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Terrorism Legislation and The Human Rights Act 1998

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TERRORISM LEGISLATION AND THE HUMAN RIGHTS ACT 1998

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I INTRODUCTION

The events of September 11th led worldwide to a heightened sense of apprehension and fear of the threat of international terrorism. The bombing of the world trade centre led not only to the high profile and ongoing military reaction in Afghanistan, but also to calls for greater legal recognition of the threat posed to citizens by international terrorist organisations. One fear when a legislative reaction to a traumatic world event is that civil concern will lead to the abrogation of the fundamental human rights of the individual, and the curtailment of basic fundamental rights in the interests of national security and “freedom”. As Ronald Dworkin, put it: “People’s respect for human and civil rights is often fragile when they are frightened, and Americans are very frightened”.¹ In the wake of September 11 and in the shadow of continued anthrax scares, several new anti-terror provisions passed into law in America, either through a largely concurring congress or by Presidential order.

The PATRIOT Act (“Provide Appropriate Tools Required to Intercept and Obstruct Terrorism”) passed on October 25 with only one dissenting vote in the Senate and sixty six in the House of Representatives. It is a large and unwieldy piece of legislation, containing a wide definition of terrorism and wide-ranging powers to deal with those engaged in terrorist activities. It also amended immigration powers to provide that where the Attorney General has reasonable grounds for suspecting an immigrant of terrorism or aiding terrorism, then he may detain the individual without charge under certain circumstances. PATRIOT also contains many

¹ He continued: “The country has done worse by those rights in the past moreover. It suspended the most basic civil rights in the Civil War, punished people for criticizing the military draft in World War I, interned Japanese American citizens in World War II...Much of this was unconstitutional, but the Supreme Court tolerated almost all of it. We are ashamed now of what we did then: we count the Court’s past tolerance of anti-sedition laws, internments and McCarthyism as among the worst stains on its record. That shame comes easier now, of course, because we no longer fear the Kaiser, or kamikazes or Stalin. It may be a long time before we stop fearing international or domestic terrorism however, and we must therefore be particularly careful now”. Ronald Dworkin “The Threat to Patriotism” (2002) *The New York Review of Books*, 44.

provisions relating to the investigation of crime more generally, including an expansion of the government's power to undertake searches without consent.

On November 13 the President announced that he would introduce a military order to ensure that any non-US citizen suspected of terrorism would be tried by military tribunal rather than by an ordinary criminal court. The President suggested that these trials could be in secret and without the protection of ordinary due process protections. The President would be the ultimate arbiter in these cases, able to review decisions of the tribunal or designate this power to the Secretary of Defence. These proposals met with serious resistance not only from liberal commentators and organisations but from conservative members of congress.¹

However, it was not only the United States that was considering increased anti-terrorist measures post September 11. The European Council met at the end of September 2001 and approved a European plan of action to deal with the crisis. This plan of action included a number of legislative measures, including a proposal for a Council Framework Decision establishing a European Arrest Warrant allowing for the cross border recognition of arrest warrants independently of the law of extradition, and a more general proposal for a Council Framework Decision on Combating Terrorism to provide a Europe-wide definition of terrorism and common minimum penalties for terrorist offences.¹

II BACKGROUND

Even before September 11, the UK had in place permanent terrorism legislation in the form of the Terrorism Act 2000. Prior to its enactment, temporary anti-terrorist

² See Aryeh Neier "The Military Tribunals on Trial" (14 February 2002) *The New York Review of Books*.

³ Sub-Committee E of the House of Lords Select Committee on the European Union produced a brief report on early drafts of both of these measures. The Report, "Counter-Terrorism: The European Arrest Warrant", HL Paper 34, can be viewed online at www.parliament.uk. For further information on the European Union response to September 11th, see <http://www.europa.eu.int>.

legislation had been enacted to deal with the specific situation faced by the United Kingdom in Northern Ireland. The Terrorism Act was introduced after a full inquiry into whether permanent anti-terrorism legislation was necessary. The inquiry concluded that such legislation was necessary but that four principles should be adhered to:

- The powers concerned should approximate as closely as possible the ordinary criminal law and procedure.
- Additional powers and offences should only be created where they are necessary to meet an anticipated threat, and should balance the need for security with respect for individual rights.
- Additional safeguards should be imposed alongside additional powers.
- Any new measures should comply with the UK's international obligations.¹

The application of the Terrorism Act 2000 is very wide. Detailed provisions cover acts committed in the United Kingdom relating to the commission of terrorism abroad.¹ Liability can be imposed under the Act for acts done in places other than the UK, relating to terrorist explosions, use of biological or chemical weapons for terrorist purposes, or the funding of terrorism anywhere in the world.² The Act makes it a criminal offence triable in the United Kingdom to do anything to finance, prepare for or carry out acts of terrorism anywhere in the world and the Act gives significant powers to the State to tackle both international and domestic terrorism. It represents the most wide-ranging terrorist legislation in Europe.³

⁴ Inquiry into Legislation against Terrorism 1996 (Cm 3420).

⁵ Terrorism Act 2000 (UK) ss 15-18 and 54-61.

⁶ Terrorism Act 2000 (UK) ss 62 and 63.

⁷ See the Comments of the House of Commons Select Committee on Home Affairs: "This country has more anti-terrorist legislation on its statute books than almost any other developed democracy. Much of it, rushed through in the wake of previous atrocities, proved ineffective and in some cases counter-productive and needed to be amended" Select

In addition to the Terrorism Act, individuals engaging in financial services provision in the UK are regulated by the Money Laundering Regulations 1993 and 2001. The powers relating to the use of intelligence gathered by the security services and the control of information relating to digital communications were recently extended by the Regulation of Investigatory Powers Act 2001. The Home Secretary also has immigration powers which will allow him to deport non-nationals who may pose a threat to national security and whose presence in the United Kingdom is not conducive to the public good. This is subject to a special appeal to the Special Immigration Appeals Commission (SIAC),⁸ of which I shall speak more later.

In the light of this extensive anti-terrorist legislation, various commentators⁹ have queried the need for the UK to enact another piece of anti-terrorist legislation providing ever wider State powers.¹⁰

Committee on Home Affairs, The Anti-Terrorism, Crime and Security Bill 2001 (HC 351 2001-02) 19th November 2001, para 1.

⁸ Special Immigration Appeals Commission Act 1997 (UK).

⁹ For example, see Satiyesh Mano and Greg Wilcox "Security and Civil Liberties: The Observer debate" (30 September 2002) *The Observer*.

¹⁰ Indeed, there are already some human rights objections being raised in relation to the Terrorism Act itself. I am currently acting as co-counsel in the United Kingdom Administrative court which seeks to challenge the decision of the Home Secretary to declare an organisation a "proscribed organisation", as an organisation concerned in terrorism. His designation has the effect of making supporters and officers of the organisation concerned subject to wide-ranging serious criminal offences. My clients, an Iranian opposition organisation which conducts armed activities in Iran, argues that it is as much or as little an international terrorist organisation as was the ANC in its struggle against apartheid and that the relevant provisions of the Terrorism Act and the accompanying Order made by the Home Secretary, prevent them from exercising their fundamental right to freedom of political expression, to freedom of association and peaceful assembly, to the enjoyment of a good reputation, and to the enjoyment of property without discrimination. The Administrative Court will soon decide whether to give permission for this judicial review.

III UK LEGISLATION IN THE WAKE OF SEPTEMBER 11TH

On October 15, the Home Secretary issued a statement outlining the Government's intention to introduce several new measures. The Home Secretary reasoned that the time the Government had taken to consider its reaction showed that the measures proposed would constitute a carefully considered response, proportionate to the threat faced by the UK as a participant in the "war on terrorism".¹¹

The Home Secretary's Statement of intent included:

- Additional provisions to combat the financing of terrorism.
 - Implementation of EU proposals on the definition of terrorism.
 - The creation of a new offence of incitement to religious hatred.
 - Measures to enforce the exchange of information about passengers and freight.
 - Measures to enforce the retention by communications service providers of records of calls etc.
 - Powers to remove suspected terrorists from the UK.
 - Powers to detain persons suspected of terrorism pending deportation.
 - Powers to deny asylum to persons suspected of terrorism.
 - A review of extradition procedures.
 - Measures relating to aviation security.
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¹¹ The House of Commons Select Committee on Home Affairs, in their Report, "The Anti-terrorism, Crime and Security Bill 2001", (HC 351 2001-02) congratulated the Government's delay: "The events of September 11 brought a wholly new dimension to terrorism and it is inevitable that they have prompted a major review of the powers available to those charged with countering the terrorist threat. It is important, however, that the response should be a considered one and we are grateful that the Government has resisted the temptation to rush through new measures in the immediate aftermath". Para 1.

- Measures relating to the security of atomic energy establishments.
- Increased powers for police forces and Ministry of Defence Police and the British Transport Police.
- The creation of offences relating to the production, possession or transfer of weapons of mass destruction or their component parts.
- The retrospective increase in penalties for certain hoaxes relating to terrorist type threats.
- The possibility of the need to derogate from the ECHR in order to allow for the long term detention of foreign nationals, suspected of terrorism, for the purpose of deportation.

The Home Secretary attempted to reassure his critics that he was “determined to strike a balance between respecting our fundamental civil liberties and ensuring that they are not exploited.” He continued: “The legislative measures which I have outlined today will protect and enhance our rights, not diminish them. Justice for individuals and minorities are reaffirmed, and justice for the majority and the security of our nation will be secured.”

In Parliament, the Minister’s statement was met with scepticism. The Conservative front benches were concerned with the potential restrictions increased financial controls would place on the City of London.¹² The Liberal Democrats were concerned that the proposal to derogate from the Convention and provisions of the Bill that potentially engaged the fundamental human rights protected by the HRA 1998, should be subject to proper parliamentary scrutiny.¹³

The Anti-Terrorism, Crime and Security Bill was introduced into the House of Commons on 12 November 2001. The Human Rights Act (Designated Derogation)

¹² (15th October 2002) 627HL Hansard, col 365.

¹³ (15th October 2002) 627HL Hansard, col 365.

Order 2001¹⁴ was simultaneously laid before Parliament, taking effect the following day. The coming into force of the Derogation Order, before the adoption of the Bill allowed the Government to issue a Section 19 statement that the Bill was compatible with the fundamental freedoms secured by the Human Rights Act and was the subject of much debate.

The fourteen-part Bill addressed many of the areas identified by the Home Secretary in his initial statement, with the notable exception of the introduction of retrospective penalties for terrorism related hoaxes. It too was accompanied by a statement issued on behalf of the Secretary of State, under Section 19 of the Human Rights Act, that the provisions of the Bill were compatible with Convention rights.

The Bill included:

- Part One empowering the forfeiture of property related to the commission of terrorist activities;
 - Part Two empowering the making of freezing orders in relation to that property;
 - Part Three creating gateways for the exchange of information between agencies and departments;
 - Part Four empowering the detention of suspected terrorists with a view to deportation, and providing for indefinite detention where deportation would breach UK obligations under the European Convention on Human Rights;
 - Part Five creating a new offence of incitement to religious hatred;
 - Part Six containing various provisions relating to the control of weapons of mass destruction;
 - Part Seven relating to the control of pathogens and toxins;
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¹⁴ The Human Rights Act 1998 (Designated Derogation) Order 2001, S.I. 3644/2001. The Order and the accompanying Explanatory Notes can be found on-line at <<http://www.hms.o.gov.uk>>.

- Part 9 increasing aviation security;
- Parts 10, 11, 13 granting increased police powers, particularly in relation to searches and identification of individuals;
- Part 12 addressing bribery and corruption of officials and Public Bodies;
- Part 13 allowing the Government to implement certain measure of the European Union by secondary legislation; and
- Part 14 containing various supplemental provisions, including commencement provisions.¹⁵

The Home Secretary said that he hoped that the proposals would receive Royal Assent before the Parliamentary Christmas recess.¹⁶ This meant that the Bill had to pass through all of its stages, in both Houses, in about a month – a very tight timescale.¹⁷ At the Bill's Second Reading in the House of Commons, Simon Hughes MP (the Liberal Democrat Front Bench spokesperson) commented on the difficulty with legislating to deal with emergency situations: "History tells us that legislation

¹⁵ In an early indication that the Government would be receptive to criticism of the Bill and its provisions, the final draft Bill did not refer to retrospective penalties for "anthrax hoaxes", which had been subject to widespread press criticism on human rights grounds. The Joint Committee on Human Rights commented: "Our preliminary conclusion was that retrospectively increasing a penalty would unavoidably violate Article 7 of the ECHR. Article 7(1) prohibits the imposition of a heavier penalty than the one that was applicable at the time the criminal offence was committed. None of the relevant qualifications to that would appear to have applied to the proposed increase in the penalty for hoaxes, and no derogation from Article 7 is possible. We are therefore relieved that no such proposal found its way into the Bill as introduced". Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 12.

¹⁶ HC Hansard, vol 372, cols 924-940.

¹⁷ Indeed, the core question on derogation from the ECHR Article 5 afforded only an hour and a half of parliamentary time.

rushed into statute for a short period often remains in place for a long time and legislation pushed through the House quickly is often very poor".¹⁸

The House of Commons Select Committee on Home Affairs raised the same concern: "We question whether it is appropriate for this Bill to be passed through the House of Commons in exactly two weeks with only three days of debate on the floor of the House. A Bill of this length...with major implications for civil liberties should not be passed by the House in such a short period and with so little time for detailed examination in committee".¹⁹ Mr Blunkett responded to these criticisms during the Second Reading debate in the House of Commons. He said "I am not absolutely certain that the length of the debate and the scrutiny given to a Bill are not one and the same thing...It seems to me that the time available in this House and the House of Lords will be used effectively and rightly to scrutinise those proposals that have already received public attention and on which there has been considerable comment".²⁰

Within this short period of time, both Houses, and their various Committees, were expected to consider the Bill, its provisions and their impact upon the protection of fundamental human rights embodied by the Human Rights Act 1998. The introduction of the Bill posed a particular challenge for the new scrutiny mechanisms established by the HRA. The Parliamentary Joint Committee on Human Rights, of which I am a serving member, recognised the importance of their task: "The international and national law of human rights, and in particular the provisions of the Human Rights Act 1998, for which we were appointed as the parliamentary guardians, represent core values of a democratic society such as individual autonomy, the rule of law, and the right to dissent, and these must not lightly be

¹⁸ (19 November 2001) 375 HC Hansard, col 56.

¹⁹ The Anti-Terrorism, Crime and Security Bill 2001, Select Committee on Home Affairs, HC 351 2001-02, November 2001, para 11.

²⁰ (19 November 2001) 375 HC Hansard, col 25.

compromised or cast away. It is precisely those values which terrorists seek to repudiate and undermine”.²¹

IV THE UK'S OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Under Part 4 of the Bill, the Government sought to amend its immigration and asylum powers to allow the detention of non-nationals who, as “suspected terrorists”, could not be deported without a risk that they would be subjected to torture in their country of nationality, in breach of the UK’s obligations under Article 3 of the European Convention.²²

The Conservatives the Government to derogate from the Convention in wider terms than those proposed. They argued that the inability to deport or extradite a non-national to a country for fear of breaching Article 3 of the Convention was an onerous obligation. The Conservatives favoured instead withdrawal from the Convention before rejoining on the basis of making a reservation to Article 3.²³

²¹ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 5. The Joint Committee also expressed its concern over the scope of the Bill and the emergency timetable: “Careful consideration is not...aided by the decision to push a Bill of this size and complexity through Parliament at such breakneck speed. Too many ill-conceived measures litter the statute book as a result of such rushed legislation in the past” above, para 79.

²² Article 3 of the European Convention on Human Rights protects the individual against torture, inhumane and degrading treatment.

²³ On the other hand, many commentators recognised the seriousness and potential impact of a derogation from the Convention. Liberty (one of the UK’s largest human rights organisations) in their submissions to the Home Affairs Select Committee of the House of Commons, called for “extreme caution” in deciding whether or not to derogate, noting: “such a derogation could in principle, send a very negative signal to the country as to the value which the executive places upon constitutional rights and the rule of law.” It is interesting to note that at around the same time as the UK was planning to derogate from article 5, Turkey decided to remove its own long-standing derogation. They felt that, in light of the arrest of leader of the PKK, they could now limit detention periods to Convention compatible durations.

V THE DEROGATION ORDER

Happily, the Government refused to adopt this proposal, introducing instead Part 4 of the Bill, which allowed for the detention of non-nationals, suspected of terrorism, who could not be deported on the grounds of Article 3. This was identified by the Government as the most problematic part of the Bill. The Government considered Part 4 to be incompatible with the right to liberty protected by Article 5 of the ECHR.²⁴ As a result, the Government sought to lodge a derogation under Article 15 of the Convention.²⁵

The Explanatory Notes accompanying the Derogation Order stated:

[The Bill]...contains an extended power to arrest and detain a foreign national where it is intended to remove or deport the person from the United Kingdom because the Secretary of State believes that his presence is a risk to national security and suspects him of being an international terrorist, but where such removal or deportation is not for the time being possible. In such cases, detention may be incompatible with Article 5(1)f because it is not for the time being possible to take action with a view to deportation, for example, if deportation would result in treatment contrary to Article 3 of the Convention.

²⁴ Article 5, provides that:

1. Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.

Article 5(1)f allows “the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

²⁵ Article 15 allows states to derogate from certain articles of the Convention, “in time of war or other public emergency threatening the life of the nation”, but only to the “extent strictly required by the exigencies of the situation.” States are prohibited from derogating from Articles 2, 3, 4(1) or 7.

The Derogation Order was laid before Parliament on 12 November 2001 and came into force the following day. The Order was debated on 19 November 2001, shortly after the Bill's Second Reading in the Commons. The parliamentary timetable allowed for only 90 minutes of debate in each House.

VI PARLIAMENTARY SCRUTINY OF THE DEROGATION ORDER

On 14 November, the Joint Committee took evidence from the Home Secretary. Much of the time was taken up with discussion of the alleged necessity to derogate from the European Convention on Human Rights. Members of the Select Committee raised several concerns with the Minister. We pointed out that the United Kingdom was the only European State which had thought it necessary to adopt such stringent anti-terrorism measures that a derogation from the Convention was required. Such a derogation required evidence of a public emergency threatening the life of the nation and the Committee was not clear, given the statement the Home Secretary had made on the 15 October 2001 that the UK was not facing any immediate threat, that any real public emergency had been demonstrated. In addition, the Committee was concerned that the provisions of Part 4 of the Bill potentially created a scheme of indefinite detention without trial.

The Home Secretary replied that the Government had concluded that a "public emergency" existed. He conceded that there was no immediate identifiable threat to the United Kingdom but rather that there was a general heightened risk of danger. To distinguish the position of the United Kingdom from the rest of Europe, the Secretary of State highlighted the UK's support for the United States, its status as a larger, more powerful European State and its larger ethnic minority population as a "host" population for would-be terrorists.

The Committee quickly published a short preliminary report, together with the evidence gathered on 16 November.²⁶ It accepted that under Article 15 of the European Convention, "the State has a substantial but not unlimited margin of

²⁶ Joint Committee on Human Rights, Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill.

appreciation when making judgements as to the existence of a state of emergency and the adequacy of the existing laws and arrangements to deal with it". We concluded that the Government had not produced any convincing evidence to show that the measures presented in Part 4 of the Bill justified derogating from the European Convention.²⁷ We considered that while evidence might exist to show that, the UK was faced with a "public emergency threatening the life of the nation" post September 11, without any further safeguards, the measures in the Bill could not be seen to be proportionate and "strictly required by the exigencies of the situation".

The House of Commons Home Affairs Committee also reported on the Bill and the accompanying Derogation Order. They reluctantly accepted the scheme proposed by Part 4 and the accompanying derogation because of what they described as the "intractable problem" created by the application of Article 3 of the European Convention. They recommended that the powers should remain under review and should in any event be subject to a five year "sunset" clause, and that the power of detention should only be exercised as a last resort, after prosecution, extradition and deportation had all been considered. The Committee further suggested that the Government should engage in a more long-term review with other member States of the Council of Europe to identify a solution which would avoid any powers of indefinite detention.

²⁷ The Committee also noted that the Human Rights Committee at the United Nations, when considering the United Kingdom's fifth periodic report under the International Covenant on Civil and Political Rights, said: "The Committee notes with concern that the State party, in seeking inter alia to give effect to its obligations to combat terrorist activities pursuant to Resolution 1373 of the Security Council, is considering the adoption of legislative measures which may have potentially far-reaching effects on rights guaranteed in the Covenant, and which, in the State Party's view may require derogations for human rights obligations. The State Party should ensure that any measures it undertakes in this regard are in full compliance with the provisions of the Covenant, including when applicable, the provisions on derogation contained in Article 4 of the Covenant" Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 26. The Government would have to derogate from both the European Convention and the ICCPR.

When Parliament considered the Derogation Order on 19 November, the responsible Minister in both Houses outlined why the Government considered that a state of emergency existed and why the derogation was strictly required by the situation.²⁸ They referred to the United Kingdom's relationship with the United States. Beverly Hughes MP also referred to the UN Security Council's two Resolutions issued in the wake of the crisis, that gave States permission to "protect themselves" appropriately.²⁹

The Joint Committee returned to consider the Bill and the making of the derogation order in a further Report.³⁰ We confirmed that we still did not consider that the case for a derogation had been made to Parliament.

VII ANTI-TERRORISM CRIME AND SECURITY BILL: SUBSTANTIVE PROVISIONS

The Bill ranged widely in its scope. I will highlight the key provisions causing concern from a human rights perspective.

A Detention and Immigration

It was the powers of detention without trial in Part 4³¹ that led the Government to decide to derogate from the Convention. Together with the consideration of the derogation, these provisions occupied a substantial part of the time allocated for

²⁸ (19 November 2001) 628 HL Hansard, cols 875-879.

²⁹ (19 November 2001) 375 HC Hansard, cols 132-146.

³⁰ Fifth Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill: Further Report.

³¹ Further detail can be found in the Second and Fifth Reports of the Joint Committee on Human Rights, Session 2001-02 and in the debates on the Bill. The Reports of the Committee and the debates can be obtained online at <<http://www.parliament.uk>>. For example, the Act provides for the indefinite retention of would-be immigrants fingerprints, engaging the individual right to private life under Article 8 of the European Convention on Human Rights. The Committee concluded "It seems to us to risk stigmatising immigrants who have no criminal connections. The provision has no clear connection with terrorism and security". These provisions remain in the Bill unchanged.

debate. The provisions were complex and technical and subject to criticism from different quarters, including from the United Nations High Commissioner for Refugees.³²

The Home Secretary resisted any analogy between the powers in Part 4 and indefinite internment. He reiterated that the powers were immigration powers. He confirmed that where a third country was prepared to receive a suspected terrorist, the UK would release the detained person. This would be so even if the accepting country were sympathetic to terrorist activities.³³

Part 4 would apply only where the Home Secretary “believes that the person’s presence in the United Kingdom is a risk to national security and suspects that the person is an international terrorist”. Vera Baird QC MP put several questions to the Home Secretary about the notions of “belief” and “suspicion”. The Home Secretary conceded that his belief that an individual was “suspected of international terrorism” should be based upon reasonable grounds. The Government subsequently amended the Bill in this respect.³⁴

An international terrorist was originally defined in the Bill as someone who was, or had been, concerned in committing, preparing or instigating acts of international terrorism, who was a member (or belonged to) an international terrorist group or who

³² The UNHCR remained concerned that the operation of the provisions in Part 4 might cause the United Kingdom to breach its obligations under the UN Refugee Convention.

³³ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, Evidence of Mr David Blunkett, paras 5-8. The Home Secretary continued to stress this point. In an article in The Guardian newspaper, published on 20th November 2001 he notes: “My proposal to detain those suspected of terrorism who we want to remove from the UK or who claim asylum when they are arrested has attracted criticism, not least from those who call this internment. It is not interment. Apart from anything else, the detainees would be free to leave the country”.

³⁴ Second Report, Anti-Terrorism and Crime Bill (Session 2001-02) 5. See evidence of Mr Blunkett, paras 30-33.

had links with anyone who was a member of or belonged to such a group.³⁵ No definition was included of what was to constitute a “link” to an international terrorist. The Committee commented that “we consider it important that the class of people liable to be regarded as international terrorists should be sufficiently clearly defined, because a certificate under clause 21 would have significant effects on the person’s right to liberty under Article 5 of the ECHR...including people who have “links with” terrorist groups or with those connected with such groups seems to us potentially over-inclusive.”³⁶ We asked the Home Secretary for further explanation.

Mr Blunkett responded to the Committee’s concerns during the Commons Committee stage of the Bill: “I think we should make clear the connection someone should have with a particular group or groups”. The Government subsequently introduced an amendment in the House of Lords at Committee to define “links” as support or assistance.³⁷

A second revision was made to the definition of international terrorist to ensure that any suspected “terrorist”, who was part of an international terrorist group but concerned in activities solely aimed at the United Kingdom, would be covered by the provisions in the Bill.³⁸

³⁵ The original definition was wider in scope than that used in the Terrorism Act 2000, which provides that a person will commit a terrorist offence only if he supports a terrorist organisation or invites or encourages support for a terrorist organisation.

³⁶ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 33-36.

³⁷ Lord Rooker explained: “The amendments seek to remove the remotest possible link, for example connections through family, friends, school, business, or sitting next to someone on a bus, from the clause”. Hansard HL, vol 629, Official Report, col 502 (29th November 2001).

³⁸ Lord Dixon-Smith, introducing amendments noted: “Subsection 4 says “international terrorism does not include terrorism concerned only with the affairs of a part of the United Kingdom”. Under that definition, somebody from abroad who was planning terrorism exclusively in London would not be an international terrorist.” (29 November 2001) 502 HL Hansard, col 467.

B *Due Process Rights of Detained Persons*

The Joint Committee expressed concern as to whether Part 4 of the Bill, as originally drafted, would meet the requirements of due process under Article 6 of the Convention.

Under the Bill, detainees were afforded certain safeguards based around a right of appeal against detention to the Special Immigration Appeals Commission (SIAC). An individual would be able to appeal within three months to SIAC. In any case, SIAC would be under a duty to review the Home Secretary's certificate, as soon as was practicable after a period of six months after the certificate was issued and to conduct 6 month periodic reviews thereafter. If SIAC disagreed with the Home Secretary's assessment, it would have the power to cancel the certificate.³⁹ An appeal would be available on a point of law to the Court of Appeal. No court or tribunal other than

³⁹ The Committee drew the attention of the House to a problem raised by clause 27(9), which was concerned with the steps which the Secretary of State would be permitted to take after SIAC had cancelled his certificate. As originally drafted the Secretary of State could issue another certificate whether "on the grounds of a change of circumstances or otherwise". Vera Baird QC asked the Home Secretary if he understood the difficulties which this could cause, she noted: "We are concerned that the word "otherwise" would allow the re-issue of a certificate with no real change of basis at all, and that that would render the whole issue, the whole appellate process, redundant or capable of becoming repetitive" (Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, Evidence of Mr David Blunkett, para 34). While the Home Secretary promised to reconsider the wording of s27(9), during the Committee Stage of the Bill in the Commons, he noted that: "Our lawyers believe that the formulation of that particular provision is correct. I have agreed to examine it and to take advice. Should it not be the case that what we intended is achieved, we will be prepared to look at the matter in the other place." (Hansard HC, Official Report, col 373 (21st November 2001). The issue remains unresolved. However, Lord Rooker, stressed during the House of Lords Committee stage that it was the Government's intention that "the Secretary of State will issue a fresh certificate only if it is justified. We rely heavily on SIAC, which would rightly take a dim view of any Secretary of State who seemed to be ignoring its decisions. I am sure that it would cancel any inappropriately made future certificates in short order. Furthermore, it might well be a breach of Article 5(4) of the European Convention on Human Rights, and perhaps also of Articles 6 and 13, for a Secretary of State to adopt such a course." (Hansard HL, Vol 629, Official Report, col 544 (29th November 2001).

SIAC (and the Court of Appeal in relation to an appeal on a point of law) would be able to question a certificate produced by the Secretary of State or a decision or action taken by the Commission.

Under the Bill, an individual would not be subject to the standard appeal provisions of the immigration legislation where the Home Secretary decided to deport an individual on any one of the following grounds:

- national security;
- where his or her exclusion would be “conducive to the public good”;
- in the interests of national security;
- in the interests of the relations between the United Kingdom and any other country;
- for other reasons of a political nature.⁴⁰

The Special Immigration Appeals Commission, a fully-fledged judicial tribunal established under the Special Immigration Appeals Commission Act 1997, was instead empowered to hear appeals in these cases.⁴¹ This procedure allows information sensitive to national security is withheld (where necessary) from the appellant and his or her legal advisers and the appointment of a special representative to inspect the evidence and represent the appellant’s interests before the SIAC in the alternative.

While there was a difference of opinion during the parliamentary debates on whether the SIAC appeal would be sufficient to protect detainees rights,⁴² the Joint

⁴⁰ S2(1)A (a) of the 1997 Act as amended by the 1999 Act (see s62(4), 64(1) of the 1999 Act) or s2(1)c as unamended.

⁴¹ The SIAC was established in response to the European Court of Human Rights decision in *Chahal v United Kingdom* (1996) 23 EHRR 413.

⁴² During the debates on the Bill, there was some debate as to whether SIAC’s decision should be subject to judicial review. Several Peers and MP’s contended that this would be necessary to satisfy a detainee’s due process rights and rights under Articles 5 and 6 of the

Committee concluded: “In our view, proceedings before the Commission in a national security case arising under the 1997 Act are likely to satisfy the requirements of Article 5(4). Clauses 25 and 26 of the Bill, as originally drafted would have allowed the Commission to fulfil the same function in cases arising under the Bill. For that reason, we took the view that for a person detained under Part 4 of the Bill, their rights under the Convention to a fair and speedy hearing would not be abrogated by being denied access to judicial review and habeas corpus”.⁴³

The amendment to clause 25, requiring the Home Secretary’s decision to issue a certificate of detention to be based on reasonable grounds means that the Secretary of State must now present to SIAC objective evidence demonstrating reasonable grounds for his decision.⁴⁴ The Committee concluded: “by allowing...the Commission to take account of all the evidence available at the time of the hearing of the appeal, clause 25 allows the Commission to do its job properly in relation to

European Convention on Human Rights. Lord Goodhart, during the Committee stage of the Bill, explained: “with judicial review, 99 times out of 100 the answer from the court will be, “We are not going to review your case because we think that the proper course is for you to go to SIAC”. However, perhaps in only one out of 100 cases judicial review would have a role to play. What is the justification for excluding judicial review and for setting a precedent here.” ((29 November 2001) 629 HL Hansard, col 561). While the government brought forward a technical amendment to raise the status of SIAC from that of a tribunal to a “superior court of record”, several Peers remained concerned about the exclusion of higher judicial review. ((13 December 2001) 629 HL Hansard, col 1438-40).

⁴³ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 12.

⁴⁴ The Committee however did express its concern that clause 26(4) of the Bill as amendment could permit a person to be detained indefinitely after new evidence or a change of circumstances “led to a situation in which the suspicion or belief under clause 21(1), while reasonable, was mistaken”. This was as section 26, as drafted in the final Act provides, “that on review (rather than appeal), SIAC must only cancel the certificate if it considers that there are no reasonable grounds for a belief or suspicion”, whereas clause 25 (dealing with appeals lodged by detainees) provides that SIAC may also cancel a certificate if it considers for some other reason the certificate should not have been issued.

appeals, and appears to provide a sufficient safeguard for the right to liberty under Article 5 of the ECHR”.⁴⁵

The original Bill provided that as soon as practicable after an individual had been in detained for six months, SIAC should review his or her detention. Thereafter, the Commission would review the Home Secretary’s certificate at six-month intervals. The Joint Committee suggested to the Home Secretary that a detainee’s case should be reviewed more regularly. The Home Secretary undertook to reconsider the period of review.⁴⁶ Although the Home Secretary refused to shorten the initial period of six months, a Government amendment was accepted at the Report stage of the Bill in the House of Lords to shorten the subsequent period of review to three months.⁴⁷

C *Incitement to Religious Hatred*

Part 5 sought to create a new offence of incitement to religious hatred. This offence was introduced to mirror the existing offence of incitement to racial hatred, enacted by the Public Order Act 1986. While certain religions are covered by the incitement to racial hatred provisions, certain others, most notably Islam, were traditionally excluded by case law from the legal definition of a racial group.⁴⁸

David Blunkett MP explained the Government’s motivation for this Part of the Bill during the Second Reading debate in the House of Commons: “We were approached by leaders of the Muslim community – it was a representative leadership group – who thought that it was only right, fair and protective to include religion with race in terms of avoiding incitement to hate using the Public Order Act 1986. I considered that and decided that their point was fair and reasonable”.

⁴⁵ Above, para 13.

⁴⁶ Second Report, Session 2001-02, Anti-Terrorism Crime and Security Bill, para 50.

⁴⁷ The Committee, while welcoming the Government concessions, suggested that one month reviews would be safer. Fifth Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 17.

⁴⁸ See *Mandla v Dowell Lee* [1983] ICR 385.

The provisions addressed a long running debate about the lack of protection offered to religious groups who might be subject to threatening words or behaviour based solely upon their religious preference. However, in the days after the Home Secretary's statement that the new Bill would include this new offence, a series of articles appeared criticising the Bill as incompatible with the right to free speech and as overly restrictive of critical and satirical speech in particular.⁴⁹

The Joint Committee, in its first report on the Bill, recommended that while the provisions would engage the right to freedom of expression in Article 10, the creation of a new offence was justified on the ground that it addressed a legitimate aim and a pressing social need.⁵⁰ We pointed out that the United Nations Human Rights Committee had recently urged the United Kingdom to extend the incitement to hatred legislation in precisely this way.⁵¹ Nevertheless, the Committee did seek reassurance from the Home Secretary to confirm that the Bill would not restrict the freedom to express opinions, including those opinions critical of religion in its oral session.⁵²

Some commentators criticised the provisions for failing to address the problem of wider reform of the law of blasphemy.⁵³ The Home Secretary stated that the anti-

⁴⁹ See for example, Rowan Atkinson's letter to *The Times* in London, on 17th October 2001, expressing concern that satire (such as that used by "Not the Nine O'Clock News" when it joked of Muslim worshippers kneeling; "The search goes on for Ayatollah Khomeini's contact lens") would fall foul of these provisions. I responded the following day to Mr Atkinson's letter, stressing that while the provisions could be justified, and that stirring up hatred should be punished, that religion should never be beyond a joke. (*The Times*, 18th October 2001).

⁵⁰ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, paras 56-60.

⁵¹ The Joint Committee did not return to the issue in its Second Report.

⁵² Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 59.

⁵³ I continued to press the case for the reform of the law of blasphemy, if not during the course of this Bill, at some convenient point in the near future. See for example, (13 December 2001) 629 HL Hansard, col 1459.

terrorism legislation was not the arena in which to address the issue of blasphemy, but he did concede that “there will come a moment when it will be appropriate for the blasphemy law to find its place in history”.⁵⁴

The debates on Part 5 uncovered a great deal of opposition to the inclusion of the new offence in the Bill on free speech and other grounds. A number of bodies, from JUSTICE⁵⁵ to The Christian Institute, registered their objections. The Joint Committee was concerned by the inclusion in the Bill of such measures which were neither sufficiently focused nor relevant to constitute emergency legislation. Indeed, a great deal of opposition to this part of the Bill was less based upon a substantive objection to its aims, but rather to its inclusion in this Bill. Lord Campbell summarised the key objection: “What is the hurry when the sense of the House is that there is a need for further comprehensive consultation and discussion?”⁵⁶ Lord Dholakia agreed: “The Government would have our full support if such legislation were separate from the anti-terrorism legislation”⁵⁷ On these grounds, the provisions of the Bill on incitement to religious hatred were removed by the House of Lords during the final stages of the passing of the Anti-Terrorism Bill.⁵⁸

D Scope of the Bill

At Second Reading in the Commons, Beverly Hughes MP stated that the Government considered that the Bill’s scope was only as wide as was necessary to address the emergency situation presented by the threat created by the September 11 attacks: “The Bill’s powers are necessary to increase the protection and security of people here...[a] general point was that the Bill’s content is not restricted to terrorism.

⁵⁴ Above, page 8, para 49.

⁵⁵ The UK arm of the International Commission of Jurists.

⁵⁶ (13 December 2001) 629 HL Hansard, col 1452.

⁵⁷ Above, col 1455.

⁵⁸ Lord Avebury has now reintroduced these measures as The Religious Offences Bill, a Private Member’s Bill. The text of this Bill can be found on-line at <<http://www.parliament.uk>>.

I fail to understand that concern. All the measures are designed to enhance intelligence and information gathering, to restrict people suspected of involvement in terrorism, to prevent abuse of asylum and to give law enforcement and security agencies powers to tackle the problems that we face. We cannot draw a firm line between terrorism and crime. Crime funds and fuels terrorism and the links between serious crime and terrorism are clear...Terrorism's connection with crime means that the Bill covers a wide range Government measures. It is not only one part out of 14 that deals with terrorism...all 14 are relevant to the tasks facing us".⁵⁹

In the introduction to our initial consideration of the Bill, the Joint Committee stressed: "any novel powers which are proposed should be clearly directed towards combating a novel threat, and should not be used to introduce powers for more wide-ranging purposes which would not have received parliamentary support but for current concerns about terrorism and fear of attack".⁶⁰

E Police Powers and Emergency Legislation

Part 10 of the Bill created a series of new police powers, including provisions to give police the power to photograph detained persons without their consent and to remove any article worn on the head or face if necessary. Clauses 93 – 97 of the Bill gave an extended power to the Police requiring a civilian to remove any item which a constable reasonably believed was being worn wholly or mainly to conceal identity. Other provisions were included which extend the powers of constables to Ministry of Defence Police in certain circumstances.

The Joint Committee was concerned about each of these provisions, specifically on the grounds that certain of the extended search and identification powers provided by the Bill would interfere with an individual's right to private life, as protected by Article 8 of the European Convention. The Committee was particularly concerned about the provisions relating to the removal of "disguises" for the establishment of

⁵⁹ (19 November 2001) 375 HC Hansard, cols 112-113.

⁶⁰ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 5.

identity. These provisions had the potential to engage not only Article 8 but also Article 9, the right to manifest individual religious beliefs. The Committee reported: “The removal of face covering may be a matter of sensitivity to certain people, for example on religious grounds. These may include Muslims, especially Muslim women, and particularly at the moment. The provisions risk being seen as authorising an unreasonable and disproportionate interference with their dignity, their right to respect for private life under Article 8 of the European Convention, and their right to manifest their religion under Article 9”.⁶¹

The Joint Committee wished to ensure that this Part of the Bill was subject to additional safeguards. They were “concerned about such provisions relating to the powers of the police being hurried through Parliament as part of a Bill which purports to be aimed primarily at taking emergency measures in respect of terrorism”.⁶²

This concern was articulated the debates on Part 10 of the Bill. Attempts were made to ensure that the powers would only apply for the purpose of combating terrorist activities or protecting national security. Lord McNally noted: “Ministers and the Government want to extend powers in all kinds of directions, using as their justification the terrorist threat. However, in response to the terrorist threat, they sweep up many other powers and issues which need to be considered at greater length and as part of different legislation”.⁶³

Lord Rooker dismissed these concerns and stated the Government position; “There are clear links between criminal activities and terrorism and it is not always possible to draw a clear line between the two”.⁶⁴

⁶¹ Second Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill, para 64.

⁶² Above, para 61.

⁶³ (13 December 2001) 629 HL Hansard, col 1468.

⁶⁴ (13 December 2001) 629 HL Hansard, col 1466.

F *Retention of Communications Data*

Part 11 of the Bill provided the Secretary of State with powers to draft and issue a voluntary code of practice applying to communications providers in relation to the retention of communications data that they held.⁶⁵

As originally drafted, the content of the Code of Practice would have been limited to provisions “necessary for the prevention or detection of crime”. A series of amendments in the House of Lords added a further limitation that the measures must also relate directly or indirectly to national security.

G *Duration of the Emergency Measures*

From the introduction of the Bill by the Home Secretary’s, parliamentarians were concerned to ensure that the legislation was subject to a satisfactory review period and preferably some form of “expiry date”.⁶⁶ At Report stage in the House of Lords, amendments were proposed introducing a series of “sunset” provisions to ensure the expiry of various parts of the Act. The various parts would have a maximum life of between one (Part 4 on detention and immigration) and five years (non-contentious provisions relating to terrorist property).

⁶⁵ See Clauses 101 and 102. These provisions raised several concerns on the compatibility of data retention with data protection principles and the Data Protection Act, and with the protection of correspondence and private life as protected by Article 8 of the Convention. The Data Protection Commissioner was concerned and submitted detailed evidence to the JCHR, stressing the importance that personal data be held for no longer than necessary. See JCHR, Fifth Report, Session 2001-02, Anti-Terrorism, Crime and Security Act: Further Report, Appendix I.

⁶⁶ Oliver Letwin MP, the Shadow Home Secretary asked: “Does the Home Secretary recognise the strength of the case for introducing sunset clauses to legislation in all these difficult areas, so that the House, and Parliament as a whole, can have the opportunity with the benefit of hindsight regularly to reassess both the effectiveness of the legislation and its effect on individual freedom?” (15 October 2001) 627 HC Hansard, col 372. Viscount Bledisoe, speaking to the need for the Bill to be subject to strict expiry periods noted: “It should be a principle that one should not legislate in haste. If one has to do so, the matter should be reconsidered in a relatively short time, and the Bill should be impermanent so that issues can be properly revisited.” (10th December 2001) 629 HL Hansard, col 1204.

The government, rejected these proposals, and introduced their own alternative amendments to provide for the appointment of a Committee of Privy Councillors to review the Act after two years. The Committee will report upon the Act to the Secretary of State. The Secretary of State is then bound to lay a copy of that report before Parliament for debate. Lord Rooker denied that this was a hollow concession: “It will be no use anyone saying, “Will you accept the recommendations?” That cannot be said at this point. If such a report is laid with suggestions for amendments to the Act, if they are not accepted the Ministers concerned will need to have very good reasons for not doing so, bearing in mind that people will have had access to all the relevant information and had a good review of the operation of the Act over the period of two years. It will then be for both Houses to make a judgment on the content of the recommendations”.⁶⁷

Lord Rooker also referred to other limiting measures which the Government had included in the Bill in light of the concerns of Parliament. The Government had already introduced amendments during the Committee stage in the House of Commons providing a 15 month expiry period for Part 4 of the Bill, subject to a power for the Secretary of State to renew by order for periods of one year, with an absolute expiry date of 10 November 2006.⁶⁸ The Government also provided by amendment, for the establishment of an annual review of the Act, by a person authorised to report to the Secretary of State. The Annual Reports would be laid before Parliament for information and debate.⁶⁹

⁶⁷ (10th December 2001) 629 HL Hansard, col 1204. The inclusion of the 5 year sunset clause in Part 4 is particularly significant as this Part contains the measures which motivated the Government to derogate from Article 5 of the European Convention. When these provisions lapse, there will be no justifiable need for the continuation of the Derogation Order.

⁶⁸ Now section 29 of the Act.

⁶⁹ Now section 28 of the Act.

G *Impact of Scrutiny on the legislation*

The scrutiny of the Bill and the accompanying derogation was intense, albeit curtailed by the short time frame. The Government's most controversial proposals were subject to often debate, which together with the Reports of the Committees of both Houses, led to a much improved Bill. The Reports of the Joint Committee proved to be an invaluable resource. Many of the parliamentarians used the Committee's Reports as the basis for their criticism of the Bill. Simon Hughes MP concluded: "If the Human Rights Committee, which we set up to do the job, advises us that the measure is not justified, we should be careful to follow that opinion".⁷⁰ Lord MacNally of the Liberal Democrats, in opposing the derogation in the House of Lords, said: "We are strengthened in that determination by the view of both Houses in the Second Report of the Joint Committee on Human Rights. Most noble Lords will have read the report in detail, and in particular paragraph 78". I describe that as the "killer conclusion", although it is one which has already been rejected by the Minister. It states that, "we are not persuaded that the circumstances of the present emergency or the exigencies of the current situation meet the tests". It continues with strong words. They are not for the Government but for Parliament and this House. It states: "It is now for Parliament to draw its own conclusions, and for Members of both Houses to satisfy themselves that there are adequate safeguards to protect the rights of the individual citizen against abuse of these powers".⁷¹

H *The Constitutional Propriety of the Derogation Order*

A key issue during the debates, concerned the constitutional propriety of the introduction of the Bill and Derogation Order. Opposition spokesmen from the Liberal Democrat benches thought that making the Order before the Bill had received Parliamentary approval was presumptive and constitutionally incorrect. In addition, the Order had been tabled in terms that presumed that the measures in Part 5 of the Bill would become law. Lord McNally stated: "I believe that this Order puts the cart

⁷⁰ (19th November 2002) 375 HC Hansard, col 60.

⁷¹ (19th November 2002) 628 HL Hansard, col 883

before the horse. The Order is not about the new powers that the Home Secretary seeks in the Anti-Terrorism, Crime and Security Bill...it presumes that those powers will be granted. My amendment concerns that presumption.⁷² The Government tried to reassure the Lords that the Government was not taking the will of Parliament for granted. It stated that in the event that the Bill's provisions were amended during its passage, the wording of the derogation would be revised accordingly.

This issue of legality remains contentious. The Joint Committee on Human Rights has recently decided to review the way in which the powers of detention are being exercised under cover of the Act and the Derogation Order, the legitimacy of its continuing application and the process whereby the United Kingdom is permitted to derogate from rights conferred by international human rights instruments in general.⁷³

VIII THE ANTI-TERRORISM, CRIME AND SECURITY ACT APPLIED

The Bill was given Royal Assent on 13 December 2001, and is now in force. The controversial provisions of Part 4 have been exercised and by the end of January 2002, seven suspected terrorists were reportedly being held in detention at Belmarsh prison, South East London.⁷⁴ The Guardian newspaper noted that one detainee has already opted to return to Morocco rather than be subject to the detention provisions in the Act.⁷⁵

⁷² (19 November 2001) HL Hansard, cols 881-882.

⁷³ The Joint Committee will shortly be calling for evidence in this regard.

⁷⁴ The War against Terror is making villains of us all". Richard Norton-Taylor, *The Guardian*, (22nd January 2002). For further criticism, see Martin Bright, Jason Burke, Burhan Wazir "UK Terror detentions Barbaric" (20th January 2002) *The Observer*. Gareth Peirce, the solicitor representing several of the detainees told *The Observer*: "These men have been buried alive in concrete coffins and have been told the legislation provides for their detention for life without trial".

⁷⁵ In the United States too, the new detention powers have been put to the test. A CNN broadcast on 12 January 2002 described the fate of the several hundred aliens being detained by the Justice Department. See Ronald Dworkin "The Threat to Patriotism", (28th February

While the Joint Committee has committed itself to an ongoing review of the provisions of the Act,⁷⁶ under Part 14 of the Bill, it will be at least another 10 months before Parliament revisits the Act, following the completion of the first report of the Monitoring Committee of Privy Councillors. In time, SIAC will be asked to exercise its powers of review. This will allow the press and legal commentators to consider anew the practical effectiveness of this process.

However, the strong opposition to the Act and the Derogation Order which remain parliamentary record may lead an individual to challenge the legislation before the English judiciary and ultimately in Strasbourg before the European Court of Human Rights. The Lord Chief Justice of England and Wales, Lord Woolf of Barnes has indicated that the judiciary have a role to play in determining the legality of the detention provisions: "If someone suggests that parliament has not enabled the government to do what it is seeking to do they [the detainee] can bring it before the courts and the courts will rule on that...If there is not a justification for infringing these rights then it is the judiciary's job to say so".⁷⁷

2002) for further details. The Department of Defence have recently published the procedural rules which will govern the operation of the Military Commissions which will be established to try non-US terrorist suspects. Human Rights Watch have said that while the new rules introduce new and important due process protections. "The rules nevertheless fail to meet the human rights requirement of appellate review by an independent and impartial court, or to meet the requirements of the Geneva Conventions". (See <<http://www.hrw.org/press/2002/03/tribunals0321.htm>>).

⁷⁶ Fifth Report, Session 2001-02, Anti-Terrorism, Crime and Security Bill: Further Report, para 20: "We intend ourselves to review the working of the Act in relation to the protection of human rights before the first renewal order and consider whether its further continuation appears appropriate.

⁷⁷ BBC Radio 4 Today Programme (31st December 2001). Clare Dyer "Woolf admits concern at new detention law", (1 January 2002) *The Guardian*.