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The UK Anti-Terrorism Crime & Security Act 2001: Too Much...Too Soon

Colin Nicholls is a Queen's Counsel practising in London and specialising in international crime including extradition and criminal mutual assistance.

He is Honorary Secretary of the Commonwealth Lawyers Association (CLA)

Colin Nicholls QC

On 14th December 2001 the British Anti- Terrorism, Crime and Security Act became law. Its object is to ensure the Government has adequate powers to counter the increased threat of terrorism in the United Kingdom following the events of September 11th.

The Act contains: measures against terrorist funds including forfeiture, irrespective of whether proceedings have been brought for any offence, and the making of freezing orders against such funds including those of foreign governments and non- UK residents; provision for the disclosure of information by public authorities for the purpose of facilitating the work of the intelligence services; power of the Home Secretary to certify a non UK national a "suspected international terrorist" and to order his removal from the UK, or if this is prevented, his ditto detention indefinitely without charge, if the Home Secretary reasonably believes his ditto presence is a risk to national security; measures to ensure the security of the nuclear, chemical and aviation industries and dangerous substances, including power to remove unauthorised persons from airport restricted zones and aircraft; the extension of police powers, including the taking and indefinite retention of fingerprint records for purposes of terrorist investigation and the removal of items believed to be worn for concealing identity; the retention of communications data by communications service providers for access by law enforcement agencies, not including the contents of communications; strengthening of the law relating to international corruption to include bribery of foreign public officials and making it an offence for any UK national to perform acts abroad which would amount to corruption if committed in England; the implementation of the third pillar of the European Union so that EU wide anti-terrorist measures on policing, extradition and sentencing can be effected; the re-introduction of an offence of general failure to disclose information about terrorism.

The Bill was introduced by the Home Secretary, David Blunkett, on 15th October. On 12th November he laid an order before Parliament that a state of "public emergency threatening the nation" existed, necessitating a derogation from Article 5 of the European Convention on Human Rights (ECHR), the ECHR provisions which guarantee personal security.

Four days later, an All-Party Joint Committee on Human Rights cautioned against the speed with which the Bill had been introduced. Foremost in its criticism were: the fact that some of the proposed measures did not relate to terrorism at all; the exclusion of judicial review of the Home Secretary's power to order detention; and the introduction of European measures, including police co-operation and simplified extradition procedures, without adequate parliamentary scrutiny.

On 6th December the Bill was defeated seven times in the House of Lords. By the time it was passed on 14th December, just one month after its publication, it had suffered a total of twelve report stage defeats and some of its most controversial measures had been amended or abandoned. It was commented in *The Independent* newspaper that it “was improved by the compromises agreed at the last minute, but it remains a deeply offensive, illiberal and unnecessary set of measures.”

The compromises included the establishment of a Special Immigration Appeals Commission, presided over by a senior judge, to hear challenges against the Home Secretary’s orders against non UK nationals suspected of being “international terrorists”, with a right of appeal to the Court of Appeal on a point of law.

The complaint remains, however, that the Home Secretary’s belief and suspicion that a person is an “international terrorist” may be based on evidence which is not disclosed to the suspect and confirmed by a judicial body which can hold hearings in secret and base its decision on secret evidence.

Although supportive of some measures including those relating to terrorist funds, human rights bodies have been vociferous in condemning many of the provisions of the Act on the grounds that they were not “necessary”, are unlikely to avert terrorists and liable to be counterproductive. Why is it, they ask, that the United Kingdom, alone amongst signatories to the ECHR and so soon after passing the Human Rights Act, has felt it necessary to revoke one of its basic provisions to fight terrorism? They complain that there is no way of testing whether the authorities’ actions are proportionate having regard to the secrecy surrounding them and they have promised to challenge the legislation in domestic courts and the European Court of Human Rights. Amnesty International has complained that the Act will result in the creation of “a shadow criminal justice system in which the normal safeguards protecting the rights to liberty and fair trial are being eroded”. Gareth Peirce, a prominent human rights lawyer, has commented on the inability of police and intelligence services to understand the distinction between resistance to oppression and support for terrorism, which recalls a similar comment in the debates in the House of Lords on the attitude which would have been adopted towards those who fought against apartheid, the so-called Nelson Mandela point.

Despite the criticisms, the Act will remain law until it is reviewed by a committee of Privy Councillors within two years. The provisions for the removal and detention of non UK nationals will expire in May 2003 when the Home Secretary may by order repeal them, revive them for up to a year, or continue them in force for a period not exceeding one year. A number of North African and Middle Eastern suspects were already in detention in the United Kingdom before the Act on international terrorist charges, mostly awaiting extradition, some to the United States. UK police have made their first arrests under the Act. It remains to be seen, in so far as is allowed, whether the Act is effective in averting terrorist attacks and the extent to which miscarriages of justice will occur.

The United Kingdom’s practical response to the events of September 11th is not alone. On 28th September, the United Nations Security Council adopted Resolution 1373, calling on states to work together urgently to prevent and suppress terrorist acts. It required them to take measures of the kind included in the Act. On 25th October, Commonwealth Heads of

Government issued a statement calling for concerted action against terrorism and Commonwealth countries are currently considering their collective response.

In recent decades the interests of the community have appeared at times to be obscured by the rights of the individual. However, when the community is threatened, individuals' rights are usually curtailed. Just as it fell to the House of Lords during the passing of the Bill to temper government zeal, it will be the responsibility of international human rights bodies to monitor carefully the enforcement of anti-terrorist legislation and to ensure that miscarriages of justice are avoided.