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IBA Interns' Newsletter

APRIL 2020



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IN THIS ISSUE

Covid-19 – the great equalizer or the great magnifier of inequality?	3
<i>Aarushi Mehta</i>	
Is 'terrorism' a label that obscures more than it reveals?	4
<i>Laura Krawczyk</i>	
Pushing for reform at the UN Security Council: finding consensus against Atrocity crimes	6
<i>Martin Davenas</i>	
How can the eyeWitness app assist in arresting ICC fugitives?	9
<i>Marilena Stegbauer</i>	
Sustainability in the Summer Olympics 2032, Amsterdam, the Netherlands	11
<i>Sharon Rasuch</i>	
Open justice and remote court hearings under the UK's Coronavirus Act	14
<i>Colette Allen</i>	



Covid-19 – the great equalizer or the great magnifier of inequality?

It is an achievement to have successfully made it to the fourth month of 2020. The past few months have been dominated by a single theme: the Covid-19 pandemic. The health crisis which began in Wuhan in December 2019 looms above us, bringing our lives to a grinding halt. By the time we go to sleep today, over 95,000 new people would be diagnosed with the novel coronavirus disease. The consequences of this crisis are extraordinary, but there is a simple commonality between the Covid-19 pandemic and any other adversity that humankind has previously witnessed. Whether it is bearing the brunt of climate change, a war, a refugee crisis, economic recession or a pandemic, it is always the most vulnerable population that encounters the worst face of the calamity. This notion falsifies the popular belief that this pandemic has bridged the gap between the haves and have-nots, impacting everyone equally. Active protection of the basic human rights of those defenseless in this health crisis is imperative.

Across different regions of the world, vulnerable groups are facing similar challenges to their basic right to life. In the war-torn region of Kashmir, there is no access to proper internet services. In Peru, persons belonging to the LGBTQI+ community face threats of unlawful arrest and detention. In Sierra Leone, pregnant women do not have access to health clinics for childbirth. Domestic abuse cases have increased by nearly 50 per cent worldwide, creating a new public health crisis of its own. If anything, this pandemic is a magnifying glass of inequality that has exacerbated the realities of those who don't live in a world with basic human rights. In the glass-half-full perspective, it has encouraged the more fortunate to take action and find solutions in their regard.

Unprecedented times call for innovative solutions with large-scale impact. In Argentina, domestic abuse victims can report to pharmacies which have been declared as safe spaces. In France, 20,000 hotel rooms

and grocery stores with temporary housing services have been made available to women who cannot go home due to threat of abuse. Both the Australian and Canadian governments have allowed funding to tackle violence against women as part of national policy to counter the impact of the Covid-19 pandemic. In Spain, exemptions for women in lockdown have been introduced, if they need to leave their homes due to abuse. On a larger scale, the African Development Bank has recently raised the world's largest social bond of \$3bn, to assist African Governments to expand access to health and to other essential goods and services.

It is important for governments to evolve according to the swiftly-changing existing realities. Policy measures that were perceived as important for peace and security may require revision, as they have become counter-productive in the current climate. A good example of this is the relaxation of the blanket ban on communication services in western Oromia in Ethiopia, where the restriction was originally imposed to discourage armed rebellion within the region. In Malaysia, the government has promised to not arrest undocumented workers or illegal migrants who come forward for Covid-19 testing. Egypt, along with Bahrain and Iran, has released a few political prisoners from overcrowded prisons. Liberal measures on every front can create space for cooperation. In South Africa, telecom operators such as Safaricom and Airtel have removed data caps from 'essential' websites. People with pending residency permits or asylum-seekers in Portugal are being treated as permanent residents, thereby having equal access to healthcare services. These decisions are a result of sound policy-making and decisive action, and will result in faster eradication of the novel coronavirus.

Further initiatives such as decongestion of jails, protection of healthcare workers, healthcare services to undocumented immigrants and asylum-seekers, and sound

economic measures are expected and encouraged globally. In the periods after both world wars in the United States of America, it was noted that society and incomes became more equal. Funds created for veterans' and widows' pensions led to social safety nets,

stronger unions, and dilution of tax benefits for the wealthy. So, while the world may become a more equal place in the aftermath of this pandemic, it is unfair and privileged to call it 'the great equaliser' right now.

Is 'terrorism' a label that obscures more than it reveals?

Laura Krawczyk



Introduction

Terrorism is a controversial concept, best described by critical theorists who argue that the collective knowledge about it is rooted in stereotypes and misconceptions, which ironically aid the terrorists in fulfilling their goal of spreading terror. How has the term been eroded to such subjectivity that 'one man's terrorist is another man's freedom fighter'? There is a significant lack of an internationally agreed definition, not for the lack of trying, but due to the various forms that terrorism takes, as well as by whom the term is used. This article will examine what the term has meant through time, as well as what it means to three different groups of actors who play key roles in defining it. This will further be examined through analysing the obstacles to a common definition. Consequently, this will lead to evaluating whether terrorism obscures more than it reveals.

The definition debate in a historical context

Prior to 11 September 2001, the term was rarely used, while nowadays it is used nearly daily to describe atrocious acts around the world. The term derived from the French Revolution's Reign of Terror enacted by Robespierre. It was devised to describe the terror acts of the French state, therefore at that time, the term which linked the terror spread by the state made sense. However, nowadays the concept of state terrorism is ambiguous as no state would take it kindly to being labeled as spreading terrorism. The 2003 invasion of Iraq – which at the time was called illegal by the then Secretary General of the UN, Kofi Annan – used violence for political gains and regime change.

Consequently, the intervention into the Iraq War still remains a contested issue.

The subjectivity of the definition

In order to have a more common definition, it is essential to incorporate the views of the three main parties involved in defining the term: academics, political actors, and those labeled as terrorists.

1. From the academics' point of view

The elusive term has been examined by Schmid in his 1992 study. The study found percentages relating to what individuals thought terrorism was:

- 80 per cent agreed that it was the use or threat of violence;
- 65 per cent agreed that the action was political in nature;
- 51 per cent agreed that it included a direct or indirect reference to the idea of fear.

More recently, two professors in Pakistan came to conceptualising the definition in three criteria:

1. The act uses or threatens to use violence. Such events as protests and strikes can be political in nature, however, they refrain from using or attempting to use force to further their cause.
2. The aim of the act is politically motivated and includes political objectives, such as replacing the government, amending legislation, or laying out new policies. Arguably, this is the most important criterion as a lack of a political agenda relinquishes the act from being an act of terrorism, consequently downgrading it to mere criminal delinquencies.
3. The intended target are civilians, with the aim being to cause great civilian

casualties. This distinguishes terrorism from guerrilla warfare as even though it fulfils the two aforementioned criteria, it fails in this aspect. This criterion exploits the vulnerability of the masses which creates a state of fear, which is then fuelled by (social) media. This criterion further excludes those who find themselves in the midst of violent conflicts such as a press journalist being killed whilst reporting in a war zone, as that lacks the shock effect which would follow if the same weapon that killed the journalist was tested on a larger group.

2. From the political actors' point of view

Schmid's research helped amend the UK's Prevention of Terrorism Act which defines terrorism as: 'the use of violence for political ends, including any use of violence for the purpose of putting the public or any section of the public in fear'. It is crucial that the act itself has a political message. For example, a series of kidnappings would create fear in a community, but they would lack a political agenda.

The UN Security Council Resolution S/RES/1566 (2004) is in line with the prior mentioned definitions and states the following: 'Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act [...]'

3. From those labelled as terrorists' point of view

In 1998, Osama Bin Laden describes his religious terrorism as being 'directed at the tyrants and aggressors and the enemies of Allah [...]. Terrorising those and punishing them are necessary measures to straighten things and make them right'. Bin Laden is perhaps the most accurate person to demonstrate on why it is genuinely difficult to define the term, as he is perceived by most as a terrorist, however his vast network of followers views him as an incarnation of their god. This division of opinions has created cold relations between Muslims and non-Muslims.

The ever-evolving term: new vs old terrorism

There are four main types of terrorism:

- (a) Insurrectionary terrorism, which is anarchist;
- (b) Issue terrorism, which promotes the main cause of the attack;
- (c) Nationalist terrorism, which is anti-colonial and aims to gain independence;
- (d) Global terrorism, which aims to inflict damage on a world power state such as religious attacks.

Since 1995, 56 per cent of terrorist groups that were believed to be operational were classified as having a religious motivation or character. Proponents of the concept of new terrorism claim that due to terrorism fulfilling a religious imperative, instead of a pragmatically identified political strategy, the nature, and composition of the groups changed increasingly. The new terrorism has a structure of networks, whereas the previous form was more hierarchical in essence. A significant number of terrorist groups prefer to spread terror outside of their country in a transnational manner, rather than as in the past, limiting themselves to a territorial orientation. Nowadays, the preferred method is following through with extreme violence, rather than displaying or threatening violence.

Obstacles and the importance of a definition

Various factors have contributed to the absence of one internationally accepted definition of terrorism. Firstly, different states have been prone to fall victim to different strands of terrorism. Consequently, it is very difficult to have a single definition, which would be an umbrella term for such vastly diverse methods of causing terror. Secondly, terrorism is a pejorative term with negative connotations that are sometimes used strategically to undermine and delegitimise the actions of one's opponents. Undoubtedly the term is linked to destruction and violence, therefore to be labeled as a terrorist has restrictive consequences in the international sphere.

The enemy of a common definition is the notion that one man's terrorist is another man's freedom fighter. Yasser Arafat claimed to be defending self-determination through the Palestinian Liberation Organisation by

insisting that some political causes were pure enough to justify non-state violence. Although his position was found to not be upheld by the UN High Level Panel, it continues to remain an obstacle to an international definition.

Conclusion

Nowadays, we have fallen into a vicious cycle of labelling any violent act as an act of terrorism. This is mostly due to the spread of fear of the Islamic so-called State. The somewhat outdated literature on this topic has a long way to go to accurately identify the current strands of it. This lack is caused by the quick digital evolution of terrorism through hacking for ransom and posting confidential documents to the world. Furthermore, ISIS' terrorism has taken a turn for when the forces were fighting it on the ground, it kept gaining popularity as an idea. An idea is arguably more dangerous in the long term than occupying territories and persecuting civilians in the areas occupied by ISIS. As those indoctrinated into the organisation through an idea, can be based anywhere in the world, and often act alone whilst conducting an

attack which leads the terrorist group to take credit after the atrocity.

Most of the definitions agree on three things: the act itself had to threaten or use violence, it had to have a political motive, and had to target civilians either physically or through fear. Therefore, to conclude whether or not terrorism is a term that obscures significantly more than it reveals, it is essential to note whether the act fulfils the set requirements. As the aforementioned definitions portray the genuine meaning of terrorism, they set out the criteria for labelling an act as a 'terrorist act'. However, a significant amount of the population mislabels some acts knowingly or not, due to their ignorance and lack of willingness to find out what terrorism means. The misconception of the masses and the strategic labelling of non-terrorists as terrorists in order to delegitimise them, makes it seem that there are a lot more terrorists than there are under the definitions. Therefore, it is necessary for states, individuals, and non-state actors to think twice before using terrorism as a label because as most labels, once it is used, it sticks and it is difficult to take it back.

Pushing for reform at the UN Security Council: finding consensus against Atrocity crimes

Martin Davenas



Defining Atrocity crimes

In 2014, the United Nations published a Framework of Analysis of Atrocity Crimes (FAAC), developed by Ban Ki-Moon's Special Advisers on the Prevention of Genocide and on the Responsibility to Protect.¹ This document compiles all possible 'risk factors' and 'indicators' of environments conducive to the commission of atrocity crimes and was therefore meant as a tool to support monitoring and prevention strategies at different levels. This set of indicators is meant to help identify warning signs, and thus act early to prevent atrocities.

The FAAC provides useful definitions of these most serious international crimes: genocide, crimes against humanity and war crimes.

- **War crimes:** Serious breaches of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict.
- **Crimes against humanity:** Certain acts, such as murder, enslavement, deportation, persecutions or other inhumane acts, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

- **Genocide:** Series of acts committed against perceived members of a national, ethnical, racial or religious group with the intent to destroy this group, in whole or in part. (Not limited to armed conflicts).
- **Ethnic cleansing:** Purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.

While genocide perpetrators are more preoccupied with a form of eradication of the targeted group, not only physically but also culturally, the authors of ethnic cleansing are more concerned with forcibly removing a population from a geographic area. Ethnic cleansing is not per se a self-standing crime of international law, but its perpetration will always fall into other, formal international crimes, being naturally constitutive of either a war crime, a crime against humanity or a genocide.

The responsibility of the international community

Since the 2005 World Summit, states formally recognised their primary responsibility for protecting their own populations from atrocity crimes, and committed to support each other in this regard as well as to take collective action in a timely and decisive manner, should states manifestly fail in meeting this responsibility. This has been interpreted as devolving a responsibility to the community of states, meaning the United Nations and more specifically the Security Council (SC) as guarantor of international peace and security, when states fail to prevent or refrain from committing atrocities. The UN is equipped with a variety of means to be used in contexts of atrocity crimes, from peaceful, provisional measures, to economic sanctions and military action or the creation of ad hoc international tribunals. However, since it has no standing army, the UN has had to ‘contract out’ military actions to coalitions of states willing to intervene, often with a wide margin of discretion and little oversight.

However, the international community has failed to honour this commitment on many occasions. The dreadful events having taken place in Iraq, Rwanda, Darfur, Myanmar, Libya, Syria and many other places are a testament to the international community’s incapacity to react swiftly and adequately to the perpetration of atrocities.

The veto power: the epitome of inequality in the Security Council

The UN Charter set in place an omnipresent paradox, which arguably remains one of the major flaws of the UN system. Indeed, Article 2(1) of the UN Charter proclaims the sovereign equality of all member states, while Article 27(3) requires the concurring votes of all permanent members of the SC for decisions on substantive matters, thus formally establishing an unfair ‘first among equals’ status. It was a pragmatic reasoning that led the founders of the UN to believe that in order to be truly efficient, as opposed to the League of Nations and its rule of unanimity, the great powers had to accept their responsibility to work together. This is why five states were given primary responsibility over maintaining peace and security worldwide, along with the means to preserve their national interests, even from this very emanation of the international community. The ‘P5’ (United States, China, France, Russia, and the United Kingdom) are therefore able to freely veto any decision that they feel may go against their interest, with no restrictions even in contexts of atrocity crimes. For instance, one notes that China has blocked every resolution on Tibet proposed at the SC, that the US vetoes any action against Israel, and that Russia ensures that the SC takes no meaningful action in Syria.² In fact, the veto power has always been harshly criticised as it often allows for the protraction of crises and the continuation of atrocity crimes, as well as the impunity of potential international criminals. As the dominant powers relied on extensive interpretations of the notion of ‘national interest’, the veto power became an enabler of human rights violations. This abusive use of the veto has transformed the Security Council into an instrument for political posturing between permanent members, with seemingly little regard to the cruelty of the atrocities being committed. This naturally leads to the question of reform, and the necessity to establish a politically neutral mechanism of response to atrocity crimes.

Reforming the United Nations Security Council

‘The root of the trouble in today’s world is that we believe in anarchy. We believe in the complete, or almost complete, right of every nation to do what it chooses. One

still has the feeling that anything like a surrender of sovereignty is contrary to our human nature'.³

Former British Prime Minister, Lord Clement Attlee

Several ideas for reform regarding the UN SC have been proposed. They can be separated into two categories: those that suggest an enlargement of the permanent Security Council, hoping to make it more representative and, therefore, less biased; and those that argue for a restriction on the use of the veto for current permanent members.

Enlargement proposals include the 'G4' project, that is the bid by Brazil, India, Japan and Germany to obtain a permanent seat at the SC on account of their economic growth and political influence; the 'Uniting for Consensus' movement, which, on the contrary, suggested the expansion of non-permanent seats, arguing that increasing the number of permanent members would further accentuate the disparity between member countries; the now-disbanded S5's proposition, etc.

Rather than opening the door to more permanent members, and thus, arguably, more gridlock in the SC, there is more merit to be found in proposals aiming at restricting the use of the veto.

In 2013, then-French President Francois Hollande proposed that, in addition to enlarging membership to the UN, the permanent members voluntarily and collectively pledge not to use the veto in contexts of recognised mass atrocities. A French-Mexican reform initiative was launched, which quickly gathered support from other UN member states. This reform project notably provides that the UN Secretary-General would have the power to seize the Security Council in cases of genocide, crimes against humanity, or large-scale war crimes. In September 2018, French President Emmanuel Macron vowed to gather support from two-thirds of UN member states for the suspension of the use of the veto in the event of mass atrocities. The United Kingdom is the only permanent member that supports the initiative.

This 'surrender of sovereignty' may seem far-fetched, especially taking into account the pervasive 'realpolitik' approach to international affairs, but the United Kingdom and France have not used the veto since 1989 when they vetoed, along with the United States, a resolution that condemned the US

invasion of Panama. Some would argue that France and the UK may not have the political muscle to credibly and unilaterally block a UNSC resolution anyway, but that would be inaccurate since the opportunity did present itself since 1989, like in 2003 when France threatened to use its veto in the event of a resolution authorising a US intervention in Iraq. The United Kingdom has also publicly vowed to refrain from using its veto power in the context of atrocity crimes. This desire of two veto-wielding states to show restraint in the use of the veto is encouraging, as it raises the hope that maybe, someday, more permanent members could consider imposing limits on this power.

In recent years, a cross-regional group of 27 states (small and medium-sized), called Accountability, Coherence and Transparency (ACT), started working on ways to improve the effectiveness of the SC, including imposing constraints on the use of the veto. This initiative takes the shape of a code of conduct for the Council members with regards to genocide, crimes against humanity and war crimes, which notably provides that permanent members should refrain from using their veto in such situations. All Council members (including but not limited to permanent members) are invited to accede to the code. As of 1 January 2020, there were 120 member states supporting the Code of Conduct drafted by ACT, including the United Kingdom and France as well as eight of the current elected members of the SC.⁴

However, it is doubtful that much can be accomplished without the support of at least one of the 'big ones', but the United States, Russia, and China appear more interested in 'enlargement' plans. For instance, in September 2017, a resolution was introduced in the 115th US Congress regarding support of India's claim to a permanent seat. Russia and China have also voiced support to India's accession to a permanent seat.

Notes

1. Framework of Analysis of Atrocity Crimes, July 2014 www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf
2. Rosa Freedman, *Failing to Protect—The UN and the Politicisation of Human Rights* (Hurst&Company, 2014) 13
3. Lord Clement Attlee, quoted in Benjamin M. Becker, *Is the United Nations Dead?* (Whitmore 1969) 130
4. Security Council Report, 'UN Security Council Working Methods – The veto', 7 March 2020 www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php



How can the eyeWitness app assist in arresting ICC fugitives?

On 17 July 2019, the Office of the Prosecutor of the International Criminal Court published its Strategic Plan 2019-2021.¹ Under the title ‘Improving performance in relation to the Office’s core activities’, there are four strategic goals for the period 2019 to 2021.

The third strategic goal aims to enhance state cooperation to increase the arrest rate of ICC fugitives. Arguably, securing an arrest for its suspects has been the Court’s ‘Achilles’ heel’,² as implementation success has been characterised by sporadic political momentum rather than actual compliance with the Rome Statute system.

The strategic plan weighs its options to increase arrests in the presence of limited financial resources due to a lack of funding by the State Parties.³ The OTP anticipates a more proactive role by building on lessons learned, sharing special investigative techniques, and organising advocacy campaigns in affected communities. The OTP is committed to liaising with states to improve awareness and to generate an understanding of the support they need to enforce arrest warrants.⁴

States parties have an obligation to cooperate fully with the ICC.⁵ However, the past has shown that states have avoided taking on responsibility for not executed arrest warrants, merely for political reasons.⁶ Arguably, the debate has reached an impasse because, in the absence of an ICC executive organ; such as a police force, the power to execute arrests is entirely vested in states. With political change unlikely to happen anytime soon, and the success of the OTP depending majorly on state cooperation, it is time to shift the debate towards what can be done to end the entrenched climate of impunity.

It is time to focus on assisting those states that are willing to execute arrest warrants but are unable to do so because they lack the technological and financial means. Often the successful locating, tracking, and arresting

of fugitives fails because of these two factors. The eyeWitness to atrocities app is a powerful investigative tool that can assist at all stages of this three-step process.

Generally, the app is freely available on GooglePlay, thus is the ideal choice in the presence of limited financial resources. The app enables the user to take photos and videos, as well as record audio material that has not been edited or altered in any way. The app thus verifies the authenticity of the footage, which increases the likelihood that the material can be used to seek justice in a court of law.

The app operates by ‘automatically collecting GPS coordinates, date and time, and the location of surrounding objects such as cell towers and Wi-Fi networks’.⁷ This gives the footage a high level of authenticity, as it confirms the details of the recording by three separate, independent sources.⁸ Importantly, the footage recorded through the app remains the ownership of the user.⁹ At all times, the user has full control over who else the information is being shared with.¹⁰

During the locating stage, the app could assist investigators as well as members of the general public to collect information about the potential location of fugitives of internationally- recognised crimes. By using the app, they back-up any potentially sensitive information in the secured eyeWitness database, where a team of highly-qualified professionals ‘catalogues, tags, and compiles this information into dossiers tailored to the specific needs of international investigators’.¹¹

Thus, the app could facilitate the operation between on-the-ground investigators and third parties, such as the ICC OTP, which can, based on the information they receive, decide and prepare for the next step of the investigative process, necessary to arrest fugitives of internationally-recognised crimes.

The OTP could monitor the situation as it advances and could invest its limited funding to support crucial transitions, such as from

locating to tracking and tracking to arresting, once the identity of the fugitive has been established (through the app).

Importantly, the eyeWitness app to atrocities does not need an internet connection to work.¹² An internet connection is only required for the initial set-up of the app or when sending material.¹³ This feature makes the app the ideal companion when the investigation takes place in rural areas, where it can be expected that no internet connection will be available.

During the tracking stage, the app could facilitate an active tracking of the fugitive's movements, and provide information about other people who are involved with the fugitive. Based on this information, investigators could establish and analyse behaviour patterns of the fugitive and his direct environment, which are needed to prepare for a secure arrest of the fugitive.

At the arresting stage, the app can serve as an additional safeguard for investigators, in proving that they have complied with any additional requirements, which may arise at this stage. The app documents the time and location automatically and proves that all requirements have been complied with at the time of the arrest.

The app might also be used to document material, which might serve as linkage evidence before a court of law.¹⁴ Such evidence establishes a nexus between the fugitive and the commission of crimes, which makes it easier to prove individual criminal responsibility for the alleged crimes. Such linkage evidence might be, but is not limited to, 'uniforms, insignias, license plates, and types of weapons'.¹⁵

The eyeWitness app to atrocities has much potential to assist the ICC OTP in meeting

its third strategic goal, aiming to increase the arrest rate of ICC fugitives while operating under limited financial resources. Educating investigators in the handling of the app and liaising this readily available technical avenue to states parties, which are willing to investigate fugitives but lack the technical resources to do so, might be just the support they need to enforce arrest warrants of the Court.

Notes

1. ICC, Office of the Prosecutor, Strategic Plan 2019-21 (Strategic Plan 2019-21), available at www.icc-cpi.int/itemsDocuments/20190726-strategic-plan-eng.pdf.
2. Richard Dicker, 'ICC Suspects Can Hide — And that is the Problem', in *JURIST*, 24 January 2013, (available on its website).
3. Strategic Plan 2019-2021, para. 30, see above note 1.
4. Strategic Plan 2019-2021, para. 31, see above note 1.
5. Rome Statute of the ICC, 17 July 1998, Article 86, (www.legal-tools.org/doc/7b9af9).
6. Eki Yemisi Omorogbe, 'The Crisis of International Criminal Law in Africa: A Regional Regime in Response?', (2019), 66 *Netherlands International Law Review* 287.
7. eyeWitness, FAQs, 'Why is the Footage captured with the eyeWitness to Atrocities app more likely to be admissible?', available at www.eyewitness.global/FAQS.html, [last accessed 26 March 2020].
8. *Ibid.*
9. eyeWitness, FAQs, 'Who owns the footage?', available at www.eyewitness.global/FAQS.html, [last accessed 26 March 2020].
10. *Ibid.*
11. eyeWitness, FAQs, 'What will eyeWitness do with the footage?', available at www.eyewitness.global/FAQS.html, [last accessed 26 March 2020].
12. eyeWitness, FAQs, 'Do I need to be connected to the internet to use the app?', available at www.eyewitness.global/FAQS.html, [last accessed 26 March 2020].
13. *Ibid.*
14. eyeWitness, FAQs, 'What type of information is the eyeWitness app intended to collect?', available at www.eyewitness.global/FAQS.html, [last accessed 26 March 2020].
15. *Ibid.*



Sustainability in the Summer Olympics 2032, Amsterdam, the Netherlands

The following includes extracts from the proposed bid to host the Summer Olympics 2032 in Amsterdam, the Netherlands. The emphasis of the extract is on the sustainability of any new or old sports infrastructure and their use after, and how we internalise the external costs.

Olympic Stadium

The Summer Olympics were held in Amsterdam from 17 May to 12 August in 1928 and marked the first time that we lit the symbolic fire of the Olympics. A total of 46 nations were represented by 2,883 athletes in a total of 109 events. In order to host the games, the Netherlands built an Olympic Stadium.

Economic Sustainability

After the games, the Olympic Stadium was one of the buildings that remained and is still actively used to this day. Its use ranges from events and concerts to fundraisers and sports events, such as the National Sports Commemoration; the European Championships; camping in the Olympic Stadium; the TCS Amsterdam Marathon and the Flying Dutch festival. Additionally, there are regular tours held to view and experience the history of the Olympic Stadium as it is a popular tourist attraction.

The fact that the Olympic Stadium is still used today and will still be used after the Olympics is key in indicating the sustainability of the infrastructure. The Stadium, to maintain and finance itself, will continue renting out its space, hosting events and organising tours for tourists. Automatically, all those who are currently employed will remain employed after the Olympics.

Internalising the externalities

By hosting a series of events, the Olympic Stadium has managed to maintain and finance itself. Upon contacting the Stadium for more information, it came to light that they are not financed through sponsors but

rely on the organisations to rent out part, or all of the stadium. The Stadium is therefore self-sufficient. Thus, its funding is dependent on the type of event or the need for space that companies and agencies can rent out. The available spaces include the Stadium facilities, the offices and space that has been transformed into meeting rooms.

Furthermore, the question raised was what sports can be hosted in the Stadium and what the possibilities are to add sports equipment. Most of the sports events that were held back in 1928 could not be held today due to lack of equipment. However, the Stadium has the possibilities to obtain any equipment it may need. For example, the Stadium does not possess an ice-skating rink, but last winter, a company who produces the materials for an ice-skating rink temporarily installed one in the Stadium. The investment of the company was turned back through ticket sales.

The same financing system will apply for the Olympics, and an example is as follows. Companies and countries can donate, rent out or invest in the sporting equipment and new facilities to be placed in the Stadium. The revenue from the ticket sales will partially go to the investors to earn their investment back. This way, any costs that are made to host the Olympics will be the burden of the investors and the Stadium, rather than the State who would be left with a debt. Additionally, as the Olympic Stadium is self-sufficient, they have adequate resources and means to contribute.

Legal sustainability

When hosting the Olympics, the International Olympic Committee (IOC) asks countries to 'provide a guarantee from the relevant authorities, concerning the import, use and export of goods, including consumables, required by the IOC, IFs, NOCs and their delegations, broadcasters, written and photographic press, sponsors and suppliers, free of all custom duties, in order for them to carry out their obligations regarding the celebration of the Olympic Games'.



The current legislation in the Netherlands is that all goods that are imported from outside the European Union must be declared to Customs and those importing it are required to pay VAT over the customs value of the goods. However, any foreign entrepreneurs may make use of a tax representative who could apply the reverse-charge mechanism on import from non-EU countries. The mechanism entails that you do not have to pay the VAT tax on import immediately, but instead file a VAT form through a tax representative. The legislation poses no immediate burden on companies bringing in sports equipment for the Olympic Stadium.

Nonetheless, the legislation may be more favourable if it exempts the payment of a VAT tax altogether regarding any import destined for the Olympics or could assign tax representatives to file a VAT form for the designated companies. The positive aspect of the latter is that it provides safeguards for any import into the country as parties may benefit from not paying, raising a risk that the equipment may be sold or serve another purpose.

Olympic Village

Back in 1928, Amsterdam was unable to adequately accommodate the 2,883 athletes as they merely provided sleeping bags and barracks berths. The accommodation arrangements from 1928 would not be an appropriate infrastructure for the 2032 Summer Olympics. Instead, new infrastructure is established based on an existing infrastructure that will be renovated to accommodate the athletes.

Economic Sustainability and internalising the externalities

For the 2032 Summer Olympics, the Netherlands will renovate the prisons that closed down due to a drop in incarceration rates. The prison that will be renovated is the Almere Penitentiare Inrichting (Almere Prison) that was closed down in December 2018. There have been several proposals to renovate the prison and to create student housing. However, no definite plans have established.

To specify, a drop in incarceration rates has led to the closing down of prisons as the Government cannot maintain them anymore. An example is the Bijlmerbajes which has turned itself partially into temporary refugee

housing, student housing and a cultural hub. The same concept will apply to the Olympic Village.

The proposal is that the Olympic Village will be the soon-to-be renovated Almere Prison. The cell blocks will transform into hotel rooms, the common area will be redone appropriately, and general housing necessities will be placed. The renovation would require a generous amount of financing, consequently making it seem unsustainable for the investors as a long-time period will pass until they earn their investment back if they do at all.

However, in Amsterdam, there is a shortage of student housing. In order to make the renovation sustainable, the Olympic Village will serve as student housing after the Olympics. The renovation solves the shortage and provides affordable accommodation for (inter)national students. Thus, the revenue that is made through rental contracts could compensate for the investments made for the Olympic Village. Therefore, the external costs (the renovation) will be internalised through rental contracts.

Legal sustainability

In order to stay at the renovated prison, the athletes must first be able to enter the country. The Dutch government must provide 'a guarantee from the relevant authorities that, notwithstanding any regulations in your country to the contrary that would otherwise be applicable, accredited persons in possession of a valid passport and an Olympic identity and accreditation card will be able to enter into the country and carry out their Olympic function for the duration of the Olympic Games and for a period not exceeding one month before and one month after the Olympic Games, in accordance with the Accreditation and Entries at the Olympic Games – Users' Guide'.

The current European legislation is that any member state must provide a temporary but speedy and simplified visa and immigration procedure for any athletes and their family during the Olympics. The Dutch legislation requires a regular provisional residence permit if individuals stay in the Netherlands beyond 90 days. The conditions are as follows: you need a purpose to stay in the Netherlands; a valid travel document; an antecedents certificate and upon arrival undergo a tuberculosis test unless your country of origin is on the exemption list.

The conditions are not strict or necessarily time-consuming, meaning they adhere to the European legislation.

Even though the conditions on their surface are not strict or time-consuming, it may still be favourable to have a temporary visa procedure in place that applies only during the Olympic period. It will have the necessary health and security requirements. Nevertheless, it will have a specific objective. After the Olympics, the visa will automatically be revoked.

Of course, another desirable solution is not to make any legislative changes per se but instead, allow for special proceedings that will be less time-consuming.

Application economic principles

When looking at the sustainability of the infrastructures and the legislation, we make a cost-benefit analysis followed by an efficiency analysis.

Cost-benefit analysis

Hosting the Olympics in Amsterdam will attract more tourism than it already has. The Olympic stadium, relying partially on tourism to survive, will benefit immensely from the increase in tourism during and after the Olympics. The downside is that Amsterdam is already crowded with tourists, causing daily inconveniences for the locals.

Another benefit is that hosting the Olympics here will result in a renovation of the prison for the Olympic Village and solving the shortage of student housing after the Olympics. However, it will require finances to renovate, which may take time to return to investors.

Nevertheless, the Olympics Effect will lead to economic growth in Amsterdam, as there will be investments and foreign investors as stipulated earlier. Due to the economic growth, tax revenues increase for the government. However, this may also lead to a burden on the local economy as costs are to be paid that cause an increase in taxes for the local community. It will be possible, however, to minimise the debt for the Netherlands by ensuring a financial plan between the investors and making optimal use of infrastructures already in place.

Kaldor-Hicks efficiency

Kaldor-Hicks efficiency arises when an action increases the net welfare of society, harms at least one person, but those who benefit from the action compensate the injured while still being better off themselves *ex-post* than they were *ex-ante*.

Holding the Olympics increases the net welfare of society by placing Amsterdam on the map and causing a boost in economic growth. It will significantly increase tourism rates and funds which allow for regular maintenance and renovation of the Stadium. However, the investors are potentially at risk to lose their investment or are subject to a long time-period to earn their investment back. The Stadium, the State and third parties (such as the students through rental contracts) could compensate the investors. As explained before, the Stadium has funds of their own which they could use to invest in the Olympics or to pay back investors. Additionally, The Dutch State Budget provides a budget for each ministry, including the Ministry of Health, Welfare and Sport. The budget for 2032 could be reserved for the expenses suffered during the Olympics or to assist investors.

Additionally, the use of the Almere prison is a win-win situation. By allowing renovation of the prison, the Netherlands can resolve the shortage of student housing. Again, any investors may be at risk. However, the Ministry of Education, Culture and Science, who is partially responsible for initiating educational plans which can include student housing, could provide a back-up budget until the end of the Olympics for any unexpected or long term costs alternatively, at least until the rental agreements have been initiated.

Conclusion

To conclude, holding the Summer Olympics 2032 in Amsterdam is not only sustainable but also efficient. By re-using the Olympic Stadium, the costs that the state and locals will burden is significantly low. Most of the finances are from non-governmental organisations, whereas a small part comes from the public budget.

Since the prison is already empty and Amsterdam needs student housing, the renovation for the Olympic Village and the purpose it will serve after is both efficient and sustainable.

Alongside, there are minor if not zero changes in legislation required to host the Olympics in the Netherlands following IOC legislative requirements.



Colette Allen

Open justice and remote court hearings under the UK's Coronavirus Act



The UK's Coronavirus Act (the Act) received Royal Assent on the 25 March 2020. The Act includes provisions to expand the availability of video and audio links in criminal court proceedings. The government says that the aim of these measures is to ensure that the courts, 'can continue to function and remain open to the public without the need of participants to attend in person'. During this turbulent time, difficult decisions have to be made and competing policy interests balanced against each other. In the main, citizens are beginning to accept certain infringements of their rights and liberty to protect public health. Nevertheless, the principle of open justice goes beyond the news interests of the media who are otherwise preoccupied at the moment. Observing open justice is essential to the rule of law and the functioning of democracy. The concerns raised in this article are not restricted to this emergency period. If we allow open justice to be eroded at this point, it may never be restored.

Open justice is a constitutional principle that harks back to the fall of the Stuart dynasty. It is enshrined in article 6 of the European Convention on Human Rights' requirement for both hearing and judgement to be pronounced before the public. It protects public confidence in the judicial procedure by neutralising any suggestions of 'cover up'. As Lord Atkinson famously stated in *Scott v Scott* [1913] AC 417, 'in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means for winning for it public confidence and respect'. Open justice deters inappropriate behaviour from the court and minimises the risk of inaccurate and uninformed comment on legal proceedings. It means witnesses are less likely to exaggerate their testimony or pass on responsibility. It allows for evidence to come forward that would not otherwise be available, and members of the public can find confidence to seek justice in reports of trials that describe similar tribulations

to their own. Finally, open justice ensures participation of society in justice being done, which is most often tied to the preservation of the free press. Without public oversight, there will be no opportunity for intervention; particularly disconcerting for the press given the informal, ad hoc way that hearings on reporting restrictions are requested.

Remote hearings allow participants to dial in from different locations, providing great flexibility in a time of government-ordered social distancing. The concept is not new. Professor Richard Susskind, IT Advisor to the Lord Chief Justice since 1998, has made a career out of championing online courts, emphasising that a shift to online and asynchronous court set up (ie, argument, evidence and decisions are sent without sender and recipient being virtually or physically together at the same time) would make the court service more accessible and affordable. In a tweet on 19 March, soon after the Act's provisions for remote hearings were made public, Susskind said that he was 'confident that judges can deliver just decisions working online'. Most accounts so far confirm this, and indicate that the shift online has gone remarkably smoothly.

In comparison to its European counterparts, where courts have closed entirely or very substantially, the UK's High Court, Court of Appeal and Supreme Court have continued, as far as possible, to operate business as usual. This is no doubt helped by the slow and steady adoption of digital technologies and £1bn programme to improve the efficiency of the courts and tribunals of England and Wales over the past ten years. Judges and barristers have become accustomed to video links for the convicted in the Court of Appeal, to victims of sexual assault and witnesses from abroad. Live-streaming from the Supreme Court was established in 2015 and periodic trials for the Court of Appeal have been a feature of court life since October 2013. Even before the Act was passed, certain courts were permitting the use of video and audio methods and

produced guidance documents, explaining how to make the most of these during the current crisis.

Yet some changes in the law were necessary to permit video and audio to become standard. Clauses 51-55 and schedules 22-26 seek to widen the circumstances in which remote technology can be used in court and tribunal proceedings. Amendments have been made to among others, the Criminal Justice Act 2003, Criminal Appeal Act 1968, Criminal Justice Act 1988, Crime and Disorder Act 1998 and the Courts Act 2003, so as to enable fully-remote proceedings, 'where there is no physical courtroom and all participants take part in the hearing using telephone or video conferencing calls'.

Legislators currently plan to protect open justice through the provisions set out in schedule 25, which gives the court discretion as to whether proceedings will be broadcast 'for the purpose of enabling members of the public to see and hear the proceedings'. The Impact Assessment, however, alludes to the fact that this is being fast-tracked without the level of legislative scrutiny that would happen under normal circumstances: 'Parliament and legal stakeholders have previously expressed concern about the use of fully video enabled proceedings, where all participants are remote. However, we consider that these concerns could be managed in the context of an emergency response to a public health issue'.

The lack of scrutiny means numerous questions are raised by the Act and the answers are far from clear. What happens to the role of the public observer? Open justice cannot be achieved if the media or members of the public cannot observe online proceedings, but is safely live-streaming court hearings feasible in such a short timeframe? What happens in instances where broadcast to the general public would not be legally permissible because it contains restricted information? How will the media/interested observers know to attend a remote hearing, or bring challenges to private hearings? What about GDPR?

The role of the public observer

Good news is found in Mr Justice MacDonald's 'The Remote Access Family Court Guide' where an account is given of Mostyn J's successful hearing involving five parties, evidence from 11 witnesses including four expert witnesses, all conducted in the presence of the press. One of the journalists

who had covered the hearing remotely told the Judicial Office: 'In light of our unique role covering hearings at the Royal Courts of Justice and the Rolls Building for the Press Association, I'd like to express our appreciation for the measures being taken... one of our reporters (Alison Kershaw) was able to cover a hearing before Mostyn J, sitting in Nottingham, which was conducted entirely over Skype... (Alison) was able to perform all of the tasks we would usually perform to ensure the fair, accurate and contemporaneous reporting of proceedings.' In theory, with careful safeguards in place and appropriate organisation, the process can work without infringing unduly on the principles of open justice.

The Act gives the court discretion as to whether or not to broadcast proceedings. This discretion is in line with the way open justice principles differ across jurisdictions, as public live streaming may not always appropriate. Family courts, for example, restrict observation to accredited press card-carrying journalists and legally qualified bloggers under certain conditions. Information protected by reporting restrictions is heard, but cannot be reported by those present. Nevertheless, the mention of restricted material in court does not prevent the media and public from attending. This is clear from Her Majesty Courts and Tribunal Service (HMCTS) Media Guidance: 'the media are entitled by law to hear and be present at all open court proceedings (including those with reporting restrictions in place)'. The courtroom itself therefore acts as a sanctuary, a safe place where sensitive cases can be discussed openly in the knowledge that certain facts will not leave the room. How can this be replicated online without losing an important aspect of open justice?

Broadcasting restricted information

Where restricted information makes a fully public broadcast inappropriate, a solution may be to allow access to a small number of observers who are fully aware of reporting restrictions. Cloisters has already suggested Microsoft Teams as a viable tool in the employment tribunal, and the example set by Mostyn J's court above shows how Skype is another possible solution. The Family Law Bar Association has confirmed that the Information Commissioners Office is content that Skype for Business, LifeSize and Zoom are GDPR compliant.



The issue is the potential side-effects. Allowing a narrow set of ‘accredited’ journalists could set a precedent for limiting public access. What sections of the press are allowed access and the criteria for granting it could raise concerns about impartiality. It is impossible to report everything, but allowing the media to differentiate is self-selective, and certain cases will never be heard. In 2016, Lawrence MacNamara discussed this in relation to terrorism in *R v Incedal* [2014], a trial that saw the court allow only a small number of journalists access. MacNamara argued that the tendency to equate the media with guardians of public interest is oversimplified and damaging. Civil society organisations and legal professional bodies may be just as valuable representatives of public interest; ‘they should be contemplated observers in the same way media interests are’. During a time of national emergency this does seem better than doing nothing. But if remote hearings are, as Susskind hopes, here to stay, then this practice would undermine open justice by proving a significant limitation on public access to the courts.

There have already been calls for clear guidance on how access to remote hearings will work in different jurisdictions. Transparency Project’s Judith Townsend has distinguished two approaches. ‘Model A’ follows a UK Supreme Court style live-stream available for all. ‘Model B’ limits the number of public viewers in a way similar to Mostyn J’s hearing mentioned above. This echoes the Lord Chief Justice’s earlier Protocol, dated 20 March 2020, where the ‘paramount’ goal of public remote hearings where possible was considered in three ways: conducting a hearing from an open court, which is clearly not possible given the current travel restrictions; giving access to accredited journalists; and, live-streaming. The final option, while in many ways the best outcome for open justice, may not be viable given existing server capacities. Proportionality must be balanced against feasibility and capability. As technology develops, the trade-off between the principle of open justice and the principle of timely delivery of justice will cease to be the focus of debate. For the time being, however, the courts will have to make the most of the technology available to them, which means live-streaming every remote hearing will be impossible.

None of the Lord Chief Justice’s options consider the visibility of those present. Who is filmed and what is seen has major safety and

privacy implications, is only the bench to be captured? What about advocates? You would see the witnesses, complainants, defendants etc in open court, so is there an argument for them to be filmed as well, or would audio-streaming their testimony be more appropriate? Townsend notes that in an ideal situation proper impact and risk assessments would be taken of both models. Given the urgency of the Act it is understandable why this has not happened, but if these arrangements continue long-term a proper risk assessment will be vital.

Public awareness of remote hearings

At the best of times, official court lists are an unreliable method of learning which cases to attend. They provide limited information and rarely give any indication as to the nature of the case, and even when legally mandated the lists are not systematically provided across the different courts. The press substitute these with word-of-mouth ‘tip offs’ and wandering around courts to see what may be of interest, both difficult activities in the current climate.

It is now more important than ever that the courts provide observers with accurate and detailed listings ahead of hearings so that they are able to gain access. The Remote Family Court document recognises that court lists play a fundamental part in open justice, and Mr Justice MacDonald’s suggestion is that information about remote hearings and judgements being handed down by email was shared via the Press Association. The drawback is that this does not reach the wider public, or non-subscribers such as interested parties like charities and civil society organisations who also represent the public interest but do not fall into the ‘media’ category.

On a practical level, magistrates’ courts are already systematically underfunded and understaffed. It is foreseeable that making contact with the court with requests for further information on remote hearings will be problematic during this emergency period. Journalists have already reported difficulties with accessing online hearings. Suitable infrastructure for managing increased journalistic traffic will be essential to ensure any provisions set up to protect open justice principles actually take effect.

Security and GDPR

The Act recognises that ‘off the shelf’

communications platforms are particularly vulnerable to malicious third-party hacking. Section 53 provides for temporary modifications of the Courts Act 2003 which make it an offence to: (a) record a broadcast from the court that has been directed for the purpose of enabling members of the public to see and hear the proceedings; and (b) in any event to record or transmit material gained through participation with live link. The Remote Family Court Report draws attention to the 'significant risks' that Skype hearings carry of being recorded by parties calling in from different venues to their solicitors. Pictures of judges, social workers and advocates may be taken and posted on social media, but Mr Justice MacDonald acknowledges that this 'is a risk that will, for the time being, have to be accepted'. It is clear that the need to keep the justice system operational in some form outweighs the security issues in these unprecedented circumstances. Perhaps a platform unique to HMCTS would be more appropriate in the future.

Journalists will need to be told when reporting restrictions are in place. As it stands, courts in England and Wales do not publish information about whether discretionary reporting restrictions are in place. Lessons could be learnt from the Scottish Court's approach, where members of the press are made aware of reporting restrictions imposed by the courts through a designated part of the Scottish Courts and Tribunals website.

Conclusion

It is highly desirable that at this time of national crisis that the operation of the court is as transparent as possible. The groundwork previously made by Susskind and the Lord Chief Justices since 1998 has hitherto been

adding to conventional, physical hearings in an attempt to improve access to justice. Today remote hearings and live broadcasts are not an addition, but a necessity. They are the only viable means of delivering timely and open justice: two fundamental principles of the rule of law. This article has highlighted some of the ways the latter of these rights may be impeded as a result of the emergency provisions, but at a time when inroads are being made into all areas of society's freedom, we must – in part – accept that open justice is just another victim. Nevertheless, the lessons learnt from this emergency trial run of remote hearings will ultimately shape the future approach.

The UK will not return 'back to normal' when this is over because it was already heading in the direction of remote hearings. The Coronavirus Act has expedited this in an unconsidered way, and we must be careful that these rushed measures do not become the baseline. Of course we will return to in-person advocacy again, but if judges spend six months operating in this way, past hesitations toward the efficiency of remote hearings will fall away and the court's perception of technology will be altered forever. The way we conduct remote hearings today will be the default framework as we move forward in the non-corona tech judicial age. This is why we must strive, as far as possible, to get into good habits. As Lord Shaw of Dunfermline warned in *Scott v Scott*: 'there is no greater danger of usurpation than that which proceeds little by little, under the cover of rules of procedure, and at the instance of judges themselves'. This inherent tendency of judicial method means open justice may be killed by a thousand cuts. If the Coronavirus Act is the first blow, the remote courts must tend to the wound rather than administer the infliction of more which may be even deeper.