

Closing the loophole: time to clip Hizballah's 'wings'

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Accepted date: 1st November 2017

Published date: 7th February 2018

Abstract

Following the terrorist attack in central London on 3rd June 2017, the Prime Minister declared, 'Enough is enough' in relation to violent extremism. Just 15 days later, however, the flag of the proscribed terrorist group, Hizballah, was paraded through central London without police intervention. This is because of a loophole by which UK legislation proscribes only Hizballah's military 'wing', but not its supposed political 'wing'. This article examines the legal background to this situation and argues that the current distinction between Hizballah's supposed 'wings' is untenable. If the Home Secretary shares the Prime Minister's view that 'Enough is enough', she should now move to proscribe Hizballah in its entirety.

Key words

Terrorism, counter-terrorism, proscription, Hizballah, 'wings'

Introduction

On 3rd June 2017, a terrorist attack at London Bridge killed eight and left 48 injured. The following day, Theresa May said that there had been 'far too much tolerance of extremism' in the UK and stated, 'Enough is enough' (Walker, 2017). Just two weeks later, however, at the annual Al-Quds Day March, the flags of the terrorist group Hizballah¹ were paraded through central London without police intervention (Harpin, 2017). This article examines the background to this situation and argues for an urgent change in the law.

Introducing Hizballah

Hizballah, an Iranian-backed Shiite militia group, was established in the early 1980s, with the primary aim of driving foreign forces out of Lebanon (BBC, 2016a). Its bombing of French and American bases in Beirut in 1983 claimed 299 lives (Levitt, 2013). It is best known for its hostility towards Israel, culminating in the ruinous 2006 war (BBC, 2008a). More recently, Hizballah has supported President Assad in Syria's civil war (Chulov, 2013).

Hizballah's use of the straight-armed salute requires little commentary (StrategyPage, 2014). Nor does its distinctive militaristic emblem, which features a machine gun brandished aloft (Crone and Boyle, 2015). Nor do these ominous 2002 words of its leader, Hassan Nasrallah:

But I'll tell you. Among the signs [...] and signals which guide us, in the Islamic prophecies and not only in the Jewish prophecies, is that this State [of Israel] will be established, and that the Jews will gather from all parts of the world into

occupied Palestine, not in order to bring about the anti-Christ and the end of the world, but rather that Allah the Glorified and Most High *wants to save you from having to go to the ends of the world*, for they have gathered in one place – they have gathered in one place – and there the final and decisive battle will take place. (cited in Rosenberg, 2015, emphasis added)

Nasrallah's words have not prevented Hizballah from actively 'going to the ends of the world'. In the words of Matthew Levitt of the Washington Institute, Hizballah has established a 'global footprint' of terrorist and criminal activity (Washington Institute for Near East Policy, 2013), with a particular focus on Europe (Levitt, 2015a). Importantly, however, Hizballah has also participated in parliamentary elections in Lebanon since 1992 and won 10 seats in the most recent (2009) elections (BBC, 2016a). It holds positions within the current government (BBC, 2016b) and also provides social welfare within Lebanon (Cammett, 2014). As we shall see, therefore, Hizballah is not completely 'proscribed' under current UK law.

'Proscription' and its consequences: the legislation

Under section 1 of the Terrorism Act 2000 ('the Act'), 'terrorism' has a three-part definition. It comprises of the 'use or threat of action' involving (among other things) 'serious violence', 'for the purpose of advancing a political, religious or ideological cause' and which is 'designed to influence the government or an international governmental organisation'. Section 1(4)(a) and (d) provide that this definition can apply to action which is carried out outside the UK and/or which is designed to influence the government of countries other than the UK.

Section 3 of the Act provides that an organisation is proscribed if it is listed in Schedule 2 - either as originally drafted, or if added to that Schedule by a subsequent order of the Secretary of State.

Speaking in 2000, the then Government Minister Charles Clarke explained that proscription was to have a symbolic role. It was to act as

‘a powerful signal of the rejection by the Government - and indeed by society as a whole - of organisations' claim to legitimacy... It is important for society to state that certain activities are simply... beyond the pale... in the sense of the way in which civilised, democratic society operates. The legislation is a powerful symbol of that censure and is important.’ (Standing Committee D, 2000)

Section 13(1) of the Act states that

‘A person in a public place commits an offence if he—

- (a) wears an item of clothing, or
- (b) wears, carries or displays an article,

in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.’

It is not necessary to prove intention on the part of such a person to arouse the said suspicion.

Section 13(3) provides that a person guilty of this offence is liable to either a prison sentence of up to six months, or a fine, or both.

Under section 121 of the Act, an 'article' includes 'substance and any other thing'. This is clearly broad enough to include a flag or banner. The same section defines 'public place' as 'a place to which members of the public have or are permitted to have access' – which plainly includes the streets of London.

Proscription and its consequences: the precedent

Perhaps surprisingly, there has been only one reported conviction under section 13 since its enactment. In the 2004 Scottish case of *Rankin v Murray* [2004] SLT 1164, Mr Rankin was convicted of the offence after passing through a port on the West Coast of Scotland wearing a ring which prominently displayed the initials 'UVF'. This had prompted police to suspect he was a member or supporter of the proscribed Ulster Volunteer Force. The conviction was upheld on appeal, with the court remarking that '[w]hile the manner and circumstances of the offending [were...] at the least serious end of the spectrum of conduct against which s. 13 strikes', it was nevertheless 'not [...] outwith the range of the legislative intent' (BBC, 2004).²

Application to Hizballah

On a plain reading of the above provisions, it would clearly be appropriate to proscribe Hizballah, as at least some of its activities fall within the definition of 'terrorism'. Equally, and particularly following the case of *Rankin v Murray*, it would seem to be illegal to display the Hizballah flag on the streets of London. If wearing a ring displaying

the initials 'UVF' was at the 'least serious end of the spectrum of conduct against which s. 13 strikes', carrying the Hizballah flag through the streets of London might appear to be at the other end. The latter is *not* a criminal offence, however, because UK legislation does not completely proscribe Hizballah, but currently distinguishes between its supposed 'military' and 'political' wings. We now turn to this distinction.

Hizballah's 'wings' – the current distinction and its rationale

Hizballah was not included within the original Schedule 2, which comprised solely of organisations linked to Northern Ireland. The 'Hizballah External Security Organisation' was added to the Schedule in 2001. In 2008, this wording was replaced by a reference to '[t]he military wing of Hizballah, including the Jihad Council and all units reporting to it (including the Hizballah External Security Organisation).' The other 'wings' of Hizballah – its MPs, government ministers and social welfare activities - are not proscribed.

Speaking in Parliament in 2001, then Home Secretary Jack Straw said:

'We are not seeking to proscribe Hezbollah and Hamas generally. Both organisations are political movements and, just as Sinn Fein is not proscribed, neither are they. We have tried to proscribe—according to one's point of view—their military or terrorist wings, in this case, the Lebanese Hizballah External Security Organisation and the Hamas-Izz al-Din al-Qassem Brigades.'

(*Hansard*, 13 March 2001, col 955)

The allusion to Sinn Fein is significant. The government had proscribed the IRA in the original Schedule 2 but it had not proscribed Sinn Fein for fear of undermining the Northern Ireland peace process. It seems that similar thinking lay behind the distinction between Hizballah's 'wings': a desire to maintain channels of communication with the political 'wing' and to avoid destabilising Lebanon's already delicate internal political situation.

Tony McNulty, then Minister for Security, Counter-Terrorism, Crime and Policing, said the following in Parliament in 2008:

'We recognise that the political wing of Hezbollah and the political organisation provide a social and humanitarian function in Lebanon. To an established extent, they make positive contributions to Lebanon and other places. In keeping with a whole range of United Nations Security Council resolutions, they provide a positive function in Lebanon and other parts of the middle east [*sic*]. It is to be hoped that the strength of those social and political wings would obviate the need for the military wing to do anything in the first place. We cannot reach a position in which the United Kingdom and others call on Hezbollah to disarm and participate in Lebanese politics as a democratic and peaceful political party... and then somehow put obstructions in its way to prevent it from doing so' (*Hansard*, 15 July 2008, col 211).

A 2009 Government Command paper stated that '[t]he UK proscribed the military wing as a terrorist organisation in July 2008 but [was] exploring certain contacts at an official level with Hizballah's political wing, including its MPs' (Home Department, 2009, p. 35, paragraph 3.17). An endnote to the same paper added that 'This [distinction] means

that it is a criminal offence to belong to, fundraise and encourage support for the military wing of Hizballah however the legitimate political, social and humanitarian role Hizballah plays in Lebanon is unaffected by the ban' (Home Department, 2009, p. 168, endnote 53).

The consequences of the distinction

The consequences of this distinction were clearly seen on 18 June 2017 when, as in previous years, Hizballah flags and other articles were paraded through London on Al-Quds Day. The police did not intervene. Since all 'wings' share the emblem, the police appear not to see its parading as constituting an offence under section 13 of the Act. As Police Minister Nick Hurd MP recently stated:

'The flags for the organisation's military wings are the same as the flags for their political wings. Therefore, for it to be an offence for an individual to display the flags for these organisations, the context and manner in which the flag is displayed must demonstrate that it is specifically in support of the proscribed elements of the group.'(cited by Dysch, 2017)

The distinction has therefore created an apparent loophole in the law, whereby it is possible to parade the Hizballah flag in public without committing an offence under section 13, provided the bearer expresses support for the 'political' (rather than the proscribed 'military') wing. The organisers of the Al-Quds Day March seem to have recognised this in their guidance to prospective marchers, which included the following words: '[Y]ou can bring a Hizbullah flag to show support for the political wing of Hizbullah. This is because the political wing of Hizbullah is not a proscribed organisation' (Islamic Human Rights Commission, 2017). Some of the marchers even

affixed stickers expressing support for the political ‘wing’ to their flags (Zionist Federation, 2017a) and to other items (Whatsupic, 2017). Yet they also chanted, ‘From the river to the sea, Palestine will be free’ – which is generally understood to be a call for the military destruction of the state of Israel (Zionist Federation, 2017b). This would appear both to undermine any claim that they were supporting Hizballah’s political ‘wing’ *only* and, in the words of section 13, to ‘arouse reasonable suspicion’ that they were also (or instead) supporting the proscribed *military* ‘wing’.

Figure 1

Example of the stickers used to express support for the political wing of Hizballah



Arguments against the distinction

Arguments for maintaining the distinction between the supposed ‘wings’ are not persuasive. There is no consistent international approach: whilst some countries (and the EU) ban only Hizballah’s political ‘wing’, it is banned entirely in others, including

the USA (Levitt, 2015b, p. 10; BBC 2013; US Department of State, 2017). If (as per the 2009 Command paper) the reason was to facilitate UK government contact with Hizballah's political 'wing', there is no compelling reason why complete proscription would prevent this: Israel (unsurprisingly) proscribes Hizballah in its entirety but has nevertheless sensitively negotiated a number of prisoner exchanges with the group (CNN, 2004; BBC, 2008b). In any event, there was no contact between the UK Government and Hizballah as late as 2013 (European Scrutiny Committee, 2013, paragraph 48.13). If (as per Tony McNulty in 2008) the aim was to encourage Hizballah to disarm and wholly embrace democratic politics, this has clearly failed: Hizballah has been actively involved in Syria's civil war (Chulov, 2013) and is reportedly preparing for a fresh conflict with Israel (May, 2017).

Moreover, there is no reason in the Act itself why the supposed political 'wing' could not be proscribed. Under section 3(4) and (5), the Secretary of State can proscribe an organisation that s/he believes is 'concerned in terrorism' - namely that it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or '*is otherwise concerned in terrorism*' (emphasis added). The last criterion could clearly cover a political party or even a charity with financial, organisational, symbolic or other links to actual terrorists.³

Most importantly, however - and in contrast to the Sinn Fein/IRA paradigm mentioned by Jack Straw in 2001 - Hizballah itself has consistently rejected any notion of separate 'wings'. A foundational 1985 document stated,

'Our military apparatus is not separate from our overall social fabric. Each of us is a fighting soldier' (cited in Levitt, 2015b, p. 13).

In 2000, deputy secretary-general Sheikh Naim Qassem said:

'If the military wing were separated from the political wing, this would have repercussions, and it would reflect on the political scene. But Hezbollah has one single leadership, and its name is the Decision-Making Shura Council. It manages the political activity, the Jihad activity, the cultural and the social activities. . . . Hezbollah's Secretary General is the head of the Shura Council and also the head of the Jihad Council, and this means that we have one leadership, with one administration.' (cited in Levitt, 2015b, p. 14).

In 2002, Muhammad Fannish of Hizballah's Political Bureau said: 'no differentiation is to be made between the military wing and the political wing of Hezbollah.' (cited by Allyn, 2004).

In 2013, Hezbollah's Political Affairs Official, Ammar Moussawi said: 'Everyone is aware of the fact that Hezbollah is one body and one entity. Its military and political wings are unified' (NNA, 2013).

Hassan Nasrallah settled the matter beyond doubt with this 2013 statement (Nasrallah, 2013):

‘However, jokingly I will say – though I disagree on such separation or division - that I suggest that our ministers in the upcoming Lebanese government be from the military wing of Hezbollah!’

In the light of such clear statements, the distinction between the military and other ‘wings’ maintained in UK legislation seems artificial and untenable. If the purpose of proscription is symbolic (as per Charles Clarke in 2001), then Hizballah must be proscribed in its entirety. It makes no sense to separate into parts an organisation whose own representatives stridently deny that any such separation exists.

Time to abolish the distinction

We end where we began. It is unconscionable that just 15 days after the central London terror attacks, the flags of a terrorist organisation were paraded through nearby streets with impunity. Since 18th June 2017, a number of political figures have called upon the Home Secretary to abolish the ‘wings’ distinction and to proscribe Hizballah completely. These figures have included Conservative MP Robert Jenrick (CFol, 2017); Labour London Assembly Member Andrew Dismore (Dismore, 2017); and the Mayor of London, Sadiq Khan (Cohen, 2017). If the Home Secretary shares the Prime Minister’s view that ‘Enough is enough’, she must surely now take this step.

ADDENDUM

On 2nd October 2017, The Jewish Chronicle reproduced correspondence between Sadiq Khan, Mayor of London, and the Home Secretary, Amber Rudd ([Jewish Chronicle, 2017](#)). The Home Secretary rejected a call from Mr Khan to proscribe

Hizballah in its entirety but did not give a clear reason for this decision. The above arguments for the complete proscription of Hizballah therefore remain valid.,

Endnotes

¹ The original Arabic term, meaning 'Party of God', can also be transliterated as 'Hezbollah' or 'Hizbullah'. 'Hizballah' is used in UK legislation.

² Note that as a Scottish case, *Rankin v Murray* would be persuasive but not binding upon courts in other parts of the UK.

³ Note that sections 4 to 6 of the Act create a procedure for any party to apply to be deproscribed, if it feels it has been proscribed wrongfully.

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