

Speech at the Oud-Poelgeest conference

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We must continue our efforts, so that terrorists, who think they can spread fear and cause havoc with impunity, are stopped in their tracks. Whether they strike in New York, London, Madrid, Bali, Mumbai or Moscow, we must let them know that they will not get away with it.

Good afternoon ladies and gentlemen,
Only days ago, the world was again shocked by two dreadful terrorist attacks that killed thirty-eight people, wounded over a hundred, and terrified thousands more. This time terrorists targeted the heart of Moscow and its subway system. They struck during rush hour, as millions of people were on their way to work. Ordinary people, going about their business. Mothers and fathers, sons and daughters, friends and lovers. Why did these people have to die?

Terrorism can never be condoned as a legitimate instrument in pursuit of a cause. There is no excuse for these attacks. The Secretary-General of the Council of Europe hit the mark when he said that 'terrorism kills randomly', but 'its ultimate target is our collective freedom and our values.'^[1] That is why we should stand united, not only in our condemnation of terrorism, but also in our response to it. I want to extend my heartfelt sympathy to the families and friends of the victims. My thoughts are with the Russian people at this difficult time.

Dilemmas in responding to terrorism

Citizens have a right to protection against attacks like these. So governments must do everything in their power to prevent terrorists from striking. And those that have succeeded in committing outrages must not be allowed to go free. They must be captured and brought to justice. We have seen time and again how difficult this is. On the one hand, combating modern terrorism requires extraordinary measures to protect society. On the other hand, legal safeguards against the abuse of power must also be in place. In recent years, we have seen that tensions can arise between the two: between protecting the safety of ordinary people and protecting the rights of individuals, even if they are suspected of terrorist acts or involvement in a terrorist organisation. We know that Guantanamo Bay is not the answer. That we should always uphold the rule of law, without exception. That there can be no excuse for violating universal human rights – ever. But we have yet to find an approach that safeguards the human rights of terrorist suspects while addressing society's legitimate security concerns and the human rights of ordinary citizens. Governments with counterterrorism programmes are faced with enormous dilemmas: if certain methods of interrogation, detention and transfer are not permitted, then what can a state do when faced with the threat of terrorism and the need to protect its citizens? Sharing information for security and counterterrorism purposes versus protecting people's privacy is another such dilemma. These are major challenges for us all.

The value of the Oud-Poelgeest process

This is precisely the reason that the Oud-Poelgeest process took shape three years ago. The Dutch government decided to bring together leading experts, representing various legal traditions, in an attempt to escape from the entrenched debate that had evolved. I consider it crucial that we move beyond condemning misguided interpretations of the law and properly establish how to address terrorism within the confines of the law. We need positive ideas about ways of addressing these very real questions, which governments now face on a regular basis.

The idea behind Oud-Poelgeest was simple: if experts could clarify the complicated legal questions terrorism posed, this would help politicians formulate a coherent and legally sound response to one of the greatest challenges of the new century.

Today, we are reaping the fruits of that three-year process. I am grateful to the Grotius Centre, and particularly to Nico Schrijver and Larissa van der Herik, for guiding the process. I thank you all for devoting your best resources – your insight, wisdom and creativity – to identifying solutions to some of the thorniest issues.

Three working groups, each with a different focus, have presented their main findings today. A crucial common thread in the conclusions of all three groups is that, according to you, no new international law is needed to deal effectively with terrorism. It has perhaps taken some time to adapt to the demands that modern terrorism has placed on us, and the questions it has raised. It

has taken time to determine how to address the problem within the law as it stands, and indeed while acknowledging the protection offered by the law. But today you have clearly stated that international law as we know it provides a sufficient basis for countering terrorism. Instead of proposing new rules, you point to the need for a better understanding, as well as a better implementation, of existing law.

I do not in any way wish to detract from your important conclusion, but I would add that I hope we – the international community as a whole, that is – can soon conclude the negotiations on the UN comprehensive convention on international terrorism and thereby complement the existing legal framework. Here, we definitely need a new international legal basis to fight international terrorism and to avoid impunity.

Use of force against attacks by non-state actors

One example of viewing these problems from the perspective of existing law is the issue of the use of force against non-state actors. It is now generally accepted that states have the right to use force in self-defence against armed attacks by non-state actors. Clearly the use of armed force in self-defence should be a last resort, and other methods of prevention need to be considered thoroughly first. But the exact parameters of that force are unclear. When does an attack justify the decision to invoke this right to self-defence? In what circumstances is consent required of the state on whose territory the use of force is taking place? And in what circumstances should a state be allowed to use force in pre-emptive self-defence – that is, to avert a threatened terrorist attack?

In dealing with these questions, you have stressed the importance of the United Nations Charter and the key role of the Security Council. You conclude that respecting existing institutions and instruments remains crucial, starting with both the letter and the spirit of the UN Charter. I agree that this must be the legal basis for dealing with terrorist acts that amount to armed attacks on states. Let me add that I am encouraged by your recommendation that a country that feels compelled to resort to the use of force should be prepared to publicly justify its reasoning, thus allowing others to check the legal basis and to weigh the necessity and proportionality of its actions.

As far as the interplay between the various relevant bodies of law is concerned, you have stressed that the applicable legislation is generally criminal law, and hence the law enforcement paradigm should apply. The majority of terrorist attacks happen outside armed conflicts and consequently questions of international humanitarian law do not arise. However you have also analysed how human rights and international humanitarian law correlate when the fight against terrorism does take place in a situation of armed conflict.

We have heard a wide range of views – some controversial - on how applicable law should be determined when countering terrorism. I have always argued that there can be no circumstances which excuse human rights violations, even in the fight against terrorism, although there may be special laws dealing with terrorist acts. I am pleased that we share that conviction.

Improving mutual legal assistance

In your observations on mutual legal assistance, you call for better use of existing legal tools and cooperation mechanisms, including regional ones, to optimise criminal justice responses to terrorism. Here, you offer a number of practical solutions, which reflect a welcome hands-on approach. Enhancing cooperation and joint investigation, as you suggest, might provide states with more solid evidence, making regular prosecution easier.

Another instrument that can reduce the threat and help protect citizens is the UN sanctions regime, under which individuals and organisations that pose a threat may be 'listed' or 'delisted'. The process still lacks sufficient legal safeguards and due process. But I consider the latest resolution adopted by the UN Security Council an important step forward, particularly in light of the provision that an Ombudsman will review requests for delisting.

Ladies and gentlemen,

Your work has produced valuable insights, for which, again, I thank you. With today's presentation of your findings, the Oud-Poelgeest process has reached its conclusion. Does this mean that the job is done? I don't think so. I believe that the fruits of your labours should be used in the broader international discussion on international law and counterterrorism. So I will ensure that your

findings are distributed widely. We could call them the 'Oud-Poelgeest recommendations' or – if we want non-Dutch speakers to be able to pronounce the name – the 'Leiden recommendations', perhaps. We will make all the relevant institutions aware of them, including the EU Counterterrorism Coordinator and the UN Counterterrorism Implementation Task Force headed by Mr Jean Paul Laborde. Mr Laborde as you are present today, I take it you will not be taken by surprise upon receiving them! I hope that the Leiden recommendations will be taken forward in the relevant international fora.

I certainly do not want the Dutch commitment to end here today. This is one of the reasons I have decided to establish an International Counterterrorism Institute here in The Hague, which will open its doors this spring. And I am delighted to be able to announce that three distinguished Dutch institutions – the Netherlands Institute of International Relations Clingendael, the TMC Asser Institute and Leiden University – will be joining forces to lend their institutional expertise to this new centre.

The Counterterrorism Institute will be an independent hub within the international counterterrorism network of academics, policymakers and implementing agencies. It will conduct research into prevention, which should be a major focus of the international response to modern terrorism. Surely it's more effective to prevent radicalisation and violent extremism than to fight them once they've taken root. But the institute will also be concerned with the fight against impunity for terrorist acts. It will focus, in particular, on the international legal aspects of combating international terrorism – and this is where it can build on your work and your insights. So while today marks the end of your deliberations, it also heralds the next stage in a continuing process.

We must continue our efforts, so that terrorists, who think they can spread fear and cause havoc with impunity, are stopped in their tracks. Whether they strike in New York, London, Madrid, Bali, Mumbai or Moscow, we must let them know that they will not get away with it.

Thank you.