The United Kingdom’s Legal Responses To Terrorism

Yonah Alexander

and

Edgar H Brenner

Editors

Transnational Publishers, Inc/Cavendish Publishing, Ltd
Library of Congress Cataloging-in-Publication Data on file

British Library CIP is available

ISBN 1-85941-178-6 (Cavendish Publishing Limited)

Copyright © 2003 Transnational Publishers, Inc. & Cavendish Publishing, Ltd

This publication is protected by international copyright law. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publishers.

Printed and bound in Great Britain and the United States.
Contents

Foreword
Michael Carpenter, Esq  vii

Preface
Yonah Alexander and Edgar H Brenner  xi

DOCUMENTS

EXECUTIVE ACTS

Document No 1
Prime Minister’s Statement to Parliament “Responsibility for the Terrorist Atrocities in the United States, 11 September 2001”, October 4, 2001  3

LEGISLATIVE ACTS

Document No 2
Terrorism Act 2000  11

Document No 3
Terrorism Act 2000 Explanatory Notes  87

Document No 4
Anti-Terrorism, Crime and Security Act 2001  101

Document No 5

Document No 6
Human Rights Act 1998  311

INTERNATIONAL TREATIES AND CONVENTIONS

Document No 7
The Treaty of Maastricht Title VI: Provisions on Cooperation in the Fields of Justice and Home Affairs, February 12, 1992  343

Document No 8
Document No 9

Title VI of the Treaty on European Union: Provisions on Cooperation in the Fields of Justice and Home Affairs, as amended by the Treaty of Amsterdam, October 2, 1997

Document No 10

(Edit text) The Queen on the Application of the Secretary of State for the Home Department v. Immigration Appeal Tribunal, and The Queen on the Application of Hvez v Secretary of State for the Home Department & an Adjudicator, In the Supreme Court of Judicature, Queen’s Bench Division, December 19, 2001

Document No 11

(Edit Text) The Queen on the Application of Louis Farrakhan and Secretary of State for the Home Department, Court of Appeal, April 30, 2002

Document No 12

(Edit Text) Governor of HM Prison Brixton, and Government of the United States of America v Eidarous and Abdelbary, High Court, Queen’s Bench Division, May 2, 2001

Document No 13

Secretary of State for the Home Department v. Shafiq Ur Rehman, Court of Appeal, May 23, 2000

Document No 14


Document No 15

(Edit Text) Her Majesty’s Advocate v Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah, The High Court of Justiciary, January 30, 2001

Document No 16

(Edit Text) Megrahi v HM Advocate, Appeal Court, High Court of Justiciary, March 14, 2002, [2002] Scots CS 68
Document No 17
(Edited Text) *The Queen (on the Application of the Kurdistan Workers Party, the People’s Mojahedin of Iran and Nisar Ahmed) and the Secretary of State for the Home Department*, High Court, Queen’s Bench Division, April 17, 2002, [2002] EWHC 644 (Admin) 543

Document No 18
(Edited Text) *Quinlivan v Conroy*, High Court of Ireland, April 14, 2000, [2000] 3 IR 154 577

Document No 19
(Edited Text) *In re Devine*, High Court of Justice in Northern Ireland, March 26, 1999, [1999] NIEHC 7 603

Document No 20
(Edited Text) *Martin v Conroy*, High Court of Ireland, May 1, 2001, [2001] 1 EHC 87 615

Document No 21

Document No 22
(Edited Text) *In re Hany El Sayed El Sabaei Yousseff*, High Court, Queen’s Bench Division, March 12, 1999, [1999] EWHC Admin. 185 675

Document No 23

Document No 24
(Edited Text) *R v Samar Alami Jawad Botmeh*, Court of Appeal (Criminal Division), May 10, 1999, [1999] EWCA Crim. 1321 693

Document No 25
(Edited Text) *Chahal v The United Kingdom*, European Court of Human Rights, November 15, 1996 705
vi Contents

Document No 26
(Edited Text) R v Secretary of State for Home Department ex parte Chahal, High Court, Queen’s Bench Division, November 6, 1998, [1998] EWHC Admin 1053 743

Document No 27
(Edited Text) R v Hugh Thomas Jack, Court of Appeal (Criminal Division), April 7, 1998, [1998] EWCA Crim 1206 751

Document No 28
Summary of Conclusions. Special Immigration Appeals Commission, July 30, 2002 767

Document No 29
A and Others v Secretary of State for the Home Department, Court of Appeal, October 25, 2002 769

Selected Bibliography 771

About the Editors 777
Foreword

Michael Carpenter, Esq

Terrorist violence has a long history in the United Kingdom, and the legal measures adopted to counter the threat are also of long standing, even though in recent years they have been considerably expanded. For example, it was the bombing campaign by the Fenians, including the bomb attack on Clerkenwell prison in London in 1867, which led to the passing of the Explosive Substances Act 1883, an enactment which is still of the greatest importance in dealing with conspiracies to cause explosions.

Terrorist activities, such as those carried out in Northern Ireland and elsewhere in the United Kingdom, involving the causing of injury to persons or damage to property, amount to the commission of crimes, even without the enactment of specific anti-terrorist measures or the proof of any specific intent related to terrorism. Apart from the question of scale, it is only the question of motivation or purpose that distinguishes these activities in any way from “ordinary” crimes, and the acts committed remain equally harmful to the victims, whatever the misguided motive. This is an important factor to recall when dealing with the so-called “political offence” exception in the extradition laws of some countries, and the tendency in some quarters to accord terrorists some special status separate from that of an offender.


In the first place, the definition of terrorism in the 2000 Act has been expanded to include the use or threat of action for the purpose of advancing a religious or ideological, as well as a political, cause. Secondly, the 2000 Act unlike its predecessors is not subject to a requirement of annual renewal by Parliament, although Part VII of the Act continues to provide temporary measures for Northern

---

1 Counsel, European Legislation, House of Commons. (The views expressed here are entirely his own.)
2 Cf the offences related to the use of explosives in ss 28–30 Offences Against the Person Act 1861.
3 See s 1 (1)(c) of the Terrorism Act 2000.
Ireland, which are subject to annual renewal and an overall 5 year time limit.\(^4\)
Thirdly, the 2000 Act is not limited to terrorism connected with the affairs of Northern Ireland, but applies generally to terrorism within the United Kingdom and throughout the world.\(^5\) Accordingly, the provisions that empower the Secretary of State to proscribe an organisation if he believes it to be involved in terrorism (Part II) will now apply across the United Kingdom. Similarly, the provisions on terrorist property in Part III (which provide for the seizure of terrorist cash and other property, and the offences of fund-raising and money-laundering) will now apply to all forms of terrorism, irrespective of any connection with the affairs of Northern Ireland. The offences of providing weapons training\(^6\) and directing a terrorist organisation\(^7\) will also apply generally and do not require any connection with the affairs of Northern Ireland.

The Explanatory Notes to the Anti-Terrorism, Crime and Security Act 2001 indicate that the purpose of the Act is to ensure that the Government has the necessary powers to counter the threat to the UK in the light of the new situation arising from the September 11 terrorist attacks on New York and Washington. The Act contains further provisions on the freezing of terrorist property, disclosure of information, immigration and asylum as well as provisions to strengthen the current legislation on the control of chemical, nuclear and biological weapons. The Act also re-introduces the offence of failing to disclose information about acts of terrorism. Such an offence was contained in section 18 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (now repealed) and applied only in Northern Ireland. The new provision (s 38B Terrorism Act 2000) applies generally throughout the UK.

Sections 22 to 23 of the 2001 Act introduce a controversial new power to detain suspected international terrorists in circumstances where it is not possible (under the European Convention on Human Rights or other international obligations\(^8\)) to remove them from the UK. In December 2001, the UK notified the Council of Europe of derogation from the provisions of Article 5 ECHR (which deal with the

\(^4\) Part VII continues the arrangement whereby common law offences such as murder, manslaughter, riot, kidnapping and false imprisonment and offences under statute such as those under the Offences Against the Person Act 1861, the Explosive Substances Act 1883 and offences related to hijacking, possession of firearms etc are ‘scheduled’ offences and therefore triable on indictment without a jury (s 75), unless the Attorney General for Northern Ireland certifies that the offence is not to be treated as a scheduled offence (in which case the trial on indictment takes place with a jury). This system has operated since the 1970s and seeks to address the problem of jury intimidation in terrorist trials.

\(^5\) Sections 62 and 63 of the 2000 Act extend jurisdiction over terrorist bombing and financing offences to acts done outside the United Kingdom. These provisions permit the UK to ratify the UN Conventions for the Suppression of Terrorist Bombings and the Suppression of Terrorist Financing.

\(^6\) Section 54.

\(^7\) Section 56.
right to liberty and security) to the extent necessary to ensure that the provisions of sections 21 to 23 are not in breach of this ECHR obligations.9

On July 30 2002, the Special Immigration Appeals Commission (SIAC) (which *inter alia* reviews immigration decisions involving considerations of national security) declared that these provisions of the 2001 Act were incompatible with the ECHR on grounds that they targeted non-British persons, and were therefore unlawful under Article 14 ECHR (which prohibits discrimination in the application of the ECHR). The decision was reversed on appeal to the Court of Appeal in *A and Others v Secretary of State for the Home Department* (October 25, 2002).10 The Court of Appeal did not see the closed evidence which the SIAC had seen, but nevertheless thought it obvious that the SIAC was entitled to conclude that there was an emergency threatening the life of the nation within the meaning of Article 15 ECHR. However, the Court of Appeal disagreed with the SIAC on the discrimination issue under Article 14 ECHR. The Court concluded that the Home Secretary’s selection of alien terrorists for detention did not involve impermissible discrimination. The aliens who could not be deported (because of the risk of torture in the country of destination) did not, unlike British nationals, have any right to remain in the UK and therefore fell into a different class. As soon as they could be deported to a country which would not torture them, this would happen. It was only the need to protect them from torture that meant that they could not be removed for the time being. The Court thought it would be “surprising” if Article 14 (ECHR, or any international requirement not to discriminate, prevented the Home Secretary from taking the restricted action he thought necessary (in this case, detention). The Court also pointed out that the consequence of the detainees’ argument on discrimination was that the Home Secretary would have to take more extensive action, applying to both national and non-nationals, than he would otherwise have thought necessary and that this result would not promote human rights but have the opposite result.

The case illustrates the significance of the ECHR as a factor in the legal context in which counter-terrorism measures operate in the United Kingdom. On the one hand, the protection of human rights is a fundamental value of a democratic society, but on the other, society itself requires protection from terrorist attack and this may necessitate some of those rights being abridged. The European Court of Human

---

8 Briefly stated, the problem is that by virtue of Article 5(1)(f) of the European Convention on Human Rights a person cannot be detained under the Immigration Act 1971 unless action is being taken with a view to deportation. On the other hand, Article 3 ECHR prevents deportation to a country where there is a real risk that the person will face torture or inhuman or degrading treatment or punishment.

9 For the text of the derogation see the Human Rights Act 1998 (Amendment No 2) Order SI 2001/3644.

10 See Document No 29.
**Foreword**

Rights has long recognised the need for a proper balance between the defence of the institutions of democracy in the common interest and the protection of human rights. It has indicated its readiness to take into account the ‘special nature of terrorist crime and the exigencies of dealing with it.’

The documents in this volume set out key elements of the balance between legitimate governmental interests and the protection of human rights as it is evolving in the United Kingdom.

---

Preface

Introduction
The most devastating terrorist attack ever recorded in the history of humanity occurred on September 11, 2001. Nineteen terrorists hijacked four US airplanes and crashed them into the World Trade Center towers in New York City and the Pentagon in Virginia. One plane crashed in a field in Pennsylvania. Some three thousand people were killed and thousands more injured. It is not surprising, therefore, that this carnage resulted, inter alia, in the proliferation of several hundred reports, studies and books on the threat of modern terrorism and what societies can, and should, do to reduce the potential risks on conventional and unconventional levels.

To be sure, the origin of The United Kingdom’s Legal Responses to Terrorism did not stem from the horrors of September 11. The editors of this volume, and their academic and professional colleagues, have conducted relevant legal research for some four decades. Suffice it to mention earlier publications such as Legislative Responses to Terrorism (Martinus Nijhof, 1986), edited by Yonah Alexander and Alan S Nanes; Cases and Materials on Terrorism: Three Nations’ Response (Kluwer Law International, 1997), edited by Michael F Noone and Yonah Alexander; Legal Aspects of Terrorism in the United States, Vols 1–4 (Oceana, 2000), edited by Yonah Alexander and Edgar H Brenner; Terrorism and the Law (Transnational, 2001), edited by Yonah Alexander and Edgar H Brenner; and US Federal Legal Responses to Terrorism (Transnational, 2002), edited by Yonah Alexander and Edgar H Brenner. Our academic work in this important field of public concern is expected to continue in the hope that it will contribute to national and international efforts in combating terrorism in the 21st century.

The purpose of this Preface is to provide a general overview of the threat of terrorism to the United Kingdom; to review and discuss the major legal responses included in this volume, particularly focusing on Executive Statements and Legislative Acts, International Treaties and Conventions and court cases, and also to acknowledge the support of individuals and institutions in producing this book.
Terrorism’s challenge to the United Kingdom

There exists a definitional and moral confusion over what constitutes terrorism. Academic research indicates that there are some 200 definitions.\(^1\) Indeed, every sovereign state reserves to itself the political and legal authority to define terrorism in the context of domestic and foreign affairs. It is not surprising, therefore, that for legislators, terrorism has a sufficiently precise legal meaning to enable them to enact counter-terrorism legislation.

The United Kingdom is no exception. Clearly, “English law regulating political violence has been continuously refined in the 300 years since the Glorious Revolution and has served as a paradigm for other countries that derive their jurisprudence from that experience.”\(^2\) Britain’s counter-terrorism legislation reflects, therefore, perceived threats of political violence at home and abroad.

It is a truism that the United Kingdom is a victim of both domestic and international terrorism. First, it has been a principal site for terrorist activities resulting from the conflict in Northern Ireland, which is a British territory. The major challenge has been the activities of the Irish Republican Army (IRA), also known as the Provisional Irish Republican Army (PIRA). In the name of uniting the Irish Republic and Northern Ireland, the IRA resorted to bombings, assassinations, kidnappings, extortion, and robberies. The IRA has taken its fight to the streets of London and other cities in England. It attacked ordinary civilians, military personnel, police, and business centres. Militant Protestant groups in Northern Ireland have also undertaken terrorist operations resulting in 3,000 fatalities, woundings, and property damage. Despite the 1994 cease-fire and the ongoing peace process, which began under the Good Friday agreement of 1998, Catholic splinter groups, such as the Real IRA, as well as Protestant extremists opposing a political solution, continue their violent activities.

To be sure, the peace process is currently in crisis. In October 2002, the police in Northern Ireland raided the offices of Sinn Fein, the IRA’s political wing. It arrested Republican activists for stealing sensitive British government documents from the offices of the parliament building at Stormont. This intelligence gathering, it was charged, could be used by terrorists. Consequently, Britain indefinitely suspended the province’s local assembly in which Protestants and Catholics share power. Both the Irish Republic, which is a co-sponsor of the Good Friday agreement, and the United States, which helped to broker it, approved Britain’s move. Nevertheless, other parts of the agreement still remain intact, including a joint Protestant–Catholic board set up to oversee policing.

---

In spite of this latest setback, the Northern Ireland experience indicates that the United Kingdom security and political measures, with some exceptions, generally struck a balance between maintaining democratic and legal rights and avoiding recourse to draconian responses.

Another challenge facing Britain, particularly in the past 30 years, relates to attacks in the country perpetrated by foreign terrorists. More specifically, various Middle East factions have carried their quarrels to Britain. For instance, in 1980 dissidents seized the Iranian embassy in London. It was stormed and retaken by a combination of police and special air service and terrorist troops. Nineteen hostages were rescued, and five terrorists killed. In 1982, members of the Palestinian Abu Nidal Organisation gravely wounded the Israeli Ambassador to the United Kingdom, Shlomo Argov. This assassination attempt triggered Israeli retaliation and the subsequent war in Lebanon.

It should be noted that Britain has been a target of many acts of terrorism abroad. British citizens traveling outside the United Kingdom have also been victims, such as the 67 nationals who were killed on September 11 at the World Trade Center. In fact, the United States House of Representatives in expressing its “sincere appreciation” of Blair’s “leadership in the war on terrorism” offered in its Resolution on October 11, 2002, “deepest sympathy to the British victims of terrorism and their families,” referring specifically to the September 11 victims.

Another aspect of the terrorist threat to be considered is the involvement of some British citizens in operational activities outside the United Kingdom. Two suspects are cases in point. Richard Colvin Reid, a 28 year old British national of mixed European and Jamaican descent, attempted to light a fuse to his explosive-laden shoes on American Airlines flight 63 from Paris to Miami on December 22, 2001. On January 16, 2002, Reid was charged with interfering with a flight crew, attempted use of a weapon of mass destruction, attempted homicide, placing explosive devices on an aircraft, attempted murder, attempted destruction of an aircraft, and attempted wrecking of a mass transportation vehicle. On October 3, 2002, he pleaded guilty, declaring his hatred for America and his loyalty to bin Laden.

The second case involves Ahmed Omar Saeed Sheikh, a British citizen of Pakistani origin. He attended the London School of Economics, dropping out in 1992 to become an aid worker in Bosnia. He was radicalised by his stay in Bosnia and moved to Pakistan to join the Kashmiri terrorist group Harakat ul-Muhajideen (HUM). He was captured by Indian forces in 1994 after kidnapping four Western tourists. He was released after the hijacking of an Indian Airlines jet in December 1999. Omar then joined Jaish-e-Mohammad (JEM) and was involved in the kidnapping and murder of Wall Street Journal journalist Daniel Pearl in February 2002. Omar was secretly indicted by the United States in November 2001 and is currently in Pakistani custody.
It is against this backdrop that the Foreign Affairs Committee of the House of Commons stated in its seventh report of Session 2001–2002 that “…international terrorism can only be tackled through thorough international cooperation, and not just among Britain’s traditional allies. We are convinced that the government’s efforts to achieve international counter-terrorism cooperation through existing international organisations, and in particular through the United Nations, are therefore an appropriate way to develop effective international cooperation against terrorism. Sufficient resources must, however, be provided to ensure that such measures succeed.”

The materials on the United Kingdom’s legal responses to terrorism included in the volume are described as follows.

**Executive Statements**

The Prime Minister, three weeks after the terrorist attacks of September 11, made a statement to Parliament (and to the world), concerning “Responsibility for the Terrorist Attacks in the United States, 11 September 2001” (Document No 1). Tony Blair’s presentation was based “on still-secret electronic eavesdropping, interrogations and other sensitive sources…” (US News & World Report, October 15, 2001, page 18). His remarkable support for the United States view of events asserts unequivocally that the attacks were planned and carried out by Osama bin Laden and al Qaida in alliance with the Taliban regime in Afghanistan. (Document No 1, page 4.) The Prime Minister charged bin Laden with responsibility for the 1993 attacks “on US military personnel serving in Somalia…the bombings of the US Embassies in Kenya and Tanzania…and [t]he attack on the USS Cole…” (page 4).

The Prime Minister closed the statement by saying “we have an absolute determination to see justice done, and this evil of mass terrorism confronted and defeated” (page 8).

**Legislative Acts**

The Terrorism Act 2000 (Document No 2) since its enactment is “the main source of the law relating to terrorist activity taking place within the United Kingdom (including actions or conspiracies within any part of the UK to commit acts abroad—

---

(see s 1(4) and the offences relating to weapons training under s 54 and inciting terrorism overseas under ss 59–61...)."

The “Terrorism Act 2000 Explanatory Notes” (Document No 3, pages 87–99) provide a convenient summary of the legislation, prepared by the government department introducing the Bill. As the “Overview” sets forth, starting at page 88: Part I sets out the definition of terrorism for the purposes of the Act; Part II provides a power for the Secretary of State to proscribe organisations; Part III provides for offences relating to fund-raising and other kinds of financial support for terrorism; Part IV concerns terrorist investigations; Part V concerns counter-terrorist powers; Part VI concerns…ancillary offences. Part VII provides for the continuation of the system, in Northern Ireland, whereby terrorist offences may be tried without a jury (Document No 3, page 89).


Part 4, Immigration and Asylum, is one of most important and controversial parts of the 2001 Act. Section 21(1) provides that the Home Secretary may issue a certificate that a person is believed by him to be a risk to national security and is suspected by him of being a terrorist. Under section 23 a person so designated may be detained “despite the fact that his removal or deportation from the United Kingdom is prevented (whether temporarily or indefinitely) by (a) a point of law…, or (b) a practical consideration.”

Under s 25, a suspected international terrorist may appeal his certification to the previously created Special Immigration Appeals Commission (SIAC). The Commission must cancel the certification if it finds that the Home Secretary’s belief or suspicion is without reasonable grounds or “that for some other reason the certificate should not have been issued.”

The purpose of Part 4 was, in part, to remedy the hurdle created by the European Court of Human Rights which had concluded in *Chahal v United Kingdom* (Document No 25) that non-deportable aliens suspected of being terrorists could not be detained indefinitely and that the United Kingdom’s detention review procedures did not provide an “effective remedy before a national authority” as...
required by Article 13 of the European Convention on Human Rights (the Convention).

However, in July 2002, the SIAC ruled that the alien detention provisions in the Anti-Terrorism, Crime and Security Act 2001 discriminated against aliens in violation of the Convention (Document No 28. This ruling was overturned on October 25, 2002. Document No 29).

The Regulation of Investigatory Powers Act of 2000 (Document No 5) is a comprehensive piece of legislation dealing with a variety of subjects related to criminal investigations. Part I concerns communications. Sub-chapters deal with interception of communications and the acquisition and disclosure of communications data. Part II concerns surveillance and covert human intelligence sources. Part III deals with investigation of electronic data protected by encryption. Part IV, and other provisions, deal with the scrutiny of investigatory powers and of the functions of the intelligence services.

In the Human Rights Act 1998 (Document No 6) the United Kingdom gave effect to the European Convention on Human Rights as substantive United Kingdom law. This means the United Kingdom courts must give effect not only to the Convention but must also take into account any “judgment, decision, declaration or advisory opinion of the European Court of Human Rights” (s 2(1)(a), pages 311–312).

**International Treaties and Conventions**

In the Treaty of Maastricht, Title VI, “Provisions on Cooperation in the Fields of Justice and Home Affairs” (February 12, 1992) (Document No 7), the European Community Member States agreed that they would regard as a matter of common interest “police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime” (Article K.1(9), page 344).


Title VI of the Amsterdam Convention (October 2, 1997) (Document No 9) placed increased importance on police cooperation through Europol (Article K.1(9), page 388). However, it was not until after September 11, 2001, that Europol assumed its current important role in coordinating the European Union’s war against terrorism.
Court Cases

We have edited the cases to delete extraneous material, or the consideration of issues unrelated to terrorism. The location of omitted text is noted.

A number of the cases mention the “Secretary of State for the Home Department.” Sometimes the title is shortened to “the Secretary” or “the Secretary of State” or “the Home Secretary.” In order to reduce confusion on the part of non-UK readers, we have used the title of “Home Secretary” wherever appropriate to the context.

The Queen on the Application of the Secretary of State for the Home Department v Immigration Appeal Tribunal, and The Queen on the Application of Hvez v Secretary of State for the Home Department & an Adjudicator, in the Supreme Court of Judicature, Queen’s Bench Division (December 19, 2001) (Document No 10): this case involved passengers on an aircraft hijacked in Afghanistan, which eventually landed in the United Kingdom. Some of the passengers sought leave to enter the United Kingdom on the ground that they were refugees entitled to the protections offered by the 1951 UN Convention on the Status of Refugees. The Home Secretary denied their claim to refugee status and refused them leave to enter the United Kingdom. They appealed to the Immigration Appeal Tribunal, which adjourned the appeals indefinitely. The court held that persons refused leave to enter the United Kingdom are entitled to have the question of whether or not they are entitled to refugee status determined by the Immigration Appeal Tribunal.

In The Queen on the Application of Louis Farrakhan, Court of Appeal (April 30, 2002) (Document No 11): the court considered a decision by the Home Secretary to refuse Rev Farrakhan permission to enter the United Kingdom on the ground that his presence “would at the present time pose an unwelcome and significant threat to community relations and in particular to relations between the Muslim and Jewish communities…” (paragraph 2, page 399). The trial judge concluded that the Home Secretary had not established that there was “more than a nominal risk that community relations would be likely to be endangered…” if Rev Farrakhan were admitted to the United Kingdom (paragraph 33, page 410).

The appellate court reversed his decision, holding that the Home Secretary “provided sufficient explanation for a decision that turned on his personal, informed, assessment of risk to demonstrate that his decision did not involve a disproportionate interference with freedom of expression” (paragraph 81, page 423).

In Governor of HM Prison Brixton, and Government of the United States of America v Eidarous and Abdelbary, High Court, Queen’s Bench Division, May 2, 2002 (Document No 12): Eidarous and Abdelbary sought writs of habeas corpus to challenge rulings by a magistrate in extradition proceedings based on allegations by the United States that they had conspired with Osama Bin Laden to attack US embassies in Nairobi and Dar es Salam and to murder US citizens.
The court rejected the arguments advanced by the applicants in an effort to avoid extradition to the United States. The Court held that: (1) the magistrate could rely on a statement from an anonymous witness identified only as “CS/1” (paragraph 15, page 429); (2) that the evidence met the applicable statutory tests (paragraphs 32–33, page 435); (3) that there was sufficient connection with the United States to confer jurisdiction, in particular that there was no requirement that the acts constituting the extradition crime should have taken place within the territory of the United States (paragraph 34, pages 435–436); (4) that the reasons set forth by the magistrate were adequate (paragraph 40, pages 437–438).

The case of *The Secretary of State for the Home Department v Shafiq Ur Rehman*, Court of Appeal, May 23, 2000 (Document No 13): involved Rehman’s appeal of a decision by the Home Secretary to deport him on the ground that information “received from confidential sources…” indicated that he was “involved with an Islamic terrorist organisation Markaz Dawa al Rishad…” and that his continued presence in the United Kingdom “represents a danger to national security” (paragraphs 1, 2 and 3. pages 439–407).

The Special Immigration Appeals Commission (SIAC) had held on appeal that the conduct at issue “had to be directed against the United Kingdom…” (paragraph 33, page 450). The Court of Appeal, however, concluded that this approach was too narrow and that if Rehman’s activities were directed against India’s links with Kashmir, it could damage the United Kingdom’s relations with India and thus could have “national security consequences” (paragraph 40, page 452).

The SIAC also concluded that the “specific allegations of serious misconduct by Mr Shafiq Ur Rehman…had not been proved” (paragraph 43, page 453). The Court of Appeal rejected this conclusion holding that “in any national security case the [Home Secretary] is entitled to make a decision to deport not only on the basis that the individual has in fact endangered national security but that he is a danger to national security” (paragraph 44, pages 453–454).

*O’Hara v Chief Constable of the Royal Ulster Constabulary*, House of Lords, December 12, 1996 (Document No 14): the case involved a question of law, namely whether in an arrest without a warrant of a person for murder in a terrorist context, the requisite “reasonable grounds” can be based on the arresting constable’s briefing by a superior officer. The trial court and the Court of Appeal concluded that “reasonable grounds” could be predicated on the constable’s briefing by a superior officer.

The House of Lords concluded “that the reasonable suspicion has to be in the mind of the arresting officer…” which in turn can be based on “the information given to the officer…” by a superior (page 465).
Her Majesty’s Advocate v Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah, the High Court of Justiciary, January 30, 2001 (Document No 15). This is the edited text of the guilty verdict against Al Megrahi of Libya in the bombing of Pan Am flight 103 over Lockerbie, Scotland on December 21, 1988. Though the court was Scottish, it heard the case sitting in the Netherlands at Camp Zeist.

Al Megrahi v HM Advocate, Appeal Court, High Court of Justiciary, March 14, 2002 (Document No 16): this is the appellate decision sustaining Al Megrahi’s conviction. The Court’s review of the facts has been omitted for the reason that the facts were adequately covered in the trial court decision.

The Queen (on the application of the Kurdistan Workers Party, the People’s Mojahedin of Iran and Nisar Ahmed) and the Secretary of State for the Home Department. High Court, Queen’s Bench Division, April 17, 2002 (Document No 17): the principal issue in this case was the procedure to be followed by an organisation challenging its proscription as a terrorist organisation pursuant to the Terrorism Act 2000. Under the Act (Document No 2 in this volume), the Home Secretary may designate an entity as a “proscribed organisation” without prior hearing. An organisation so designated may apply to the Home Secretary for “deproscription” (paragraph 7). If the application is denied, an appeal may be taken to the Proscribed Organisation Appeal Commission (POAC) (paragraph 8).

The three organisations involved in the case contended that they were entitled to immediate judicial review of their designation. The court rejected this argument holding “that challenges to an organisation’s presence in the list of proscribed organisations should be brought by way of an application for deproscription and appeal to POAC” (paragraphs 82 and 92).

In paragraph 33 of the decision, the court mentions that one of the proscribed organisations relied on a United States Court of Appeals decision for the proposition that the failure to provide advance notice and a prior hearing constituted procedural unfairness. The case relied on was National Council of Resistance of Iran v Dept of State, 251 F3d 192 (DC Cir.2001). That case involved an organisation designated as a “foreign terrorist organisation” under the United States Antiterrorism and Effective Death Penalty of 1996 (AEDPA). Under AEDPA a designated organisation does not receive prior notice of the designation but may subsequently challenge it in the United States Court of Appeals for the District of Columbia.

In the US case, the designated organisation contended that the AEDPA procedure was unconstitutional. The Court of Appeals agreed and ordered the US Secretary of State to provide a meaningful hearing but did not lift the designation. After the hearing the same result obtained and a second appeal was taken to the Court of Appeals.
Meanwhile criminal proceedings had been bought against six individuals in a US District Court in California charging them with having supported the designated organisation. The District Court Judge concluded that the designation procedure was unconstitutional and dismissed the criminal charges. United States of America v Roya Rahmani, et al, Case No CRI-209 (June 21, 2002). (For a highly critical commentary on the District Court’s action see: Alexander and Brenner, “Privileged Justice for Terrorists?” The Washington Times, July 11, 2002 page A19).

The case of Quinlivan v Conroy, High Court of Ireland, April 14, 2000, (Document No 18) involved efforts by Quinlivan to preclude his extradition from Ireland to England. Quinlivan had been charged with (1) conspiring “with others to murder Sir Charles Henderson Tidbury and other persons…”; (2) conspiring “with others to cause, by explosive substances, explosions of a nature likely to endanger life or cause serious injury to property…”; (3) escaping from custody in Brixton Prison “contrary to common law”; and (4) that in the process of the escape he “unlawfully and maliciously wounded…” a third person (pages 577–578).

Quinlivan’s first argument was that the extradition should be refused because his actions were “political offences” committed on behalf of the Irish Republican Army. The “political” defence was denied because the planned use of explosives would constitute “indiscriminate attacks” and “crimes against humanity” (page 587).

As to the escape from prison and the serious wounding of a bystander, the court relied on the Extradition (European Convention on the Suppression of Terrorism) Act 1987, as precluding the “political offences” defence to extradition (pages 590–592).

Quinlivan’s remaining argument that he would be prejudiced by pre-trial publicity, and that in the event he were tried and convicted he would be entitled to accelerated release under the “Good Friday Agreement,” were both rejected (pages 597–601).

In re Devine, High Court of Justice in Northern Ireland, March 26, 1999 (Document No 19) involved legislation applicable only in Northern Ireland permitting certain officers of the Royal Ulster Constabulary to apply to a County Court Judge to authorise a “financial investigator” in an investigation. The financial investigator has the power to compel persons to appear before him, answer questions and produce documents (paragraph 2).

Devine also contended that the financial investigator was improperly permitted to use “the pseudonym of John Armstrong” (paragraph 5). This was done for the protection of the financial investigator in light of the violence in Northern Ireland. The court, in light of particular circumstances of the case,
concluded that the use of a pseudonym by the financial investigator was proper (paragraphs 27, 28).

The case of Martin v Conroy, High Court of Ireland, May 1, 2001 (Document No 20) involved an unsuccessful effort by Andrew Martin to avoid extradition from Ireland to England to stand trial for terrorist acts.

Martin was charged in England with conspiracy and serious offenses involving the use of explosives occurring in 1988 (paragraph 1). Warrants issued by the Bow Street Magistrates Court in London were served on Martin in 1998 in Ireland when he was released from prison after serving a sentence on unrelated charges (paragraphs 8, 9). Consequently the time period between the alleged offences and the execution of the arrest warrants was over nine years (paragraph 10).

Martin’s counsel argued that the delay of over nine years was contrary to Section 50(2)(bbb) of the Extradition Act of 1965, as amended by the Extradition (Amendment) Act of 1987, and that Martin should be released and not extradited to England (paragraph 19).

Sub-section (bbb) provides in part that a ground for release of an arrested person is “the lapse of time since the commission of the offence specified in the warrant…and other exceptional circumstances…” (paragraph 22).

The Irish Court held that the passage of time by itself was not enough in that Martin was required to make a showing of “exceptional circumstances,” which he had failed to do (paragraph 61).

In Regina v Director of Public Prosecutions, ex parte Kebeline and Others, House of Lords, October 28, 2001, (Document No 21): three Algerian nationals were charged with offences under section 16A of the Prevention of Terrorism (Temporary Provisions) Act 1989 (pages 634–635).

The defendants were charged with having “in their possession chemical containers, radio equipment, manuals, (documents, credit cards and sums of money in circumstances which give rise to a reasonable suspicion that the articles were in their possession for a purpose connected with the commission, preparation or instigation of acts of terrorism” (page 634) (emphasis added).

Section 16A of the Act provides that a person is guilty of the offence if the suspicious articles are in his possession or control, but as a defence the defendant can prove “that he did not at that time know of its presence in the premises in question, or if he did know, that he had no control over it” (page 634).

Section 19(1)(aa) of the Act of 1989 requires the consent of the Director of Public Prosecutions to initiate proceedings under the Act.

“At the close of the case for the prosecution the defence sought a ruling from the judge that section 16A of the Act reversed the legal burden of proof and was therefore in breach of Article 6(2) of the European Convention on Human
Rights.” Article 6(2) provides that persons criminally charged “shall be presumed innocent until proved guilty according to law” (page 635).

The trial judge ruled that section 16A was in conflict with Article 6(2). The jury was discharged, for procedural reasons, without hearing the prosecution’s evidence. It was expected that a new trial date would be set.

Prior to the setting of a new trial date the three defendants applied for leave to apply for judicial review to challenge the “continuing decision” of the Director of Prosecutions to permit the case to go forward. The trial judge granted leave to apply for judicial review (page 636).

The appeal was heard by three judges in the Divisional Court, which, in an opinion by the Lord Chief Justice, held that “section 16A of the Act of 1989 undermines in a blatant and obvious way the presumption of innocence”.

The principal issues on appeal to the House of Lords concerned the effect to be given to the Human Rights Act of 1998, which had not fully come into force, the propriety of reviewing a decision of the Director of Public Prosecutions in separate proceedings, and whether the legal burden of proof had been reversed, and if so, whether this reversal was compatible with Article 6(2) of the European Convention on Human Rights (pages 637–687).

Lord Steyn concluded that absent dishonesty or *mala fides* (which was not at issue) “the decision of the [Director of Public Prosecutions to consent to the prosecution… is not amenable to judicial review” (page 644).

Lord Cooke observed that “[on] its face section 16A of the Act of 1989 enables a person to be found guilty of a very serious offence merely on reasonable grounds of suspicion” (pages 645–646). In his view, the issue of incompatibility should be initially decided by the trial judge (page 647).

Lord Hope differed in concluding that section 16A requires “*prima facie* proof, not mere suspicion” (page 661). Whether the burden shifted to the defendant is unreasonable can only be determined when the facts are known at trial (page 662). However, he concurred with Lord Steyn that the consent of the Director of Public Prosecutions “is not amenable to judicial review” (page 649).

Lord Hobhouse concluded that any incompatibility between the Human Rights Act s 16A would “not deprive s 16A of its force and validity nor does it affect the criminal trial or any convictions resulting from the application of s 16A” (page 671). This was because section 4(6) presumes the continuing validity of any provision of an Act of Parliament in respect of which a declaration of incompatibility is made (pages 670–671).

Lord Hobhouse also stated that “[c]riminal statutes which in certain circumstances partially reverse the burden of proof are not uncommon…[and] are not necessarily incompatible with the [European] Convention” on Human
Rights (page 673). In his view, the issues in the case should be decided initially by the trial court.

In re Hany El Saved El Sabaei Youseff, High Court, Queen’s Bench Division, March 12, 1999 (Document No 22), involved an application for habeas corpus by an Egyptian lawyer “who represented Islamic fundamentalists in Egypt” (paragraph 1). After being tortured by Egyptian security forces, he arrived in the United Kingdom and claimed asylum.

Subsequently, he was detained under Schedule 2 to the Immigration Act of 1971 pending a decision by the Home Secretary as to whether he could be removed to Egypt. The court noted that the applicant could not be detained under the 1971 Act if he was considered to be linked to international terrorism (paragraph 22).

The court in denying the writ of habeas corpus held “that it would not be acceptable for the applicant to be kept in detention simply on the off chance that he might be able to be removed to Egypt. The Home Secretary has to be satisfied that there is a realistic prospect, which he wishes to pursue with the Egyptian authorities. Once that prospect ceases in his judgment to be realistic then the applicant should be released” (paragraph 39).

In the Matter of Ramda, in the Matter of Boutarfa, High Court, Queen’s Bench Division, June 25, 1997 (Document No 23): Ramda and Boutarfa, in an effort to preclude their extradition to France, where they faced various terrorism charges, sought writs of habeas corpus (paragraph 1).

The applicants claimed that if returned to France they might be “prejudiced at…trial by reason of [their] race, religion, nationality or political opinions” (paragraphs 2, 3). In support of this argument they sought to “demonstrate xenophobic attitudes in France and, in particular, hostility towards immigrants from Algeria” (paragraph 6).

The applicants also claimed prejudicial pre-trial publicity and that under the French legal system the trial would be before judges with no power to stay the prosecution by virtue of prejudicial pre-trial publicity (paragraphs 9, 14). The French government denied these and other similar assertions (paragraphs 15, 16).

The court was unable to conclude, in light of all the circumstances, that “it would be unjust or oppressive to return the applicants…to France” (paragraph 27).

The case of R v Samar Alami Jawad Botmeh, Court of Appeal (Criminal Division), May 10, 1999 (Document No 24): involved the appeal by two defendants convicted of conspiracy in the London bombing of the Israeli Embassy and Balfour House in 1994 (page 693).

The two principal grounds of appeal were that the trial court refused to postpone a television program concerning a terrorist airplane hijacking incident
occurring in 1977. The court concluded that prejudice was avoided when the court instructed the jurors to “try this case on what you hear and see and are told in this court, not what you see on television” (page 701).

The other ground of appeal was that a juror received a brief “approach from an Israeli journalist during the course of the trial…” (page 701). The juror reported the incident promptly. The journalist denied making any approach (page 702).

The court held that the trial judge was entitled to conclude that there was no possibility of bias and was entitled in his discretion to refuse to discharge [the] juror, (page 703).

Chahal v The United Kingdom and the European Court of Human Rights, November 15, 1996 (Document No 25): the case was referred to the European Court of Human Rights by the Government of the United Kingdom and by the European Commission of Human Rights to secure a ruling as to whether or not Karamjit Sing Chahal’s detention in the UK pending deportation proceedings was consistent with the European Convention on Human Rights (“the Convention”) (Document No 25, paragraph 1).

Chahal was a Sikh separatist believed by the Home Office to be a supporter of terrorism. The Home Office sought his deportation from Britain. Chahal applied for political asylum and claimed that he would be “subject to torture and persecution if returned to India…” Chahal had been held in Bedford Prison pending his deportation from August 16, 1990 to March 3, 1994 when the domestic court proceedings came to an end (paragraphs 109, 114). Thereafter, the UK government refrained from deporting him and he remained in custody until the European Court of Human Rights issued its ruling on November 15, 1996. (The total period of detention was thus almost six years.)

Chahal contended that his detention was improper because the lawfulness of his detention was not decided speedily by a court as required by Article 5, Section 4 of the Convention. He argued that the Home Secretary’s reliance on national security grounds precluded the UK courts from deciding if his detention was lawful (paragraph 67).

Chahal also argued that he did not have an “effective remedy before a national authority” as required by Article 13 of the Convention. The European Court of Human Rights agreed with both arguments (at paragraphs 132, 133, 155). The ruling led to Chahal’s release (Document No 26, paragraph 5).

The significance of the European Court’s decision was set forth as follows in the United Kingdom’s Human Rights Act of 1998 (Designated Derogation) Order 2001 (November 11, 2001). “It is well established that Article 5(1)(f) [of the Convention] permits the detention of a person with a view to deportation only in circumstances where ‘action is being taken with a view to deportation’ Chahal v United Kingdom (1996).” The penultimate document in this volume, No 28, is a
Summary of a decision by the SIAC relating to the Home Office’s efforts to detain terrorists and to comply with the European Human Rights Court’s decision in *Chahal v United Kingdom* (Document No 25). The SIAC decision was set aside on October 25, 2002 (Document No 29).

*R v Secretary of State for Home Department ex parte Chahal*, High Court, Queen’s Bench Division, November 6, 1998 (Document No 26): as a result of the decision in *Chahal v The United Kingdom*, Chahal was released from custody. Chahal unsuccessfully applied *ex parte* to the Home Office to be financially compensated for his long detention (paragraphs 12 and 14). Though Mr. Justice Tucker of the High Court of Justice referred to Chahal as “the longest serving civil detainee in this century…” and he dismissed Chahal’s application for compensation concluding that “it has not been established that the [Home Secretary’s] discretionary refusal to award compensation was irrational, or in contravention of Article 5(5)…” (paragraphs 4, 45, 46).

An additional aspect of the decision is worth mention. The court observed that “at no time during…[Chahal’s] detention was there in existence a UK Court which was able to investigate and evaluate the allegation of a threat to national security that had caused the applicant to be detained during his challenge to the decision to deport him”. The court continued, “[t]his defect has now been remedied by the introduction, in September 1998, of the Special Immigration Appeals Commission, presided over by a High Court Judge”.

*R v Hugh Thomas Jack*, Court of Appeal (Criminal Division), April 7, 1998 (Document No 27): in 1995, Hugh Thomas Jack was convicted of conspiracy to cause explosions and was sentenced to 20 years’ imprisonment (paragraph 1). The appellate court concluded that the circumstantial evidence against him “was very strong” and that even if they had found any merit in the three grounds for appeal, leave to appeal would not have been granted (paragraph 8).

The principal basis for appeal was the use of screens to conceal the identity of witnesses who were members of the security and intelligence services (paragraph 7, ground 1). The court approved the use of five factors to govern the exercise of the trial judge’s discretion with respect to the use of screens. The court concluded that in the context of the case the trial judge properly balanced the possible prejudice to Jack against the importance of the evidence and the “risk to the witnesses…”.

Jack’s counsel claimed next that it was wrong for the prosecution not to disclose the location of a surveillance camera (paragraph 5). Doing so would have revealed the identity of the persons who permitted its location on their property, contrary to their wishes (paragraph 6). The court concluded that this ground had “no substance”.

Counsel claimed finally that it was wrong to preclude cross-examination “as to
the capacity of tracking devices used to monitor…[Jack’s] movements…” (paragraph 5). The trial judge had considered the extent to which information could be disclosed to the jury, and that the jurors should not speculate about what they had not been told. The appellate court concluded that this was the correct approach (paragraph 7, ground 3).

Special Immigration Appeal Commission, Summary of Conclusions, July 30, 2002 (Document No 28): as we have seen from ex parte Chahal (Document No 25), and Chahal United Kingdom (Document No 26) prior to the Anti-Terrorism, Crime and Security Act 2001, aliens suspected of being terrorists could be detained without trial pending proceedings to remove them from the country. However, if removal became or was unrealistic within a reasonable period of time, the alien would have to be tried or released.

This presented a serious problem with respect to suspected terrorists who could not be removed to their country of origin because in the event of removal they would be subject to torture and other civil rights abuses.

To deal with this situation Part 4, sections 21 to 23 of the Anti-Terrorism, Crime and Security Act 2001 (Document No 4) provided for the detention without trial of persons the Home Secretary “has certified as threats to national security and who are suspected of being international terrorists where their removal is not possible at the present time” (Explanatory Notes to the Anti-Terrorism, Crime and Security Act 2001, paragraph 12).

Shortly after the terrorist attacks of September 11, 2001, the Home Secretary concluded that there was a “public emergency threatening the life of the nation”, and filed a derogation to Article 5(1) of the European Convention on Human Rights (“the Convention”) to permit suspected international terrorists deemed to constitute a risk to national security to be detained indefinitely without trial where removal or deportation is not presently possible because doing so might result in their torture, a violation of Article 3 of the Convention (Human Rights Act 1998 (Designated Derogation) Order 2001, No 3644 (November 11, 2001)).

It should be noted that these indefinite detention provisions are not applicable to UK citizens inasmuch as they cannot be removed or deported. Nor do they apply to citizens of the European Union since all Member States are parties to the Convention so that removal or deportation to any EU state would be presumed not to violate their human rights.

However, a small number of persons were categorised as suspected terrorists designated as risks to national security, who could not be removed for human rights reasons. Nine persons who had not been charged were being detained indefinitely (The Guardian, July 30, 2002). According to the Summary of Conclusions issued by the SIAC (Document No 28) it would appear that the nine persons were suspected of being “international terrorists”.

On July 30, 2002, the SIAC handed down a classified “substantial document” concerning the status of the nine detainees. In addition, it published a non-classified one-page summary of its conclusions.

The most important aspects of the Commission’s opinion are that the Home Secretary’s derogation from Article 5 was proper because there was a continuing public emergency threatening the life of the nation, justifying the detention without trial of suspected international terrorists with ties to al Qaida.

The Commission observed that the Home Secretary had not, however, derogated from Article 14 of the Convention, which precludes discrimination against aliens in the protection of human rights. Since the Act of 2001 permits the indefinite detention only of “non-British” persons, the Commission concluded that the indefinite detention of only alien suspected terrorists was not compatible with the European Convention on Human Rights. The opinion immediately attracted considerable attention.

A and Others v Secretary of State for the Home Department, Court of Appeal, October 25, 2002 (Document No 29): this decision is the appeal from the July 30, 2002 action of the SIAC. The Court of Appeal reversed the SIAC’s ruling.

The Chief Justice of the court, Lord Woolf, held that “[d]ecisions as to what was required in the interest of national security were self-evidently within the category of decisions in relation to which the court was required to show considerable deference to the Home Secretary because he was better qualified to make an assessment as to what action was called for” (page 769).

The court went on to observe that:

“[i]t was only the need to protect them [the aliens] from torture that meant for the time being they could not be removed. In those circumstances it would be surprising indeed if Art 14, or any international requirement not to discriminate, prevented the Home Secretary taking the restricted action, which he thought was necessary…. By limiting the number of those who were subject to the special measures, the Home Secretary was ensuring that his actions were proportionate to what was necessary” (page 770).

Justices Brook and Chadwick gave concurring judgments.

All twenty-nine documents that comprise this volume were downloaded from United Kingdom, Irish and European Union internet sources available to the public. The United Kingdom sources are Crown copyright, the existence of which we are pleased to acknowledge. We also acknowledge the copyright vested in the Irish sources and the European Union.
In sum, since September 11, 2001, the United Kingdom intensified its counterterrorism efforts on all levels: legislative (the Anti-Terrorism Crime and Security Act 2001), law enforcement (the Metropolitan Police Activities), civil contingency measures (dealing with the consequences of a chemical, biological, or radiological terrorist attack), moves toward central domestic coordination, and diplomatic and military support of the United States and coalition allies in the global war against terrorism. Whatever steps have been undertaken by the United Kingdom to strengthen its defence and security against the growing challenge of political violence at home and abroad, it is important to recognise that Britain has had counter-terrorism experience over some four decades.

As we have seen already, much of the pre-September 11 British legislation was designed to deal with terrorism and was focused on the situation in Northern Ireland. It prescribed penalties for a wide range of offences. Terrorism and terrorist were both defined. The possession of firearms or explosives was banned under certain circumstances. The provision of financial or material support for acts of terrorism in connection with Northern Irish affairs was designated as an offence, as was the failure to disclose information to the police which might be of assistance in preventing a terrorist attack. The IRA was proscribed, while other organisations could be added to the list. As we have seen, some of the methods adopted by the British in attempting to combat terrorism in Northern Ireland have led to criticism on civil liberties grounds. In fact, a public inquiry is currently underway into the alleged human rights abuses committed on so-called “Bloody Sunday”. One witness has claimed that the soldiers shot indiscriminately at unarmed civil rights protestors.

Clearly, as events in Northern Ireland amply demonstrated, political measures by the respective communities to further the peace process are essential. In general, the British government struck a balance between maintaining democratic and legal rights and avoiding recourse to excessive military responses.

As the events of September 11 clearly demonstrate, the United Kingdom has relocated its attention to the challenge of international terrorism posed by groups such as al Qaida. The legal responses are essential in the long war against terrorism. This volume reflects some of the measures undertaken and issues faced, to deal with the threat of terrorism to the United Kingdom, and to the entire international community.

Acknowledgments

We are particularly indebted to Michael Carpenter, Esq, Counsel (European Legislation), House of Commons, for his editorial guidance and advice, as well as for his agreement to write the Foreword to this volume. We also received substantial
assistance from Professor Frank Gregory, of the Department of Politics, University of Southampton, United Kingdom.

We also wish to thank the Inter-University Center for Legal Studies (International Law Institute), and the Inter-University Center for Terrorism Studies (Potomac Institute for Policy Studies). None of the aforementioned individuals or institutes bears any responsibility for our selection of materials to be included in this volume or our commentary relating to them.

We are fortunate to have sustained editorial supervision of the production of this volume by Research Associate Eric Whittington of the International Center for Terrorism Studies, Potomac Institute for Policy Studies. In addition, Research Assistant Kerrie Martin and a number of Research Interns contributed exemplary research and analysis. They include: Michelle Mendez, Melissa Brewster, Jesse Ferguson, Blaire Bingham, John M Turner, Amanda Bronsky, Jennifer Silvi, Jessica Wright, Lauren Conn, Wendy Lee, Roger Pogozelski, Tyler Richardson, Sean Corcoran, Leonard Tengco, and Joy Kolin.

Yonah Alexander
and
Edgar H Brenner
Washington, DC
October 25, 2002
EXECUTIVE ACTS
Check Against Delivery

I am grateful to you for recalling Parliament on a second occasion so that the House can consider developments since it last met.

Then the scale of 11 September tragedy was still unclear. Even today we do not yet know the precise numbers of those feared dead. But a bleak picture has emerged: there are up to 7,000 feared dead, including many British victims and others from 70 different countries. Many were Muslims. It cannot be said too often: this atrocity appalled decent Muslims everywhere and is wholly contrary to the true teaching of Islam. And we condemn unreservedly racist attacks on British Muslims here, most recently at an Edinburgh Mosque.

These acts are without any justification whatever and the full force of the law will be used against those who do them.

I pay tribute again to all those in America who have been involved in dealing with the human consequences of the attacks. The rescue services and medical workers who worked tirelessly and with devotion in the most harrowing conditions imaginable. I pay tribute to our own consular staff in New York and London and the family counsellors and Metropolitan Police officers who have supported relatives of the victims. And, above all, to the relatives themselves. Those I met in New York, still uncertain finally of the fate of their loved ones, bore their grief with immense dignity which deserves the admiration of us all.

Since 11 September intensive efforts have taken place here and elsewhere to investigate these attacks and determine who is responsible. Our findings have been shared and co-ordinated with those of our allies, and are clear.
4 United Kingdom’s Legal Responses to Terrorism

They are:

- First, it was Usama Bin Laden and Al Qaida, the terrorist network which he heads, that planned and carried out the atrocities on 11 September;
- Second, that Usama Bin Laden and Al Qaida were able to commit these atrocities because of their close alliance with the Taleban regime in Afghanistan which allows them to operate with impunity in pursuing their terrorist activity.

I will later today put in the Library of the House of Commons a document detailing the basis for our conclusions. The document covers the history of Usama Bin Laden, his relations with the Taleban, what we know of the acts of terror he has committed; and some of what we know in respect of 11 September. I enter a major caveat, much of the evidence we have is intelligence and highly sensitive. It is not possible without compromising people or security to release precise details and fresh information is daily coming in. But I hope the House will find it useful at least as an interim assessment. The Leader of the Opposition and the Leader of the Liberal Democrats have seen the full basis for the document on Privy Council terms. For myself and all other Government Ministers who have studied the full information, we have absolutely no doubt that Bin Laden and his network are responsible for the attacks on 11 September. That was also the unanimous view of the NATO members who were taken through the full facts on 2 October. Much more of the evidence in respect of earlier atrocities can be released in greater detail since it is already subject to court proceedings; and this in itself is powerful.

Indeed, there is nothing hidden about Bin Laden’s agenda. He openly espouses the language of terror; has described terrorising Americans as “a religious and logical obligation”; and in February 1998 signed a fatwa stating that “the killing of Americans and their civilian and military allies is a religious duty.”

As our document shows, he has been responsible for a number of terrorist outrages over the past decade.

- In 1998, the bombings of the US Embassies in Kenya and Tanzania. 224 people killed and over 4500 injured.
- Attempted bombings in Jordan and Los Angeles at the turn of the millennium, thankfully thwarted.
- The attack on the USS Cole nearly a year ago which left 17 crew members killed and 40 injured.

The attacks on 11 September bear all the hallmarks of a Bin Laden operation: meticulous long-term planning; a desire to inflict mass casualties; a total disregard
for civilian lives (including Muslims); multiple simultaneous attacks; and the use of suicide attackers. I can now confirm that of the 19 hijackers identified from the passenger lists of the four planes hijacked on 11 September, at least three of these hijackers have already been positively identified as known associates of Bin Laden, with a track record in his camps and organisation. The others are being investigated still.

Of the three, one has also been identified as playing key roles in both the East African Embassy attacks and the USS Cole attack.

Since the attacks, we have obtained the following intelligence: shortly before 11 September, Bin Laden told associates that he had a major operation against America under preparation; a range of people were warned to return to Afghanistan because of action on or around 11 September; and most importantly, one of Bin Laden’s closest lieutenants has said clearly that he helped with the planning of the 11 September attacks and has admitted the involvement of the Al Qaida organisation. There is other intelligence we cannot disclose of an even more direct nature indicating guilt. The closeness of Bin Laden’s relationship with the Taleban is also plain. He provides the Taleban with troops, arms and money to fight the Northern Alliance. He is closely involved with the Taleban’s military training, planning and operations. He has representatives in the Taleban’s military command structure. Forces under the control of Usama Bin Laden have fought alongside the Taleban in the civil war in Afghanistan. The Taleban regime, for its part, has provided Bin Laden with a safe haven within which to operate, and allowed him to establish terrorist training camps. They jointly exploit the Afghan drugs trade. In return for active Al Qaida support the Taleban allow Al Qaida to operate freely, including planning, training and preparing for terrorist activity. In addition they provide security for the stockpiles of drugs.

Mr Speaker, in the face of this evidence, our immediate objectives are clear. We must bring Bin Laden and other Al Qaida leaders to justice and eliminate the terrorist threat they pose. And we must ensure that Afghanistan ceases to harbour and sustain international terrorism. If the Taleban regime will not comply with that objective, we must bring about change in that regime to ensure that Afghanistan’s links to international terrorism are broken.

Since the House last met, we have been working ceaselessly on the diplomatic, humanitarian and military fronts.

I can confirm that we have had initial discussions with the US about a range of military capabilities with which Britain can help and have already responded positively to this. We will consider carefully any further requests and keep the House informed as appropriate, about such requests. For obvious reasons I cannot disclose the exact nature of our discussions. But I am fully satisfied they are consistent with our shared objectives. I believe the
humanitarian coalition to help the people of Afghanistan to be as vital as any military action itself.

Afghanistan was in the grip of a humanitarian crisis even before the events of 11 September. Four years of drought, on top of over two decades of conflict, have forced millions of people to leave the country; and have left millions more dependent on international humanitarian aid.

Last week the United Nations launched an appeal for $584 million to meet the needs of vulnerable people in and around Afghanistan. The appeal covers the next six months. The international community has already pledged sufficient funds to meet the most immediate needs. The British Government has contributed £25 million, nearly all of which has already been allocated to UN and other agencies. We have also made available a further £11 million for support for the poorest communities in Pakistan, especially those most directly affected by the influx of refugees.

I know President Bush will shortly announce details of a major US programme of aid. I have been in detailed consultation with the UN Secretary General Kofi Annan, the UN High Commissioner for Refugees Ruud Lubbers and other leaders. Kofi Annan has now appointed Lakhdar Brahimi to be his high level coordinator for the humanitarian effort in and around Afghanistan. We will give Mr Brahimi all the support we can, to help ensure that the UN and the whole of the international community comes together to meet the humanitarian challenge.

Action is already in hand to cope with additional outflows of refugees. UNHCR are working with the governments of the region to identify sites for additional refugee camps. The first UNHCR flight of relief supplies, including tents donated by the British Government, arrived in Iran yesterday. A second flight will depart at the end of this week, carrying more tents, plastic sheeting and tarpaulins, so that we can provide essential shelter for refugees.

We are also stepping up the effort to get food into Afghanistan, before the winter snows begin. A UNICEF convoy carrying blankets and other supplies left Peshawar for Kabul on Tuesday. A World Food Programme convoy carrying over 200 tonnes of wheat arrived in Kabul on Monday. Further WFP convoys have left for Afghanistan from Pakistan and Turkmenistan.

We will do what we can to minimise the suffering of the Afghan people as a result of the conflict; and we commit ourselves to work with them afterwards inside and outside Afghanistan to ensure a better, more peaceful future free from the repression and dictatorship that is their present existence.

On the diplomatic front, over the past three weeks the Foreign Secretary and I have been in intensive contact with foreign leaders from every part of the world. In addition, the Foreign Secretary has visited the Middle East and Iran. I have visited Berlin, Paris and Washington for consultations with Chancellor Schroeder, President
Chirac and President Bush respectively. Later today I will travel to Moscow to meet with President Putin.

What we have encountered is an unprecedented level of solidarity and commitment to work together against terrorism. This is a commitment that spans all continents, cultures and religions, reinforced by attacks like the one on the Jammu and Kashmir Assembly in Srinagar which killed over 30 innocent people.

We have already made good progress in taking forward an international agenda. Last week the United Nations Security Council unanimously adopted resolution 1373. This makes it mandatory for all states to prevent and suppress terrorist financing and requires the denial of safe haven to who finance, plan, support or commit terrorist acts. The European Union too has taken firm action. Transport, interior, finance and foreign ministers have all met to concert an ambitious and effective European response: enhancing police cooperation; speeding up extradition; putting an end to the funding of terrorism; and strengthening air security.

We are also looking closely at our national legislation. In the next few weeks, the Home Secretary intends to introduce a package of legislation to supplement existing legal powers in a number of areas. It will be a carefully appraised set of measures: tough, but balanced and proportionate to the risk we face. It will cover the funding of terrorism. It will increase our ability to exclude and remove those whom we suspect of terrorism and who are seeking to abuse our asylum procedures. It will widen the law on incitement to include religious hatred. We will bring forward a bill to modernise our extradition law. It will not be a knee-jerk reaction. But I emphasise we do need to strengthen our laws so that, even if necessary only in a small number of cases, we have the means to protect our citizens’ liberty and our national security.

We have also ensured, insofar as is possible, that every reasonable measure of internal security is being undertaken. We have in place a series of contingency plans, governing all forms of terrorism. These plans are continually reviewed and tested regularly and at all levels. In addition, we continue to monitor carefully developments in the British and International economy. Certain sectors here and around the world have inevitably been seriously affected, though I repeat the fundamentals of all the major economies, including our own, remain strong. The reduction of risk from terrorist mass action is important also to economic confidence as 11 September shows. So there is every incentive in this respect also, to close down the Bin Laden network.

Mr Speaker, three weeks on from the most appalling act of terrorism the world has ever witnessed.

The coalition is strong. Military plans are robust. The humanitarian plans are falling into place.
8 United Kingdom’s Legal Responses to Terrorism

And the evidence against Bin Laden and his network is overwhelming. The Afghan people are not our enemy. For they have our sympathy and they will have our support.

Our enemy is Usama Bin Laden and the Al Qaida network who were responsible for the events of 11 September. The Taleban regime must yield them up or become our enemy also. We will not act for revenge. We will act because for the protection of our people and our way of life, including confidence in our economy, we need to eliminate the threat Bin Laden and his terrorism represent. We act for justice. We act with world opinion behind us. And we have an absolute determination to see justice done, and this evil of mass terrorism confronted and defeated.
LEGISLATIVE ACTS