

Transnational Repression: What Planet Are We On?

Introduction/ Definition

1. The internet, ease of travel, global instability: these are fine times for states to flex their muscles repressively across borders.
2. Taking the words “Transnational Repression” at face value, Russia’s invasion of Ukraine is a bold contemporary example. But Transnational Repression or TNR is by convention something else – less than war but more than ordinary.
3. The leading think tank **Freedom House** defines Transnational Repression (“TNR”) as occurring,

“...when states reach across borders to silence dissent from activists, journalists, and others living in exile”¹.
4. Most people would consider this too narrow. **Council of Europe** politicians have taken a more effects-based approach, considering that TNR is a threat to the rule of law and democracy, which it certainly is². They say it includes any number of the growing methods used mainly by authoritarian states to exercise power over populations abroad – such as physical attacks, unlawful rendition, passport controls, online intimidation³, surveillance or coercion by threats to family members.
5. But TNR could also be practiced by democracies⁴.
6. The **FBI** refer to TNR in terms of countries harassing and intimidating their own citizens living in the United States, or targeting US citizens who have family overseas or other foreign connections, where the purpose is to silence individuals, get information from them, or coerce them to return⁵.
7. I think this is the most useful definition as it combines means (harassment or intimidation) with target (foreign born or connected) with purpose (silence, obtain information, or coercion).
8. A **common thread** in all these definitions is that transnational repression is activity against a part only of the population: that is, exiles, citizens or former citizens of the repressing country living abroad, or those with foreign connections.
9. But a difference between them is whether TNR must fulfil a particular objective, such as silencing dissent, or whether interference for any reason is sufficient. None of them address actions by patriots who repress their own communities without state direction. There is no published definition **in the UK**.

¹ Written Testimony of Annie Boyajian, Vice President for Policy and Advocacy at Freedom House, to House Homeland Security Subcommittee on Counterterrorism, Law Enforcement, and Intelligence (17.1.24).

² Parliamentary Assembly Committee on Legal Affairs and Human Rights, Report (Doc.15787, 5.6.23).

³ See for example the narrative indictment in USA v Ni Gaobin and others (CR No. 24-CR-43, filed 30.1.24, US District Court Eastern District of New York).

⁴ The government of Canada has stated that the killing of the Sikh nationalist Hardeep Singh Nijjar was linked to the government of India.

⁵ FBI website, ‘Transnational Repression’,

<https://www.fbi.gov/investigate/counterintelligence/transnational-repression> (last accessed 9.5.24).

TNR and National Security

10. As the Council of Europe politicians observed, the substance of TNR is far from new. But something has happened. However difficult to define, TNR has become a phrase, a label, or as I consider it for the purposes of this paper, a planet exercising a gravitational pull on policy-makers, think tanks, police forces and intelligence agencies.
11. The question is, what sort of planet is it? Fundamentally is it a world of national security, or a world in which the principal concern is protecting individual human rights?
12. It is easy to make a case that TNR is matter not only of national sovereignty but of national security. The contemporary backdrop is states pursuing their strategic interests with aggression.
13. The exercise of enforcement powers by one state on the territory of another state is a breach of international law. Left unchecked, lesser measures of repression could lead to greater:
 - To targeted assassinations threatening collective and equal security.
 - To coercive repression used instrumentally as a method of foreign interference, used to incite or coerce a foreign-linked population to violence or to vote in a particular way.
14. Indeed, there is something particularly **emblematic** about the way TNR manifests itself in democracies.
15. It strikes at the freedoms that separate the host state from the authoritarian state - freedom of speech, freedom to dissent, freedom to pursue political or rights-based campaigns, freedom to write. In other words, the very freedoms that authoritarian regimes are unwilling to accord to their own populations.
16. On this basis, TNR is not only a matter of national security but is arguably more serious than some aspects of modern terrorism. I refer to self-initiated lone actor terrorism which, however terrible its local and human effects, may be less likely to shake the security of the state⁶.
17. **On the other hand:**
 - TNR encompasses harassment and low-level threats, not just the bullet and the bomb. Studies of TNR rightly focus on the impact at an individual human level: the sense of dread, the self-censoring, the gradual curtailment of freedoms. Even if based on a foreign political agenda, these are not major national security events.
 - From the perspective of the victim, it may not matter whether the perpetrator is state-tasked, or is acting through a sense of patriotism. But whether another state is involved matters very much in the world of national security.
 - States do have a legitimate interest in what their citizens and former residents are up to abroad. This results in intelligence collection on terrorist suspects who have travelled abroad to fight or train, extradition requests, and extra territorial jurisdiction of counter-terrorism statutes which (at least in the UK) is sometimes

⁶ UK counter-examples are the lone-actor murders of Jo Cox MP and Sir David Amess MP.

directed expressly at citizens overseas⁷. In time of war states may use measures to encourage or coerce their citizens to serve in the military⁸. Not every incidence of the foreign hand is sinister.

- I am not aware of any official statistics on the incidence of TNR, no doubt because it is so hard to define, but also because it is difficult to prove. In general, it is easier to prove a terrorist motive⁹ than to prove the involvement of a foreign state. A focus on protecting individual human rights may therefore be more effective in the long term.

18. A linked question is whether countering TNR requires a whole system or sectoral approach.

19. A **whole system approach** would make TNR a priority for law enforcement and the intelligence agencies, massively increase public awareness, including on the part of health and education, passing new laws, and possibly creating an equivalent to the UK's counter-terrorism policy of Prevent. On the positive side this might yield valuable insights into trends, or make it easier to attribute patterns of behaviour to certain states by looking at the bigger picture. But it could also lead to uncertainty and alarm and the diversion of scarce resources.

20. It might also, as with campaigns against modern slavery, lead to expectations that are hard to meet¹⁰. An enthusiastic embrace of the mission against TNR could lead to unintended consequences. It is foreseeable that TNR victimhood, which may be difficult to prove or disprove, could be advanced as a basis for claiming additional state resources or special immigration status¹¹.

21. A **sectoral approach** would address the most egregious examples of TNR, such as assassination attempts against foreign journalists, where national security was clearly implicated. Or prioritising suspected TNR from certain states. But it could risk leaving less obvious forms of TNR unaddressed.

Fake Counter-Terrorism

⁷ For example, the offence of inviting support for a proscribed organisation under section 12(1) and (1A) Terrorism Act 2000: see section 17(3A) Terrorism Act 2006.

⁸ Both Russia (see Parliamentary Assembly Committee on Legal Affairs and Human Rights, Report, *supra*) and Ukraine (see NPR, 'Ukraine cancels its consular services for all military-aged men living abroad', 3.5.24) are reported to have cancelled consular services for military-aged men living abroad, to encourage their military-age citizens to return home.

⁹ In UK law, terrorism arises where the use or threat of action is made for the purpose of advancing a political, religious, racial or ideological cause (section 1 Terrorism Act 2000).

¹⁰ In According to Dr Alicia Heys of Hull University, in the years 2017-2019, 64 adult offenders were sentenced for offences under the UK's Modern Slavery Act 2015 whilst at the same time 22,756 potential victims were referred to the National Referral Mechanism: 'Prosecutions under the Modern Slavery Act', Blogpost (1.6.23). In 2021, the figure had gone up to 114 convictions but against almost 10,000 modern slavery crimes in 2021-22: Hansard (HC) Vol 730 Col 290WH (29.3.23). 17,004 potential victims of modern slavery were referred to the Home Office in 2023: Home Office, Official Statistics, 'Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2023 (7.3.24). This is despite the non-punishment principle which is intended to incentivise cooperation with the authorities: Jovanović, M., Niezna, M., 'Non-Punishment of Victims/Survivors of Human Trafficking in Practice: A Case Study of the United Kingdom', (Council of Europe, Sept 2023).

¹¹ The UK government states that some have claimed to be victims of modern slavery in bad faith, as a way of resisting immigration controls or deportation: HM Government, Policy Statement, 'New Plan for Immigration' (CP 412, March 2021).

22. It is in the interests of all states, and one that serves international obligations of counter-terrorism¹², that there should be no safe havens for terrorists.
23. Uncomfortably for those who wish to see **international cooperation** in the field of counter-terrorism, it seems that a significant proportion of TNR involves allegations of terrorism or extremism¹³.
24. A repressive state may issue red notices¹⁴ or make politically motivated requests for extradition, seeking to co-opt the authorities of other states. It may encourage local actors to take the law into their own hands, by issuing warrants¹⁵, making denunciations, or place bounties¹⁶. In extreme cases it may use force directly against the alleged terrorist or carry out harassment of connected persons such as family members or lawyers¹⁷.
25. In some cases, there may even be a genuine reason to believe that the target is a threat to national security. But if an individual cannot be formally extradited – for example, because of human rights fears – then a state may prefer to use methods of coercion to induce return.
26. So it is important for states to maintain mechanisms of international cooperation where possible, to avoid providing incentives for TNR¹⁸. Democracies with strong and independent judiciaries ought to be well-placed to sort between genuine and politically motivated extradition requests. Turning inward is not a long-term option.

New Laws

27. Crudely put, civil liberties groups tend to be keener on new laws to prevent TNR¹⁹, than on new laws to counter terrorism²⁰.
28. I suspect this is because TNR is seen as perpetrated by states, whereas the victims of TNR are individuals perceived as vulnerable (e.g., recent migrants) or requiring special protection (e.g., journalists)²¹.

¹² E.g. UNSCR 1456 (2003) on combating terrorism.

¹³ Gorokhovskaia, Y., Linzer, I., ‘Defending Democracy in Exile’ (Freedom House, June 2022). Amnesty International, ‘Terrorising the Dissent: Abuse Of Terrorism-Related Charges In Russia’ (EUR 46/7705/2024, 19.2.24).

¹⁴ Notoriously against Bill Browder, as recounted in in ‘Red Notice’ (Simon & Schuster (October 20, 2015).

¹⁵ FCDO, ‘Hong Kong National Security Law arrest warrants: Foreign Secretary’s statement’ (14.12.23).

¹⁶ E.g. ‘Hong Kong puts arrest bounties on five overseas activists including US citizen’ (Guardian, 14.12.23).

¹⁷ Caoilfhionn Gallagher KC, Opening Statement to Senate Foreign Relations Committee, ‘Transnational Repression’ (5.12.23).

¹⁸ See, Mehra, T., Clarke, C., ‘The India-Canada rift: Sikh extremism and the rise of transnational repression?’ (ICCT, 17.10.23).

¹⁹ E.g. Schenkkan, N., Linzer, I., ‘Out of Sight Not Out of Reach: The Global Scale and Scope of Transnational Repression’ (Freedom House, Feb 2021).

²⁰ E.g. Amnesty International, ‘Submission on Counter-Terrorism Law, Policy and Practice in the UK’ (EUR 45/6347/2023, 10.1.23). In the UK, counter-terrorism laws have been used to deal with TNR: in December 2023, Magomed-Husejn Dovtaev was convicted of an offence under section 58 Terrorism Act 2000 for his part in spying on the headquarters of Iran International, the TV station subject to persistent threats by Iran.

²¹ By contrast, terrorism can be portrayed superficially as committed against the state (ignoring the terrible human cost of terrorist attacks) by individuals regarded as dissidents. Separately, it is foreseeable that terrorist organisations will increasingly be used by states to carry out TNR.

29. Even so, there is a risk that special laws against TNR could have negative consequences for individual liberties²². The difficult work of state attribution might result in longer periods of detention for suspects and wider and more intrusive searches of properties and digital devices.
30. Allegations will be easy to make but, owing to **problems of state attribution**, difficult to prove or disprove; and large foreign-linked communities are likely to contain both dissidents and those who consider themselves patriots with legitimate points to air. In a world of disinformation, there is a risk of fake TNR.
31. Of course, all democracies already have laws that permit the investigation and punishment of TNR. States can only act through individuals, and those individuals will commit general offences of violence, blackmail, harassment or other contraventions of public order. Keeping criminal law up-to-date (for example, by penalising the making of explicit deepfakes²³) will bear down on evolving methods of TNR.
32. The UK has enacted new laws which are, in part, specifically designed to address TNR²⁴. The National Security Act 2023 came into force in December last year.
33. The most relevant offence is “foreign interference”²⁵. I like to think of this offence as a chair having three legs:
- An **interference effect** must be intended. That could be interfering with someone’s human rights – for example, their ability to attend a demonstration.
 - There must be **prohibited conduct**, meaning conduct that amounts to an offence, coercion or misrepresentation. Misrepresentation is quite a low threshold bearing in mind what gets said in a democracy.
 - The **foreign power condition** must be met. Judging whether something is done for or on behalf of a foreign government is a tricky area. When is a state responsible for TNR? Does there need to be evidence of specific direction? What about general encouragement? An online message addressed to patriots? People who just get up one morning and decide to threaten those they see as traitors or extremists? The UK approach is also to include all those who intend to benefit a foreign state²⁶ – even if no foreign state is involved at all.
34. Now is not the time to delve into UK legislation. But it is obvious that without great care, new measures to prevent foreign interference or transnational aggression from authoritarian countries could themselves restrict freedom of speech, peaceful assembly, and association²⁷.
35. My role as Independent Reviewer of State Threat Legislation is to monitor, and report back to Parliament, whether that is or may be the case. As with terrorism legislation, this involves looking both at the content of the legislation, and how it is **operated in practice**.

Conclusions

²² Schenkkan, N., Linzer, I., *supra*, referring to the possibility of a “refugee espionage” law.

²³ Measures currently in the Criminal Justice Bill (2024).

²⁴ Explanatory Notes, para 150 (examples 1 and 4).

²⁵ Section 13.

²⁶ Section 31(5).

²⁷ Mehra, T., Clarke, C., *supra*.

36. So what planet are we on? Is TNR a world of national security, or of protecting individual human rights?
37. Firstly, TNR can have a national security dimension requiring a commensurate response from the authorities of the host state. This could be because of the nature of the activity, or the identify of the repressing state, or both.
38. TNR may be encouraged when international cooperation within a common framework of values breaks down. States do have a legitimate interest in individuals located abroad. Democracies with strong and independent judiciaries ought to be well-placed to sort true allegations of terrorism from fake allegations of terrorism.
39. Secondly, TNR is difficult to define, and state involvement is hard to prove. What is more obvious is the impact on individuals. This suggests a human rights response in many cases. Indeed, special laws against TNR could have adverse consequences, and end up injecting a national security response where none is required.
40. To conclude, we are in a world of national security and human rights protection. We are living in an era of large-scale migration and increasingly aggressive state behaviour. Protecting foreign-linked populations is not only about keeping our fellow citizens and residents safe from harm. But false expectations should not be raised. Simplistic solutions should be avoided.

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