Uk anti-terrorism laws - analysis of key concepts

The UK Home Office holds plenty of different legislative functions that are used to help prevent any terror attacks from happening. Their main strategy used to counter terrorism is called “ Operation contest,” it involves four detailed criteria to ensure that any attacks are successfully prevented. Firstly, it aims to ‘ Pursue’ or follow terrorist activity in order to be able to stop terrorist attacks. Secondly, it wants to ‘ Prevent’ people from becoming terrorists, or actively supporting terrorist movements. Thirdly, Home Office aims to ‘ Protect’ the public and strengthen the safeguarding levels used to protect the nation from such attacks as the ones in France. Finally, the last element of the criteria is to ‘ Prepare.’ This stage is a last resort for when an attack cannot be stopped, and its intention is to mitigate the impact of the attack as much as is possible in order to fulfil the other criteria to an effective standard.

The prevention of terrorism is more relevant now than ever before, considering recent attacks, such as the ones in Nice this year. The Anti-Terrorism, Crime + Security Act 2001 (ATCSA) implemented the ‘ Indefinite detention of international terror suspects’, in an attempt to gain further control over the issue. S. 21 of this Act declares that the Secretary of state may issue a certificate in respect of a person, if they reasonably believe that a persons’ presence in UK is a risk to national security, and they suspect that the person is a terrorist. This is a useful prevention method, because detaining possible suspects means that they cannot partake in any dangerous terror related acts.

However, there are some issues concerning the detainment of individuals, especially when it is not certain that the individual has been identified as a

terrorist. In order to pass the legislation, the government had to derogate from Article 5 of ECHR, which deals with the right to liberty for individuals. (AV Secretary of State Home Department 2004)[1]It is argued that even a suspected international terrorist must still be given certain rights, for example they can use S. 21 to appeal to the Special Immigration Appeals Commission against the allegations made against them. The detainment of falsely accused suspects in particular could cause conflict within todays modern society; Lord Hoffman claimed that " the real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism, but from laws such as these." To emphasise this point, Lord Scott said that indefinite imprisonment that is based " on grounds that are not disclosed and made by a person whose identity cannot be disclosed, is the stuff of nightmares." This raises doubt to the sincerity of governmental intentions regarding terrorism suspects, and the success rate of finding and stopping active terrorists from causing irreparable damage.

Following the ruling of the House of Lords, the government replaced the provisions of ATCSA 2001 with the Prevention of Terrorism Act 2005 (PTA) This introduced various changes and new methods, such as ' control orders' for all terror suspects; these can be implemented whether the suspect is British or foreign, which has introduced a higher level of equality towards the treatment of suspects.

This Act stipulates that " control order" means an order against an individual that imposes obligations on him. For purposes connected with protecting members of the public from the risk of terrorism. The obligations that may

be imposed by a control order made against an individual, are any obligations that are necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity.

The PTA allowed the statute to impose ‘ non-derogating control orders’ on individuals, which included electronic tagging, curfews, visitation restrictions, internet bans, and limits placed upon phone communication. (Secretary of State for home Department V JJ 2007)[2]

A control order is not the same thing as being placed under ‘ house arrest’. The sole purpose is to put a stop to any potential terrorist activity, and they are tailored to each individual case in order to be a successful prevention method. They can be imposed for a period of up to 12 months at a time, but then an application for renewal must be made. This is a highly effective strategy to prevent terrorists from being able to plan or stipulate any attacks. Because it cuts off, or at least monitors all communication between the detainee and the outside world, it means that the individual has no way of executing any sort of attack, via his own actions or through somebody else’s. It is a good and effective method hat is reasonably accessible too, which theoretically should be a highly effective prevention strategy, once a suspect has been identified.

Despite the effectiveness of the method, Lord Bellingham likened the conditions of a control order to that of prison, simply without the benefit of association with others. He questions the humanity of the control order, and whether it is ethically acceptable to place an individual under these conditions, especially when it has not been proven that they have committed

a crime. However, in contrast to this, Lord Brown noted that “ provided the ‘ core element of confinement’ does not exceed 16 hours a day,” it is ‘ insufficiently stringent’ as a matter of law to effect a deprivation of liberty. This means that by law it is acceptable to allow the use of such a method, where the affected individual is a threat to the welfare of the nation. Beyond 16 hours, however, liberty is lost, and the problems with the control order are entirely valid.

Article 6 (1) of the European Convention of Human Rights (ECHR), addressed the issue of a defendants’ rights in regards to a fair trial. In the determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement is openly accessible in the interest of the public eye, but the press and public may be excluded from all or part of the trial itself in the interest of morals, public order, or national security in a democratic society.

Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to the law. In addition, everyone charged with a criminal offence has the right to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them. They have the right to defend themselves in person, or through legal assistance of their own choosing, and also to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them.

The House of Lords held that Article 6 (1) of the ECHR did apply to the control order proceedings, meaning that the suspect would be entitled to a fair and public hearing, along with the other criteria mentioned. (Secretary of State for home Department V MB, AF 2007)[3]Lord Billingham said that in regards to any case in which a person was at risk of a control order containing obligations, there could be a fair trial in spite of the fact that a controlled person was neither provided with the detail nor the sources of the evidence, forming the basis of the allegations.

Terrorist suspects also have a right to respect for private and family life, and there shall be no interference by a public authority with the exercise of this right. Except when it is in accordance with the law, and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, or for the prevention of disorder or crime. Similarly, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. (G V Secretary of State for home Department 2004)[4]These conditions illustrate the State’s compliance with acceptance of a suspect’s individual rights. This brings us to the conclusion that the main importance to the Government is to use the law to aid them in preventing any terrorist acts that could be a threat to the safety of the country.

There are various provisions in regards to the reform and abolition of control orders under the Terrorism Prevention and Investigation Measures Act 20011 (TPIM). These include the introduction of a replacement system of terrorism prevention and investigative measures. There have also been increased safeguarding levels for the civil liberties of individuals that are subject to the

measure. For example, there is now a higher test that must be satisfied before the measures can be imposed upon suspects; compared to what already exists for control orders, which have a maximum time limit of 2 years for TPIM notices.

Further measures can only be imposed if the person has re-engaged in the terrorism. But restrictions that impact on an individuals' ability to follow normal patterns of daily life will be kept to a minimum in order to protect the public. They will have to be proportionate and clearly justified in order to keep the public at peace with the State and how effectively they are managing current affairs in relation to the protection of the public regarding threats of terrorism.

The Counter-Terrorism and Security Act 2015 is another useful aid in providing legislative measures to prevent terrorist attacks from becoming a reality within the UK. For example, it allows the seizure of passports from persons suspected of involvement in terrorism for up to 30 days. This means that it stops possible suspects from being able to leave the country to avoid capture, but more importantly they cannot get on any flights and commit terror attacks. This Act also allows the imposition of temporary exclusion orders from the UK, used to stop potential threats from executing any plans within the UK that could cause any serious damage or harm to the country.

The Police are provided with various legislative measures to assist them in the counter of terrorist acts, such as stop and search powers, which are given to them under s. 43 of the Terrorism Act 2000. (TACT) A constable may stop and search a person whom is reasonably suspected to be a terrorist, or

to discover whether he has in his possession anything which may constitute valid evidence of terrorism.

However, this method has been used less and less in recent years. The Metropolitan Police stopped and searched 411 people in the year of 2014/2015, compared to 2010/11, where 1, 154 people were searched, and an even larger total of 1, 896 in 2009/10. Lord Carlile of Berriew complained about the effectiveness of it, as " it catches no or almost no terrorism material, it has never caught a terrorist, therefore it should be used conservatively." The exercise of this stop and search power was a clear interference of Article 8(1) of the ECHR, which is the right to privacy. As shown in (Gillan + Quinton V UK 2009)[5], it is not in accordance with the law, and therefore not the best method to use when trying to prevent terrorist attacks.

Port and border controls are another prevention method used in an effort to keep the country safe from attacks. The State reserves wide powers to stop, search and detain individuals at ports and airports. (Beghal V Director of Public Prosecutions 2015)[6]

However, recent changes have reduced the maximum period someone can be questioned before being detained from a 9-hour period to just 6 hours. With access to legal advice for all individuals who are questioned for more than one hour. 32, 000 individuals were stopped at ports in the UK in 2014/15. Despite the use of this method being generally avoided, there are other more successful strategies that are used within the UK to prevent terrorism. These defensive strategies have been put in place with the sole

purpose of protecting the public of the UK, and gives law enforcement the power to do all they can to prevent such attack as the ones in Nice.

Terrorism is defined in the UK by the Terrorism Act 2000 (TACT) within three main subsections. S. 1(a) defines it as the use of threat or action that involves serious violence against a person, serious damage to a property, or endangers a person's life, other than the person committing the action. Terrorism also occurs if the action creates a serious risk to the health or safety of the public or a section of the public, or if it is designed to seriously interfere with or disrupt an electric system. S. 1(b) of TACT stipulates that terrorism also involves the use of threats that are designed to influence the government or an international government organisation, or to intimidate the public. Finally, S. 1(c) explains that terrorism occurs where the use of the threat is made for the purpose of advancing a political, religious, racial, or ideological cause. Additionally, the use or threat of action which involves the use of firearms or explosives acts as a count of terrorism, whether it falls within section b. or not. (Regina V F 2007)[7]

The general definition of terrorism references criteria such as the intention and motivation of a suspected terrorist, whereas a more specific approach identifies terrorist activities like hijacking and taking hostages. The case of (R V Gul 2013)[8]– UKSC 64, made the Supreme Court reconsider the definition of ' terrorism', as it is arguably far too wide to be an effective prevention method. One person could be seen as a terrorist to a certain number of the population, but to another section such as a conflicting religion or country, they could be seen as a freedom fighter. Because of this, it has been difficult to agree on a definition of terrorism that is suitable for everyone at an

international level. The issue in this case concerned the legal definition in TACT and whether or not it includes military attacks by non-state armed groups working against the armed forces during conflict.

The Supreme Court's press summary explained how it unanimously dismissed Mr Gul's appeal because of a judgment given by Lord Neuberger and Lord Judge, which was agreed by other members within the courts. Mr Gul argued that both domestic law and international law required that the legal definition of terrorism should be narrow and strictly interpreted. This was to exclude its application from situations where it is not necessary, namely those involving actions by non-state armed troops attacking foreign armed forces in their territory.

The definition had clearly been drafted in deliberately wide terms so it could take into account the various and unpredictable ways that terrorism might take effect. In these circumstances, the only reason for the Court to interpret the definition more restrictively would be if it conflicted with the ECHR, or generally with the UK's obligations in international law. In parting, the Court noted that although the issue was one for Parliament to decide, the current definition of terrorism is ' concerningly wide', and needs to be condensed significantly in order to be more productive in its effort to prevent terrorism.

However, in contrast to this view, Lord Carlile shares his own views on terrorism in The Definition of Terrorism. (7 th June 2007) His main conclusions find that there is not one single definition of terrorism that commands full international approval. The risks posed by terrorism and its nature as a crime are sufficient to necessitate proportional and special laws to assist

prevention, disruption and detection. This indicates that the definition of terrorism would be a very useful part of such laws, and the more detail that can be provided, the better. It would provide an easier way to not only define but recognise acts of terrorism and put more effective precautionary measures and laws in place to stop such events occurring.

The current definition of terrorism is consistent with international comparators and treaties, meaning it is useful because of how broadly fit for its purpose it is. There are many different ways an individual can commit acts of terrorism, so it makes sense that an efficient definition would be fairly broad or extensive, to cover all possible aspects. For example, the offences against property should continue to fall within the definition of terrorist acts, as well as with religious causes. However, the only religiously inspired terrorist attack in the whole of Europe in 2013 was the murder of Lee Rigby in Woolwich. This shows that despite its necessity, this part of the definition is not needed very often. But that does not mean that it is an insufficient part of the definition, therefore it should not be discarded or overlooked. The definition being so broad does not bring us to the conclusion that it is unfit for its purpose, if anything it makes it more effective as it can help to prepare for or determine all or more possible terrorist activities.

Alternatively, it could be argued that there is no such need for certain elements of the definition, and that to be more effective it should in fact be more concise. S. 1(b) includes actions which are not severe enough to constitute actual acts of terrorism. Therefore, existing laws should be amended so that these actions cease to fall within the definition if they were only intended to influence the specific target audience. For terrorism to

arise, influencing actions or reactions is not enough. The root of the word terrorism is taken from a Latin term that means “ to frighten”, therefore, there should be a definite intention to intimidate the target audience, or make them act in a certain way. Even though some sections may be too broad to be effective, extra-territoriality should remain within the definition in accordance with international obligations. This would allow justified prosecutions of terrorist activities in other countries, such as Iraq and Syria.

The Terrorism Act is a wide-ranging piece of legislation that criminalises various acts related to terrorism as it defines it. The legal definition of terrorism it provides is so broad it has been argued that it threatens to criminalise most of the general population as well. The UK Government’s current independent reviewer of terrorism legislation is called David Anderson QC, who succeeded Lord Carlile of Berriew C. B. E. Q. C. in February 2011. Anderson has expressed some concerns regarding the issues arising with the definition of terrorism. In one of his reports, he argued that the current definition needs to be much more narrow, otherwise simple general affairs such as political speeches or investigative journalism could be incorrectly identified as terrorism. This is not the aim of the definition, it illustrates a good example of why it is too broad, as not only is it broad enough to include all counts of terrorism, it is also so broad that it is incorrectly criminalising many other individuals which is an unjustified result of a poorly crafted definition.

In another one of David Andersons’ reports, he discussed ways in which to solve the problems, the necessary actions to narrow it down and become a more applicable definition would be to remove s. 1(c), which stipulates that

shooters and bombers are deemed to be terrorists even if they are not trying to influence or intimidate anyone other than their immediate victim. This rule is only applicable within the UK, and it does not apply to poisoners, arsonists or people who use cars or machetes as weapons. Therefore, it is arguable that repealing it would not have much of an impact on the current UK legislation regarding terrorism anyway. This deems it a potential solution to discard the particular subsection of the definition in order to condense it and put more focus on factors with higher levels of importance. Ultimately, this would make the definition more fit for its purpose, and there would be less speculation regarding its levels of effectiveness.

The UK has some of the most extensive anti-terrorism laws in the western world. They give Ministers, prosecutors and the police the powers they need to put a stop to violence caused by terrorists. Hate crimes are another example used to illustrate how unnecessarily extensive the definition of terrorism actually is. A hate crime may include something like an indirect act of racism, but it will not always suffice as an act of terrorism. For example, a child making a threat on a fascist website to shoot their teacher would be legally classed as a terrorist. This act is criminally wrong, but if the child only intended to harm that one individual teacher, who would be the only person that would be immediately affected by their act, then it is wrong to characterise them as a terrorist as well. Therefore meaning that the current definition has flaws that need to be amended in order to stop the incorrect determination of terrorists or terrorist activity.

When comparing the definitions of terrorism from different countries, it is clear that there are some similarities between the basic structure of the

definition. In 1986, France adopted its first “ anti-terrorism” law. As of 2016, the French legal definition stipulates that an act of terrorism occurs if it is connected to individual or collective enterprises, and intended to gravely disturb the public order through the use of intimidation and fear. It defines terrorist acts as deliberate assaults at life and personal integrity. Similarly, the U. S. Code of Federal Regulations defines terrorism as “ the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.” This definition is arguably a lot more fit for purpose than the extensive version that the UK abide by. In comparison, it could be argued that the narrow definitions are more effective as they allow clear focus on pinpointing the acts of terrorism to the best of the states’ ability, enabling efficient prevention of terrorism and harm. These definitions are not dissimilar, so with a small amount of change, the current UK definition could be equally as concise and effective as the others are.

The word terrorism itself has a large political stigma attached to it. This could be the reason behind international communities having so much difficulty in finding a universally accepted definition of the term. Most governments do agree that certain key elements of crime are what we use to define an act as terrorism. These elements include a politically motivated act of violence that is used to target non-combatant targets, and is designed to spread fear across a nation or the world. The reason it is so difficult to define is that there are so many different types or ways in which it can occur. However, despite the fact that the current UK definition provided by TACT is extremely broad, it is still fit for its purpose. It is sufficient in catching terrorists and

doing its best to prevent terrorism in order to protect the public. The problem is that it is so broad, it can unjustly criminalise individuals as well. To prevent this, some sections of the definition should be condensed in order to reach a better balance.

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