

DURESS AS A CRIMINAL DEFENCE IN SOLOMON ISLANDS

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INTRODUCTION

The defence of duress in criminal law was recently pleaded in four separate homicide cases in Solomon Islands, following a series of murders committed in 2003. The context of the murders was violent civil unrest that continued after the civil war of 1998 – 2000. The disputing groups were primarily people from Malaita and people from Guadalcanal, two of the islands that comprise Solomon Islands. Two of the issues at the heart of the conflict were grievances by Malaitans about the centralisation of power and resources in the capital of Honiara, based on Guadalcanal, and demands for compensation by the people from Guadalcanal for use of their land purchased or occupied by Malaitans during the period since Independence.¹ Although the civil war was officially ended by the Townsville Peace Agreement in 2000, the law and order situation continued to be critical for a number of years following that agreement, and finally prompted the Pacific Islands Forum to send a military intervention force, the Regional Assistance Mission to Solomon Islands or RAMSI, in mid 2003.² Some of the factors contributing to the continuing unrest were that many militants had not surrendered their weapons as required by the Townsville Peace Agreement, but used them to continue to commit criminal activities.³ In addition, the police force was weakened by the fact that some of its police officers were either members of, or sympathetic towards, the two major militant groups involved in the conflict, the Isatabu Freedom Movement and the Malaita Eagle Force. The police force was also compromised by the appointment of former militants, who did not have proper training or qualifications, as special constables in 2000 and 2001.⁴

The first of the cases discussed below concerns a murder committed by a rogue police officer and other police accomplices. The warlord Harold Keke, leader of the rebel Guadalcanal Liberation Front, contributed to the general lawlessness during this period, especially on the Weather Coast of Guadalcanal where he and his followers threatened and murdered more than twenty people between 2002 and 2003,⁵ including the seven members of the Melanesian Brotherhood whose murders led to cases two and three

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¹ Judith Bennett, 'Roots of Conflict in Solomon Islands' (Discussion Paper 2002/5, State, Society and Governance in Melanesia Project, 2002) http://rspas.anu.edu.au/papers/melanesia/discussion_papers/bennett02-5.pdf (Accessed 28 August 2007).

² Tarcisius Tara Kabutaulaka, 'Solomon Islands (Political Reviews: Melanesia)' (2004) 16(2) *The Contemporary Pacific* 393, 393.

³ *Ibid.*, 394.

⁴ *Ibid.*

⁵ *Ibid.* 396.

discussed below.⁶ The fourth case also involves a murder committed by a member of the Guadalcanal Liberation Front.

All of the cases discussed in this paper deal with the question of the extent to which a defendant is able to escape criminal liability for murders committed in situations of a break-down of law and order, and also whether voluntary membership of a violent criminal organisation precludes reliance on the defence of duress. These cases are the first time such issues have been considered by courts in the South Pacific region.⁷ Indeed, prior to 2004 the defence had rarely been used anywhere in the region in any context.⁸

THE DEFENCE OF DURESS

The defence, termed “compulsion” in the legislation, is codified in section 16 of the *Penal Code* [Cap 26] as follows:

A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.

The rationale for the defence is that if a person is faced with a situation where they are compelled by wrongful threats to act in a criminal way in order to avoid a grave harm to themselves, they can not be said to have acted voluntarily in committing the offence, and therefore should escape criminal liability. Most countries in the South Pacific region provide for the defence of duress or compulsion either by codifying it (the defence as codified in Solomon Islands is found also in Fiji⁹ Tuvalu¹⁰ and Kiribati,¹¹ and a variation in Vanuatu¹² and Samoa¹³) or by adopting the common law on duress.¹⁴ The criminal

⁶ The cases themselves involve the deaths of 6 members of the Melanesian Brotherhood. These men came looking for the first Brother, who had disappeared. There is no reported decision regarding the disappearance and murder of the first Brother.

⁷ For the purposes of this paper the South Pacific region is defined to be small island member states of the Pacific Islands Forum that primarily follow English (as opposed to US) common law. These countries are Cook Islands, Fiji Islands, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

⁸ The exceptions being *Rex v Makahununiu* [2001] TOSC 25 <http://www.pacii.org> and *Chandra Masih Hilmuk v. R* (1963) 9 FLR 92. Since then it has been the subject of judicial consideration in Solomon Islands in the four murder cases discussed below, as well as one of armed robbery, (*Regina v Maenu - Judgment 1* [2006] SBHC 29 <http://www.pacii.org>) and one of arson. (*Regina v Randy* [2005] SBHC 57 <http://www.pacii.org>).

⁹ *Penal Code* [Cap 17] (Fiji) section 16.

¹⁰ *Penal Code* [Cap 8] (Tuvalu), section 16.

¹¹ *Penal Code* [Cap 67] (Kiribati) section 16.

¹² *Penal Code* [Cap 135] (Vanuatu) section 26.

¹³ *Crimes Ordinance 1961* (Samoa) section 14.

¹⁴ For example in Tonga: *Rex v Makahununiu* [2001] TOSC 25 <http://www.pacii.org>.

law in Solomon Islands, Fiji, Kiribati and Tuvalu is based on the “Griffith Code” which was drafted by Sir Samuel Griffith for Queensland at the end of the nineteenth century. Although it was intended as a code, and to thus make the common law redundant,¹⁵ it is in fact applied with reference to case law in a way indistinguishable to other pieces of legislation.

There are a few interesting features of the defence as set out in section 16. First, it requires the person issuing the threats to be a co-offender, which is not a specific requirement in the UK or Australia, although as a matter of reality such a person would almost always be a co-offender for inciting the criminal offence even if he or she did not commit any other criminal acts. Second, the defence as worded specifically rules out the possibility of the defendant’s will being overborne by cumulative threats, as the use of the word “only” in section 16 makes it clear that the threats of death or serious injury must have been the sole reason for the person to commit the offence. In contrast, in the English case of *R v Valderrama-Vega*¹⁶ the court recognised that the defence was open even where threats of death or serious injury were not the only factors that caused the defendant to commit the crime. Third, the wording of section 16 limits the defence to where the defendant him or herself is threatened. In this way it is narrower than the defence of lawful use of force or self-defence, which extends to cover a threat to a third person¹⁷ or even property.¹⁸ However, a situation where a defendant is forced to commit a crime because of a threat to a third person may well be covered by the emerging common law defence of duress of circumstances, or necessity as it is sometimes termed.¹⁹

A significant issue concerning the defence of duress around the South Pacific region, as well as in the UK, is the type of offences it is available for, and in particular its availability for the crime of murder. In the UK, duress has been held not to be a defence to murder.²⁰ The rationale for this approach has been supposed to be that a man under duress ‘ought rather to die himself than escape by the murder of an innocent.’²¹ This approach has been explicitly followed in some countries in the South Pacific region, such as Samoa and the Cook Islands, where duress is excluded as a defence to murder and certain other crimes by legislation.²² However, in Solomon Islands, Fiji, Tuvalu and Kiribati, where the legislation is identical, the legislation is silent on any offence limitations for the defence, and the courts have reached different conclusions on its

¹⁵ See Eric Colvin, ‘Criminal Responsibility under the South Pacific Codes’ (2002) 26 *Criminal Law Journal* 93-113.

¹⁶ [1985] Crim LR 220.

¹⁷ *R v Duffy* [1967] 1 QB 63.

¹⁸ *R v Hussey* (1924) 18 Cr App Rep 160.

¹⁹ This defence applies in situations where a defendant is compelled to commit a crime in order to avoid a great evil. It has been accepted in the region in a number of cases including *Lolohea v Police* [2004] TOSC 29 <http://www.paclii.org>, *Stehlin v Police* [1993] WSCA 5 <http://www.paclii.org>, and *Police v Apelu* [2004] WSSC 8 <http://www.paclii.org>.

²⁰ *R v Howe* [1987] 1 All ER 771.

²¹ Blackstone, *Commentaries*, iv, 30 cited in J C Smith and B. Hogan, *Criminal Law* (10th ed, 2002) 254.

²² In Samoa section 14 of the *Crimes Ordinance 1961* excludes the defence for the offences of treason, murder, attempted murder, aiding or abetting rape, abduction, robbery, causing grievous bodily harm and arson and in the Cook Islands section 27(2) of the *Crimes Act 1969* also limits the availability of the defence to numerous crimes.

applicability to the offence of murder. In Fiji, in *Hilmuk v R*²³, the court accepted in *obiter dictum* that the defence could exist for the crime of murder, but did not actually rule on the issue. More recently in *Roko v State*²⁴ the Court of Appeal also accepted that the defence of compulsion could apply to murder, again without discussing any possible limitation on the applicability of the defence, although it was found not to be made out in that particular case. This approach by the courts disregards section 3 of the Fiji *Penal Code* [Cap 17] that provides that the Code ‘shall be interpreted in accordance with the principles of legal interpretation obtaining in England.’ The High Court of Kiribati, however, reached the opposite conclusion in *Republic v Toromon*,²⁵ again in *obiter dictum* without any discussion of the issue. Before the cases that are the subject of this paper arose, this issue of interpretation was therefore still outstanding in Solomon Islands.

THE OETA CASE

The first case in this series was *Regina v Oeta*.²⁶ The case involved two defendants, both of whom were police officers, charged with the murder of a member of the United Nations Development Programme Delegation for the Demobilisation of Special Constables. A third suspect (the suspect), who was linked to the Malaitan Eagle Force,²⁷ and remained at large at the time of the trial, and indeed remains so to this day, carried out the shooting. The two defendants were charged on the basis that they had aided and abetted the murder by confirming the whereabouts of the deceased to the suspect, meeting up with the suspect after the murder, and failing to carry out their duties as police officers to apprehend the suspect. They were also charged on the basis that they were parties to a joint enterprise with the suspect to gun down the deceased. The defendants claimed that although they accompanied the suspect throughout, they did so unwillingly and primarily through fear of being killed or shot by him.

The court found that although duress is not a defence to murder in England, it is in Solomon Islands by virtue of section 16 of the *Penal Code*, but did not discuss why this was so, nor did it refer to any cases from South Pacific jurisdictions on the issue. In considering whether there was a threat made by the Suspect to the two defendants, Chief Justice Palmer acknowledged that ‘there was no direct evidence of threats of shooting or killing coming from the lips of the Suspect.’ However, he found that ‘the overwhelming evidence from the Prosecution witnesses and these two Defendants was that such threat was present throughout without it having been spoken or expressed.’ The evidence to support this was the evidence of all witnesses about the suspect’s access to guns, his violent nature, his short-temperedness, and the very real fear senior police officers continued to have of him. Consequently, his Honour found that at the time of the murder

²³ [1963] 9 FLR 92; [1963] FJCA 1 <http://www.pacii.org>.

²⁴ [2004] FJCA 23 <http://www.pacii.org>.

²⁵ [2005] KIHC 26 <http://www.pacii.org>.

²⁶ [2004] SBHC 123 <http://www.pacii.org>.

²⁷ Mark Forbes, ‘Strangers in Paradise’ *The Age* (Sydney, Australia) 20 August 2003 <http://www.theage.com.au/articles/2003/08/29/1062050662299.html> (Accessed 28 August 2007).

the two defendants had a ‘direct and immediate’ fear and that this engendered ‘a feeling of helplessness and hopelessness.’

The court also considered the standard to be used in judging the response of the defendants to the threat, and approved the test of a ‘man of reasonable firmness sharing the characteristics of the Defendants’ set out by the House of Lords in *R v Howe*,²⁸ observing that the test is based primarily on a duty owed to an ‘objective innocent victim.’ Applying that standard of behaviour to the two defendants the court found that although the two defendants had acted ‘cowardly through fear,’ and not in the courageous way others had acted during the period, it could not be said that they had acted much differently from how a man of reasonable firmness may have done. The court did not discuss whether the fact that the defendants were police officers should require them to act to a higher standard than the ordinary man. His Honour concluded that the prosecution had failed to prove beyond reasonable doubt that the defence of duress was not made out and the accused were acquitted.

This case represents a high water mark in the acceptance of the defence of duress in Solomon Islands. As we will see below, the courts in the following three cases were concerned to draw tighter limitations on the applicability of the defence.

THE MELANESIAN BROTHERHOOD CASES

The next two cases arose from the murder of six men who were all members of the Melanesian Brotherhood, a religious order in the Church of Melanesia (Anglican Church) by members of the Guadalcanal Liberation Front (GLF). The Brothers had been on a mission to the Weather Coast to find another of their Brothers, whom they believed had been abducted and held for questioning by the GLF. Three of the Brothers were executed the day they arrived, and the other three the next day.²⁹

The *Cawa* case (High Court and Court of Appeal)

In *R v Cawa*³⁰ the first defendant, Ronny Cawa, described as the ‘boss Commander’ of the GLF, was charged with the murder of the three brothers on the first day and the ordering of the death of the three Brothers on the second day. He accepted that he shot the three Brothers and ordered the shooting of the others, but claimed that he was acting in self-defence at the time. His claim was based on the fact that the Brothers were carrying religious sticks which he believed had a magical power to kill. The court dismissed this defence, holding that the response to the Brothers’ use of the sticks was totally out of proportion to the circumstances.

The second defendant was charged with murder on the basis that he was an active participant in the beating that led to the death of one of the Brothers. The third defendant

²⁸ [1987] 1 All ER 771.

²⁹ An in-depth account of the Melanesian Brotherhood and their experiences during the civil war and post-war period can be found in Richard Carter, *In Search of the Lost* (2006).

³⁰ [2005] SBHC 18 <http://www.paclii.org>.

was charged with the murder of another Brother by shooting him at close distance. The second and third defendants claimed that at the time of the murders they were acting under compulsion.

In dealing with these claims, Naqiolevu J accepted, without reference to any case authorities (including *Oeta*), that duress could be a defence to murder in Solomon Islands. His Honour then went on to adopt the principle set down by the House of Lords in *R v Hasan*³¹ that an accused person who has voluntarily joined an organisation that commits violent offences or is involved in criminal activity and participates in such activity, cannot avail himself of the defence of duress. It held that both men had voluntarily joined the GLF, and that they must have known of its violent nature, but that they did not leave and continued to be associated with its illegal activities. The defence of duress had therefore been successfully rebutted beyond reasonable doubt by the prosecution and the men were found guilty of murder and sentenced to life imprisonment.

The second and third defendants appealed to the Court of Appeal in *Kejoa v Regina*.³² The court (Lord Slyn of Hadley P, Williams JA and Ward JA) held that the trial judge had erred in holding that principles of the common law modified the clear and express words of the *Penal Code*, and that it could not be said as a matter of principle that the defence of duress could never be made out where a defendant had voluntarily laid himself open to the duress. However, their Honours also stated that although the question must always be whether the defence as set out in section 16 of the *Penal Code* was made out, common law principles such as those set out in *Hasan* were relevant in interpreting the provisions. The court then held that although it accepted that the two defendants each had 'a real fear of reprisal if the order was not obeyed,' that was not the *only* reason they had carried out the murders – they had also carried them out because of their membership of the GLF. For this reason, section 16 of the *Penal Code* could not be held to apply. The Court of Appeal also approved a number of principles set down in *Hasan* as being applicable to section 16. These are:

- (1) adults of sound mind are ordinarily to be held responsible for crimes which they commit.
- (2) ...the law should confine the defence of duress within narrowly defined limits.
- (3) To found a plea of duress the threat relied on must be to cause death or serious injury.
- (4) The threat must be directed against the defendant.
- (5) The test is an objective one.
- (6) The defence of duress is available only when the criminal conduct it is sought to excuse has been directly caused by the threats which are relied upon.
- (7) Duress will excuse criminal conduct only if.... there was no evasive action he could reasonably have been expected to take.³³

³¹ [2005] UKHL 22 <http://www.bailii.org>.

³² [2006] SBCA 6 <http://www.paclii.org>.

³³ *Ibid*.

The Kelly case (High Court and Court of Appeal)

The second case arising from the murder of the Melanesian Brothers is *Regina v K.*³⁴ The defendant in that case had been 14½ year old when he was handed a rifle by Ronnie Cawa, the commander in charge, and ordered to shoot one of the Brothers. He based his defence on duress, arguing that he had joined up with the GLF when his village had been burnt down, after which he fled to the jungle and then joined up with Harold Keke's boys and followed them to their camp. He argued that although no direct or specific threat had been made, he knew that within the GLF an order was an order, and if it was not obeyed then the consequences were death or a severe beating. Chief Justice Palmer did not accept that the defendant joined the GLF involuntarily, noting that there was no evidence why he could not have followed his parents and gone away from all the violence, nor why he could not have left at a later stage. The court therefore found that there was no evidence to suggest that he was in fear of reprisals. Rather, '[w]hat was uppermost in his mind at that time in my respectful view was his desire or determination to obey or comply with the order given.' He went on to find that the Court of Appeal's decision in *Hese* applied on all fours to the facts, namely that when he joined '*...he knew or must have foreseen that he would have to obey such orders, under penalty of death or grievous bodily harm if he did not do so, he cannot be heard to say that he was compelled within the meaning of section 16 of the Code and that he is exonerated from liability.*'³⁵ Although the court noted the defendant's age, no consideration was given to the effect of his age on his ability to rely on the defence of duress. The trial judge sentenced the defendant to life imprisonment.

On appeal, in *Kelly v Regina*,³⁶ the appellant sought to rely on the fact that he was only 14½ years at the time of the offence, and as such was 'more susceptible to manipulation by an order to kill' than an older person. The Court of Appeal rejected the appeal on this point, holding:

There may well be substance in such a submission in appropriate cases. Unfortunately, the point was not raised in this way at the trial. As a consequence, the material needed to make it good was not presented at trial and is not before us now. There is a dearth of evidence on critical matters about the appellant's state of maturity, vulnerability and education, and about his appreciation or otherwise of the tragic consequences of his obeying the order given to him on 25 April 2003. Without adequate information, perhaps psychiatric, of this kind, it is not possible on appeal now to conclude that the outcome could or might have been different if the point had been raised at the trial. On the evidence before him, the learned Chief Justice was justified in finding and in holding in accordance with the decisions of this Court that s.16 had no application to the appellant.

³⁴ [2006] SBHC 35 <http://www.paclii.org>.

³⁵ Emphasis in original.

³⁶ [2006] SBCA 21 <http://www.paclii.org>.

The Court referred to the fact that Solomon Islands had acceded to the *Convention on the Rights of the Child*,³⁷ and noted that it ‘does allow young people to be prosecuted if the procedure can be fair and takes into account the particular needs and vulnerability of young people.’ However, because the *Convention* had not been ratified and incorporated into domestic law it could serve only as a guide to the procedure to be followed. In considering whether the trial of the defendant was oppressive, unfair or unjust to the defendant considering his age, the court noted that at the time of the trial the defendant was almost 17¾, that he had been represented, and that there was no suggestion that he did not understand the nature of the proceedings or their significance. The court therefore found that the trial had not been unfair in any way. What the court did not, however, discuss was that the reason the defendant was almost 18 at the trial was that he had been obliged to wait almost three years in custody between his arrest in October 2003 and his trial in July 2006.³⁸

The prosecution and trial of a juvenile for the offence of murder is always morally problematic, and needs to be done with considerable sensitivity. It is hard not to conclude that the system here failed the defendant in many ways, including his defence counsel’s omission to make relevant arguments concerning his age, and the delay of three years before his trial which allowed the court to avoid the necessity to make allowance for his “particular needs and vulnerability” as a young person at trial.

Fortunately, the Court of Appeal did at least quash the sentence of life imprisonment given by the trial judge. The basis for this was its finding that the trial judge had erred in automatically imposing a sentence of life imprisonment, rather than having regard to section 13 of the *Juvenile Offenders Act 1972*, which permits a court to sentence a young person to a period of detention (instead of imprisonment). The court remitted the matter back to the High Court for sentencing. On re-consideration of sentence, in *Regina v K*,³⁹ Chief Justice Palmer took a number of factors into account in a thoughtful and well informed judgment. He eventually sentenced the defendant to eight years imprisonment, and reduced it to four taking into account the three years that had already been spent in custody. He then ordered that instead of spending the four remaining years in prison the defendant could serve out the remainder in the community in the case of a relative or other fit person.

THE HESE CASE

The fourth murder case, *R v Hese*⁴⁰ also involved a defendant who was a member of GLF. However, rather than murdering one of the Melanesian Brothers he was charged with the murder of his cousin brother. He claimed that he only committed the murder because he was compelled to do so by the leader of the GLF, Harold Keke. The trial judge, who was the same as in the *Cawa* case, dismissed his claim on the same basis as

³⁷ (Entered into force 2 September 1990, acceded to by Solomon Islands 9 May 1995).

³⁸ The facts of his arrest and detention are discussed in the decision concerning bail: *K v Regina* [2005] SBHC 150 <http://www.paclii.org>.

³⁹ [2006] SBHC 53 <http://www.paclii.org>.

⁴⁰ [2005] SBHC 137 <http://www.paclii.org>.

he had used in *Cawa*, holding that ‘the Prosecution has negated the defence of duress in the case by virtue of the accused membership of the illegal organisation the GLF, whose leadership encouraged and committed such brutal and barbaric act against their own people.’ No consideration was given to whether the standard of reasonableness for duress is different in a situation where the victim is related to the defendant, as the court based its decision solely on the basis of membership of the GLF. On appeal, in *Hese v Regina*⁴¹ the court (which was also comprised of the same members who had sat in *Kejoa*) reached the same conclusion as in *Kejoa*, holding that:

If he had, without compulsion, joined such an organization and either he had given an undertaking that he would obey orders, or when he joined he knew or must have foreseen that he would have to obey such orders, under penalty of death or grievous bodily harm if he did not do so, he cannot be heard to say that he was compelled within the meaning of section 16 of the Code and that he is exonerated from liability. Similarly if he subsequently could have left but did not do so he would not be able to rely on the defence because he was not “compelled” to say and obey the order. Again if he did not know initially that the organization carried out such acts of violence but failed to leave the organization when he did know and could have left, he will not be able to rely on the defence of compulsion for subsequent acts.

The court concluded that, although the defendant may not have been aware of the violence nature of the GLF when he first joined, his continued membership of it once he was aware of the criminal activities it was involved in, meant that it was impossible for him to establish he was compelled to commit the crime. Unfortunately, the Court of Appeal also had no regard to the fact that the man the defendant killed was his cousin brother, and what effect this may have had upon the question of whether it was *only* the threat of death or grievous bodily harm that caused him to commit the crime.

CONCLUSION

These cases together show a development in the approach of the Solomon Islands courts toward the defence of duress. We see them grappling with the difficulty of finding a balance between interpreting the defence too expansively and permitting people to escape criminal liability where they should have stood up to a threat, and avoiding unjustly criminalising people who only commit crimes because they are faced with a choice between that and death or serious injury. Thus in *Oeta* the court took a relatively liberal view of the defence, allowing it in a situation where there had been no explicit threats and the individuals involved were police officers. However, in the other three cases discussed in this paper we can see a clear withdrawal from this relatively open position, and a desire to draw strict limits around the ability to use the defence.

Another major point to arise from all the cases is the failure of counsel to raise significant issues before the courts. The three issues that stand out in this regard are the question of

⁴¹ [2006] SBCA 7 <http://www.pacii.org>.

whether the defence of duress is available for the crime of murder, the relevance of the age of a defendant when considering the effect of a threat on a defendant, and the relevance of a blood relationship between a defendant and the victim in determining whether the crime was committed only because of membership of a violent criminal organisation. These failures on behalf of counsel, for which the judges must also share some blame, means that the decisions made by the courts lack a consideration of legal principles that are necessary in developing a rich regional case law.

These failures notwithstanding, we can draw a number of specific points about the interpretation of section 16 from the four cases discussed in this paper. The first is that it is now clear that the defence is available in Solomon Islands for the offence of murder. While this position is consistent with general principles of criminal and civil law which do not require a person to sacrifice their own life for others,⁴² it should have been adopted on the basis of a thoughtful consideration of all the issues involved. Second, it is now established that there does not need to be an explicit threat to cause death or grievous bodily harm to establish duress. Instead, it is sufficient if the threat was implicit in the circumstances. Third, in *Oeta* the court demonstrated that the question of the effect of the threat on both the defendants and the objective “man of reasonable firmness” had to be considered law and order context in which the crime had occurred. The fourth and final point is that although, unlike in England and Australia, voluntary membership of a criminal organisation known to commit violence does not *automatically* mean a defendant cannot rely on duress. Rather, the defendant must prove that he or she committed the crime *only* because of the threat, and not because of his or her membership of that organisation, which may be extremely difficult. Perhaps the only way a defendant could successfully do this would be to argue some personal factor that overrode the expected willingness to commit acts of violence accepted by membership, such as where the defendant is forced to kill a member of his or her close family.

⁴² For example the defence of necessity or duress of circumstances is available for the offence of murder: see *A (Children), Re* [2000] EWCA Civ 254.