist threats in several countries. He maintains that this
has been accomplished precisely to circumvent necessary safeguards, such as clear legal
regulations on the use of security and intelligence agency information, thereby abusing the
usually legitimate secrecy of intelligence operations (Scheinin 2009).13

The UN Special Rapporteur is not alone in his worries: there are many human rights
NGOs that try to track the rapid developments in the misuse of anti-terrorism measures
and to address those violations they know about. They are aware of their partial access to
the sphere of anti-terror mechanisms; they know that the ‘field’ is opaque and highly
protected (Human Rights Watch 2004). The Eminent Jurists Panel on Terrorism, Counter-
terrorism, and Human Rights hosted by the ICJ in Geneva conducts country visits to assess
the compatibility of the national anti-terrorism laws and policies with the international
human rights commitments.14 Similarly, Amnesty International and Human Rights Watch
carry out their own research activities, profiting from grass-root contacts in many remote
places in the world (Gilmore 2002, Amnesty International 2005).

As mentioned before, the rhetoric of the ‘War on Terror’ first and foremost serves the
interests of those in power positions, i.e. those who can set the terms for defining what is
to be considered terror, and under which circumstances. The danger posed by terror is
certainly a fact; however, the danger posed by states using the ‘War on Terror’ rhetoric, with
hazardous consequences, against any people they find suspect, is also part of the reality.15
From a human rights perspective, terrorism clearly produces two kinds of victims: victims
of terrorist acts and victims of counterterrorism measures. In the second group, we find
people who have suffered repression, torture, and loss because the experts have assessed
their political and cultural activities as a threat to the states in which they live or to the
international community as a whole (cf. Furedi 2007, pp. 158–159). They may also be
relatives of suspected persons, or just have similar names as individuals suspected of
terrorism.16 Sometimes they are just ‘unlucky’ persons who happen to reside in areas that the
state has defined as terrorist operation areas (Commonwealth Human Rights Initiative 2007).

A human rights approach to balancing liberty and security
It is a truism that after the heinous attacks of September 11, 2001, the delicate balance
between liberty and security has globally been severely shaken. The new counterterrorism
provisions, adopted even in democratic states with no history of terrorism, have clearly
become more security-driven (ICJ 2009). The term ‘9/11’ has become a symbol of the
fragmented world: the West against Islam, US and UK against ‘the axis of evil’, ‘we’
against ‘others’. The perceived new quality of the threat to security justifies new kinds of
measures with a focus on preventive action (Zöller 2004, p. 473).

The terrorist attacks in Madrid in March 2004, in London in July 2005, and in Moscow
in 2010 (and the threats in many other capital cities) have validated the security-driven
course of action adopted by the European governments as well. New laws restricting the
liberty of individuals and stressing security have been adopted across the globe, also widely
on the European continent. Profiling, collecting details of potential terrorists in new secret
databases, extending flight security laws, widening the permission to monitor communications (including e-mail, text messages, and phone conversations), disclosure of bank transactions, video surveillance of public places, biometric IDs, and face scanning are all ‘innovative methods’ to be used in order to find potential terrorists as swiftly and efficiently as possible, thereby contributing to the security of the citizens (Moeckli 2008).

As a side effect, the warnings given by some human rights NGOs about the danger to the human rights system that used to be ridiculed are not laughed at anymore: it is now a widely shared fear that human rights are endangered, not so much because of the terrorists, but because of the efforts to counter terrorism by any means available, and by those parties which use the antiterrorism discourse to legitimate, in any state, activities against unwanted persons in their own territories and beyond. Recent polls show that not only many Europeans, but also Americans feel that governments have used 9/11 as a strategy to limit civil rights and to enable warfare in Iraq and elsewhere (ICJ 2009, Toivanen 2008). It is now commonplace around the world for innocent persons to be subjected to surveillance to a degree unthinkable for most of the citizens of democratic societies ten years ago. They have been forced to accept the rules of the new game, because the security experts say that those who are not terrorists should have nothing to hide (Solove 2008). In other words, the citizens are asked to trust (or just obey) their governments – and rather blindly. The security experts appear in the media and in the speeches of decision makers as if they were the true guardians of human rights and democratic values. In this discourse, ‘the experts’ on the security issues appear as a faceless group bearing powerful knowledge that affects the lives of us all – but is accessible only to a selected group (Miller and Mills 2009).

Because the process that I have here called ‘othering’ works so effectively, people in different places are quite ready to accept that safeguarding their own security requires actions which may undermine certain basic human rights: ‘If we have nothing to hide, the restrictions will not affect us’ seems to be a widely shared attitude even amongst those who are involved in politics. And because the people of the world know so little about their human rights, many restrictions go unnoticed. Some violations, however, have regularly been addressed in the media: policies regarding the right of security officials to kill in case of emergency or the extensive intrusion of the private sphere (surveillance, taping and recording, data banks, profiling) have been identified as problematic areas. For example the German Prevention of Terrorism Act of 2002 allows for surveillance in cases in which no concrete danger or grounds of suspicion exist but which involve persons who ‘are found to be conspicuously loitering in the vicinity of protected property . . . and are found to be watching them, creating the impression they are spying on them or are gathering other information’ (Germany’s Report to the Security Council Committee, 2001) The federal police can collect data in various ways, including the recording of phone calls and text messages of potential terrorists.

The most serious violation of human rights, which is often legitimised by the governments by referring to counterterrorism activities, is the violation of the right to life. The UN Special Rapporteur on human rights and terrorism has, in his thematic report, profoundly criticised the widespread acceptance of shoot-to-kill policies in all parts of the world (UN 2007). Many governments have, however, created for state purposes their own reading of what the use of ‘utmost force’ (as the seemingly neutral term goes) means, whether in the UK, the United States, Nigeria, Myanmar, or elsewhere. Such invocations as ‘targeted killing’ and ‘shoot-on-sight’ are used to define a new – but technically legal – approach to counterterrorism. For example, after the London metro bombing, the UK police forces shot down an innocent person and reported it as an unlucky security measure error. The incident was tackled – also in the media – as an unfortunate miscalculation for which,
however, no one was required to take responsibility despite national and international protests.\footnote{Annan 2006b}

Kofi Annan, when he was still the Secretary General of the UN, stated:

Domestically, the danger is that in pursuit of security, we end up sacrificing crucial liberties, thereby weakening our common security. . . . Whether the question involves the treatment of minorities here in the West, or the rights of migrants and asylum seekers, or the presumption of innocence or the right to due process under the law – vigilance must be exercised by all thoughtful citizens to ensure that entire groups in our societies are not tarred with one broad brush and punished for the reprehensible behaviour of a few. Internationally, we are seeing an increasing use of . . . terrorism to demonize political opponents, to throttle freedom of speech and the press, and to delegitimize legitimate political grievances. . . . States fighting various forms of unrest or insurgency are finding it tempting to abandon the slow, difficult, but sometimes necessary processes of political negotiation for the deceptively easy option of military action. (Annan 2006b)

Annan emphasised that effective counterterrorism measures and the protection of human rights are not conflicting goals, but rather complement and reinforce each other. Accordingly, the defence of human rights can be seen as an essential element in the fulfilment of all aspects of a successful counterterrorism strategy (Annan 2006a, para. 5). The ‘disaster discourse’ (Klein 2007) which dominates most of the international relations research, has proven a major challenge for the establishment of think tanks that would be based on ‘real’ expertise and independent academic information. Such information can certainly never be completely value-free, but at least it is open to criticism.

The international human rights treaties are binding on the states that have ratified them. Many articles of the treaties, such as the right to life, are non-derogative by nature. This means that they are not open for interpretation by states, and the human rights standards cannot be lowered under any circumstances, not even in a state of emergency. As has become obvious, governments worldwide have severely breached these agreements. It is therefore easy to agree that the counterterrorism discourse has seriously challenged the human rights system. The question that still remains to be answered is in which ways it has changed the human rights protection system as a whole.

Conclusions

United Nations (UN) organisations and regional human rights organisations, such as the Council of Europe and the African Union, have taken a proactive role in creating methods to prohibit and prevent terrorism. They have passed several resolutions, declarations and conventions to tackle the problems linked to terror. Most notably, in the outcome document of the 2005 World Summit, all states (without any regional differences) jointly condemned terrorism ‘in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security’ (UN 2005, para. 81). In the same document, the states also recognised the significance of international cooperation in the fight against terrorism, but even more crucially, they acknowledged that states ‘must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law’.

The international community as a whole has condemned terrorism and sought to build alliances across the borders and continents to unify in the face of a joint danger: the terrorist ‘other’. This danger is especially challenging as it can take many forms: closing
borders and controlling foreigners does not suffice anymore, as home-grown terrorists are outside of these ‘old’ control mechanism of border control. More information is needed, but it is exceedingly difficult to define on whom and where. Cooperation with the experts who can provide guidance in this jungle is certainly needed. However, it should be kept in mind that there is no expertise completely free from political and ideological agendas. Alarmingly, many studies have shown that both the governments and the media seek expertise first and foremost among those who help to maintain the existing power structures and shift the focus away from the failures of the governments and intergovernmental operations. It is legitimate to fear that the expertise is veiled in secrecy not only to protect the sources of information, but also to hide the ideological undercurrents behind the selection of the experts. The human rights community is concerned because the checks and balances no longer seem to work, not even in democratic countries. Civil society activists are also troubled by the difficulty of getting accurate information on the activities ‘behind the scenes’.

The expertise used by governments to legitimate actions which violate human rights poses a danger – at least if we accept that prolonged unresolved conflicts, dehumanisation of victims of terrorism in all its forms and manifestations, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalisation, and lack of good governance, represent the main conditions conducive to the spread of terrorism (UN 2006a).

This article has addressed the question of the role that expert knowledge plays in reproducing and strengthening the processes of ‘othering’ in the War on Terror. I have attempted to illustrate how those holding the power use the discourse related to ‘the War on Terror’ to label others as terrorists. Furthermore, I have argued that the possible consequences for human rights law are tremendous: the laws as such are not changing, but considering the cumulative effect of the ways in which even well-established liberal democracies are trying to circumvent binding international law, we can at the very least talk about a real challenge to the realisation of universal human rights. Numerous studies have shown that it is not poverty or a lack of education that motivate terrorism – as has been assumed by many governmental ‘experts’ – but the causal link between weak human rights protection and the increase of radicalism. Addressing educational needs and poverty is important for advancing global justice, but guaranteeing the rule of law, the right to a fair trial and non-discrimination are more important tools for countering the phenomenon defined as terrorism. In reality, these two approaches to fostering well-being are closely linked to each other, as the two sets of rights they are based on – social, economic and cultural rights; and civil and political rights – are interdependent, as indicated in the 1948 Universal Declaration of Human Rights.

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Notes
1. Especially, Richard Jackson has, with his colleagues, analysed the current discourse on terrorism and reviewed what expertise means in that context. He has published extensively on his findings and severely criticised the actual meaning of expertise on terrorism in today’s world. I am here much more concerned about how the expertise and expert knowledge are (mis)used,
especially in legitimising human rights violations and in justifying the derogation of agreed human rights standards.

2. See the National Counter-terrorism Strategy of Finland, adopted in March 2010, at: http://www.intermin.fi/intermin/images.nsf/www/terrorismintorjunnanstrategia/$file/terrorismintorjunnan_strategia_110310.pdf [Accessed 20 April 2010].

3. Even the framing of countering terrorism as a war against terror, or simply War on Terror, is one essential part of the ‘problem’ being tackled herein. In framing the mechanisms of countering terror in a military language, the governments seek to legitimate their actions as a part of their national defence strategy. See here also Martin Scheinin’s country visit reports as the UN Special Rapporteur on human rights while countering terrorism (Office of the United Nations High Commissioner for Human Rights 2010).

4. The recently released film The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers (2009) by Judith Ehrlich and Rick Goldsmith addresses the secrecy ‘machine’ of the government during the Vietnam War and brings to attention the amount of ‘under cover’ lies of any democratic state.

5. On the homepage of the Unrepresented Nations and Peoples Organization (UNPO), plentiful evidence can be found on how counterterrorism has been used as an excuse to move (peacefully and with lethal consequences) indigenous peoples from their traditional homelands (see http://www.unpo.org).

6. International Commission of Jurists (2009) and Amnesty International (2009). For more information, see also the homepages of Amnesty International and Human Rights Watch: http://www.amnesty.org/en/campaigns/counter-terror-with-justice and http://www.hrw.org/en/category/topic/counterterrorism/.

7. According to Jackson (2009, p. 68), the aim of the researchers involved in critical terrorism studies ‘is to destabilise dominant interpretations and demonstrate the inherently contested and political nature of the discourse’ (of counterterrorism) and to reveal the politics behind seemingly neutral knowledge.

8. POTA was introduced in 2002. Under this law, detention of a suspect for up to 180 days without the filing of charges in court is permitted. It also, for example, allows the law-enforcement agencies to withhold the identities of witnesses and to treat a confession made to the police as an admission of guilt.

9. Researchers have challenged this description by stating that there is not much new to the phenomenon and the argument of ‘newness’ is just a way of justifying the number of new experts recruited to tackle the phenomenon (Miller and Mills 2009).

10. He refers in his report to the Dutch legal framework as exemplary (see Intelligence and Security Services Act 2002, arts 17–34).

11. The report also notes that the lack of oversight and the lack of political and legal accountability have facilitated illegal activities by the intelligence agencies (Scheinin 2009, p. 7).

12. According to some empirical studies, most of the experts consulted by the intelligence agencies, the military, and the governments share some previous affiliation with these institutions (Reid and Chen 2007, Miller and Mills 2009).

13. The Special Rapporteur is referring to the Russian law On Counterterrorism Action of 6 March 2006, which transfers ordinary police powers to the intelligence agencies while reducing the legal safeguards against the abuse of these powers, for instance in the context of communications monitoring or ‘stop and search’ activities.

14. For more, see http://ejp.icj.org/ [Accessed 28 March 2010].

15. The concept of ‘suspect community’ is discussed in detail in Hillyard (1993), who describes situations in which persons who are identified as Irish are stopped and searched only because they are categorised as potential IRA members.

16. For example, an eight-year-old US citizen was halted by airport security because he had the same name as someone who was listed as a suspect on the Terrorism Watch List (CBS News 2010).

17. The term ‘potential’ in conjunction with the term ‘terrorist’ is a curious mix found daily in newspapers. What it means, however, is still open to scrutiny by social scientists.

18. For polls in Europe, see Mahler et al. (2009).

19. There is a separate Wikipedia page with an information package on the incident, see http://en.wikipedia.org/wiki/Jean_Charles_de_Menezes [Accessed 12 April 2010].
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