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House of Commons
Joint Committee on
Human Rights

The Council of Europe Convention on the Prevention of Terrorism

First Report of Session 2006–07

*Report, together with formal minutes and
appendices*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

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Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Judy Wilson (Inquiry Manager), Angela Patrick (Committee Specialist), Jackie Recardo (Committee Assistant), Suzanne Moezzi (Committee Secretary) and James Clarke (Senior Office Clerk).

Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is jchr@parliament.uk.

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Summary

The Council of Europe Convention on the Prevention of Terrorism was adopted on 3 May 2005. It was signed by the UK on 16 May 2005 and laid before Parliament on 24 July 2006. Its purpose is “to enhance the efforts of the Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international cooperation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the parties” (paragraphs 1-2).

Under the so-called Ponsonby rule, Governments do not proceed in normal circumstances to ratification of a treaty during a period of 21 parliamentary sitting days from the date on which it is laid before Parliament, in order to afford Parliament the opportunity of considering commitments which the Government is proposing to make. The Joint Committee on Human Rights considers that pre-ratification scrutiny of human rights treaties is important in order to increase parliamentary understanding and involvement in the process of incurring human rights obligations on behalf of the UK (paragraphs 3-5).

The Committee’s examination of the Convention comes within the context of its continuing inquiry into counter-terrorism policy and human rights. When the Convention was laid before Parliament, the Committee decided to report to Parliament on it because of the significant human rights issues raised by it. In this Report the Committee draws to Parliament’s attention one particularly significant issue before the treaty is ratified, namely whether the creation of the offence of encouragement of terrorism in s.1 of the Terrorism Act 2006 is compatible with the requirement in the Convention that any new offence of public provocation to commit a terrorist offence must be in accordance with the rights to freedom of expression, freedom of association and freedom of religion (paragraphs 6-10).

Public provocation to commit a terrorist offence

Article 5 of the Convention requires states to criminalise “public provocation to commit a terrorist offence”. For the purposes of the Convention, “terrorist offence” means any of the offences within the scope of and as defined in any of the twelve existing international counter-terrorist conventions. The Explanatory Report to the Convention explains that the proposed offence is designed to fill a lacuna identified in the international legal protections against terrorism. The Convention also contains a number of provisions concerning the protection of human rights and fundamental freedoms. Article 5(1) of the Convention requires that the scope of an offence be restricted by two limitations. First, there must be a specific intention to incite the commission of a terrorist offence. And second, the making available of a message to the public must cause a danger that such offences may be committed. Article 12 of the Convention also requires states to respect relevant human rights obligations when creating the offence required by Article 5 (paragraphs 11-17).

According to the Government, s.1 of the Terrorism Act 2006, which creates a new offence of encouragement of acts of terrorism, was introduced to implement the requirement of Article 5 of the Convention to have an offence of “public provocation to commit a terrorist offence”. The new offence is said to supplement the existing common law offence of incitement. There are four main points of difference between the encouragement of

terrorism offence in s. 1 of the Terrorism Act 2006 and the offence of public provocation to commit a terrorist offence in Article 5 of the Convention, each of which makes the scope of the UK offence broader than the offence required to be created by the Convention (paragraphs 18-21).

The definition of “terrorism”

The most significant difference concerns the definition of “terrorism”. The offence of encouragement of terrorism in s.1 of the Terrorism Act 2006 is much wider than the offence which is required to be criminalised by Article 5 of the Convention and the Committee remains of the view that it therefore carries with it a considerable risk of incompatibility with the right to freedom of expression in Article 10 ECHR (paragraphs 22-29).

Lack of a requirement of intention

The second significant difference between s.1 of the Terrorism Act 2006 and Article 5 of the Convention concerns the mental element required for the offence. But the Committee is satisfied that the mental element for the offence of encouragement is now either specific intention or subjective recklessness, which it does not consider to be inconsistent with Article 5 of the Convention (paragraphs 30-34).

Lack of a requirement of danger

The third difference concerns the lack of a requirement in the Terrorism Act 2006 to prove any danger of a terrorist offence being in fact committed. The Committee remains of the view that this lack is an omission of an important safeguard (paragraphs 35-37).

Inclusion of “glorification”

The fourth difference is that, unlike the Convention offence of provocation to commit a terrorist offence, the encouragement offence in the Terrorism Act 2006 includes the concept of “glorification”. The Committee remains of the view that this concept is too vague (paragraphs 38-39).

Concerns were expressed to the Committee about the possible “chilling effect” of the offence of encouragement of terrorism on the expression of legitimate views. The Home Office say that they are not aware that the new offences have inhibited freedom of expression, association or religion. But the Committee considers it likely that the creation of the offence of encouragement of terrorism in its current form will have an inhibiting effect on legitimate freedom of expression and will therefore lead to disproportionate interferences with free speech (paragraphs 40-49).

The Committee’s conclusion

The Committee takes the view that the offence of encouragement to terrorism as defined in s.1 of the Terrorism Act 2006 is likely to have a disproportionate impact on freedom of expression, contrary to the express requirement in Article 12 of the Council of Europe Convention on the Prevention of Terrorism. It therefore concludes that, on the current state of the law, the Government cannot and should not ratify the Convention because the UK’s

domestic law is not compatible with it, and draws this matter to the attention of each House. The Committee also says that it will in due course produce a Report containing its recommendations as to what the definition of “terrorism” should be (paragraphs 50-52).

1 Introduction

1. The Council of Europe Convention on the Prevention of Terrorism¹ was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005. It was signed by the UK on 16 May 2005, and was laid before Parliament on 24 July 2006.² An Explanatory Memorandum on the Convention was also laid by Mr Tony McNulty MP, Minister of State at the Home Office.³

2. The Convention is accompanied by an Explanatory Report prepared by the Council of Europe.⁴ The purpose of the Convention is “to enhance the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties.”⁵

3. The UK Parliament currently has no formal role in the ratification of treaties, which is carried out by the Government under its prerogative powers. Under the so-called “Ponsonby rule”, however, the Government has undertaken in normal circumstances not to proceed to ratification of a treaty during a period of 21 parliamentary sitting days from the date on which the text of the treaty is laid before Parliament, in order to afford Parliament the opportunity of considering commitments which the Government is proposing to make.

4. In our recent Report on our future working practices we said that we intended to continue our predecessor Committee’s practice of reporting on human rights treaties before they are ratified by the Government if in our view they raise any significant issues of which Parliament should be made aware.⁶ The reason our predecessor Committee decided to scrutinise human rights treaties prior to their ratification was to ensure that Parliament is fully informed about the background, content and implications of such treaties and to enable parliamentarians to decide whether it is appropriate to call for a debate on such a treaty before it is ratified, thereby enhancing the democratic legitimacy of human rights obligations incurred on behalf of the UK by the Executive pursuant to the prerogative power.⁷

5. The Government welcomed the previous Committee’s intention to report to Parliament in future on human rights treaties, agreeing that this will facilitate properly informed parliamentary debate and enhance the democratic legitimacy of such treaties, and promised to bear this in mind in future as a predictable procedural step in the timetable for

¹ CETS No. 196. Henceforth “the Convention”.

² Cm 6901.

³ Cm 6907.

⁴ Available at <http://www.conventions.coe.int/Treaty/EN/Reports/Html/196.htm>

⁵ Article 2.

⁶ Twenty-third Report of Session 2005-06, *The Committee’s Future Working Practices*, HL Paper 239, HC 1575, at para. 68.

⁷ First Report of Session 2004-05, *Protocol No. 14 to the European Convention on Human Rights*, HL Paper 8, HC 106, at paras 5-7.

parliamentary approval of human rights treaties and amendments.⁸ We agree that pre-ratification scrutiny is important in order to increase parliamentary understanding and involvement in the process of incurring human rights obligations on behalf of the UK.⁹

6. Our examination of the Convention comes within the context of our continuing inquiry into counter-terrorism policy and human rights, and we considered the Convention briefly in our Report last Session in that inquiry on the Terrorism Bill and related matters.¹⁰ We considered that the enactment of the proposed offence of encouraging terrorism in the Bill as introduced would be an obstacle to the UK's ratification of the Convention because it did not contain the necessary restrictions on the scope of the offence to make it compatible with freedom of expression.¹¹ When the Convention was laid before Parliament prior to ratification, we therefore took the view that the treaty raises significant issues of which Parliament should be informed, and we decided to report to Parliament on it. Our Chair therefore tabled an Early Day Motion on 20 October 2006 requesting that the Convention not be ratified until we had reported to Parliament.¹² Baroness Stern tabled a similar motion in the House of Lords.¹³

7. On 9 November 2006 we issued a call for evidence inviting submissions on the following matters in particular:

- “whether the new criminal offences in Part 1 of the Terrorism Act 2006 (encouragement of terrorism and dissemination of terrorist publications) have inhibited legitimate freedom of expression, association and religion, and if so, how
- whether the new grounds on which organisations can be proscribed in s. 21 of the Terrorism Act 2006 have inhibited legitimate freedom of association
- whether the UK complies with the duty to investigate and either extradite or prosecute terrorist suspects
- whether the measures adopted by the UK to protect and support the victims of terrorism are adequate”.

8. Because of the short period of time for parliamentary consideration of a treaty laid before Parliament under the Ponsonby rule before the Government is able to proceed with ratification, we allowed only two weeks for the submission of written evidence.¹⁴ We received submissions from Liberty, British Irish Rights Watch, the Mayor of London, Mr. Belal Ballali (a private individual) and the Home Office, all of which are published as

⁸ Government Response to the Committee's First Report of Session 2004-05, on *Protocol No.14 to the European Convention on Human Rights*, HL Paper 8, HC 106, at para. 5; Eighth Report of Session 2005-06, *Government Response to Reports from the Committee in the last Parliament*, HL Paper104, HC 850, Appendix 2.

⁹ *The Committee's Future Working Practices*, op. cit., at para. 68.

¹⁰ Third Report of Session 2005-06, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and Related Matters*, HL Paper 75-I, HC 561-I.

¹¹ *Ibid.*

¹² EDM No. 2822 of Session 2005-06. Following prorogation a fresh EDM was tabled renewing the request: EDM No. 347 of Session 2006-07, tabled on 29 November 2006.

¹³ Baroness Stern, 19 October. Following Prorogation, Baroness Stern tabled a fresh motion for debate on 29 November 2006.

¹⁴ We asked for evidence to be submitted by 24 November 2006.

Appendices to this Report. We also had drawn to our attention a recent academic article on the Convention by Adrian Hunt of the University of Birmingham.¹⁵ We are grateful to all those who have helped us in this short inquiry.

9. British Irish Rights Watch expressed concern at the limited time given for submissions, which it said is especially problematic for small NGOs, and asked the Committee to consider extending the deadline for the presentation of evidence in future.¹⁶ As mentioned above, the reason for the shortness of the deadline was the short amount of time which is available for parliamentary consideration under the Ponsonby rule. So long as this remains the framework within which Parliament is involved in the ratification of treaties, we must aim to publish any report as soon as possible after the laying of a treaty before Parliament. We acknowledge, however, that such a short timetable may have made it impossible for others to make submissions to our inquiry.

10. Having considered the evidence, **in our view there is one particularly significant issue which we should draw to Parliament's attention before the treaty is ratified, namely whether the creation of the offence of encouragement of terrorism in s.1 of the Terrorism Act 2006 is compatible with the requirement in the Convention that any new offence of public provocation to commit a terrorist offence must be in accordance with the rights to freedom of expression, freedom of association and freedom of religion. After considering the evidence and further scrutinising the Convention, we consider that the other three matters on which we called for evidence do not raise issues which are relevant to whether or not the UK can or should ratify the Convention.**

¹⁵ "The Council of Europe Convention on the Prevention of Terrorism", (2006) 12 European Public Law 603.

¹⁶ Appendix 2 at para. 1.3.

2 Public Provocation to Commit a Terrorist Offence

The requirements of the Convention

11. Article 5 of the Convention requires states to criminalise “public provocation to commit a terrorist offence.” It provides:

“1. For the purposes of this Convention, 'public provocation to commit a terrorist offence' means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

2. Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.”

12. For the purposes of the Convention, “terrorist offence” means any of the offences within the scope of and as defined in any of the 12 existing international counter-terrorist conventions.¹⁷ These conventions deal with a number of specific offences, such as hijacking or endangering aircraft or ships, taking hostages, attacking internationally protected persons, using nuclear materials or bombs, and financing any of these activities.

13. For an act to constitute an offence of public provocation, it shall not be necessary that a terrorist offence be actually committed.¹⁸

14. The Explanatory Report to the Convention explains that the proposed offence of public provocation to commit a terrorist offence is designed to fill a lacuna identified in the international legal protections against terrorism.¹⁹ It also explains that it allows States a certain amount of discretion with respect to the definition of the offence and its implementation.

15. However, the Convention contains a number of provisions concerning the protection of human rights and fundamental freedoms. The Explanatory Report describes this as “a crucial aspect of the Convention, given that it deals with issues which are on the border between the legitimate exercise of freedoms, such as freedom of expression, association or religion, and criminal behaviour.”²⁰ The Preamble, for example, recites:

“Recalling the need to strengthen the fight against terrorism and reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms ...

¹⁷ Article 1. The counter-terrorism treaties are listed in the Appendix to the Convention.

¹⁸ Article 8.

¹⁹ *Explanatory Report* at para. 97.

²⁰ *Explanatory Report*, para. 30.

Recognising that this Convention is not intended to affect established principles relating to freedom of expression and freedom of association;”

16. The Explanatory Report also makes clear²¹ that Article 5(1) of the Convention requires that the scope of such an offence be restricted by two limitations. First, there must be a specific intention to incite the commission of a terrorist offence. And second, the making available of a message to the public must cause a danger that such offences may be committed.

17. Article 12 of the Convention also requires states to respect relevant human rights obligations when creating the offences required by Article 5. It provides:

“Article 12 - Conditions and safeguards

1 Each Party shall ensure that the establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention are carried out while respecting human rights obligations, in particular the right to freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.

2 The establishment, implementation and application of the criminalisation under Articles 5 to 7 and 9 of this Convention should furthermore be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any forms of arbitrariness or discriminatory or racist treatment.”

The UK’s implementation of the Convention requirement

18. According to the Government, section 1 of the Terrorism Act 2006, which creates a new offence of encouragement of acts of terrorism, was introduced to implement the requirement of Article 5 of the Convention to have an offence of “public provocation to commit a terrorist offence”.²² The new offence is said to supplement the existing common law offence of incitement to commit an offence.

19. Section 1 of the Terrorism Act 2006 creates an offence of publishing a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences. Indirect encouragement includes any statement which “glorifies” the commission or preparation of such acts or offences if members of the public will reasonably infer from the statement that they should emulate the conduct being glorified.²³ “Glorification” is defined to include “any form of praise or celebration”.²⁴ For the offence to be committed, the person publishing the statement must either intend members of the public to be directly or indirectly encouraged

²¹ *Ibid* at paras 99-100.

²² Home Office Evidence, Appendix 5; Explanatory Notes to the Terrorism Act 2006, para. 20.

²³ Section 1(3) Terrorism Act 2006.

²⁴ Section 20(2) Terrorism Act 2006.

or otherwise induced to commit, prepare or instigate acts of terrorism or Convention offences, or be reckless as to whether they will be so encouraged or induced.²⁵

20. For the purposes of the encouragement offence, “terrorism” has the same meaning as in the Terrorism Act 2000²⁶ and “act of terrorism” includes anything constituting an action taken for the purposes of terrorism.²⁷

21. There are four main points of difference between the encouragement of terrorism offence in s. 1 of the Terrorism Act 2006 and the offence of public provocation to commit a terrorist offence in Article 5 of the Convention, each of which makes the scope of the UK offence broader than the offence required to be created by the Convention.

(1) The definition of “terrorism”

22. The most significant difference concerns the definition of “terrorism”. The Convention contains no general definition of “terrorism”. Indeed, as the Explanatory Report makes clear, the drafting process deliberately avoided using such a general definition because the purpose was not to draft a comprehensive convention on terrorism but a specific instrument of much more limited scope for the prevention of terrorism.²⁸ Instead, the Convention uses the concept of a “terrorist offence” in its definition of the offence of public provocation, which means only those offences contained in the existing international counter-terrorism conventions.²⁹

23. Section 1 of the Terrorism Act 2006, which purports to implement Article 5 of the Convention, takes a very much broader approach. It covers all of the “terrorist offences” covered by Article 5, by introducing for the purposes of the Act the concept of “Convention offences”: these are set out in Schedule 1 to the Act which consists of a list of the UK provisions implementing the treaties listed in the Appendix to the Convention. However, in addition to “Convention offences”, the encouragement offence also covers statements which encourage “acts of terrorism”. As noted above, “terrorism” in the 2006 Act has the same meaning as in the Terrorism Act 2000.

24. As defined in the Terrorism Act 2000, “terrorism” covers the use or threat of action which satisfies three conditions:³⁰

(1) the action involves serious violence against a person or serious damage to property, endangers a person’s life (other than the person committing the action), creates a serious risk to the health or safety of the public or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system;

(2) the use or threat of action is designed to influence the government or an intergovernmental organisation or to intimidate the public or a section of the public;
and

²⁵ Section 1(2)(b) Terrorism Act 2006.

²⁶ Section 20(1) Terrorism Act 2006. “Terrorism” is defined in s. 1 of the Terrorism Act 2000.

²⁷ Within the meaning of s. 1(5) of the Terrorism Act 2000.

²⁸ *Explanatory Report*, para. 48.

²⁹ Article 1.

³⁰ Terrorism Act 2000, section 1(1) and (2).

(3) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

25. The definition is not limited to things taking place in the UK or even related to the UK, but includes actions outside the UK. The person or property concerned can be situated abroad, the public can be the public of a country other than the UK, and the government can be a foreign government.

26. The definition of “terrorism” in the encouragement of terrorism offence is therefore very much wider than the “terrorist offences” covered by the offence of public provocation to commit a terrorist offence which States are required to criminalise by Article 5 of the Convention. In our report on the Terrorism Bill the breadth of the definition of terrorism for the purposes of this offence was one of the reasons we expressed our concern about whether the offence was defined with sufficient legal certainty to satisfy the requirement in Article 10 ECHR that interferences with freedom of expression be “prescribed by law”.³¹ In our view, a more tightly drawn definition of terrorism was needed in order to make the new offence compatible with Article 10.

27. The same concern about the uncertainty of the scope of the offence because of the breadth of the definition of terrorism was expressed by all those who submitted evidence apart from the Home Office. The Mayor of London, for example, argued that the broad definition is fundamentally flawed in a number of respects: it is expansive and indiscriminate, it does not reflect commonly held notions of terrorism, it undermines basic human rights, it makes no allowance for legitimate protest and struggles and therefore criminalises people who cannot properly be regarded as terrorists.³² The effect of using such a broad definition, he submits, is to delegate to the executive and the prosecution the decision as to which organisations and acts ought properly to attract criminal liability, turning the definition into a political tool rather than an objective legal criterion. British Irish Rights Watch makes the similar point that on highly contentious issues such as the war in Iraq or the ongoing conflict in Israel/Palestine, one person’s terrorist is another person’s freedom fighter.³³

28. The Government, on the other hand, takes the view that the publication of statements that encourage terrorism is not a legitimate activity and that the offence in s. 1 Terrorism Act 2006 rightly criminalises the activities of those who seek to encourage acts of terrorism.

29. In our view, by using the definition of terrorism contained in the Terrorism Act 2000, the offence of encouragement of terrorism in s. 1 of the 2006 Act is much wider than the offence which is required to be criminalised by Article 5 of the Convention. We remain of the view expressed in our earlier report on the Terrorism Bill, that the definition of terrorism used in the 2006 Act is too broad and therefore carries with it a considerable risk of incompatibility with the right to freedom of expression in Article 10 ECHR, particularly when taken in combination with the other respects in which the UK offence is wider than what is required by Article 5 of the Convention. We hope that

³¹ Third Report of Session 2005-06, op. cit., at para. 29.

³² Appendix 4, para. 5.

³³ Appendix 2, para. 2.5.

Lord Carlile’s impending review of the definition of “terrorism” will provide an opportunity for the introduction of a narrower definition for these purposes.

(2) Lack of requirement of intention

30. The second significant difference between s. 1 of the Terrorism Act 2006 and Article 5 of the Convention concerns the mental element required for the offence.

31. Article 5 of the Convention provides that the offence of public provocation to commit a terrorist offence requires a specific intent to incite the commission of such an offence. The Explanatory Report explains that this is one of the conditions and safeguards deliberately built into the definition of the offence in order to minimise the risk of a restriction of fundamental freedoms.

32. A specific intent is not required in order to commit the s. 1 encouragement offence. The Act expressly provides that the offence may be committed if the person making the statement is “reckless” as to whether members of the public will be directly or indirectly encouraged by the statement.³⁴

33. In Liberty’s view, the extension of the offence to recklessness is a major reason for the disproportionate impact on freedom of expression.³⁵ It argues that recklessness is an inappropriate standard for criminalisation when applied to a speech offence, and that the element of intention should always be attached to criminal offences based on speech.

34. In our earlier report on the Terrorism Bill, we considered that the mental element for the offence of encouragement of terrorism should be confined to intention or, if it was to extend to recklessness, it should be subjective recklessness (that is, knowing or being aware of but indifferent to the likelihood that one’s statement would be understood as an encouragement to terrorism) rather than objective recklessness.³⁶ At one point the Bill contained an objective test for recklessness, but this was removed during the course of the Bill’s passage. We are therefore satisfied that the mental element for the offence of encouragement is now either specific intention or subjective recklessness, which we do not consider to be inconsistent with Article 5 of the Convention.

(3) Lack of a requirement of danger

35. The third difference concerns the lack of a requirement to prove any danger of a terrorist offence being in fact committed. The second condition in the Article 5 offence which is intended to be a safeguard against it unduly restricting freedom of expression is the requirement that the result of an act of provocation must be to cause a danger that a terrorist offence might be committed. The significance and the credible nature of the danger should be considered when deciding whether the offence of public provocation to commit a terrorist act has been committed.

³⁴ Terrorism Act 2006, s. 1(2)(b)(ii)

³⁵ Appendix 3 at para. 9.

³⁶ Third Report of 2005-06, op. cit. at para. 33.

36. There is no such requirement in relation to the s. 1 offence of encouraging terrorism. It is not necessary in order for the offence to be committed for the prosecution to prove that there is any danger that an act of terrorism might be encouraged.

37. We remain of the view in our previous report that the lack of any requirement on the prosecution to show that the statement in question causes a danger that a terrorist act may be committed is an omission of an important safeguard which is intended to restrict the potential scope of the offence and so to reduce its inhibiting effect on freedom of expression.³⁷

(4) Inclusion of “glorification”

38. The fourth difference between the Convention offence and the offence in s.1 of the Terrorism Act 2006 is that, unlike the Convention offence of provocation to commit a terrorist offence, the encouragement offence includes the vague concept of “glorification”, which is defined to mean any form of praise or celebration, if members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated.

39. We remain of the view expressed in our earlier report on the Terrorism Bill that the difficulty caused by the inclusion of the concept of glorification is the inherent vagueness of the concept, and in particular the genuine difficulty of distinguishing between expressions of understanding, explanation or commemoration on the one hand, and encouragement on the other.

Evidence of “chilling effect”

40. Concerns were expressed to us about the possible “chilling effect” of the offence of encouragement of terrorism, as a result of the various uncertainties about the scope of the offence described above.

41. Liberty, for example, expressed concern that people will be afraid of the new offence of encouragement of terrorism and prefer to keep quiet rather than risk prosecution for the new offence.³⁸

42. According to the Mayor of London’s submission,

“Sections of the Black, Asian and Minority Ethnic communities testify to the chilling effects of the new laws and to their increased concern about the possible consequences of expressing legitimate views relating to foreign and other government policies.”³⁹

43. Similar concerns about the impact of the 2006 Act provisions on freedom of expression were also expressed to us by the Muslim Council of Britain at an informal meeting we held on 23 November 2006 with Dr. Muhammad Abdul Bari, Secretary General, and Mr. Khalid Sofia, Chair of its Legal Affairs Committee.

³⁷ Third Report of 2005-06, op. cit. at para. 34.

³⁸ Liberty evidence, Appendix 3, para. 12.

³⁹ Appendix 4, para. 4. Other evidence of the chilling effect of the 2006 Act offences can be found in *The Rules of the Game: Terrorism, Community and Human Rights*, a Report by Democratic Audit for the Joseph Rowntree Reform Trust: see esp. Chapter 3, “The Experience of Young Muslims” at p. 28.

44. The essence of the concern about the chilling effect of the encouragement offence was captured by Mr. Ballali in his written submission to us:

“Would saying that you understand the frustration of a Palestinian would be suicide bomber, who has seen his father being killed, had his house demolished and is regularly subjected to humiliating searches at a check point on his way to work, be encouragement? Are the Iraqis who believe that their country has been illegally invaded by a foreign force, terrorists? With this in mind, a law abiding citizen would be stuck in a dilemma regarding the above and asking him/her self, is it an offence to say what I am thinking or is it my civil right to express my views in a free society?”⁴⁰

45. The Home Office, on the other hand, state in their evidence that they are not aware that the new offences have inhibited freedom of expression, association or religion.

46. We did not receive any direct evidence which demonstrated that the new offences have inhibited freedom of expression, association or religion. However, as Liberty pointed out in its submission, since the offence has only been in force since April 2006, and no one has yet been charged with the offence, it is probably too early to make any meaningful assessment of whether the new offences have deterred legitimate freedom of expression in practice. **We also see the force in Liberty’s observation that there is an inherent difficulty in trying to assess whether the existence of an offence has inhibited freedom of expression. A “chilling effect”, by its very nature, prevents people from saying something they might otherwise say. While in theory individuals might come forward to give evidence that they have been inhibited from saying or reporting something, in practice if they have been so inhibited they are unlikely to want to identify themselves as individuals who might be at risk of prosecution for the new offence.**

47. **We think it is likely that the creation of the offence of encouragement of terrorism in its current form will have an inhibiting effect on legitimate freedom of expression and will therefore lead to disproportionate interferences with free speech.** The Explanatory Report to the Convention states that.⁴¹

“when establishing the offences in their national law, Parties should bear in mind the purpose of the Convention and the principle of proportionality. The purpose of the Convention is to prevent terrorism and its negative effects on the full enjoyment of human rights and in particular the right to life. To this end, the Convention obliges Parties to criminalise conduct that has the potential to lead to terrorist offences, but it does not aim at, and create a legal basis for, the criminalisation of conduct which has only a theoretical connection to such offences. Thus, it does not address hypothetical chains of events, such as ‘provoking an attempt to finance a threat’.”

48. Under the Terrorism Act 2006, however, provoking an attempt to finance a threat would, on the face of the legislation, appear to be within the scope of the encouragement offence. Indeed, it seems to us that a person may commit the UK offence if, for example, he publishes a statement which he does not intend to encourage members of the public to commit terrorism, but which could be said indirectly to encourage the preparation of the financing of a threat of action involving serious damage to property outside of the UK to

⁴⁰ Appendix 1.

⁴¹ *Explanatory Report*, para. 49.

influence a foreign government, even if the statement causes no danger that any terrorist offence may be committed.

49. So, for example, a public statement approving of the provision of financial aid to an organisation which refuses to condemn the use of serious disruption against an occupying or undemocratic government, by a person with absolutely no intention of encouraging terrorism, could nevertheless amount to the encouragement of terrorism under s. 1 of the Terrorism Act 2006. **Such theoretical possibility of committing the serious criminal offence of encouraging terrorism can only inhibit freedom of discussion and debate on topical and contentious political issues.**

3 Conclusion

50. While reiterating in this Report the position of the Committee in previous Reports, we wish in our conclusion to emphasise our view that the combination of the breadth of the definition of “terrorism”, the vagueness of “glorification”, and the lack of a requirement that there be at least a danger that an act of terrorism will result, makes the encouragement of terrorism offence in section 1 of the Terrorism Act 2006 incompatible with the requirement in Article 12 of the Convention that the establishment of any new offence of public provocation to commit a terrorist offence be compatible with the right to freedom of expression, and proportionate to the legitimate aim pursued. In our view the offence as defined in section 1 is likely to have a disproportionate impact on freedom of expression, contrary to the express requirement in Article 12.

51. We therefore conclude that, on the current state of the law, the Government cannot and should not ratify the Convention because our domestic law is not compatible with it. We draw this matter to the attention of each House.

52. We shall in due course be producing a report containing our recommendations as to what the definition of “terrorism” should be.

Formal Minutes

Monday 15 January 2007

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Judd

Lord Lester of Herne Hill

The Earl of Onslow

Nia Griffith MP

Dr Evan Harris MP

Mr Richard Shepherd MP

The Committee deliberated.

Draft Report (The Council of Europe Convention on the Prevention of Terrorism), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 52 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the First Report of the Committee to each House.

Several papers were ordered to be appended to the Report.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Judd make the Report to the House of Lords.

[Adjourned till Monday 22 January at 4.00pm]

Appendices

Appendix 1: Memorandum from Mr Belal Ballali

Whether the new criminal offences in Part 1 of the Terrorism Act 2006 (encouragement of terrorism and dissemination of terrorist publications) have inhibited legitimate freedom of expression, association and religion, and if so, how.

The difficulty with this legislation is not just the definition of terrorism but also what is encouragement of terrorism. Would saying that you understand the frustration of a Palestinian would be suicide bomber, who has seen his father being killed, had his house demolished and is regularly objected to humiliating searches at a check point on his way to work, encouragement. Are the Iraqis who believe that their country has been illegally invaded by a foreign force a terrorist.

With this in mind, a law abiding citizen would be stuck in a dilemma regarding the above and left asking his/her self, is it an offence to say what I am thinking or is it my civil right to express my views in a free society.

Whether the new grounds on which organisations can be proscribed in s. 21 of the Terrorism Act 2006 have inhibited legitimate freedom of association.

This point is less complicated but in some instances may leave one in a dilemma. Organisations such as Al-Qaeda are clearly terrorist organisations. However, other organisations, such as those in Kashmir and the Libyan Islamic Fighting Group, are not. These are organisations that are not known to have targeted civilians, nor have they been involved in global terrorism and have concentrated their efforts to their localities. I believe that to proscribe such organisations undermines not only the legislation but also the governments responsible for it.

Whether the UK complies with the duty to investigate and either extradite or prosecute terrorist suspects.

Although the UK complies with its obligation not to deport an individual to a country where they may be mistreated, the fear is that the country where this individual is wanted may indeed decide to deport them to a country where mistreatment may occur. However, if the individual has committed a crime and is on our territory then it should be our courts that try him/her. This is important as we can then ensure that the rule of law is upheld.

Whether the measures adopted by the UK to protect and support the victims of terrorism are adequate.

I must say that many of those who were affected by the 7/7 bombings felt somewhat isolated. This is a serious issue which any serious government must fully understand.

Finally may I take this opportunity to thank you for giving due consideration to my concerns.

Appendix 2: Memorandum from the British Irish Rights Watch (BIRW)

1. INTRODUCTION

1.1 British Irish Rights Watch (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.

1.2 BIRW welcomes the scrutiny by the Joint Committee on Human Rights of the Council of Europe Convention on the Prevention of Terrorism (CECPT). Although BIRW's remit does not extend to include international terrorism, our experience in Northern Ireland is relevant. We have only commented on areas which fall directly under our mandate.

1.3 We would like to express concern at the limited time period given in this inquiry for submissions, which is especially problematic for small NGOs such as ours. We respectfully ask the Committee to consider extending the deadlines for the presentation of evidence in future inquiries.

1.4 The Committee asked four questions as part of their inquiry into the UK's ratification of the Convention on the Prevention of Terrorism. These questions were:

Whether the new criminal offences in Part 1 of the Terrorism Act 2006 (encouragement of terrorism and dissemination of terrorist publications) have inhibited legitimate freedom of expression, association and religion, and if so, how.

Whether the new grounds on which organisations can be proscribed in s. 21 of the Terrorism Act 2006 have inhibited legitimate freedom of association.

Whether the UK complies with the duty to investigate and either extradite or prosecute terrorist suspects.

Whether the measures adopted by the UK to protect and support the victims of terrorism are adequate.

2. CRIMINAL OFFENCES IN PART 1 OF THE TERRORISM ACT 2006

2.1 British Irish Rights Watch has a number of serious concerns about the Terrorism Act 2006 including the new criminal offences of encouragement of terrorism and dissemination of terrorist publications and their impact upon freedom of expression, association and religion. It is clear that the UK government has not taken account of Article 12 of the CECPT regarding respect for human rights obligations.

2.2 As we outlined in previous briefings to the Joint Committee, the outlawing of the encouragement of terrorism is a vague concept. In particular, it appears to make individuals responsible for the actions of the collective, over which they may have no or only limited control. This is particularly relevant at s. 1(2)(a) of the Terrorism Act 2006, which states: "A person commits an offence if – he publishes a statement to which this section applies or causes another to publish such a statement;" (our emphasis). This vagueness will have a serious impact when it comes to trying to convict individuals of these offences.

2.3 What makes the presence of the encouragement offence within the Terrorism Act 2006 so redundant is the fact that the following offences already exist in legislation, all of which clearly encapsulate the principles laid out in Section 1.:

to “invite support for a proscribed terrorist organisation”;⁴² to “encourage, persuade or endeavour to persuade any person to murder any other person”;⁴³ to “counsel or procure” any other person to commit any indictable offence;⁴⁴ to “solicit or incite” another person to commit any indictable offence;⁴⁵ to incite another person to commit an act of terrorism wholly or partly outside the UK;⁴⁶ and to conspire with others to commit offences outside the UK.⁴⁷

2.4 The criminalisation of the encouragement of terrorism and the dissemination of terrorist publication has a negative impact upon basic freedoms such as expression, association and religion. This can be clearly seen with s. 1(3)(a) of the Terrorism Act which states: “...the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which – glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences”.

2.5 We do not dispute the principle that the glorification of acts of violence is offensive. However, on highly contentious issues such as the war in Iraq or the ongoing conflict in Israel/Palestine, one person’s terrorist is another person’s freedom fighter. In other words, it is impossible for there to be any objectivity on certain contentious subjects. The right to freedom of expression in the UK allows these contentious views to be expressed both publicly and privately. This expression encourages debate, which in turn encourages the moderation of extremist views. In countries where freedom of expression is undermined, such as Egypt, we see a rise of underground, extremist politics, and an absence of democracy.

2.6 Similarly, the right to free association also contributes to the strengthening of democracy. If this right is curtailed then groups are driven underground and are thus harder to monitor. For instance, the views expressed by Abu Hamza al-Masri at the Finsbury Park Mosque may have been highly offensive, but the fact that they were so public enabled both him and other advocates of extremist Islam to be monitored. If the right to association had been undermined and Abu Hamza was forced to meet his supporters in secret rather than at a prominent London mosque, then this monitoring would have become even harder.

2.7 The demonisation of Islam in the UK has substantially undermined the freedom of religion one would expect in a mature democracy. While the fact that there are mosques which preach an extremist version of Islam and encourage the use of violence in the UK is an issue for concern, the methods proposed by the government to combat this extremism are contributing to the curtailment of religious rights and freedoms, and are counter-productive in that they make such views seem more glamorous to those who are already alienated and/or disaffected.

2.8 Section 2 of the Terrorism Act 2006, which deals with the dissemination of terrorist publications, falls into a category similar to that of the encouragement of terrorism

⁴² Terrorism Act 2000, s. 12

⁴³ Offences against the Person Act 1861, s. 4

⁴⁴ Accessories and Abettors Act 1861, s. 8

⁴⁵ DPP v Armstrong (Andrew) [2000] Crime LR 379 DC

⁴⁶ Terrorism Act 2000, s. 59

⁴⁷ Criminal Law Act 1977, s.1A

offence. Firstly, there is a substantial impact upon freedom of expression and the subsequent impact on public debate. Attempting to prevent the publication of texts will drive extremist publications underground where their content and distribution will be more difficult to monitor. Secondly, such an offence would be hard to police especially given the extensive use of the internet, which will enable contentious texts to be posted anonymously on web forums or circulated via third parties based outside the jurisdiction. Thirdly, the definition of a 'terrorist publication' is unclear. This could lead to innocuous publications such as science textbooks dealing with nuclear power being considered as terrorist publications. Similarly, a book about the Northern Irish hunger strikers could be considered a terrorist publication, if the prosecution argued that it could encourage acts of republican terrorism.

3. THE PROSCRIPTION OF ORGANISATIONS UNDER THE TERRORISM ACT 2006

3.1 Many of the principles we have outlined above under the encouragement of terrorism and the dissemination of terrorist publications have covered the new grounds on which organisations can be proscribed, namely the glorification of terrorism. It is clear that the grounds for proscription will inhibit freedom of association. Proscribing organisations merely drives people underground which ensures that their activities are harder to monitor and their extremism can grow unchecked.

3.2 On a broader principle, BIRW has concerns about the Terrorism Act as a whole because this legislation typifies the wider erosion of human rights taking place in the United Kingdom today. Draconian legalisation is not the way to address terrorism. Indeed, the curtailment of freedoms and human rights standards seeks to push those already on the margins to the extreme, as well as undermining the rule of law. Our experiences in Northern Ireland clearly show that similar legislation, such as that relating to internment, directly increased the numbers joining the IRA and participating in terrorist activities.

3.3 The Terrorism Act 2006 appears to focus heavily on one community – Muslims. We fundamentally oppose the use of racial or religious profiling in the legislative arena. The creation of an atmosphere of racial mistrust and suspicion can only contribute to an increase in alienated, angry people, playing straight into the hands of the terrorists. We have seen this with the stigmatisation of the Irish community in England during the 1970s and '80s. We believe that such measures undermine Article 3 of the CECPT which says that "Each party shall promote tolerance ..."

4 DUTY TO INVESTIGATE

4.1 The government's duty to investigate terrorists suspects, and associated duties of extradition or prosecution, has been undermined by their failure to adequately execute these actions in Northern Ireland. As a result, few lessons appear to have been learned. BIRW has raised concerns about the methods used by the government in their attempts to prevent terrorist attacks. These have included UK complicity in extraordinary rendition, the use of evidence obtained under torture and the erosion of suspects' rights. Of particular concern was the government's desire to extend the length of pre-charge detention. We argued clearly against the case for extending detention time to a maximum of 90 days, instead we placed an emphasis on the need to expand the resources available to both the police and other security services in the form of translators, increased collaboration with mobile phone companies and the use of intercept evidence. It is clear that the UK is facing a threat from both domestic and international terrorism; however, as already noted, eroding human rights and condoning the use of torture simply serves to increase alienation and extremism. The strongest defence the UK has against these threats is a robust system for the administration of justice which is firmly rooted in compliance with domestic and international human rights norms.

4.2 The government has consistently failed in Northern Ireland to deliver justice for the families of those bereaved by acts of terrorism, whether on the part of paramilitaries or state actors involved in collusion. This can currently be seen in the trial of Sean Hoey, who is facing charges related to the Omagh bombing in 1998. Not only is the trial taking place years after the event, but it has been dogged throughout by concerns about forensic evidence and unreliable witnesses.⁴⁸ Perhaps of more significance are cases where the UK government has placed the protection of informers over the principles of justice. Mark Haddock, a UVF terrorist, was complicit in numerous acts of violence, yet as a Special Branch informer, was able until very recently to operate with impunity.⁴⁹

4.3 The Inquiries Act 2005 has long been criticised by BIRW for its incompatibility with Article 2 of the European Convention of Human Rights. The judicial review taken by David Wright, father of the late Billy Wright, leader of the LVF, has huge implications for the future of the Inquiries Act, as David Wright has applied for a declaration that the Act is incompatible with the Human Rights Act 1998 and the European Convention on Human Rights. That contention has the support of Amnesty International, the Northern Ireland Human Rights Commission, BIRW and the Committee on the Administration of Justice. The conversion of the statutory basis of the Robert Hamill Inquiry to the Inquiries Act has already resulted in interference by the Secretary of State in the costs lawyers involved in the Inquiry can claim and the hours they can work, which is heading for another judicial review. That inquiry has also been delayed over claims for anonymity by police officers.

4.4 While BIRW welcome the creation of the Historical Enquiries Team (HET) to examine conflict related deaths in Northern Ireland, we do not believe that they are fully independent, and thus not Article 2 compliant, because they report to the Chief Constable of the Police Service of Northern Ireland, who in turn reports to Her Majesty's Inspectorate of Constabulary, which is headed by Sir Ronnie Flanagan, former head of the Royal Ulster Constabulary, who presided over many of the investigations now under scrutiny by the HET. Concerns have also been raised about the number of missing records and case files which will undermine the quality of the investigations.

4.5 We have previously raised with the Committee the failure by the government to investigate deaths involving the security forces. In particular, the delay in the implementation of the European Court of Human Rights' judgments in the cases of McKerr, Shanaghan, Jordan, Kelly & Ors, McShane and Finucane is inexcusable.

5. PROTECTION AND SUPPORT OF VICTIMS OF TERRORISM

5.1 In our view, the measures adopted by the UK government to protect and support the victims of terrorism, have been woefully inadequate. Our experience in Northern Ireland has indicated that despite 30 years of conflict, few lessons have been learned by the government in how to address the rights and needs of victims.

5.2 Firstly, the use of informers and the value placed on intelligence by the security forces rather than on the right to life has enabled acts of terrorism to take place which could have been stopped. For instance, the murder of Francisco Notarantonio in 1987 by loyalists with state collusion, apparently enabled Alfredo Scappaticci, a high ranking IRA member and Force Research Unit informer to be protected. Scappaticci's involvement with the IRA's internal discipline unit means that he was allegedly involved in multiple killings which could have been prevented. Loyalist informers such as Mark Haddock have also enjoyed similar protection, with the same outcome.

⁴⁸ *Omagh DNA evidence 'unreliable'*. BBC News, 16 November 2006

⁴⁹ *Haddock inquiry called over judge's comments*, Belfast Telegraph, 21 November 2006

5.3 Secondly, a sectarian police force meant that deaths by terrorists did not receive effective investigations, and thus perpetrators went unpunished. This undermined the rule of law in Northern Ireland and failed to provide a suitable deterrent to further acts of terrorism. It prevented bereaved families from accessing the mechanisms of truth and justice about their loved ones' deaths.

5.4 Thirdly, the measures which were taken by the government to protect Northern Ireland's citizens from acts of terrorism fuelled rather than dampened the conflict. As mentioned earlier, the policy of internment alienated many young Catholics and substantially aided the recruitment efforts of the IRA. The 'shoot to kill policy' and the events of Bloody Sunday has similar consequences. Fourthly, compensation to victim's families was often woefully inadequate with some families having to fight for years to get any money at all.

5.5 Finally, recent attempts by the government to provide a voice for victims, in the form of a Victim's Commissioner have resulted in controversy. The appointment of Bertha McDougall, the widow of an RUC officer, alienated many in the nationalist community. The appointment was viewed as being highly political, without due concern for the rights and needs of victims. The resulting judicial review into the appointment has further undermined the status of the post and left victims without a champion.

5.6 In conclusion, the failure of the government to adequately investigate terrorist crimes and to protect and support the victims of terrorism in Northern Ireland does not bode well for victims of more recent terrorist attacks such as those on 7 July 2005. Until the government is prepared to acknowledge its mistakes in Northern Ireland, then there is little chance that lessons can be learned and best practice applied. It is unclear how the government will respond appropriately to the demands of the Council of Europe's Convention on the Prevention of Terrorism. However, undermining human rights standards within the UK through the design and application of draconian legalisation does not bode well for this process.

Appendix 3: Memorandum from Liberty

INTRODUCTION

1. The Joint Committee on Human Rights has decided to report on the Council of Europe Convention on the Prevention of Terrorism, signed by the UK on 16th May 2005 (the "Convention"). The purpose of the Convention is to enhance the efforts of states in preventing terrorism and its detrimental effects on human rights, especially the right to life. It obliges states to establish certain criminal offences, including public provocation to commit a terrorist offence, and to ensure that while doing so they respect human rights obligations, in particular the rights to freedom of expression, association, and religion.

2. In particular, the Committee asked the following four questions:

Whether the new criminal offences in Part 1 of the Terrorism Act 2006 ("TA 2006") (encouragement of terrorism and dissemination of terrorist publications) have inhibited legitimate freedom of expression, association and religion, and if so, how?

Whether the new grounds on which organizations can be proscribed in s. 21 TA 2006 have inhibited legitimate freedom of association?

Whether the UK complies with the duty to investigate and either extradite or prosecute terrorist suspects?

Whether the measures adopted by the UK to protect and support the victims of terrorism are adequate?

OVERVIEW

3. Security and freedom are not diametrically opposed or mutually exclusive values. The most effective way of countering the threat from terrorism will involve laws and processes which respect the values and rights that terrorism seeks to undermine. The international human rights framework, left to the world by the generation which survived the Holocaust and the Blitz, respects questions of public safety. There is no need for this framework to be undermined in the name of a "war against terror". This was well-appreciated by the Council of Europe when it passed the Convention. The preamble to the Convention recalls, for example "the need to strengthen the fight against terrorism and reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms".

4. The Government used the Convention as a justification for a number of the provisions of TA 2006. It argued, for example, that new offences were needed to enable it to ratify the treaty. Some of these offences Liberty supported, including the offence of training for terrorism which is contained in Article 7 of the Convention and section 6 TA 2006.

5. The Convention was, however, used as a justification for other offences and powers which Liberty opposed as TA 2006 was passing through Parliament. These included the offences of encouraging terrorism (commonly known as "glorification of terrorism") and dissemination of terrorist publications as well as widening the powers to proscribe organisations. We believe that the breadth of these offences and the new grounds for proscription went far beyond what the Convention required. As a result of this these offences and powers have had a disproportionate impact on our rights and freedoms. It is too early to make a definite assessment of the practical effect of these provisions. Furthermore, it is logically very difficult to assess what views people have decided not to express and what organisations people have decided not to join or support as a result of the provisions of TA 2006.

6. There are a number of other key concepts in the Convention which the Government has, sadly, been less keen to pursue. These include the obligation to investigate and to prosecute those suspected of involvement in terrorism and the provision of protection and support for the victims of terrorist attacks. In particular we are concerned about the failure to provide financial support to victims of terrorism abroad.

NEW OFFENCES

7. In the explanatory notes to TA 2006, and during Parliamentary debates on the Bill, the Government drew a clear connection between several of its provisions and the Convention. The Explanatory Notes state, for example:

"Section 1 creates an offence of encouragement of acts of terrorism or Convention offences. The offence has been introduced to implement the requirements of Article 5 of the Council of Europe Convention on the Prevention of Terrorism ("the Convention"). This requires State parties to have an offence of 'public provocation to commit a terrorist offence'. This new offence supplements the existing common law offence of incitement to commit an offence."

The following comments focus on the offence of encouragement. Similar issues apply in relation to section 2 and the proscription powers in section 21.

8. The offence in section 1 of TA 2006 goes further than Article 5 of the Convention in one significant respect. Article 5 of the Convention provides:

"1 For the purposes of this Convention, "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

2 Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law." [emphasis added]

Unlike Article 5, section 1 does not require the person making any statement or publishing any document to thereby intend to incite the commission of a terrorist offence. The domestic offence of encouragement, for example, will also be committed if a person makes a statement or publishes a document and is reckless as to whether it is understood, as a direct or indirect encouragement to terrorism.⁵⁰ The extension of this offence to recklessness is a major reason for the disproportionate impact on freedom of expression.

9. The Government pointed out that the concept of recklessness is common in criminal law. This is true. There are, however, two key reasons why recklessness is an inappropriate standard for criminalisation when applied to a speech offence:

- Firstly, recklessness is normally applied to actions that are themselves within the realm of criminality. A simple test is to look at 'recklessness' in the index of the leading Criminal Law textbook Archbold.⁵¹ The subheadings are 'battery, 'common assault' criminal damage', drinks and drugs',⁵² 'fraudulent evasion' and 'obtaining property by deception'. There is no reference to speech offences. The rationale for this is that if you hit someone or deceive them then it is absolutely appropriate for a jury to be able to convict you of an offence even if you did not intend the consequences of your actions. The same nexus between action and consequence should not exist for speech offences. Speech does not naturally reside in the realm of criminality. This is why the element of intention should always be attached to speech offences. It is the means by which proper criminal responsibility can be determined.
- Secondly, conviction for existing offences involving an element of recklessness is totally dependant upon the actions of the person charged. If I have hit someone or deceived them all the consequences derive from my action. If someone hits their head after I have struck them, suffering severe injury, then it is appropriate to convict if I was aware of a risk of that happening or aware of a risk so that it would be unreasonable to take it. The difficulty in applying this principle to the section 1 offence is that criminality flows from another's interpretation of my actions. If someone were actually to plan a terrorist attack as a consequence of what I say then, as all acts of terrorism must be unreasonable, it must have been unreasonable for me to take the risk. When dealing with the interpretation by a third party it is difficult to see any practical distinction between what is negligent and what is reckless.

⁵⁰ Indirect encouragement is defined as a statement glorifying the commission of acts of terrorism which members of the public could be reasonably expected to infer as behaviour that should be emulated. For both direct and indirect encouragement it is irrelevant whether the statement is understood as encouragement to commit any particular act of terrorism. It is also irrelevant whether anyone was in fact encouraged.

⁵¹ Page 2969 in the 2005 edition

⁵² The reference to drink and drugs relates to the effect of intoxication on recklessness rather than any specific offence.

There is little to distinguish what might be careless speech and what might be reckless speech. As a consequence any distinction could well be based on the circumstances and manner in which comments are made rather than the content. Indeed, this is a specific requirement for consideration under section 1(5). Those who feel most deeply about issues such as the Palestinian conflict and who are likely to express their views most passionately are likely to be young Muslims. It is easy to see how a person's passion might become interpreted as recklessness.

10. The lack of any need for intent coupled with the broad definition of "terrorism" means that the sense of certainty essential to a fair and credible criminal justice system are missing. Section 1 of the Terrorism Act 2000 defines "terrorism" as (among other things) an action⁵³ that involves serious violence against a person, serious damage to property or which endangers a person's life, and which is intended to influence the government or intimidate the public for the purpose of advancing a political, religious or ideological cause. It even appeared that the Minister responsible for the Bill did not appreciate the scope of the offences it contains.⁵⁴ It is possible that the restriction on freedom of expression in section 1 TA 2006 is not sufficiently clear and accessible to be considered "prescribed by law" as required by Article 10(2) of the European Convention on Human Rights.

11. Given the breadth and uncertainty of the offences in sections 1 and 2 TA 2006, we consider there to be a significant risk that they would, in fact, violate Article 12 of the Convention which provides:

"Each Party shall ensure that the establishment, implementation and application of the criminalisation under ... this Convention are carried out while respecting human rights obligations, in particular the right to freedom of expression, freedom of association and freedom of religion, as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law."

12. Liberty is concerned about the possible "chilling effect" of the offence. We fear that people will be afraid of the new offence of encouragement of terrorism and, knowing generally that it criminalises speech even if they do not intend to encourage any act of terrorism, will feel that it is simply safer to keep quiet. The Committee specifically asks whether the new offences in sections 1 and 2 of the Terrorism Act 2006 have deterred legitimate freedom of expression in practice. Given that the offence only came into force in April of this year and that no one has yet been charged with the offence, it is probably too early to make any such meaningful assessment. There is another major difficulty with assessing whether the existence of the offence has inhibited free expression. Logically there can be no record of articles that have not been published or speeches that have not been made. It is, therefore, impossible to know what opinions a person has decided not to express.

PROSCRIPTION POWERS

⁵³ Which can be outside the UK

⁵⁴ When giving evidence to the Home Affairs Select Committee on 11th October the Home Secretary was asked that given the breadth of the definition of 'terrorism' which is used in the offence would criminalise calls to overthrown oppressive regimes. Examples given were North Korea, Zimbabwe and the Ceausescu regime in Romania. The Home Secretary's response was that this would not be criminal, commenting, *"In fact, I think the Romanian change illustrates my point extremely clearly. What actually happened at the process of change in Romania was precisely as you said, millions of people coming on to the streets and it leading, as a result, to a change in loyalty for the army and so on."* We believe the Home Secretary was mistaken. We do not see how the overthrow of Ceausescu could fail to satisfy this definition. Anyone who 'encouraged' the Romanian revolution in 1989 would be committing the offence.

13. Section 21 TA 2006 allows for the extension of the grounds for proscription under the Terrorism Act 2000. It now covers non-violent organizations which 'glorify' terrorism. The Government clearly intended that this extension would allow groups such as Hizb-ut-Tahir to be proscribed. The Prime Minister stated his intention to do this in August 2005. There is a vast difference between proscribing groups involved in violence and terror and non-violent political groups. It allows for state censorship of political views. Liberty has a number of concerns regarding the proscription of non-violent organisations, including:

- The disproportionate impact on the right to freedom of association and expression protected by Articles 10 and 11 of the European Convention on Human Rights and the Human Rights Act 1998.
- Banning non-violent political organisations is extremely counterproductive. Whatever we may think of organisations that praise terrorists, banning and criminalising them will create martyrs and drive debate underground.
- Criminalising expressions of belief does not make us safer from terrorism. Instead it risks adding weight to the arguments of those who maintain the UK applies double standards in its treatment of Muslims.

14. The Committee has asked whether the new grounds on which organisations can be proscribed have inhibited legitimate freedom of expression. An order proscribing additional organisations has been made since section 21 came into force⁵⁵ but we suspect that the organisations it has proscribed (Al-Ghurabaa, The Saved Sect, Baluchistan Liberation Army and Teyrebaz Azadiye Kurdistan) could have been banned under the original proscription powers in the Terrorism Act 2000.⁵⁶ We are pleased that no order proscribing non-violent groups has been made. Any such order would, we believe, be likely to have an unjustified and disproportionate impact on freedom of association and be likely to be in breach of Article 11. Such an order would, accordingly, be likely to be unlawful pursuant to section 6 of the Human Rights Act 1998.

UK COMPLIANCE WITH THE DUTY TO INVESTIGATE AND PROSECUTE TERRORIST SUSPECTS

15. It is clear from the scheme of the Convention that the state parties to it had envisaged that the most appropriate way of dealing with those engaged in terrorist activities would be through the application of the criminal law. Article 18 provides, for example, that:

"The Party in the territory of which the alleged offender is present shall ... if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that Party. Those authorities shall take their decision in the same manner as in the case of any other offence of a serious nature under the law of that Party."

16. Liberty agrees that those suspected of involvement in terrorism should be prosecuted and sentenced. We support the JCHR's conclusion that:

"States are now under an emerging human rights law duty to prosecute those whom it suspects of being involved in terrorist activity in order to prevent future loss of life in future attacks. This makes it all the more important that the Government now urgently

⁵⁵ The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2006 No. 2016

⁵⁶ i.e. without recourse to section 21 TA 2006

addresses the obstacles to prosecuting for terrorism offences with a view to resorting more frequently to the criminal law in the effort to counter terrorism."⁵⁷

Liberty believes prosecution to be the most effective way of tackling terrorism and considers that intelligence should be turned into evidence so that more prosecutions can take place. In particular, we consider that the bar on intercept evidence should be lifted.

17. Liberty has serious concerns about the fact that some of those who the Government suspects of involvement in terrorism are not being prosecuted but are instead being subjected to control orders. The control order regime created by the Prevention of Terrorism Act 2005 enables Ministers to impose restrictions on individual freedom (including tagging and curfews) where there is no view to a criminal prosecution. Although control orders impose restrictions which are, in effect, punitive, they are not made following a fair trial. This scheme undermines the central pillars of the British legal system: protection against unlawful detention, the right to a fair trial and the presumption of innocence. It also undermines the scheme of the Convention. We consider that the prosecution and sentencing of terrorists would better protect members of the public than control orders, which could be counter-productive and, in terms of the protection they offer, fall far short of criminal sanctions.

VICTIMS OF TERRORISM

18. Article 13 of the Convention requires states to "adopt such measures as may be necessary to protect and support the victims of terrorism that has been committed within its own territory". This is an important legal obligation, recognising the moral duty of states to support those who have suffered grave violations of their human rights at the hands of terrorists. It is significant that Article 13 of the Convention would not require the British Government to provide support only to British citizens injured in terrorist attacks in the UK, but also to foreign citizens who suffer in attacks in the UK. This means that, had the Convention been ratified by the UK, the UK would be under a legal obligation to foreign citizens injured in the July 7th attacks. We greatly welcome the fact that the Criminal Injuries Compensation Authority ("CICA") already compensates victims of terrorist attacks in the UK regardless of their nationality or residence.

19. Sadly, support for British victims of terrorism outside of the United Kingdom is not as generous. There is no scheme for the provision of support to British victims of terrorism overseas – this falls outside of CICA's remit. This is of particular concern given that most British travel insurers choose to rely on the Terrorism Exemption Clause, which means they are not required to pay out for costs incurred in the wake of a terrorist attack.

20. Article 13 of the Convention requires other state parties to the Convention to provide support to British citizens who suffer as a result of terrorist attacks in their jurisdiction. For example, had Turkey ratified the Convention, Article 13 would have required it to provide support to those British citizens who were injured in terrorism attacks in Marmaris and Antalya on 28th August 2006.⁵⁸ In practice, we understand that British victims in those attacks have had some difficulties in accessing the financial support which is already available, in theory at least, from the Turkish state. Such problems include language barriers, very short limitation periods,⁵⁹ and high legal costs in making applications with difficulties in getting insurers to cover these costs, at any rate before the

⁵⁷ Twenty-fourth Report of Session 2005-06, *Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention*, HL 240/HC 1576, Summary.

⁵⁸ There were a series of explosions in the Aegean coastal resort of Marmaris and the Mediterranean resort of Antalya resulted in a number of casualties. In Marmaris, 21 people were injured, including 10 British nationals. In Antalya three people were killed and at least 30 injured; foreign nationals were amongst the wounded.

⁵⁹ Only 60 days, although periods in hospital are not included.

claims become time-barred. Furthermore, as the claims have not yet been processed and the compensation scheme is far from transparent, the amount of likely compensation is still unknown (it is certainly very limited in respect of loss of earnings). We are concerned that differing costs of living and of obtaining support in states which are parties to the Convention could mean that the awards paid in one country to those living in another may be insufficient, out of step with what a British victim would receive from CICA had they suffered as a result of a terror attack in the UK. For these reasons we believe that the UK should provide a safety-net for those who, while theoretically entitled to support from other state parties to the Convention, do not receive sufficient compensation or are unable in practice to obtain it.

21. This would still, however, leave an obvious gap in protection and support: British victims of terrorist attacks in countries which are not state parties to the Convention. The Convention would provide no protection for those who died or were injured in bombings outside the Council of Europe (i.e. Bali (2002), Sharm el Sheikh (2005), Bali (2005), Qatar (2005) or Dahab (2006) or Jordan (2006). British victims in these attacks were not covered by CICA and the vast majority would not have been covered by travel insurance due to the terrorism exemption provisions. The Government's arguments against extending CICA to cover this group do not stand up to scrutiny:⁶⁰

- "Terrorism" is difficult to define and therefore poses problems in assessing eligibility - Liberty also has difficulties with the definition of "terrorism".⁶¹ However, if its meaning is clear enough to use as the basis for criminal responsibility and to confer significant coercive powers on the state, it must also be clear enough to provide a basis for ascertaining entitlement to financial support.⁶²
- *Any scheme for British victims of terrorism abroad would be open to fraud:* However, according to Howard Webber, the Chief Executive of the CICA, fraudulent applications are a small sub-category of those that are disallowed. In addition, we have criminal procedures in place to deal with those who attempt to defraud the CICA.

Cost: According to the CICA website, the scheme receives about 65,000 domestic applications and pays out £200 million in compensation per year. Relative to this, the number of potential applications from victims of terrorism abroad is small.⁶³ If, however, the Government is not convinced that the financial implications of expanding the scheme will be small, they can reassess the role of insurance companies in these cases – i.e. requiring insurers not to include a terrorism exemption.

As a matter of urgency, this serious lacuna should be addressed, not as a matter of legal compliance with the Convention but in the performance of the state's moral obligation to its citizens that suffer in such attacks.

⁶⁰ Criminal Justice System, "Rebuilding Lives: Supporting Victims of Crime", December 2005, p.21

⁶¹ See our submission to Lord Carlile's review: <http://www.liberty-human-rights.org.uk/pdfs/policy06/terrorism-definition-response.PDF>

⁶² We would point out that, in addition to the definition of "terrorism" in Section 1 of the Terrorism Act 2000, there is a definition in Section 2(2) of the Reinsurance (Acts of Terrorism) Act 1993. It defines "acts of terrorism" as 'acts of persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government de jure or de facto'.

⁶³ Since 2002 we estimate that 43 British holiday-makers have been killed by terrorist attacks abroad.

Appendix 4: Memorandum from the Mayor of London

1. This submission addresses in particular the first two points in the Joint Committee's Call for Evidence, relating to the effects of Part 1 and section 21 of the Terrorism Act 2006 (henceforth 'the Act').

2. At the time of the Joint Committee's investigation last year into the human rights compatibility of the then Terrorism Bill, the Mayor expressed concerns over the potential impacts of proposed new offences on community cohesion and the criminalisation of those who oppose terror. During the passage of the Bill, the Mayor made clear his particular concerns relating to the definition of terrorism, and the new measures outlawing the glorification of terrorism and extending powers to proscribe organisations. The Mayor believes that these issues may raise questions as to the Act's compatibility with the Council of Europe Convention on the Prevention of Terrorism.

3. While the Mayor fully supports action to tackle terrorism decisively and effectively, lasting success is unlikely to be achieved if counter-terrorism legislation is not perceived as being legitimate, proportionate and equitable and as a result we fail to take with us those communities whose support and trust are vital.

4. The Mayor also remains seriously concerned about the effects of certain provisions of the Act upon community cohesion. By presenting a visible minority or faith group, in this case British Muslims, as part of the problem there is potential to increase the hostility faced by minority groups from some sections of society and to cultivate a feeling of isolation and disenfranchisement amongst such groups. Sections of the Black, Asian and Minority Ethnic communities testify to the chilling effect of the new laws and to their increased concern about the possible consequences of expressing legitimate views relating to foreign and other government policies. There is also a sense that the tone and implied target of the measures has helped to legitimise Islamophobia.

5. To ensure appropriate application of the extensive new offences and powers, it was imperative that they were based on an accurate, tightly defined and consensus-based definition of terrorism. However, by re-using the existing definition contained in the Terrorism Act 2000 this was not achieved. The definition of terrorism set out in section 1(5) of the Terrorism Act 2000 is fundamentally flawed in several respects. The definition:

- is expansive and indiscriminate;
- does not reflect commonly held notions of terrorism;
- undermines basic human rights;
- makes no allowances for legitimate protest and struggles; and therefore
- criminalises people who cannot properly be regarded as terrorists.

6. The effect of the broadness of the definition of terrorism is to delegate to the executive and the prosecution the decision as to which organisations and acts ought properly to attract criminal liability. In such circumstances, the definition potentially becomes a political tool rather than objective legal criteria, enabling the executive to inhibit legitimate freedom of expression, association and religion using section 1 and section 21 of the Act.

7. The problems created through the use of ill-defined concepts as the basis for criminal offences have been illustrated by the Government's inability to convincingly demonstrate that the Act satisfies the 'Mandela test'. Had this legislation been in place

during the ANC's struggle against Apartheid, it would have been entirely possible for groups and individuals who expressed support for the ANC to have been prosecuted under the Act. The Government's claim that this would not have been the case appears to be based solely on the contention that the current Executive would not, for political and ideological reasons, have ordered such a prosecution. This provides no guarantee as to the future use of the Act. The failure of the Government to allay such key concerns seriously damages the legitimacy of this legislation and, by association, our counter-terror efforts.

8. The Mayor believes that, regardless of the intentions of the Act, the shortcomings of the definition of terrorism coupled with the sweeping provisions in section 1 relating to glorification are likely to engender a lack of confidence amongst some parts of the community either through inappropriate use of the powers or through the expectation of such use. This will impact disproportionately on British Muslims and may be seen by parts of that community as a direct attack upon their rights to freedom of speech, association and conscience. These groups are certain to include those whose trust and co-operation is essential in order to isolate and defeat supporters of terrorism and who totally oppose terrorist attacks, but who risk being prosecuted for promoting legitimate points of view on sensitive areas of policy. The ensuing damage to trust between government, police and the British Muslim community could prove highly counter-productive in terms of securing continuing assistance in counter-terrorism intelligence work and operations.

9. Similar concerns arise in relation to the proscription of organisations that 'glorify' (defined as 'any form of praise or celebration') terrorism under section 21 of the Act. Again, the use of a vague definition lays open the possibility of the proscription of groups which are wholly non-violent or which hold a different interpretation of historical or contemporary issues to that of the UK government. The risk arises of such groups being forced underground by their proscription, which is likely to be counter-productive in terms of both intelligence gathering and community relations, assisting recruitment to terrorism.

10. The continuing controversy over the Government's reported plans to proscribe Hizb ut-Tahrir under section 21 highlights the fundamental problems with these powers. The Mayor wishes to make no judgement as to whether Hizb ut-Tahrir supports or glorifies terrorist activities. Nevertheless, it is evident that significant sections of the British Muslim community consider the group to be of a purely non-violent nature, concerned solely with advocating the creation of an Islamic state across the Middle East. Given that such a policy perspective is unlikely to be looked on favourably by western governments, moves to ban Hizb ut-Tahrir have been seen not only by the group's members but by other British Muslims as being a symptom of politically-motivated misuse of counter-terror powers. Such a perception will inevitably damage the trust of the communities concerned. It should be noted that in the case of Hizb ut-Tahrir, it has been reported that senior police officers do not consider that a ban would be helpful to counter-terrorist operations.

11. In the explanatory notes to the Act, the Government stated that section 1 'has been introduced to implement the requirements of Article 5 of the Council of Europe Convention for the Prevention of Terrorism'. However Article 5 does not require a new statutory offence to be introduced. The current common law on incitement is sufficient to take account of the area of provocation as required by the Council of Europe Convention. This is illustrated by reference to the common law on incitement. Paragraphs 34-70 of Archbold, Criminal Pleading Practice and Evidence 2005, state that:

"To solicit or incite another to commit a crime is indictable at common law, even though the solicitation or incitement has no effect: DPP v. Armstrong (Andrew) [2000] Crim. L.R. 379 D.C. This includes...an attempt to incite a person to commit an offence: R. v. Ransford (1874) 13 Cox 9 CCR. It is immaterial whether the principal offence is one existing under the common law or is created by statute: see 1 Russ.Cr. 12th ed 176..."

12. This amplifies the effect of the Terrorism Act 2000 in a sufficient way to deal with the provocation of terrorism within the Council of Europe Convention. In other words, the offences of encouragement and glorification of terrorism introduced by the Terrorism Act 2006 go further than is necessary under the Convention.

13. At a time when the democratic principles that underpin our society are under threat, we should strive to safeguard our right to express opinions that are controversial or even offensive. It is the freedom to debate – and to disagree – that helps to make our society strong. However, the expansive definitions of terrorism and glorification in the Act are likely together to impact on the trust and cooperation of communities in a way that undermines the fight against the terrorist threat to London and the UK, by criminalising those whose cooperation is vital to the police.

Appendix 5: Memorandum from the Home Office

Whether the new criminal offences in Part 1 of the Terrorism Act 2006 (encouragement of terrorism and dissemination of terrorist publications) have inhibited legitimate freedom of expression, association and religion, and if so, how

- The offences in sections 1 and 2 of the Terrorism Act 2006 have only been in force since April 2006. We are not aware that the offences have inhibited freedom of expression, association or religion.
- As the nature of extremism changes, we must respond. The Terrorism Act 2006 introduced new offences and powers to tackle those who promote terrorism.
- This included the offences of the encouragement of terrorism and the dissemination of terrorist publications.
- Section 1 of the Terrorism Act 2006 creates an offence of publishing a statement that directly or indirectly encourages acts of terrorism including, in certain circumstances, the glorification of acts of terrorism. For the offence to be committed,
 - it requires a person to publish or cause to be published a statement and the statement must be likely to be understood by people to whom it is directed as a direct or indirect encouragement or other inducement to them to carry out acts of terrorism or Convention offences (indirect encouragement includes glorification, if members of the public will infer from the statement that they should emulate the conduct that is being glorified); and
 - the person intends the statement to encourage others to commit, prepare or instigate acts of terrorism or Convention offences or is reckless as to whether others will be so encouraged.
- The section 1 offence was introduced to implement Article 5 of the Council of Europe Convention on the Prevention of Terrorism. This requires state parties to have an offence of “public provocation to commit a terrorist offence”. The new offence supplements the existing common law offence of incitement to commit an offence.
- It is the Government’s view that the offence in section 1 of the Terrorism Act 2006 rightly criminalises the activities of those who seek to encourage acts of terrorism. It is the Government’s view that the publication of statements that encourage terrorism is not a legitimate activity.

- Section 2 of the Terrorism Act 2006 creates an offence of disseminating terrorist publications. For the offence to be committed:
 - a person must disseminate a publication;
 - the publication must be a terrorist publication. A publication is a terrorist publication if it directly or indirectly encourages terrorism. Indirect encouragement includes glorification, if members of the public will infer from the statement that they should emulate the conduct that is being glorified. A publication is also a terrorist publication if it contains information that is useful in terrorism so long as it is understood by those to whom it is disseminated as having been included in the publication wholly or mainly for the purpose of being so useful.
 - The person must have either intention or be reckless.
- It is the Government's view that the offence in section 2 of the Terrorism Act 2006 rightly criminalises the activities of those who seek to disseminate terrorist publications. It is the Government's view that the dissemination of terrorist publications is not a legitimate activity.
- The Government has made it clear that it does not wish to curtail proper political debate or to criminalise innocent activity.
- Parliament was clear in passing the Terrorism Act 2006 that we needed to have powers in place that enabled us to take action to tackle the climate of extremism.

CONCLUSION

- We consider that we have managed to achieve the appropriate balance between the measures necessary to deal with the very real threat to national security posed by terrorism and the need to protect the rights to freedom of expression, association and religion.
- All of the UK's anti-terrorism measures have to be set in the context of our general commitment to human rights and the protection of individual freedoms.

Whether the new grounds on which organisations can be proscribed in s. 21 of the Terrorism Act 2006 have inhibited legitimate freedom of association

- We do not believe this to be the case. The extension of the proscription powers in section 21 of the Terrorism Act 2006 only allows the proscription of organisations which promote or encourage terrorism by unlawfully glorifying the commission or preparation of acts of terrorism. Promotion or encouragement of acts of terrorism falls outside the activities for which persons can legitimately associate.

Whether the UK complies with the duty to investigate and either extradite or prosecute terrorist suspects

- If there is an option to execute an extradition request then the UK will comply with its international obligations (within what our domestic law allows) and expedite these requests as much as is possible. Where appropriate or if required by its international obligations, the UK Government will take extra-territorial jurisdiction in relation to an offence. For example, section 17 of the Terrorism Act 2006 takes extra-territorial jurisdiction in relation to sections 1 and 6 of that Act insofar as they relate to Convention offences in order to implement, in part, the UK's obligation to extradite or prosecute under the Council of Europe Convention

on the Prevention of Terrorism. A decision on whether to prosecute in a particular case in this country for terrorism-related offences is not one for the Government to make. It is one for the UK's independent prosecuting authorities, such as the Crown Prosecution Service.

Whether the measures adopted by the UK to protect and support the victims of terrorism are adequate

- The measures adopted by the UK are adequate to support victims of terrorism. Immediate help and support is provided by the police and other emergency services. Support from the police can continue long after the incident e.g. through continuing contact by family liaison officers.
- Free medical treatment and care is provided by the NHS (and by local authority social services for those who have longer term care needs).
- Advice and support to individuals is provided by the organisation 'Victim Support' (which is substantially funded by Government) and other voluntary agencies.
- Compensation for injuries sustained (and for relatives where the injury is fatal) is provided under the state funded Criminal Injuries Compensation Scheme.
- In March 2006 the government announced a £1 million charitable fund to help UK victims of terrorism. Details of the new fund are currently being finalised, but it is intended to provide small-scale and immediate financial relief for UK citizens following a terrorist incident overseas.

Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2006–07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
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Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888
Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915

Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 144/HC 989
Sixteenth Report	Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 154/HC 1022
Seventeenth Report	Legislative Scrutiny: Eighth Progress Report	HL Paper 164/HC 1062
Eighteenth Report	Legislative Scrutiny: Ninth Progress Report	HL Paper 177/ HC 1098
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes	HL Paper 185-I/ HC 701-I
Twentieth Report	Legislative Scrutiny: Tenth Progress Report	HL Paper 186/HC 1138
Twenty-first Report	Legislative Scrutiny: Eleventh Progress Report	HL Paper 201/HC 1216
Twenty-second Report	Legislative Scrutiny: Twelfth Progress Report	HL Paper 233/HC 1547
Twenty-third Report	The Committee's Future Working Practices	HL Paper 239/HC1575
Twenty-fourth Report	Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention	HL Paper 240/HC 1576
Twenty-fifth Report	Legislative Scrutiny: Thirteenth Progress Report	HL Paper 241/HC 1577
Twenty-sixth Report	Human trafficking	HL Paper 245-I/HC 1127-I
Twenty-seventh Report	Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill	HL Paper 246/HC 1625
Twenty-eighth Report	Legislative Scrutiny: Fourteenth Progress Report	HL Paper 247/HC 1626
Twenty-ninth Report	Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 248/HC 1627
Thirtieth Report	Government Response to the Committee's Nineteenth Report of this Session: The UN Convention Against Torture (UNCAT)	HL Paper 276/HC 1714
Thirty-first Report	Legislative Scrutiny: Final Progress Report	HL Paper 277/HC 1715
Thirty-second Report	The Human Rights Act: the DCA and Home Office	HL Paper 278/HC 1716

	Reviews	
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