

National Case Study: United Kingdom's Legislation in International Law

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In the last quarter of the twentieth century a large number of international treaties and conventions were passed to facilitate co-operation between states in their responses to terrorism. The UN's General Assembly and Security Council have also been active in issuing resolutions condemning terrorism and proposing measures to eliminate them. The General Assembly's policies on counter terrorism are very important to international law, partly because this body has had the responsibility of drafting and developing the law. The Assembly has identified human rights as a crucial issue in counter terrorism measures and international counter terrorism law. This paper is concerned with how the UK's legislation implements the most recent conventions, the International Convention for the Suppression of Terrorist Bombings 1997 and the International Convention for suppression of the Financing of Terrorism 1999. This discussion will consider whether their implementation is in accordance with the UN's and in particular the General Assembly's, counter-terrorism policies. To comply with both the Convention and UN policy, UK's counter terrorism law must successfully implement the criminal liabilities for acts of terrorism imposed by the conventions in a way that complies with international human rights standards. This paper is not going to discuss in precise detail the terms of international law or the sections of UK legislation that implement them. Instead it will discuss the themes of the law and the manner in which it has been implemented. In particular I will be discussing whether the UK's incorporation of the conventions into domestic law and its implementation upholds international obligations including respect for human rights.

UN and "Preventing and suppressing terrorist acts".

In 1996 the General Assembly established an Ad Hoc Committee on Terrorism. Its function was to "elaborate an international convention for the suppression of terrorist bombings" and to consider supplements to existing conventions and what developments were needed to ensure a comprehensive international legal framework to counter terrorism.¹ This committee debated and amended a draft convention prepared by the Group of Seven major industrialised countries and the Russian Federation. The draft convention proposed by the Ad Hoc Committee was considered further by a specially established Working Group of the Sixth Committee of the General Assembly. The Working Group's deliberations included written and oral proposals from a wide range of states, the International Atomic Energy Agency and

¹ United Nations General Assembly Resolution, "Measures to eliminate international terrorism" A/RES/51/210 17th December 1996, Para 9. This was not the first such Ad Hoc Committee, the first was established in 1972 to consider measures at the national level to eliminate international terrorism; A/RES/3034(XXVII), 18th December 1972.

other interested specialised agencies.² This Working Group has continued to meet and discuss international law's response to terrorism and it produces an annual report. The Working Group of the Sixth Committee has responsibility for devising universal counter terrorism conventions; it drafted the 1999 Convention for the Suppression of the Financing of Terrorism and is currently considering international laws to prevent terrorists obtaining weapons of mass destruction and disruption. The Sixth Committee is a sub-section of the General Assembly and is accountable to the Assembly. As such, its tasks are framed by the resolutions and policies of the General Assembly, including its resolutions and policies on international terrorism.

These policies include the attempt to accommodate human rights within counter terrorism measures. The problematic balance between human rights protection and security needs has been a complex issue for the General Assembly. Since 1972 there have been no less than thirty-one General Assembly resolutions on international terrorism.³ Of these, seven have been entitled, "Human Rights and Terrorism",⁴ although other resolutions also consider human rights issues as an integral part of the debate on terrorism.⁵ Almost all of the Assembly's resolutions have recognised that acts of terrorism breach human rights and many recognise the fact that state responses to terrorism can also result in abuses of human rights. The Assembly has noted that states' endeavours to eliminate terrorism, have breached the human rights of people suspected of involvement in terrorism or supporting terrorist groups. In response to states actions the General Assembly has followed a strict protectionist stance, disallowing state infringements of human rights in the pursuance of counter terrorism policies. The General Assembly stated that whilst it unequivocally condemned all forms of terrorism, states are bound by human rights law. One of its most recent resolutions affirmed that:

"States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law."⁶

The General Assembly has not only been concerned with state activities to counter terrorism, but also developing policies and strategies to end terrorism entirely. In this endeavour the Assembly has considered the underlying problems that can lead to terrorist violence and the need to address those issues in order that conflicts may be brought to an end. In the frequent General Assembly resolutions on the elimination of terrorism, the issue of human rights is repeatedly discussed. In one of its earliest resolutions on preventing terrorism, the Assembly took the opportunity to condemn colonialism and other repressive regimes that suppressed self-determination and other human rights and freedoms.⁷ This early resolution did not make an explicit link

² General Assembly, Fifty-second Session, Sixth Committee, "Measures to Eliminate International Terrorism – report of the Working Group", A/C.6/52/L.3 10th October 1997.

³ The general assembly is issuing resolutions with increasing frequency: ten resolutions were passed in the 1970s and 1980s; nine in the 1990s but there have been eleven since 2000. This is partly a result of more committees of the UN considering and reporting on terrorism in recent years.

⁴ A/RES/57/219; A/RES/56/160; A/RES/54/164; A/RES/52/133; A/RES/50/186; A/RES/49/185; A/RES/48/122.

⁵ e.g. "Resolution Adopted on the Reports of the Sixth Committee" A/RES/40/61, 7th December 1987.

⁶ "Protection of human rights and fundamental freedoms while countering terrorism" A/RES/57/210, 27th February 2003, para. 1.

⁷ A/RES/3034(XXVII) 18th December 1972.

between the abuse of human rights and the underlying causes of terrorism.⁸ By the mid 1980s however, the General Assembly was expressly making a connection between the infringement of human rights and the underlying causes of international terrorism:

“*Further urges* all States, unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security.”⁹

This is not the only occasion when the General Assembly has expressly identified the abuse of human rights as one of the underlying causes of terrorism. In a 1989 declaration, the General Assembly urged:

“all States, unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien domination and foreign occupation, that may give rise to international terrorism and may endanger international peace and security.”¹⁰

This consideration of the causes of international terrorism is a holistic approach that attempts to eliminate the conflict altogether, rather than just respond to individual attacks. The General Assembly’s concern with the relationship between terrorism and the infringement of human rights has identified the abuse of human rights as one of the underlying causes of terrorism.

The Assembly has recognised that state action to prevent or punish terrorist acts is an essential part of measures to eliminate international terrorism. In two key declarations, the General Assembly have outlined a range of state policies which it thought were important in eliminating terrorism. The 1994 Declaration on Measures to Eliminate International Terrorism,¹¹ imposed a number of obligations to which all states must adhere. These included, refraining from organising or aiding terrorist organisations within or outside their territories, prosecuting or extraditing suspects, agreeing international legal norms on co-operation, implementing existing international law, and ensuring that asylum is not granted to terrorist suspects. The

⁸ In fact the resolution described states that employed these policies as terrorist, “*Condemns* the continuation of repressive and terrorist acts by colonial, racist regimes and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms.” *Ibid.*, para. 4.

⁹ “Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes.” A/RES/40/61, 9th December 1985, para. 9.

¹⁰ A/RES/44/29 4th December 1989, para. 6.

¹¹ General Assembly Resolution A/RES/46/90, 9th December 1994, Annex.

Assembly made it clear that states' duties under the Charter of the United Nations are superimposed over counter terrorism obligations and that states must, "take effective and resolute measures in accordance with the relevant provision of international law and international standards of human rights."¹² The declaration expressly reminds states that, whilst they are required to fulfil the obligations set out, they cannot attain the "speedy and final elimination of international terrorism" through any means. Instead, the General Assembly made it plain that the implementation of the declaration must be in accordance with standards of international human rights laws. This point was driven home even more forcefully in the subsequent declaration in 1996, the unimaginatively entitled, Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism.¹³ This declaration is primarily concerned with refugee status beginning exploited by terrorists and in encouraging co-operation between states in countering terrorism. However, both of the main obligations set out in paragraphs three and five are qualified by the requirement that measures taken are, "in conformity with the relevant provisions of [national and] international law, including international standards of human rights."¹⁴ This qualification is important as it demands that states fulfil their counter terrorism obligations in a way that is respectful of the human rights of the suspects.

It is possible to make a link between the underlying causes of terrorism that the General Assembly has identified and the qualification it imposes on state counter terrorism policies. The General Assembly believes that the abuse of human rights is an underlying cause of terrorism. It has also acknowledged that there is a potential problem of states responses to terrorism infringing people's rights. From these two positions it is possible to argue that, in infringing human rights states are ensuring the existence of one of the causes of terrorism. This does not mean that a terrorist conflict will inevitably result from these abuses. The causes of terrorism are far too complex for such simplistic logic. However, if the abuse of human rights is an underlying cause of terrorism then the consequence of states infringements of those rights could at least be the continuation of a pre-existing conflict. Any state counter terrorism actions, policies and laws which flagrantly abuse human rights is unlikely to discourage and eliminate terrorism but help to sustain it. Links of this kind do not seem so very far fetched or implausible. The two strands of General Assembly policy, human rights abuses are a cause of terrorism and responses to terrorism must comply with human rights norms, are often made within the same document, thereby giving rise to an implicit link. Although the General Assembly has not expressly made those links, its repeated assertion that international legal obligations to counter and eliminate terrorism must be achieved within existing human rights laws seems to imply a realisation of the potential effects of state counter terrorism policies in the continuation of terrorism conflicts. Regardless of whether the General Assembly actually makes these connections, there are two aspects to its policies on human rights and terrorism. States are obliged to implement international law but in doing so they must comply with international human rights law. If they abuse those rights states are perpetuating a cause of terrorism that, at least, fails to comply with the General Assembly's measures to eliminate terrorism.

¹² Ibid., para. 5.

¹³ General Assembly Resolution A/RES/51/210, 17th December 1996, Annex.

¹⁴ Ibid. paras. 3 & 5.

The General Assembly is not the only UN organ of importance to this discussion. The Security Council has issued a number of resolutions about terrorism over the years but one of the most important was adopted on 28th September 2001 in response to the atrocities carried out in America on 11th of that month.¹⁵ In this resolution the Security Council identified international terrorism as being a threat to international peace and stability. Consequentially, the Security Council imposed a number of obligations and duties upon states which can be grouped into six distinct themes: not to support terrorists; assist other states; ratification of the international conventions on terrorism; criminalise terrorist acts; suppress terrorist finance; increase co-operation between states; and issues related to asylum and refugees. The obligations outlined within the resolution are ultimately a summation of duties contained within the 1997 and 1999 conventions. All members of the UN are therefore bound by a rough approximation of the obligations in the 1997 and 1999 Conventions, even if they are not party to them. This resolution also established the Counter Terrorism Committee that monitors the implementation of this resolution and states have to submit reports to the Committee on how they have implemented the resolution. This unusual enforcement mechanism combined with the requirement to ratify the 1997 and 1999 conventions makes Resolution 1373 of vital importance in UN policies on terrorism. What is striking about this resolution is the language used. In contrast to the General Assembly resolutions and declarations, Security Council Resolution 1373 does not talk about eliminating terrorism but rather the stated intention is to “prevent and suppress terrorist acts.” The whole resolution discusses responses to *terrorist acts* rather than *terrorism*. This distinction may seem semantic but it is important because the way language focuses attention. Concentrating upon terrorist acts can lead to attacks being regarded as a series of separate violent acts rather than a low-intensity conflict. Responding to terrorist violence as discrete events, discourages analysing it as a complex problem with deep rooted causes. A focus on terrorist acts disconnects individual acts from the reasons why the conflict developed in the first place and each act of violence is not seen in the context of the conflict as a whole. The underlying causes for terrorism are not addressed in this approach. This is in sharp contrast to the approach in the General Assembly, which stated that the issues underlying terrorism must be addressed as well as the individual acts. The Security Council on the other hand only briefly dealt with the causes of terrorism in the preamble to the resolution. The Council stated that it was:

“*Deeply concerned* by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism”¹⁶

However, this explanation for some forms of terrorism places the blame squarely on the shoulders of the terrorists themselves. It is they who are intolerant and extremist and these factors have lead to their terrorism. Nowhere is there mention of factors that might encourage that extremism in the first place, such as political and economic exclusion, exploitation, infringement of rights and the inability to gain redress through non-violent means.

Resolution 1373 is not really concerned with the causes of terrorism but in developing strategies to respond to threats and attacks. Its drafting is extremely broad and it does

¹⁵ S/RES/1373(2001)

¹⁶ Ibid.

not impose the sort of limitations on state responses to terrorism or the implementation of human rights obligations that the General Assembly demands. In fact the preamble to the resolution actually states:

“*Reaffirming* the need to combat **by all means**, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts.”¹⁷ [my emphasis]

Obviously, this statement does not condone the infringement of human rights but neither does it expressly impose their observance in state counter terrorism policies and activities. In fact this resolution has been used to legitimise many actions since September 11th, including the policy of pre-emptive self-defence. Counter terrorism policies emerging from the United Nations are therefore two-fold. The Security Council is concerned with promoting the obligations contained within the counter terrorism conventions, their ratification and suppressing, preventing and punishing acts of terrorism. In contrast the General Assembly aspires to eliminate terrorism entirely partly by seeking to address the causes of terrorism and through the development of international counter terrorism conventions. The drafting and negotiations of these conventions is under the General Assembly’s control, and therefore, reflects its priorities (that the law and its implementation ought to be in accordance with human rights standards and norms). These are the same conventions upon which the Security Council has based the obligations it imposes. So whilst the emphasis of the two bodies is different they are not entirely at variance and human rights protection in the responses to terrorism is part of the policies of both these UN bodies.

Recent International Counter-terrorism Law.

The international counter terrorism conventions have a reasonably long history, but their drafting and implementation has not been straightforward. Since their creation, some of the conventions have remained very important and whilst others have become less important as terrorist strategies have altered. Nevertheless, the UN supports full ratification and implementation of them all. There are twelve universal counter terrorism conventions: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; International Convention against the taking of Hostages, 1979; Convention on the Physical Protection of Nuclear Material, 1979; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988; Convention on the Marking of Plastic Explosives for the

¹⁷ Ibid. my emphasis.

Purpose of Detection, 1991; International Convention for the Suppression of Terrorist Bombings, 1997; International Convention for the Suppression of the Financing of Terrorism, 1999. Most of these conventions were drafted as a response to the emergence of particular security threats. Through the 1990s this piece-meal approach was replaced by a more systematic evaluation of the threat from terrorism and necessary international law to counter that threat. Reviewing and developing international legal norms to counter terrorism has now become a permanent institutionalised part of the UN's structure.

The counter terrorism conventions are designed to increase national and international security through co-operation and criminalisation of certain acts. The majority of the conventions focus upon state control of non-state actors rather than controlling the actions of states. The 1997 and 1999 conventions are similar in their construction and how they approach counter terrorism. Both conventions begin by creating the main offence, either terrorist bombings or financing terrorism. There is also a range of other associated crimes; it is an offence to commit or plan these offences, to conspire, aid, abet, or incite an offence. These offences form the core of the conventions and are the base upon which all other duties are built. Obligations in these treaties include a duty to investigate a terrorist act, to prosecute or extradite the suspect and the imposition of appropriate sanctions according to the severity of the offence. The Conventions are designed to make states pass domestic legislation that outlaws these acts, and therefore, people are tried in national courts. States must also try to prevent attacks. This is a positive duty that requires states to be proactive in a number of preventative ways, including the prevention of attacks organised within their territory but carried out elsewhere, raising funds or recruitment within their territory. Parties to the convention must increase their co-operation in counter terrorism activities including the exchange of intelligence, research, and training and in prosecuting and preventing attacks.

Whilst it essentially achieves the same result, the 1999 convention differs from the 1997 convention in how it constructs offences. Unusually, the 1999 Convention on financing is based on offences created in earlier conventions. It does not make the funding of terrorism an offence *per se* but funding for “an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex.”¹⁸ Basing the offences around the 'term' terrorism would have engaged all of the usual difficulties in defining terrorism and consequentially neither of these treaties actually defines terrorism or makes 'terrorism' an offence in itself. Instead, the Conventions eliminate the political exemptions available, thus, states cannot refuse to co-operate in prosecutions or extraditions by claiming a suspect is being tried for a political offence. This applies irrespective of states definitions of terrorism in their domestic legislation. This is also unlike earlier counter terrorism conventions in which states could refuse to cooperate in extradition proceedings by asserting the offence is a political crime. However, a state can legitimately refuse to co-operate if it has substantial grounds for suspicion that the suspect is being punished or prosecuted:

¹⁸ International Convention for the Suppression of the Financing of terrorism, 1999, Art 2(1)(a).

“a person on account of that person’s race, religion, nationality, ethnic origin or political opinion of that compliance with the request would cause prejudice to that person’s position for any of these reasons.”¹⁹

These two clauses are intended to avoid the pitfalls of defining terrorism and the political crime exemption. Instead, the combination of these articles means that the offences set out are regarded as strictly criminal offences, but a safety clause is inserted which allows states a limited opportunity to refuse to co-operate where a person is being prosecuted or punished because of their status (i.e. race nationality etc) rather than their criminal actions. This emphasises the crime-based approach of the conventions and the seriousness with which the prevention and punishment of these acts are viewed. Moreover, the threat to carry out these acts is not part of the offences. The Ad Hoc Committee of the General Assembly reported that some delegates felt threat did not “attain the level of gravity required under the proposed draft”.²⁰ Seemingly, the desire to maintain the severity of the offences in the conventions is why threats to carry out these offences is absent. This is certainly a distinctly divergent approach from English law, where the threat to carry out a number of terrorist offences has long been criminalised. Instead, the 1997 and 1999 Conventions are concerned with ensuring that states criminalise bombings and the financing of terrorism and co-operate in preventing and punishing the offences created.

Human rights considerations are included in both of the Conventions. The form in which this reference occurs is similar to the approach adopted in the General Assembly. The Conventions impose a limitation imposed upon their implementation in accordance with other norms of international law:

“Nothing in the Convention shall affect other rights, obligations and responsibilities of states and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.”²¹

The 1999 Convention also inserts at the end, “and other relevant conventions.” These articles within the Convention only legitimise legislation and policies that achieve the goals of the conventions if they are in accordance with other international laws, including humanitarian and human rights law. These Conventions disallow counter-terrorism measures undertaken to implement the obligations under the 1997 and 1999 Conventions to override other international legal obligations. Ultimately, these counter-terrorism Conventions are explicitly stating that human rights laws must be observed in the implementation of the duties and obligations contained therein. To be fully in accordance with international law as well as fulfilling UN counter-terrorism policies, counter-terrorism measures must not to infringe upon human rights. This paper will now consider whether the UK’s implementation of these Conventions meets both these requirements.

¹⁹ International Convention for the Suppression of the Financing of terrorism, 1999, Art 15.

²⁰ Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17th December 1996, General Assembly, Official Records, Fifty-second Session, Supplement No. 37. A/52/37, p.51

²¹ International Convention for the Suppression of Terrorist Bombings, 1997, Art. 19 and International Convention for the Suppression of the Financing of terrorism, 1999, Art. 21.

UK Implementation of the International Conventions.

In considering the compatibility of the UK's implementation of the 1997 and 1999 counter-terrorism conventions and the General Assembly's resolutions on the elimination of terrorism this paper will consider most but not all of the main themes in the conventions obligations. These themes are the criminalization of terrorist acts, the suppression of terrorist finance, increased co-operation between states and issues related to asylum. This paper will deal with the implementation of these obligations in outline only – a concentration upon the UK's approach rather than a detailed legal analysis. This reveals that although the international obligations on counter terrorism are fulfilled, the legal powers actually take them much further than the Conventions or General Assembly resolutions require. These more extensive powers infringe upon human rights and therefore fail to uphold the UN's policies on the elimination of terrorism, of which the implementation of the Conventions is but a part.

Historically, the UK has had difficulty in drafting counter terrorism legislation that has satisfied international human rights standards. Prior to 2000 the UK's domestic counter legislation was primarily designed to increase security against threats stemming from the conflict in Northern Ireland. These sets of legislation, the Prevention of Terrorism Acts and the Northern Ireland (Emergency Provisions) Acts had been widely criticised. They had also led to a number of findings against the UK in the European Court of Human Rights.²² The UK's response to conflicts between its domestic legislation and international human rights law, as occurred over the issue of length of detention in police custody before appearing in front of a judicial authority,²³ has not been overly supportive of human rights. The UK chose to derogate from the European Convention of Human Rights and retain the domestic power rather than relinquish the power that is in breach of the Convention rights. The European Court of Human Rights has legitimised this stance by upholding the legality of the derogation entered by the UK.²⁴ In 2000 the UK repealed the Prevention of Terrorism and Northern Ireland (Emergency Provisions) Acts replacing it with a new Terrorism Act. The Terrorism Act 2000 was meant to satisfy all the international obligations set out in the 1997 and 1999 Conventions. The Anti-terrorism, Crime and Security Act supplemented this Act in 2001. If the 2000 Act enabled the UK to ratify the 1997 and 1999 treaties then it is probable the 2001 Act has gone beyond the minimum standards set out in the counter-terrorism treaties. A more encompassing approach to counter-terrorism is not problematic but in order to fulfil the policies of the United Nations all powers must be in accordance with human rights law.

On the enactment of the Terrorism Act 2000 the Secretary of State for the Home Office issued a certificate in accordance with the Human Rights Act 1998 stating that the Act was compatible with the European Convention on Human Rights. The changes introduced in the Terrorism Act 2000 meant that the derogation from the European Convention on Human Rights was withdrawn. In contrast the Anti-Terrorism, Crime and Security Act 2001 has not had a compatibility certificate issued, instead a new derogation was entered. Thus, the UK government acknowledges that the 2001 Act is in contravention of the European Convention of Human Rights and has once again chosen to renounce international standards of human rights in order to

²² For example, *Murray v United Kingdom* (1994) 19 EHRR 193.

²³ *Brogan and Others v UK* 11 EHRR 117.

²⁴ *Brannigan and McBride v UK* Series A 258-B (1993).

retain new powers.²⁵ However, in its report to the Security Council's Ad Hoc Committee on Terrorism in August 2002, the UK stated that it had fully implemented all its obligations under Security Council resolution 1373. The UK argued that it had ratified all twelve counter terrorism conventions in accordance with human rights obligations and the 1952 Refugee Convention. The report actually stated that:

“The European Convention on Human Rights and other relevant international human rights instruments are fully respected.”²⁶

It is hard to perceive the UK's justification for its assertion that the obligations under the counter terrorism conventions have been fulfilled within existing human rights obligations when it has in fact derogated from one of the most significant and well enforced conventions. Human rights instruments may indeed well be ‘respected’ but do the new counter-terrorism powers enacted to comply with the 1997 and 1999 treaties comply with international human rights standards? If they do not then they will be not comply with UN policies on measures to eliminate terrorism.

The Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001 do indeed criminalize the activities identified in the 1997 and 1999 conventions. The two Acts create a large number of different offences. In English law it has been an offence to carry out an unauthorised explosion since the late 19th century, including the conspiring, encouraging, inciting, planning, or assisting to conduct any explosions. The Terrorism Act 2000 extends the jurisdiction over terrorism bombings conducted overseas so that a person can be tried in the UK for that offence, even if it did not involve UK interests or a UK national.²⁷ These powers satisfy the obligations under the 1997 Convention. The Terrorism Act 2000 goes further than the 1997 Convention, making a number of different offences including: directing a terrorist organisation; proscribing groups if they are believed to be concerned in terrorism; membership, addressing or organising a meeting of a proscribed organisation; providing or participating in weapons training (covering firearms, explosives or chemical, biological or nuclear weapons); directing a terrorist organisation and inciting terrorism overseas. None of these offences appears to be particularly problematic in terms of obvious infringements of human rights. There are offences, however, that are less likely to be in accordance with international human rights law. For example, the Terrorism Act makes it an offence if a person:

“possesses and article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism”²⁸

The courts must assume that articles found on the premises at the same time as the suspect or on premises occupied or habitually used by the suspect are under his or her control. Ultimately, the courts can infer that a person found with any article in any circumstances that the court feels are suspicious is in possession of them for the purposes of terrorism. There is also a similarly constructed offence of the collection

²⁵ For details see later text.

²⁶ Report to the Counter-terrorism Committee pursuant to paragraph 6 of Security Council resolution 1371 (2001) of 28 September 2001, S/2001/1232, para.4.

²⁷ TA s62 & 63.

²⁸ TA s57.

of information, “of a kind likely to be useful to a person committing or preparing an act of terrorism or posses a document or record contain information of that kind.”²⁹ The construction of these offences results in a reversal of the presumption of innocence. Guilt in these offences is not dependant not upon an act by the suspect but the suspicions of the court. This undermines the presumption of innocence that is an integral part of the balance in the adversarial criminal justice system. In the context of the UK’s criminal justice system a presumption of guilt that requires the suspect to disprove his guilt, potentially results in an unfair trial that is in breach of international human rights standards and the European Convention on Human Rights in particular.³⁰ This infringement is especially concerning as these offences attract a maximum sentence of ten years.

UK provisions on suppressing terrorist finance are very extensive. It is an offence to collect, contribute, receive, use, or possess money or property that is likely to be used for the purposes of terrorism, are the proceeds of acts of terrorism or the proceeds of acts carried out for the purposes terrorism.³¹ Cash can be seized for up to three months if it is intended to be used for the purposes of terrorism, is part of the resources of a proscribed organisation or is the product of property gained through terrorism.³² This appears to satisfy the requirements of the 1999 Convention. There are aspects of the powers that go beyond the minimum requirements of the Convention but arguably contribute to the prevention of terrorism. For example, the Anti-terrorism, Crime and Security Act 2001 introduced account monitoring orders in which a judge may authorise the release of information by a financial institution on specified accounts held by specified person, for up to ninety days. Judges can issue these orders if satisfied that the order is for a terrorist investigation, tracing the property is desirable and for the purposes of the investigation, the order will enhance the investigation.³³ These powers raise question of invasion of privacy, although the right to privacy differs across human rights instruments.

There are other powers that have been introduced under the guise of anti-terrorism but are not confined to terrorist investigations. For example, property and funds can be frozen if the Treasury, a state department not a judicial authority, believes that a person is likely to commit or has committed an act threatening the life or property of UK nations or residents, or would be detrimental to the UK economy. The person must be a non-UK national or resident outside UK territory.³⁴ These orders exercisable by the Secretary of State for the Treasury, sanctioned by Parliament in a Statutory Instrument and can only be revoked by an Act of Parliament; the courts have no role. These orders do not require a criminal act or conspiring to commit a criminal act before the property can be frozen nor is power is not confined to any criminal investigation, terrorist or otherwise. Technically this does not breach the European Convention of Human Rights that enforces the right to enjoyment of private property because those affected are outside UK territory. It does however raise the question of breaking faith with the obligations.

²⁹ TA s58.

³⁰ There is some controversy over the reversal of the onus of proof, although it has been allowed in some situations. See *R v DPP exp Kebilene and Others* [1999] 4 ALL ER 801.

³¹ TA s 14 & 15

³² Anti-terrorism, Crime and Security Act 2001.

³³ s3 Sch 2.

³⁴ s4.

Increasing cooperation between states was an integral theme of the Conventions in 1997 and 1999 and in numerous other General Assembly and Security Council resolutions. This has been achieved formally and legally in the Anti-terrorism, Crime and Security Act 2001 which increases the scope of the intelligence services and other government agencies to divulge information. The disclosures of information held by public authorities is authorised for a criminal investigation or to decide whether a criminal investigation ought to be conducted.³⁵ The investigation or proceedings may be conducted within or outside the UK. The Secretary of State is allowed to prevent information from being disclosed in an overseas investigation or proceeding if she or he thinks that it would be more appropriate to conduct that investigation in the UK or a third country.³⁶ This power does indeed facilitate cooperation between internal agencies and between agencies of other states, which is in line with obligations in the 1997 and 1999 Conventions and General Assembly Resolutions. The international obligations only extended to counter-terrorism investigations but the powers enacted by the UK go far beyond that expected in the Conventions. In the Anti-terrorism, Crime and Security Act information can be disclosed with or without a criminal investigation; the information can be disclosed in order to decide whether there should be an investigation. Also, these powers are not restricted to proceedings related to terrorism; any suspected criminality is sufficient grounds to invoke these powers. The type of information that can be disclosed is wide ranging and its relevance to terrorism is not always obvious. Information covered includes that held under the Agricultural marketing Act 1958, Consumer Credit Act, 1974, Legal Aid Act 1986, Bank of England Act 1998, Fair Trading Act 1973, Employment Agencies Act 1973, and the Disability Rights Commission Act 1999. This kind of information goes far beyond the obligations set out in the Conventions and raises questions about the infringement of privacy.

Finally, the Anti-Terrorism Crime and Security Act 2001 has made significant changes to asylum and immigration laws. These laws were only initially enacted for fifteen months from the commencement date of the Act but can be revived by Statutory Instrument. The abuse of refugee status by suspected terrorists is a theme addressed by General Assembly resolutions. Resolution 51/210 of 1996 in particular, requires states not to grant asylum to those who are suspected of committing terrorist actions. States must ensure that the asylum seeker has not participated in terrorist acts, with reference to whether they are, “subject to investigation for or is charged with or have been convicted of offences connected with terrorism”.³⁷ Under the 2001 Act the Secretary of State for the Home Office has the power to issue a certificate that the person is a suspected terrorist if the Secretary reasonably believes that the person’s presence in the UK is a risk to national security and *suspects* that the person is a terrorist. A terrorist is defined as someone who:

“is or has been concerned in the commission, preparation or instigation of acts of international terrorism, is a member of or belongs to an international terrorist group, or has links with an international terrorist group.”³⁸

³⁵ s17 Sch 4.

³⁶ s18.

³⁷ General Assembly Resolution A/RES/51/210 17th December 1996 para. 3.

³⁸ Anti-terrorism, Crime and Security Act 2001 s 21.

There is the right of appeal process to the Special Immigration Appeals Commission and a review process held by the Commission within six months of the certificate being issued, but to no other judicial body is involved in the decision. This certification process is the basis upon which asylum and immigration rights can be altered.³⁹ If a certificate is issued by the Home Secretary the suspected international terrorist is unable to claim asylum. The restriction of this important right is the firstly the decision of a politician and secondly specially constituted, with minimal regular judicial scrutiny and without evidence of involvement being heard in a regular open court. The obligations set out in Resolution 51/210 are quite distinct from the process under the Anti-terrorism, Crime and Security Act. The legality of this approach in human rights law is questionable and undermines the ethos of human rights and humanitarian law, even if it is not technically in breach.

The UK government have taken this process of certification and control of immigration further than the obligations set out in the General Assembly resolutions. A person certified as a international terrorist by the Home Secretary can have their immigration rights, including residency, leave to enter altered or withdrawn so that they can be deported or refused entry.⁴⁰ There are also powers to detain a person certified as a suspected international terrorist if they cannot be deported. Usually, they cannot be deported because there is a reasonable fear of persecution or threat to their life if they are deported. This enactment was a response to a decision of the European Court of Human Rights, in which the UK wished to deport a person suspected of involvement in terrorism back to Sri Lanka. The Court held that where reasonable grounds to believe a threat of death, persecution, torture existed they could not be deported even if they were a threat to national security.⁴¹ The power to detain only extends to non-UK nationals but it is indefinite and is not dependant upon a criminal investigation, charge or proceedings. The individuals are free to leave the UK at any time they wish but they have no freedom of movement within the UK. In order to pass this enactment the UK has had to enter a derogation from the European Convention of Human Rights from Article 5(1). Similarly to the situation under the Prevention of Terrorism Acts, when there is a clash between domestic legislation and human rights the UK government is willing to dispense with international human rights obligations. This is particularly curious because there is no onus upon the UK to take up this power in any of the UN resolutions or Conventions. There is an obligation to refuse refugee status to those who have conducted terrorist acts, which is dubiously achieved, but there but detaining them without trial is not part of those obligations. The UK legislation has superseded the limits of the counter terrorism obligation. The legislation has extended far beyond the original international obligations and as a result are in breach of international human rights and humanitarian law.

Conclusion

The UK has ratified all twelve of the universal counter terrorism conventions and it asserts that it is in compliance with international law. The UN General Assembly resolutions on terrorism frequently state that the ratification of the conventions must

³⁹ s33

⁴⁰ s22.

⁴¹ *Chahal v UK* (1991) 23 EHRR 413.

comply with international human rights and humanitarian law. It is the General Assembly that controls the drafting of these conventions through its 6th Committee. The text of the conventions state that measures taken to fulfil the obligations must satisfy human rights. It is likely that the desire to preserve human rights in counter terrorism measures is due to the General Assembly's recognition that the infringement of human rights is one of the underlying causes of terrorism. The Security Council on the other hand has a more ambivalent stance on the protection of human rights in its resolution 1373. It does, however, call upon all states to fully ratify all counter terrorism conventions and according to two most recent conventions that ratification must preserve human rights. Thus, in the implementation of the conventions at least, the two bodies do not differ. The UK's ratification of the two most recent conventions, the International Convention for the Suppression of Terrorist Bombings 1977 and the International Convention for the Suppression of the Financing of Terrorism, 1999, is problematic. UK legislation does establish all of the offences and procedures set out in the two Conventions. The powers and procedures in the Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001 extend further than the minimal standards established in the two conventions. United Kingdom law has taken the obligations in international law and stretched them so far that they have infringed upon human rights and humanitarian law. This can be seen in a number of areas from the establishment of offences, the suppression of terrorist finance, co-operation between states and alterations to immigration law and the right of asylum. One of these infringements of human rights law has even required the UK to derogate from its obligations under the European Convention of Human Rights. Infringement of human rights in implementing the international legal obligations is arguably a breach of Article 19 of the 1977 convention, Article 21 of the 1999 convention and the General Assembly Resolutions, in particular the "Measures to Eliminate Terrorism" 49/60 of 1994 and 51/210 of 1996. If as asserted by the General Assembly the abuse of human rights is a cause of terrorism, then the UK's counter terrorism legislation, which fails to comply with international human rights standards will not eliminate terrorism but help to sustain it.