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Responding to Terrorism: An Irish Perspective on Guantánamo*

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Background

I am currently serving my sixth year of a seven year tenure as Secretary General (Managerial Head) of the Department of Justice, Equality and Law Reform. We see our collective mission in the department as helping to make Ireland a safer and fairer place in which to live and work, visit and do business.

The remit of the 'Justice family' of agencies and services spans a range of human concerns and touches on aspects of our national life as diverse as the protection of life and property, the prevention and detection of crime, maintaining and promoting equality of treatment between people; the provision of services for the buying and selling of property, the management of inward migration to the state, supporting integration and providing a Courts Service and other forms of investigative tribunals.

In this paper I will offer my reflections on the lessons learnt in responding to terrorism in Ireland and address the issues that have arisen as a result of the operations of the Guantánamo Detention Centre from the perspective of a policy maker in a member state of the European Union.

Ireland's experience with terror – historical perspective

Combating and counteracting the very real risks and serious threats posed by terrorism and its proponents are complex and multi-faceted tasks that must be confronted by every administration. The historical experience of terrorism has of course been different in different countries. To borrow a phrase from Tolstoy, *all families are unhappy – each in its own unique way.* It is the same with terrorists and the causes they espouse. One man's terrorist is another man's freedom fighter – most terrorists perceive themselves to be freedom fighters.

While this may not be a commonly held perspective that we all share, it is crucially important to be aware of the terrorist's psychology – what motivates and drives the terrorist. Equally, an awareness of the history, culture and other affiliations of terrorists is important in dealing with them. Terrorism is a byproduct of history and indeed is often a product of historic injustice, perceived or real.

The terrorist activity which has dominated the Irish landscape in my lifetime and that of my parents' generation has not emanated from the activities of external agents. Rather the threat has come from internal forces. In the words of historian Professor Eunan O' Halpin, it came 'from domestic enemies who believed that the project of a united, independent Ireland had been needlessly abandoned.'[1] The abandonment of this project crystallised in the minds of many Irish nationalists as the partitioning of our country under the terms of the Anglo Irish Treaty signed in Downing Street in December 1921 and the subsequent history of Northern Ireland.

The embryonic Irish state clearly did not develop from a clean slate. It was instead born in the conflict of the War of Independence from Great Britain between 1919-1921, and the subsequent Civil War between 1922-23.

While the Irish Civil War generated relatively few casualties it was still a bitter, fratricidal conflict, pitting friends and former allies in the War of Independence against each other. It was, to borrow a phrase from the Duke of Wellington, a 'damned close run thing' in terms of the victory of the forces representing the elected government in Dublin. Reprisal killings by both sides were a tragic feature of the two year campaign. Military custody was imposed by the new Irish government on the insurgents. Courts martial of captured prisoners who were found in possession of firearms were swiftly followed in many instances by

[1] O'Halpin, Eunan., *Defending Ireland: The Irish State and its enemies since 1992.* Oxford Press 1999

summary executions. These were panic measures justified by the Roman maxim, '*Salus Populi – Suprema Lex*': (Public Safety – is the Supreme Law). Ireland's fledgling parliamentary democracy was preserved but a legacy of great bitterness ensued, as did intermittent challenges from armed republicanism in both jurisdictions on the island.

The post-Treaty conflict had a profound impact on the development of the Irish state's public order and defence institutions and on the Irish system of justice. For example, even though our national police force, the Garda Síochána, was founded in the strife of the Civil War and faced huge challenges, the principled but controversial decision was taken, at its inception, that uniformed members of the force would be unarmed. The first Commissioner or head of the Garda Síochána, Micheal Staines, proved to be prophetic when he said in 1922, 'The Garda Síochána will succeed, not by force of arms or numbers but by their moral authority as servants of the people'.

Moral authority is a precious possession which we strive to retain.

Ireland's experience with terror – a more recent perspective

The level of terrorism inspired by the division of the island of Ireland in 1921 rapidly declined from the 1930s through to the 1950s. By the early 1960s it had fizzled out almost entirely. Irish migration patterns played their part in the relative calm that reigned in those years. Working class young Irish men and women left the country in their millions over those lost decades of the twentieth century.

In Northern Ireland, a civil rights movement, centering on the college student population and the minority Catholic community, sprang into life rather unexpectedly in the summer of 1968. It drew much of its rhetoric and inspiration from the

US Civil Rights Movement of that period. The largely peaceful street marches – with demands for 'one man, one vote' and equality of treatment in employment and housing policies – triggered counter demonstrations from within the majority community in Northern Ireland and, on a number of occasions, evoked heavy handed, indeed partisan responses from the local police services, the Royal Ulster Constabulary and the reserve constabulary, the 'B Specials'. These were captured on television which greatly increased their public impact.

This overreaction by the authorities led, to a great degree, to a revival in the almost extinct IRA in Northern Ireland, which then took the lead in what became a significant 'dirty war' of bombings and targeting of members of the Protestant community especially law enforcement officers in their own homes. Casualties included the deaths of over 3,000 mostly Irish people over a twenty year period but the economic and social damage was incalculable. This human carnage extended to the South of Ireland and to Great Britain also. Major episodes in this terror campaign included the Brighton Bombing of the Grand Hotel in which Margaret Thatcher and her cabinet were staying for a party conference and the bombings in Birmingham City Centre and at London's Canary Wharf and Baltic Exchange.

The IRA prisoners' hunger strike of 1981 in the Maze Prison, Northern Ireland, was in my personal view a major tipping point in this bitter war. This hunger strike was unusual as the participants commenced their hunger and thirst strike in sequence, not simultaneously, and also because of the enormous resolution they showed in fasting unto death, one by one. Their ten deaths had an enormous resonance throughout the island of Ireland which continues to this very day.

I was a young civil servant working as private secretary to our Prime Minister in Dublin at the time of these hunger strikes. This job gave me a unique 'worm's eye' view of the increasing political impact of this prisoner protest across the whole island of Ireland and indeed internationally. Bobby Sands and his fellow

prisoners declared that their demand was for humane prison conditions and political status. Ten men died over a six month period. I was contacted by phone in the middle of the night by our Department of Foreign Affairs, to let my minister know the news that the first hunger striker, Bobby Sands, had died. I still remember vividly my own sense of personal anger and my surprise at that anger on learning the news of that death in May 1981. I felt the protest could have been headed-off without loss of principle on either side.

Huge funerals followed each prison death, each having an enormous nationwide propaganda impact. The attendance exceeded 100,000 at several of these funerals – a huge figure as a proportion of the local population. The hunger strike became a hugely effective recruiting agent for the IRA and Provisional Sinn Féin. The perception grew both within the island of Ireland and internationally that the ten prisoners died because they had to endure incredibly cruel treatment and moreover that theirs was a just cause.

While no concessions were made to the IRA prisoners, the consensus of many observers was that they had achieved their real objective, in that the British side increasingly lost its moral authority in the course of the protest and fundamentally lost the argument while the protest created an enormous new electoral base for Sinn Féin in both jurisdictions in Ireland. This was to become the basis on which they were ultimately to rise into government in Northern Ireland.

In the south we also had hunger strikes by paramilitary prisoners over the past thirty years but none lasted to the point of death. The Dublin government still had moments of extreme difficulty and confrontation with the IRA however. High profile businessmen were kidnapped and direct armed confrontations took place with IRA activists in the context of these crimes and, also, the robbing of banks and post offices in the Irish Republic.

There were two spectacular prison breaks in the 1970s; one involving a hijacked helicopter at Mountjoy Prison, the other an

explosion where a truck loaded with explosives blew up the prison gates at Portlaoise Prison. From 1975 onwards we put in place a heavily armed military presence at the main prison holding terrorists, Portlaoise, and the military presence there was a major factor in subsequently preventing prison escapes by this group.

From 1996 on, the main protagonists in terrorism in Ireland went on ceasefire or generally reduced their activities to a low level of 'tit for tat' violence largely confined within small neighbourhoods in Northern Ireland cities and towns. I personally feel that this de-escalation in the armed struggle on the part of the main protagonist groupings particularly facilitated the Good Friday Agreement of April 1998. This agreement was endorsed overwhelmingly[2] by referendums held simultaneously in both parts of Ireland in May 1998, was the first occasion since the UK General Election in 1918 on which all the people in Ireland voted on the same day to decide their political future.

Despite this democratic endorsement by the majority of the Irish population, small terrorist splinter groups have since emerged to continue the armed struggle and to continue to resist by force of arms the agreed political resolution of the governance arrangements of Northern Ireland.

In August 1998, just months after the island-wide referendum endorsed the accord, a tiny group of dissident republicans carried out a massive car bomb attack in a shopping district in Omagh, on a busy Saturday afternoon. That attack left twenty-nine people dead and many others badly injured. More recently – in 2009 – dissident republicans have sought to further challenge the democratic process in Ireland by carrying out a targeted attack at Masserene Barracks in Antrim where two British soldiers were murdered, and by shooting and murdering a PSNI officer while he responded to a call from a distressed householder in Craigavon.

[2] Combined Yes Vote of 85 per cent.

Many more attempts by IRA splinter groups over the intervening years to carry out terrorist atrocities have been stymied thanks to effective counter intelligence work and cooperation between our police forces, both north and south.

The 1998 Omagh atrocity and the more recent murders committed by hardline republican splinter groups remind us that there will always be the possibility of violent extremists emerging in any society no matter how wide the consensus on which it is based. There will in every country always be individuals who will want to follow a path of politically inspired violence and who will attempt to cause harm, by whatever means possible, with the objective of usurping democratic institutions and negating the political will of the majority. However, in Ireland this approach has very few followers – the vast majority of the population has experienced the benefits of peace and social justice and does not want a return to destruction and hatred.

Peter Hain, former Secretary of State for Northern Ireland, aptly stated in 2006 that, 'crucially the conditions simply do not exist to sustain any community support for a campaign of violence in Northern Ireland' and that, 'Republicans realised long ago that the armalite (rifle) is not an effective way of changing people's minds, let alone their identities; that bombs do not convince your opponents that you are a trustworthy partner in peace.'[3]

The Irish peace process

A peaceful solution in Ireland could not have been achieved without the consistent political, economic and practical support of other countries around the world, particularly of the United States. Successive American Presidents, American administrations and the American people have made the search for peace in Northern Ireland their concern and have also shown their support and generosity through their contributions to the

3 Speech by the Rt Hon Peter Hain, MP, Secretary of State for Northern Ireland to the British Irish Association Conference, Oxford, September 2006.

International Fund for Ireland, the American Ireland Fund and other programmes. Taoiseach, Bertie Ahern, paid homage to these invaluable contributions in addressing the Houses of Congress in 2009 when he said, 'When we needed true champions of peace, when we needed true friends, when we needed inspiration, we found them here. We found them among you'.[4]

Speaking at the Guildhall in Co. Derry in 1998, at a crucial point in the peace negotiations (which would eventually lead to the Good Friday Agreement), Senator Ted Kennedy advised his audience

> Taking full advantage of this unique opportunity will bring lasting peace, and a genuine place in history for all those that make it happen. Failure to grasp this opportunity will be devastating. History will harshly judge any who fail the test and waste the decisive moment.[5]

The current shared governance of Northern Ireland, by democratically elected representatives of diametrically opposed traditions, is an extraordinary situation. It is the outcome of conciliation, forbearance, forgiveness, and patience. It is the culmination of a series of events, which, far from following an inevitable course, was in fact beset with doubts, reversals and great uncertainty.

The Irish peace process – to which I had on occasion the privilege to be a witness at close quarters – saw many false dawns but it illustrates the use that can be made of the arts of government, diplomacy and public service. It illustrates above all, what acts of true leadership can achieve.

[4] Address by Taoiseach Bertie Ahern T.D., Joint Meeting of US Congress, Washington, 30 April 2008

[5] Address of Senator Edward Kennedy, 'Northern Ireland – A View from America', TIP O'Neill Memorial Lecture, University of Ulster, Magee College, Derry, 9 January 1998

Ireland's international role

The conflict and the peace process draw international attention to Ireland. However, it is important to emphasise that Ireland has pursued outward-looking international policies. Although Ireland is a small country, since achieving independence it has continually sought to play a full role on the international stage.

Active participation in multilateral institutions such as the League of Nations in the 1930s and later in the United Nations, the European Union and the Council of Europe has provided Ireland with the platform to consistently advocate the underlying principles of our own foreign policy – acting in accordance with the principles of democracy, the rule of law and human rights.

Alongside support for the United Nations, the European Union institutions and international law, successive Irish governments have vigorously pursued and implemented a policy of military neutrality – this has also evolved as a central tenet of our foreign policy. Every deployment of Irish Defence Forces abroad – whether UN, EU or NATO led – is a sovereign decision of the Irish Government and is subject to the 'triple-lock' of government decision, parliamentary approval and UN authorisation. The policy that deployment of military forces should only be undertaken within the framework of a UN Charter and, as I have mentioned already, the approval of the United Nations, is also a capstone of our foreign policy doctrine.

9/11 and its aftermath

On 12 September 2001, the day following the attacks in New York, at the Pentagon in Washington and over Pennsylvania, the Council of Ministers of the European Union expressed its horror at the attacks and formally expressed its solidarity with the United States. Ireland was one of the very few countries which declared a National Day of Mourning in solidarity with the grieving people of the US. This was held on 14 September 2001 and was marked by well attended church services throughout our

country and by the signing of books of condolences in town and city halls throughout the land.

In the weeks immediately following the attacks of 9/11, the US administration was highly successful in gaining and harnessing international cooperation in making counter terrorism a top priority. On 12 September the UN Security Council unanimously adopted Resolution 1368 (2001) and called 'on all states to work together urgently to bring to justice the perpetrators, organisers and sponsors of these terrorist attacks...' and requested '...the international community to redouble their efforts to prevent and suppress terrorist acts by increased cooperation of the relevant international anti-terrorist conventions and Security Council resolutions'.[6]

However, in the wake of 9/11 the US intervened militarily; firstly in Afghanistan, and later in Iraq – repatriating fighters captured in the field, in some instances, to the Guantánamo Bay Facility or detaining them in Abu Ghraib Prison in Iraq. These were decisions taken under great pressure. However, they were also decisions which were ultimately to cause great international grief and controversy. Subsequently, the Parliamentary Assembly of the Council of Europe, in Resolution 1433 (2005), probably spoke for most Europeans when it declared

> The United States has long been a beacon of democracy and a champion of human rights throughout the world and its positive influence on European development in this respect since the Second World War is greatly appreciated. Nevertheless the Assembly considers that the United States Government has betrayed its own highest principles in the zeal with which it has attempted to pursue the 'war on terror'. These errors have perhaps been most manifest in relation to Guantánamo Bay.[7]

[6] UN Security Council, Resolution 1368 (2001), *Threats to international peace and security caused by terrorist acts*, 12 September 2001.

[7] Resolution 1433 (2005) *Lawfulness of detentions by the United States in Guantánamo Bay*, Parliamentary Assembly of the Council of Europe, 26 April 2005.

I am conscious that key decisions about the treatment of military captives in the theatre of war by the US also drew down much domestic opposition from the outset including criticism from current President Barack Obama, when he spoke in August 2007, as Senator Obama of Illinois, when he contended

> ... in the dark halls of Abu Ghraib and the detention cells of Guantánamo, we have compromised our most precious values. What could have been a call to a generation has become an excuse for unchecked presidential power. A tragedy that united us was turned into a political wedge issue used to divide us.[8]

I must acknowledge here that the US Military has a long established doctrine for the humane treatment of captives, dating back to an order made by President Lincoln in April 1863. The *Instructions for the Government of Armies of the United States in the Field,* foundational in the development of the modern 'laws of armed conflict' and pivotal in the development of formal American military doctrine, was intended to constrain the harshness of treatment of detainees in the course of a military struggle. Article 16 of these Instructions declared

> Military necessity does not admit of cruelty – that is, the infliction of suffering for the sake of suffering or revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions.[9]

That is a very clear and unambiguous instruction. The provisions of Article 16 (General Orders) were reconfirmed in 1949 when

8 *Security Address on Counter Terrorism* by Barack Obama, United States Senator from Illinois, Woodrow Wilson Centre, August 2007.

9 Instructions for the Government of Armies of the United States in the Field (General Orders 100/ Lieber Code)

Rest of the Article 16 reads – 'It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult'.

the US signed the Geneva Conventions Common Article 3, which prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture and outrages upon personal dignity and, in particular, humiliating and degrading treatment and, again, when the United States signed, in December 1977, Protocol 1 wherein Article 75 (2) confirms and strengthens Common Article 3 of the Geneva Conventions.

However, the persistent and credible reports of the ill-treatment of detainees at Abu Ghraib Prison and at Guantánamo – initially aired on the CBS 60 Minutes Broadcast (28 April 2004) and documented in *Time* magazine (12 June 2005) had a huge impact internationally. They certainly had a strong resonance in Ireland. One reason why this is the case is readily understandable in an Irish context.

In Northern Ireland during 1971 at least fourteen individuals arrested by the British security forces were submitted to a form of 'interrogation in depth' with a view to extracting confessions or information from them. The interrogation methods deployed by the British authorities at the time combined the application of five techniques – wall standing (forcing detainees to remain in stress positions for long periods of time), hooding, subjection to noise, deprivation of sleep and deprivation of food and drink. The Irish government reacted to these developments by bringing the United Kingdom before the European Court of Human Rights in Strasbourg. Ultimately, after a lengthy hearing, the European Court of Human Rights ruled (by sixteen votes to one) on the 18 January 1978, that 'the use of the five techniques in August and October 1971 constituted a practice of inhuman and degrading treatment, a practice in breach of Article 3(Convention for Protection of Human Rights and Fundamental Freedoms)'.[10] Though it had taken seven years to get to that point, the United Kingdom had been found guilty by the international court of the degrading treatment of Irish

[10] Judgment, Case of Ireland v. The United Kingdom (Application No. 5310/71), European Court of Justice, Strasbourg, 18 January 1978.

internees, though not of inflicting suffering so cruel that it met the definition of physical torture.

The interrogation methods employed in 1971 by the British security forces and later condemned by the European Court are on any view comparable to the interrogation methods approved by the then Secretary of Defence, Donald Rumsfield, in response to a submission put to him regarding the use of counter-resistance techniques, in December 2002 from Defence Department General Counsel William J. Haynes.[11]

The use of interrogation techniques of this character is not morally right. It is unlikely that they are ultimately very effective from an intelligence point of view.

My view is that when the state departs from the core requirements of international law it loses its moral authority and it risks descending to the level of the transgressor. In policing, this type of activity is sometimes referred to as 'noble cause corruption'. I would emphasise the word 'corruption'.

I do not think any utilitarian argument morally justifies ill treatment of prisoners and it is not logically persuasive either. As far as I am concerned the argument that 'it works' fails in terms of credibility. It is well known that a prisoner who suffers and is subjected to torture or ongoing degrading treatment is liable to say just about anything and implicate anyone if it may possibly spare them further pain.

There is an argument in some law enforcement circles around what might be called the 'ticking time bomb' theory. I have never, in almost a quarter of a century, working in our Justice department ever come across a case where such a 'ticking bomb' was found through abusing a prisoner. It is an 'end justifies the means' argument that is unlikely to restrain interrogators to

11 Submission on *Use of Counter-Resistance Techniques*, 27 November 2002, approved December 2002.

abusing prisoners in narrowly defined circumstances, such as finding the 'ticking bomb'. It is actually a 'slippery slope' argument. Once you depart from the moral high ground in this area you lose your moral authority.

On this point, The Report (26 May 2003) of the Parliamentary Assembly (Council of Europe) into the 'Rights of persons held in the custody of the United States in Afghanistan or Guantánamo Bay' noted that

> Some persons may not only be vulnerable and make questionable statements, but they may also be subjected to undue pressure and make self incriminating statements. Principle 21 of the Body of Principles for the Protection of all Persons detained under any Form of Detention or Imprisonment provide that, 'it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.[12]

In its subsequent Resolution 1340 (2003) the Parliamentary Assembly reminded the government of the United States that it is responsible under international law for the well being of prisoners in their custody and strongly urged the United States to

> 9i) bring conditions of detention into conformity with internationally recognised legal standards, for instance by giving access to the International Committee of the Red Cross (IRC) and by following its recommendations; and
>
> 9ii) recognise that under Article 4 of the Third Geneva Convention members of armed forces of a party to an international conflict, as well as members of militias or volunteer

[12] Report of Parliamentary Assembly, Council of Europe, *Rights of persons held in the custody of the United States in Afghanistan or Guantánamo Bay*, 26 May 2003 (Doc. 9817)

corps forming part of such armed forces, are entitled to be granted prisoner of war status.[13]

In the same Resolution the Assembly regretted 'that the United States is maintaining its contradictory position, claiming on the one hand that Guantánamo Bay is fully within the US jurisdiction, but on the other, that it is outside the protection of the American Constitution.'[14]

In 2009 two important announcements were made by the US Department of Justice.

In the first announcement, US Attorney General Eric Holder, stated that John Durham, Assistant United States Attorney (Connecticut), was to lead a preliminary review into whether federal laws were violated in connection with the interrogation of certain detainees at overseas locations.

The second statement by the Justice Department referred to the proposals of the *Special Task Force on Interrogations and Transfer Policies Issues*[15]. One of the proposals of the task force was the recommendation to establish a specialised interrogation group, namely the High Value Detainee Interrogation Group, which would bring together the most experienced personnel from across the government spectrum.

The report of the Special Task Force also concluded that the Army Field Manual provides appropriate guidance on interrogation for military interrogators and that no additional/differing guidance was necessary for other security agencies.

13 Resolution 1340 (2003), *Rights of persons held in the custody of the United States in Afghanistan or Guantánamo Bay*, Parliamentary Assembly, Council of Europe, 26 June 2003.

14 Ibid.

15 The Special Task Force on Interrogations and Transfer Policies was created pursuant to Executive Order 13491 Ensuring Lawful Interrogations, Section 5, 22 January 2009.

In the context of my argument, these are welcome decisions by the US Justice Department.

Guantánamo Bay: an Irish perspective

Despite deep historical connectedness, Ireland has never been in any way reluctant to, or hesitant in conveying its concerns and very clear views to the United States on the treatment of prisoners, be it at Guantánamo, Abu Ghraib, or elsewhere. Speaking to the European Parliament Committee on Rendition (2005) our then Minister for Foreign Affairs, now our Minister for Justice, Dermot Ahern said

> ...let me be emphatically clear. The close ties which bind Ireland and the United States do not in any way preclude frank and forceful speaking when occasions demand it. ... I would like to make the point that at my meeting in December 2005 with Secretary of State Rice, I also raised our concerns regarding Guantánamo Bay. Both the Taoiseach, Mr. Bertie Ahern TD, and I have publicly called for the closure of the Guantánamo facility.[16]

The Irish administration has consistently emphasised to the United States authorities our complete opposition to the practice of 'Extraordinary Rendition', wherever it might take place, and have made it clear categorically that such a practice would never be permitted through Ireland. The Irish government has sought, and received, absolute assurances that there has been no attempt to use Irish airports or territory for this purpose. In response, and based on a process of extensive confirmation with all of the relevant agencies, the United States has authoritatively indicated to Ireland that captured prisoners have not been transferred through Irish territory.

16 Statement by Dermot Ahern T.D., Minister for Foreign Affairs of Ireland to European Parliament Temporary Committee on the alleged use of European Countries by the CIA for Transport and Illegal detentions of Prisoners, 30 November 2006.

While completely opposed to the US transiting captives through our air-space, Ireland has facilitated literally hundreds of thousands of American military personnel over the last fifty years, who have flown through Shannon Airport in Ireland. This continues to this day with the transport of troops to and from what are at this juncture UN mandated operations in Iraq and Afghanistan.

The assurances of the US government and the clarification of facts are important underpinnings of the moral stance that Ireland takes on these issues.

Closure of Guantánamo

The European Union has officially welcomed and supported President Obama's decision to close the facility at Guantánamo Bay.

As the decision of any EU Member State to accept a former detainee has implications for other Member States and Schengen associated countries, a collective framework has been agreed by the European Union that would help those Member States who wish to receive ex-detainees who are 'cleared for release from Guantánamo'. The EU collective framework has several constituent parts, some of which are:

- The decision whether or not to accept former detainees would be taken by Member States on a case by case basis. EU Member States alone decide if and how they accept former detainees. Decisions on the reception of former detainees and the determination of their legal status fall within the sole responsibility and competence of a receiving Member State and Schengen associated country.

- The agreed collective framework also includes a political non-binding jointly endorsed EU-US statement. The statement sets the framework for European cooperation with the US on the closure of Guantánamo and paves the way for

strengthening cooperation on counter-terrorism in the future. The statement highlights the importance of respect for shared values, international law, and the rule of law and human rights in the fight against terrorism.[17]

It is within the context of this framework that Ireland has agreed in 2009 to accept two detainees cleared for release from the Guantánamo Bay detention facility. Indeed I accompanied my boss, the Minister for Justice, Mr. Dermot Ahern, when in 2009 he met with the new American Ambassador to Ireland, Mr. Dan Rooney, to inform him of our government's decision on this matter.

While the two men being accepted by Ireland are not admitted to our country as refugees within the strict technical meaning of the Geneva Convention, it is however intended to adhere to the norms it lays down in respecting their rights to their privacy. There will be no public disclosure of any personal information relating to these individuals nor of their resettlement arrangements.

However, some member states of the EU have yet to agree to take detainees. I can only speculate as to their rationale. Some countries argue that the United States itself is practising double standards in not resettling any of the prisoners on its own soil despite insisting some of them no longer represent a threat. Other countries may feel that they are not under a moral obligation to help the US in this way while being very supportive of the US in other practical ways in its struggle against international terrorism.

The Irish terror experience – 'lessons learned'

Finally I would like to turn to some of the lessons we have learned about responding to terrorism in Ireland (some of which

17 EU Council Secretariat, *The European Union ready to help US in closing Guantánamo Bay*, 15 June 2009

are drawn from my own experience in this area as head of the Irish Prison System from 1999 to 2004).

- The process of capturing and imprisoning terrorists via conventional law enforcement processes is horrendously complex, expensive and always controversial. This is unavoidable in all settings. You have to be fully aware of the background, historical, ideological and political, of the terrorist movement you are confronting. Without this knowledge you are very vulnerable from a national security perspective.

- Extreme measures have of course been repeatedly deployed in my country too against the terrorist threat. In Ireland, north and south, this has involved the use of internment without trial in the past and the use of non-jury courts to this very day. Both processes involve the use of emergency police powers and have had many critics nationally and internationally. It is important that extreme measures are only used in strict proportion to their actual necessity and do not undermine public support for the law enforcement agencies involved. It is vital too that the exercise of all such powers is backed up by statute law and that the exercise of emergency powers is reviewed regularly by one's national parliament. This was not the case with the operation of Guantánamo Bay Detention Centre.

- Holding terrorist prisoners is of course a huge burden for the state and a real pressure on individual facilities and the people who have to run them. Firstly, there is the expense arising from the security measures involved. Secondly, there are the litigation costs arising from the ongoing use of the legal system by prisoners with paramilitary backgrounds and their supporters. They may despise our system of justice but they will use its mechanisms to the hilt.

- Sir Winston Churchill, at a crucial juncture in the Second World War, famously said, 'the resources of civilisation are not

exhausted'. I agree with that sentiment. But the resourcefulness of the terrorist combatant, both at liberty and in prison, is virtually inexhaustible. You have to respect your enemy in the sense of taking him seriously as an opponent. Asymmetric warfare is cheap and relatively easy to organise though the damage to life and property can be horrendous, as was demonstrated not just at the Twin Towers but also in the London Underground, the Madrid Train Bombings and the attacks in Mumbai. This is equally the case with prison based resistance. Vigilance is indeed the price of overall liberty in that context. Terrorists may seem random in what they do but invariably they adopt a strategic approach. And they have the patience to plan years ahead, waiting for the moment of opportunity to cause the greatest possible 'spectacular event'.

Conclusion: building a new consensus on tackling international terrorism

The Joint Statement of the EU and the United States, 15 June 2009, on the *Closure of the Guantánamo Bay Detention Facility and Future Counterterrorism Cooperation* declared that 'building on shared values and in a spirit of mutual respect, reciprocity and partnership, the EU and the US seek to deepen transatlantic cooperation in the area of freedom, security and justice, including cooperation in the fight against terrorism...'[18]

International cooperation and consensus are crucial in combating terrorism.

As I mentioned earlier, the conflict in Northern Ireland could not have been resolved without the sustained interventions and patient inputs of successive Irish, British and American administrations.

[18] Joint Statement of the European Union and its Member States and the United States of America on the *Closure of Guantánamo Bay Detention Facility and Future Counterterrorism Cooperation, based on Shared Values, International Law, and Respect for the Rule of Law and Human Rights*, 15 June 2009

Governments in Europe and the United States administration must combat the global threats of terrorism by utilising global channels. While terrorists can be clever and committed, in this contest for hearts and minds the community of nations ultimately has the weight of its collective resources and the will of its people on its side in isolating and dealing with terrorism.

It seems too easy to fall into the trap of not following 'due process' in managing the terrorist threat. 'Due process' however is what ultimately distinguishes us from terrorists. That distinction is worth preserving even when the cost is very high. In this context I would echo a point made by the President of the Woodrow Wilson Centre, Lee Hamilton, that in combating terrorism we must also pursue the goals of 'protecting civil liberties and opposing torture – at home and abroad. We need to offer the world a beacon of hope – not a recruiting poster for terrorists'.[19]

I have argued here, that serious mistakes have been made in the recent US war on terror. However, as the Bulgarian philosopher Tzvetan Todorov has argued, 'We learn more from our mistakes than our good deeds. Thanks to them, we can begin to moderate pride with humility – and to see that, very often, the best way of defending our own interests lies in not neglecting the interests of others'.[20] The Irish Peace Process exemplifies that necessity to simultaneously show concern for people of different traditions than our own.

The decision by President Obama to sign the Executive Orders (22 January 2009) ordering the closure of Guantánamo, prohibiting 'enhanced interrogation', ending secret detention and the ordering a review of US detention, transfer, trial and interrogation policies in the fight against terrorism was not just the fulfilment of an election campaign promise. It also

[19] Hamilton, Lee H., *Fighting Terrorisim.*

[20] Todorov, Tzvetan, *Hope and Memory: Reflections on the Twentieth Century,* Princeton University Press 2003, pg. xxii.

represented a restoration and renewal of joint EU-US efforts to uphold and promote human rights while combating the very real threats posed by terrorism.

Woodrow Wilson declaimed in his Final Address on the 25th of September 1919, in Support of the League of Nations that

> There is one thing that the American people always rise to and extend their hand to, and that is the truth of justice and of liberty. We have accepted the truth and we are going to be led by it, and it is going to lead us, and through us the world, out into pastures of quietness and peace such as the world never dreamed of before.[21]

The decision made by the Obama administration to close Guantánamo is consistent with President Wilson's description of the American national character, of the world role to which he aspired, and the course which other nations would wish it to pursue. Indeed President Obama's decision will help all democratic governments engaged in combating terrorism and eradicating dogmatic terrorist ideologies. The struggle against international terrorism now has renewed moral integrity as well as necessary force and determination.

The campaign against terrorism around the world will undoubtedly continue. Delicate balances will have to be struck by all democratic administrations between protecting society, protecting individual liberties and indeed protecting the rights of suspects. We in Ireland and in Europe generally must of course strike difficult compromises in this area every day, as does the present Government of the United States.

In maintaining good authority in its approach the US will rightly expect and should have the support of every democratic state,

21 Wilson, Woodrow., *Final Address in Support of the League of Nations*, delivered 25 September 1919, Pueblo, CO.

including those in the European family of nations, all of which have, in the words of the Atlantic Council, a '...great desire to see the United States again become a leader in global human rights and the rule of law'[22]

22 *The Atlantic Council of the United States, Beyond Closing Guantanamo: Next Steps to Rebuild a Transatlantic Partnership in International Law*, February 2009, pg. 6.