



**UNIVERSITY OF  
STIRLING**

**School of Law**

**Challenges to Media Organisations due to  
Anti-terrorism laws**

**By**

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## **Declaration**

I hereby declare that this thesis is my own work and that it has not been submitted anywhere for any award. Where other sources of information have been used, they have been acknowledged.

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## **Dedication**

This work is dedicated to the souls of my late Father and Mother who contributed a lot in bringing me up and inspiring my life with their love and patience. It is dedicated, too, to my Wife and Children (Mohamed; Ali; Ahmed; and Mariam)

## **Acknowledgements**

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## **Abstract**

The twenty-first century has witnessed a significant increase in terrorist activities across the world, especially after the attacks on New York and Washington on September 11 2001. The phenomenon, of international terrorism, represented a huge challenge to states and civil societies. The governments' reactions were swift and strong, primarily in the enactment of anti-terrorism laws and the strengthening of the cooperation in security issues. However, despite a general consensus as regards the necessity to legislate in the face of the growing threat of terrorism, the provisions, of the new laws, were criticised heavily by the media; human rights; and civil liberties organisations; and the public in general. The main grievance was tension between the aim of ensuring security and concerns about reducing civil liberties. In view of their exceptional role in society, the independent media, became one of the indirect victims of the new legislation, with severe restrictions imposed on journalists. This thesis examined the various legislative approaches. The conclusion is that, without properly addressing security concerns, the new laws affected media organisations unduly.

## List of Abbreviations

ACPO	Association of Chief Police Officers
AFP	Agence France Press
ATCSA	Anti-terrorism, Crime and Security Act
BBC	British Broadcasting Corporation
C.T.C	Counter-Terrorism Committee
CCTV	Closed-circuit television
CIA	Central Intelligence Agency
CNN	Cable News Network
CoE	Council of Europe
CPCR	Centre for Public Communication Research
CTT	Counter-Terrorism Committee
DNA	Deoxyribonucleic acid
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPA	Emergency Provisions Act
ETA	Euskadi Ta Askatasuna
EU	European Union
FBI	Federal Bureau of Investigation
FD	Framework Decision
FOI	Freedom of Information
HRA	Human Rights Act
ICC	International Criminal Court
ICJ	International Court of Justice

IFJ	International Federation of Journalists
MIPT	Memorial Institute for the Prevention of Terrorism dataset
MoD	Ministry of Defence
MP	Members of Parliament
NATO	North Atlantic Treaty Organisation
NBC	National Broadcasting Company
NGOs	Non-Governmental Organisations
NUJ	National Union of Journalists
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PACE	Parliamentary Assembly of the Council of Europe
PSCOs	Police Community Support Officers
PTA	Prevention of Terrorism Acts
RIPA	Regulation of Investigatory Powers Act
TA	Terrorism Act
TTSRL	Transnational Terrorism, Security and the Rule of Law
TV	Television
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
USA	United States of America
USA PATRIOT	Uniting and Strengthening America by Providing Appropriate Tools
USSR	Union of Soviet Socialist Republics

WWII

Second World War

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## **Chapter One**

### **Introduction**

#### **1.1 Background:**

In modern, open and democratic societies, and, in a period of relative peace and economic stability, governments do not feel the need to restrict the civil liberties of their citizens by imposing drastic laws or interfering too much in the people's normal lives. Therefore, in such circumstances, the size, of the challenge, is more or less controllable and manageable. However, in the case of conflicting circumstances (war; economic crisis; terrorism and so on), things are dealt with in a completely different way. In fact, it is during a period of crisis that the worth of a government is confirmed or disproved.

There is no doubt that the phenomenon of terrorism represents a huge challenge to authorities, and that the value, of executive powers, will be measured eventually according to the responses to that challenge and the efficiencies of the measures taken. Those, who choose terrorism to achieve political gains and draw public attention to their demands, have realised, for a long time, that their actions would be fruitless without the presence of the media to report their deeds. Accordingly, they understood quickly how essential the media was, and included it, in their strategies, in order to amplify and convey their message to world audiences.

For their part, the media, for various reasons, find themselves in a very difficult situation. On the one hand, they consider themselves committed to informing the public about what is happening around them, good or bad. On the other hand, they are under the simultaneous threat and scrutiny by terrorist organisations and authorities. Terrorists can threaten their

lives, whilst law enforcers can stop them; search them; confiscate their documents or cameras; arrest them; harass them; and restrict their freedom of movement.

The key date, which changed significantly the lives, of most citizens in the world, was September 11 2001 when terrorists attacked the symbols of the supremacy of the only superpower left after the fall of the Soviet Union, namely, the United States of America (USA). These exceptional events prompted international condemnation and calls for appropriate measures to prevent similar tragedies in the future. Amongst the first measures, which were taken, was the enactment of anti-terrorism laws in many countries. The United Kingdom (UK), which had particular past experience with terrorism, was amongst the first countries to issue an anti-terrorism legislation.

This study considers the historical background of terrorism; the potential incentives to making it the main challenge of modernity; the innumerable definitions of the concept Terrorism; and the new laws made to face the threat of terrorism in the USA, the UK and the European Union (EU). This study examines also the potential effects which the new British laws had on human rights generally, and on the media freedom in particular, especially its capacity to investigate and report, to the public, on matters related to terrorism. Several cases are identified and the concerns of human rights and media organisations reported. There follows a conclusion which specifies the study's contribution to knowledge, and its limitations and recommendations. Finally, this research explores the lessons, of the UK experience, in terms of the effects, of anti-terrorism laws and their enforcement, may have on other democracies faced with similar threats and sustained campaigns of violence.

## **1.2 Research Questions:**

The study tried to answer the following questions:

- What are anti-terrorism laws?
- What are the emergent challenges from the enactment of the anti-terrorism laws particularly in the United Kingdom?
- What are the effects of antiterrorism laws on the media?
- What are the effects of anti-terrorism laws on journalists in particular?

### **1.3 Statement of Purpose:**

This study aimed to examine the laws, introduced after September 11 2001, in order to shed light on their impact on the media and the civil liberties which were abridged in different areas of life in the UK. As a major step to understanding and analyzing the discourse around terrorism today as well as discussing the definition and typology of terrorism in different parts of the world, it tackled the different historical eras of the Cold War; Post-Cold War; and the aftermath of September 11 2001. The study highlighted, also, the obstacles, encountered by the mass media, and the challenges to some fundamental rights, e.g. freedom of expression; privacy; data protection; freedom from surveillance; the right to a fair, public trial; and the right not to be subjected to torture and inhuman treatment. The study advocated that there ought to be a much wider discussion of the questions regarding the scale of terrorist threats and the existing evidence about them.

### **1.4 Methodology:**

This was mainly a library-based research project. The main sources were collected from the libraries of the Universities of Stirling; Glasgow Caledonian; Glasgow and the National Library of Scotland. In addition, the researcher scrutinised sources from the Australian National University and the McGill University. As regards the part concerned with the

critical analysis of the topic, the researcher relied on official documents; statements; books; and journals, as well as on reports from the United Nations (UN); the European Commission on Human Rights (ECHR); a British institution, named Liberty, dedicated to Human Rights; international NGOs such as Reporters Without Borders; the International Federation of Journalists (IFJ); Amnesty International; and Human Rights Watch. It is essential, also, to mention the importance, for this research, of internet sources; on-line research; UN and Western law websites. The documents, relative to the UK terrorism laws, were drawn from the official governmental websites. The work was based, also, on the data obtained from attendance at several conferences on the issue of terrorism and civil liberties. The critical analysis, of the issues raised in the thesis, was carried out by relying on books; journal articles; and official documents as well as reports of international organisations and research centres.

### **1.5 Contribution to knowledge:**

This thesis' distinctive character consists of presenting an in-depth analysis of the effect of Anti-terrorism Laws on media. However, the other contributions to knowledge were:

- The researcher is an Arab from Libya - an area believed to be in political crisis and a haven for terrorism. This is the first study, of this issue, by a researcher with this background. This was very important since the debate on how terrorism might be counteracted whilst simultaneously maintaining human rights and a free media, was extremely vital for that area.
- This study contributes to knowledge by highlighting the importance of anti-terrorism laws and the maintenance of human rights in general and freedom of the media in particular.

- The study is amongst very few which have linked the anti-terrorism laws to the freedom of media; this is unlike many other studies which discussed generally the laws in relation to human rights.
- Along with other efforts, the study draws the legislators' attention to the concerns of the media personnel.
- The study observed that the disturbed regions represented always an origin for terrorism.

### **1.6 General Structure of the Thesis:**

The thesis comprises of the following six chapters.

The first chapter is the introduction.

The second chapter deals with the historical background of terrorism and the emergence of antiterrorism laws. It links the changes, in the nature of terrorism, to different historical eras, by discussing the historical background of terrorism and distinguishes between domestic and international terrorism. The chapter highlights, also, the main changes which have taken place in the nature of terrorism, such as the involvement of states in the acts of terrorism.

The third chapter examines the different definitions and types of media; and how the media has developed since the dawn of history. It highlights, also, the role played by international media organisations. It discusses the relationship between the media and antiterrorism with particular emphasis on the laws which aim to counteract terrorism. The chapter tries to cover the debated relationship between the media and antiterrorism laws and how, generally, the antiterrorism laws, enforced after 9/11, affected the media.

The fourth chapter focuses on the terrorism laws in the UK; the EU; and the USA and their effects on journalists. The researcher reviewed the UK's numerous pieces of anti-terrorism

legislation with a particular focus on the provisions which presented a challenge to civil liberties and freedom of reporting. The USA Patriot Act and National Security Act were examined, also, from that standpoint, and particular instances of negative consequences were highlighted. In addition, several European case studies from Europe are presented. The purpose of addressing these issues was to assess, to what extent, the legislation had effected freedom of information. The countries were not selected at random but for specific reasons, such as the fact that their legislation raised concerns amongst Human Rights and Civil liberties organizations; ethnic minority groups; religious entities; and representatives of worldwide media. The other incentive, for addressing legislation in the USA; the UK; and certain EU states, was that these countries amended their legislation very quickly in the light of September 11, and took the lead in dealing with terrorism.

The fifth chapter discusses the relationship between anti-terrorism laws and the media, comparing British law with that of European and American law. The chapter covers, also, the reactions, of governments and international organisations, to these issues. Furthermore, it discusses the co-operation between the UK; members of the European Union; and the United States of America in counteracting terror. This chapter discusses particular cases of media personnel who claimed to have been affected by anti-terrorism laws. Finally it reviews British anti-terrorism laws in light of the concerns raised by human right activists.

The sixth chapter features the conclusions; provides an overview of the thesis; its contribution; limitations; and recommendations.

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## Chapter Two

### Historical Background and Definitions of Terrorism

#### 2.1 Introduction

This chapter focuses on the historical background of terrorism and traces the emergence of anti-terrorism laws. Accordingly, it discusses both the historical background and the various definitions of terrorism. Additionally, it considers the main incentives for defining terrorism; and distinguishes between international terrorism and domestic terrorism.

#### 2.2 Historical Background

The historical background, of this study, is divided into three pre-determined phases. The first deals with the aftermath of the Second World War and is the study's starting point. This particular phase was characterised by what is known in history as the 'Cold War' era. It ended with the collapse of the Soviet Union and, in 1989, the fall of the Berlin Wall. The second phase, known as the post-cold War phase, is relatively significant and witnessed the supremacy of the United States of America, with the acknowledged hegemonic consequences for the rest of the world,<sup>1</sup> as highlighted by Ashcar.<sup>2</sup> The third phase started with the tragic events, of September 11 2001, which provoked worldwide reactions. These included tough legislation which, as a response to terrorism and whether or not intentionally, limited severely the work of the media.

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<sup>1</sup> See Hess and M. Kalb (eds), *The media and the war on the terrorism*. Brookings Institution, Washington, 2003, p.1.

<sup>2</sup> G. Achcar, 'Seven theses on the current period, the war, and the anti-war movement', in Solidarity Working Paper: *Iraq and Beyond*, October 2004. Retrieved on 2March 2011, <http://www.solidarity-us.org/pdfs/IraqAndBeyond.pdf>. Ashcar (2004) argued that: The era of US hyper power was inaugurated by the first Bush administration's war against Iraq in January-February 1991, the year of the USSR's final collapse.

Depending on the kind of media organisations involved and their relationship with the executive powers, the effects, of the new legislation, were felt differently. However, with the passing of time, real and genuine concerns appeared when, due to the antiterrorism laws passed in most countries, several media organisations found themselves restricted in conducting their work. This put journalists; reporters; photographers; and all media professionals at risk of either arrest or legal pursuit.<sup>3</sup> The following section discusses, in more detail, the three phases mentioned previously.

### **2.2.1 Post Second World War Phase (1945 -1989)**

After World War II, the world became effectively divided in two blocs, with western liberal democracies led by the United States of America (USA) on one side, and the socialist East, under the leadership of the Union of Soviet Socialist Republics (USSR), on the other. During that period, which lasted nearly half a century, the communications world was subject, also, to the two dominant materialistic ideologies, namely, capitalism; and communism. Accordingly, the media, an essential instrument for the promotion of ideologies, was either part of the socialist camp (or communist, for many thinkers, the two terms are often interchangeable) or acting as its counterpart, and representing the “free world” in the West. In socialist countries, dissident voices or overt criticisms were unheard because of the totalitarian nature of the ruling regimes. In the so-called ‘free world’ and, despite the prevailing ideology of liberal democracy, it was possible, nevertheless, to have an alternative media.<sup>4</sup>

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<sup>3</sup> D. Kellner, *The Media In and After 9/11*, *International Journal of Communication*, 2007, 1: 123-142.

<sup>4</sup> S. Livingstone, ‘On the Continuing Problem of Media Effects’ in J. Curran and M. Gurevitch (eds), *Mass Media and Society*, London: Arnold, 1996, pp. 305-24.

The two conflicting ideologies created a paradigm: the Cold War period. Yet, despite reflecting the general feeling and understanding of most people around the world, such a perspective, was not shared by political scientists such as Huntington; Kuhn; and James. For Huntington, who relied heavily on the theories of James and Kuhn, ideas, like the Cold War, were only an evocation of “simplified pictures of reality called concepts, theories, models, and paradigms”.<sup>5</sup> It was through these intellectual constructs that it was possible to prevent confusion and chaos.

For Kuhn, the development of science was not evolutionary but consisted of a series of “peaceful interludes punctuated by intellectually violent revolutions,”<sup>6</sup> and, in those revolutions, “one conceptual world view is replaced by another.”<sup>7</sup> The paradigm shift resulted from intellectual encounters and debates and scientists defending the paradigm in crisis, whilst their counterparts highlighted the unavoidable emergence of a new paradigm. Therefore, a paradigm revolution occurred following battles regarding scientific theories. By effacing the precedent paradigm completely, the new paradigm relegated it to history. Kuonqui considered that the creation, of a new theory, did not mean necessarily that the

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<sup>5</sup> See S. P. Huntington, ‘If Not Civilizations, What? Samuel Huntington Responds to His Critics’, *Foreign Affairs*. November/December 1993. available online at: <http://www.foreignaffairs.com/articles/49414/samuel-p-huntington/if-not-civilizations-what-samuel-huntington-responds-to-his-crit>

<sup>6</sup> Kuhn stated that “The transition from a paradigm in crisis to a new one from which a new tradition of normal science can emerge is far from a cumulative process, one achieved by an articulation or extension of the old paradigm. Rather it is a reconstruction of the field from new fundamentals, a reconstruction that changes some of the field’s most elementary theoretical generalizations as well as many of its paradigm methods and applications. During the transition period there will be a large but never complete overlap between the problems that can be solved by the old and by the new paradigm. But there will also be a decisive difference in the modes of solution. When the transition is complete, the profession will have changed its view of the field, its methods, and its goals. See T.S. Kuhn. *The Structure of Scientific Revolutions* 84-5

<sup>7</sup> N.Wade, ‘Thomas S. Kuhn: Revolutionary Theorist of Science’, *Science*, 1977, 197, 143-145  
<http://europepmc.org/abstract/MED/17834074/reload=0;jsessionid=0vWYjcN7xJpJYm3EoosG.2>

intention, behind it, was a genuine quest for truth, but “rather a contestation between scientists and power struggles over whose views shall champion over the others. Paradigms constitute entire worldviews such that every empirical reality and theoretical construct is re-read and re-interpreted in the new paradigm.”<sup>8</sup>

The paradigm’s ‘universality’ which, once adopted, remained at the forefront, was introduced; led; and ‘imposed’ on the public by the media<sup>9</sup> and, consequently, with the passage of time, obtained a sort of legitimacy.

To sum up the ‘Cold War’ era, it could be said that, in the aftermath of World War II, the victors, under the USA’s leadership on the one hand, and Russia on the other, united their efforts. At that time, the threat, which they had to confront and defeat, was represented by the challenges of Nazism and Fascism. However, later on, the predominance, of opposed ideological conceptions (deep economic divergence in particular) on the future of modern societies, induced the new superpowers (i.e. the USA and the Soviet Union) to divide the world<sup>10</sup> into two distinct groupings; the capitalist, on the one hand and the communist on the other. In reality, direct confrontation, between the two superpowers, never occurred. It was at the level of the satellite countries, of these two poles, that the real ‘battlefield’ for the two ideologies<sup>11</sup> took place.

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<sup>8</sup> See C. Kuonqui, *Is Human Development a New Paradigm for Development? Capabilities Approach, Neoliberalism and Paradigm Shifts*, (Paper presented at the August 2006 international conference “Freedom and Justice” of the Human Development and Capability Association HDCA), (p.9), 2006, Groningen, Netherlands, available online at, [http://www.capabilityapproach.com/pubs//6\\_3\\_Kuonqui.pdf](http://www.capabilityapproach.com/pubs//6_3_Kuonqui.pdf).

<sup>9</sup> The prominent role of the media, as a vehicle for introducing new concepts, was to be underlined here.

<sup>10</sup> According to the circumstances, the division, of the world, was achieved either in a coercive or a seductive manner.

<sup>11</sup> What is meant is that the two superpowers never clashed directly but through ‘proxies’. For example, Italy after 1945, Berlin 1960s’, Korea 1950s’, Cuban Missile Crisis 1963, Vietnam 1960’s and 1970’s, Prague crisis 1956, Angola, Poland 1980s’, Afghanistan 1979, and all movements of independence from colonialism.

The Soviet Union's fall, as a superpower, put an end to the Cold War era. The obsolete paradigm was supplanted by the new paradigm of the 'war on terror'; this, with all its various interpretations and derivatives, became the *modus vivendi* of the new era.<sup>12</sup> In the context of the 9/11 events, it was clear that the USA, the only remaining undoubted superpower, would react vigorously and launch the "war on terror". The paradigm was ready to be used and the opinions, of cautious political analysts, were ignored. Policymakers, instead of dealing with the challenge as an appalling crime, which needed proper investigation and legal process to apprehend those responsible, preferred to follow another path. They rushed towards a major military response, a "war on terror", which, a decade later, was seen as deeply counter-productive.<sup>13</sup>

Before the adoption of this particular paradigm, political strategists suggested what might be called in Kuhn's terms a 'pre-paradigm'<sup>14</sup>; this viewed Islam as the "Green Threat",<sup>15</sup> in opposition to the obsolete "Red Threat"<sup>16</sup> represented by the communist bloc until 1989. It is essential to observe that the paradigm, in question, was devised by a certain category of thinkers. It did not appear naturally or suddenly by magic.<sup>17</sup>

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<sup>12</sup> See D. J. Kilcullen, 'New Paradigms for 21st-Century Conflict', *Foreign Policy Agenda, eJournal*, May 2007, Volume 12, number 5, pp39-50, available online at [http://www.au.af.mil/au/awc/awcgate/state/kilcullen\\_21c\\_conflict\\_may07.pdf](http://www.au.af.mil/au/awc/awcgate/state/kilcullen_21c_conflict_may07.pdf)

See also D. S. Cohen, *The War on Terrorism* 2001, online article available online at: [www.academia.edu/1263787/The\\_War\\_on\\_Terrorism](http://www.academia.edu/1263787/The_War_on_Terrorism). With these words, President Bush established a paradigm for the post-Cold War struggle between the United States of America and state-sponsored worldwide terrorism.

<sup>13</sup> P. Rogers, 'A War Gone Badly Wrong – The War on Terror Ten Years on', *ORG International Security Monthly Briefing* – August-September 2011.

<sup>14</sup> Kuhn enounced, in 1962, his theory of "scientific revolutions"; this was a theory divided into six stages. The Pre-paradigm stage represented the initial phase or phase 0, where several schools of thought competed whilst there was not a system where principles were shared. The other phases were Phase 1, which was the Acceptation of the paradigm, Phase 2 was normal science; Phase 3 represented the appearance of anomalies; Phase 4 was called crisis of the paradigm; and, finally, Phase 5 was the scientific revolution. See T.S. Kuhn, 'The Structure of Scientific Revolutions', *International Cyclopaedia of Unified Science*, 1970, Vol. 2, No. 2, p.47, <http://insitu.lri.fr/~mbl/Stanford/CS477/papers/Kuhn-SSR-2ndEd.pdf>.

<sup>15</sup> The 'Green Threat' was considered to be the new paradigm following the fall of the Soviet Union.

<sup>16</sup> The 'Red Threat' referred to the Communist world during the Cold war.

<sup>17</sup> Ibid

### 2.2.2 The Post-Cold War Phase (1989-2001)

The post-Cold War witnessed a nation's monopoly, of world leadership, by virtue of its military; political; and economic strength. Following the collapse of the Eastern bloc and the state of euphoria and victory felt in the West, there was, initially, a kind of misunderstanding and misinterpretation of the situation. Consequently, the domination of liberal democracies; free markets; and capitalism misled many observers, and the judgment made (i.e. the supposed final success of the capitalist model) might have been expressed too hastily. Yet, in 1989, with the demise of the Soviet Union bloc, represented by the symbolic fall of the Berlin Wall, the USA and its allies or "satellites"<sup>18</sup> dominated effectively the bipolar ideological worlds.

In circumstances such as the ones which witnessed the end of an era (i.e. the collapse of the USSR) it was natural and understandable for the Soviet Union's adversaries to overreact and express a rather euphoric attitude. Unfortunately, the collective euphoria, of the time, influenced, also, several western scholars such as Lewis;<sup>19</sup> Pipes;<sup>20</sup> Huntington;<sup>21</sup>

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<sup>18</sup> M. Yılmaz, 'Resolving Internal Conflicts in the Post-Cold War Era: Is Peacekeeping Enough?' *Journal of Economic and Social Research*, 8(2), pp. 27-42.

<sup>19</sup> B. Lewis, British historian, was, in fact, the originator of the 'clash of civilisations' thesis. He made the following statement in 1957 at John Hopkins University: 'we shall be better able to understand this situation if we view the present discontents of the Middle East not as a conflict between states or nations, but as a clash of civilisations'

<sup>20</sup> R. Pipes was a scholar from Harvard, a historian, of the Soviet system, whilst ideologically opposed to it. He was, also, adviser to President Reagan. In March 1981, he made this statement to Reuters: "Soviet leaders would have to choose between peacefully changing their Communist system in the direction, followed by the West, or going to war. There is no other alternative and it could go either way... Détente is dead."

<sup>21</sup> See S. P. Huntington, 'The Clash of Civilisations?' *Foreign Affairs*; 1993;72, 3. Huntington stated that 'in future serious external threats to American could arise from China, Russia, Islam or some combination of hostile states.'

Fukuyama;<sup>22</sup> and Kramer<sup>23</sup>, who thought that the time was ripe for a new representation and charting of the world. In their work, Dahms et al. quoted Vygotsky, a Russian educational scholar, who considered "intellectual abilities as being much more specific to the culture in which the child was reared."<sup>24</sup> Accordingly, it can be said, to a certain extent, that the perceptions, of the thinkers reviewed previously, viewed were dictated or influenced rather by the philosophical culture in which they believed profoundly as a result of their educational and intellectual environment.

The twenty-first century cannot be severed from its predecessor, either in terms of dramatic events, such as the two World Wars or in terms of human achievements in science and technology and advancement of human well-being. The 'discontinuity' or shift, identified by a part of academia, was challenged, nevertheless, by others who argued that the line drawn did not represent faithfully the reality on the ground. In this study, the researcher made an effort to try to understand the new challenges, encountered by media organisations, which evolved following the path of the technology.<sup>25</sup>

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<sup>22</sup> Fukuyama, who was one of Huntington students, affirmed, in an article which was developed later into a book, a theory, according to which there was a 'single sustainable model for national success' and that it was the 'end of mankind's ideological evolution and 'the universalization of Western liberal democracy as the final form of human government'. See F. Fukuyama, 'The End of History', *The National Interest*, Summer 1989.

<sup>23</sup> M. Kramer was a Middle East historian who directed the Moshe Dayan Center for Middle Eastern Studies. He supported the promotion of bill HR 3077; this was an initiative to provide closer Congress control over Middle Eastern Studies departments in the United States of America.

<sup>24</sup> See G. K. Clabaugh, EdD, 'The Educational Theory of Lev Vygotsky: an analysis', p.2, article available online at: [www.aiz.vic.edu.au/.../Article-The-Educational-Theory-of-Lev-Vygo](http://www.aiz.vic.edu.au/.../Article-The-Educational-Theory-of-Lev-Vygo)

<sup>25</sup> L. Marlow, *Post-war, Journalists Ask Themselves Hard Questions: The Vantage Points from which this War Was Witnessed Give Future Historians a Wealth of Material*, *The Irish Times*, 8 Nov 2003.

For instance, Mahajan,<sup>26</sup> offering a harsh criticism of the United States of America's drive to war in the twenty-first century, believed that, at this particular time in history, the US administration showed an explicit contempt for the United Nations. Other influential thinkers and political activists shared this opinion.<sup>27</sup> A year after the September 11 2001 tragedy, President Bush, when addressing the General Assembly of the most important world organisation (the United Nations), was quite unambiguous when he declared bluntly: "The United Nations must do what we say or it risks becoming irrelevant".<sup>28</sup>

In that very critical period in history, it was decided that the world was entering the 'age of terror' and, consequently, all measures had to be taken to annihilate the new threat. This was despite the negative effects deriving from the diverse measures taken in the fields of security; legislation; executive action; and so on. Consequently, freedom of information and speech became victims of drastic laws which were rushed in specific and extraordinary circumstances. What became to be universally known as 'the war against terror' did affect the media to a certain extent throughout the world, especially when one considers the restrictions which journalists; photographers; and other media professionals were subjected to as a result of the enforcement of significant numbers of severe laws on national security issues.

Emulating Western liberal democracies, most countries, in the world, , implemented laws intended to deal with terrorism. Whether entitled 'anti-terrorism' laws; emergency laws;

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<sup>26</sup> R. Mahajan, *Full Spectrum Dominance, US Power in Iraq and Beyond*, Seven Stories Press, New York. 2003. P. 24

<sup>27</sup> (G. Ashcar,; N. Chomsky,; Prof. F. Boyle; L. Blum,; D. Miller,; T.Ali; and so on).

<sup>28</sup> During his presentation to the General Assembly on September 12, 2002, US President, G.W.Bush, made this statement , supporting the argument that war was necessary to enforce international law and, making the U.N. "relevant," according to the US norms was high on the justifications.

special laws; counterterrorism laws; or branded as 'patriotic' (e.g. the US Patriot Act)<sup>29</sup>, or put forward as amendments to existing criminal codes, all, of them, had (and still have to some degree) an impact on freedom of speech generally and on the media in particular. The dominance of international affairs and the interdependence between politics and law produced new forms of challenges to media organisations in all their forms, especially because, as Kellner observed, "the media are key instruments of political power, constituting a terrain upon which political battles are fought and providing instruments for political manipulation and domination."<sup>30</sup>

### **2.2.3 Post September 11 2001 Events**

Most countries and in particular those targeted directly by terrorist actions have had to take relevant measures to face this form of threat. Nevertheless, there are still divergences at the level of the international legal community regarding what kind of behaviour can be considered as an act of terrorism. The existing differences prevent the adoption of an international convention on terrorism which includes a legally binding and comprehensive definition of terrorism.

The UN Security Council (UNSC) did consider the inclusion of violent actions perpetrated by either single persons or groups as terrorism, regardless of whether they were sponsored by states. The difficulty, for the UNSC, was to define clearly what constituted a terrorist

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<sup>29</sup> The USA Patriot Act stands for Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism Act of 2001. In the 107<sup>th</sup> Congress, the USA Patriot Act, enacted in October 2001 (P.L.107-56), contained provisions related to terrorism. It gave law enforcement increased authority to investigate suspected terrorists, including surveillance procedures such as roving wiretaps; it provided for strengthened controls on money laundering and financing of terrorism; it improved measures for strengthening of defenses along the U.S. northern border, believed to be an important conduit for terrorists; and it authorized disclosure of foreign intelligence information obtained in criminal investigations to intelligence and national security officials.

<sup>30</sup> See D. Kellner, 'Media Industries and Media/Cultural Studies: An Articulation' in J. Holt and A. Perren, *Media Industries: History, Theory, and Method*, p.2, 2007, Wiley-Blackwell, available online at: [http://pages.gseis.ucla.edu/faculty/kellner/essays/2009\\_Kellner\\_blackwell\\_Chp7.pdf](http://pages.gseis.ucla.edu/faculty/kellner/essays/2009_Kellner_blackwell_Chp7.pdf).

action, even if the menace to international peace and security by violent action was acknowledged unanimously. As a result of the lack of consensus within the UNSC regarding an agreed definition of terrorism, states took the initiative in deciding what constituted terrorism and, despite the risks of ambiguity which might result from subjective choices, developed their own definitions of the phenomenon,. Under the umbrella of the UNSC resolutions, there was an 'implicit accord' or rather an 'imprudent decision' to allow States, to criminalise political opponents and breach their citizens' basic rights. Only a few months after the September 11 2001 attacks, the US-based Human Rights Watch singled out states such as Russia; Uzbekistan; Egypt; Israel; China; Malaysia; and Zimbabwe which, under the pretext of waging the "war on terror", in fact, were waging wars against their political opponents.<sup>31</sup>

Accordingly, without necessarily respecting universal values and principles, there are countries which, through their own national legislations, define and punish acts of terrorism. Therefore, under international law, a definition of terrorism is crucial as a means of preventing the States' abuse of domestic antiterrorist laws by. However, concerning internationally accepted standards, it is worthwhile mentioning certainly two very important UNSC Resolutions which were passed in the wake of the September 11<sup>th</sup> 2001 terrorist

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<sup>31</sup> In the introduction of its 2002 annual report Human Rights Watch stated that:

President Vladimir Putin of Russia embraced this rhetoric to defend his government's brutal campaign in Chechnya. China's foreign minister Tang Jiaxuan did the same to defend his government's response to political agitation in Xinjiang province. Egyptian Prime Minister Atef Abeid, brushing off criticism of torture and summary military trials, rejected "call[s] on us to give these terrorists their 'human rights'" and suggested that Western countries should "think of Egypt's own fight against terror as their new model." Israeli Prime Minister Ariel Sharon repeatedly referred to Palestinian Authority President Yasir Arafat as "our bin Laden." Alluding to September 11, Malaysian Deputy Prime Minister Abdullah Ahman Badawi defended administrative detention under his country's long-abused Internal Security Act as "an initial preventive measure before things get beyond control." A spokesman for Zimbabwean President Robert Mugabe justified a crackdown on independent journalists reporting on abuses by his government as an attack on the "supporters" of terrorism.

See Human Rights Watch Report, *World Report 2002: Events of 2001*, p XX , 2002, retrieved on, available online at: <http://www.hrw.org/legacy/wr2k2/intro.html>.

attacks in the United States of America. The UNSC passed Resolutions 1373 and 1566 shortly after the attacks on the USA territory. The former<sup>32</sup> drew enormously from the Suppression of the Financing of Terrorism Convention; this set up a normative framework to tackle the worldwide financing of terrorist activities.

The UNSC, recognising the gravity of the attacks against the USA and the fact that such acts threatened international peace and security, issued firm resolutions encouraging states to engage with the terrorist threat and take specific measures; procedures; and precautions regarding terrorism and its financing. The first UNSC Resolution 1373 underlined some key concepts,<sup>33</sup> whilst, in October 2004, the UNSC approved the second Resolution<sup>34</sup> (i.e. UNSCR 1566). The UNSC's intentions were to address and resolve the problem of defining terrorism and considered this phenomenon as:

“criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act” , which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism”.

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<sup>32</sup> [2001] 9 SCR 1373

<sup>33</sup> For instance, the Resolution 1373 ought to quell terrorism and enact legislation which criminalises the intentional collection of funds for terrorism purposes. Moreover, the properties and assets of those who facilitate, assist or commit terrorist acts must be frozen. The Resolution obliges, also, states to prohibit persons from directly or indirectly financing those who commit terrorist acts, and to ban the use of their territory as a safe shelter for those who finance or plan terrorism. The Resolution requires, also, that states must guarantee that any person who is involved or takes part in the financing, planning, or supporting otherwise of terrorist acts is brought to justice, and that such terrorist acts are considered to be serious criminal charges in domestic laws with suitable penalties. Finally, the Resolution established the Counter-Terrorism Committee (C.T.C.), which inspects and evaluates the application of the obligations under the Resolution and provides assistance to states. See [2001] 9 SCR 1373

It is debatable whether this paragraph was intended to form a definition of terrorism; however, it might be the beginning of a consensus on what would be the key ingredients of such a definition. Yet, the above formula presents some deficiencies which cannot be neglected. Firstly, the timing, three years after the September 11 2001 events, might be considered as inadequate. At this stage, most States had adopted already a variety of legislation based on their own interpretations of terrorism and their own domestic interests; in some circumstances, these were detrimental to other states. The second weakness, of Resolution 1566, is its non-binding nature since, when dealing with terrorism suspects, States are not obliged to adopt the proposed definition and are able still to devise independently their own definitions.

According to Brennan, although it was inspired by earlier treaties on counter-terrorism and the debates at the General Assembly level, the definition did not adopt the existing definitions, in related treaties, and, consequently, might contradict them.<sup>35</sup>

Therefore, the definition of terrorism, given in Resolution 1566, is only a sort of guide for States wishing to make their own legislations conform to international norms relative to counter-terrorism measures. It was shown, through the UNGA debates, that there continued to exist a disagreement regarding the definition of terrorism. Consequently, it appears that, addressing the issue of how to face terrorism, is more of a priority than the insistence of finding a consensual definition of the phenomenon. Such an attitude is the UNSC's preferred scenario, in view of the fact that, whilst neglecting to define terrorism, it established counter-terrorism mechanisms.

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<sup>35</sup> See A.M. Brennan, 'The Difficulties in Defining Terrorism under International Law', a [blog to Human Rights Watch in Ireland](http://humanrights.ie/criminal-justice/the-difficulties-in-defining-terrorism-under-international-law/), 2011, retrieved online at: <http://humanrights.ie/criminal-justice/the-difficulties-in-defining-terrorism-under-international-law/>

The researcher considers that, despite the pragmatic stance and approach noticed at the level of international organisations, the inability to define the phenomenon made it more complicated to implement a programme meant to confront such a threat to international peace and security. Moreover, allowing States to decide what violent actions constituted terrorism might generate legal ambiguity. In fact, divergence in interpretations, of what represented terrorism, did provoke discrepancies in States' legislations. In particular, the Counter-Terrorism Committee (CTT), which was set up immediately after the tragic events of September 11 2001, acknowledged that the lack, of a binding definition of terrorism, handicapped its work. The Counter-Terrorism Committee found itself in a difficult situation since, in fact, it was unable to take action against groups which, under some States' legislations, were not considered to be terrorists.

However, this is not the CTT's only worry because non-democratic governments, in countries like Chechnya; China; and Egypt (before the revolution) took the opportunity to devise definitions of terrorism in order to allow counter-terrorism operations interfering with basic human rights.<sup>36</sup> Therefore, with the selective definitions developed endangering civil rights and the freedom to dissent, the absence, of a consensual definition on terrorism, was very concerning. Several non-governmental agencies denounced and condemned such practices . For instance, Amnesty International stated that:

“Often “suppression of terrorism” has been used as an excuse for laws and practices designed simply to stifle dissent and opposition. In many cases this has amounted to

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<sup>36</sup> See Human Rights Watch Report, *World Report 2002: Events of 2001*, p XX, 2002, available online at: <http://www.hrw.org/legacy/wr2k2/intro.html>.

a “war” against political opposition of whatever kind, with the use of a repressive catalogue of violations of human rights including the right to life, the right not to be tortured, the right not to be detained arbitrarily and the right to a fair trial. Those affected frequently include the wider population who are innocent of any activity”.

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The CTT engaged in close collaboration with the UN Human Rights Committee to prevent the use of the UN Security Council Resolution 1373 as an instrument to justify breaches of the most fundamental human rights. In addition and in order to allow international control, the CTT required states to include, in their reports on antiterrorism dealings, the inclusion of data relative to compliance with human rights. However, the definition of terrorism remains “at the mercy” of executive powers. Additionally, the two UN resolutions pointed out that states had an obligation to criminalize and prevent both direct and indirect financing of terrorism.<sup>38</sup>

What these terrorist actions are – was drafted in the second resolution-

“Acts committed to cause death or injury, to provoke terror amongst the public or to compel a government to do something prohibited by international instruments relating to terrorism. Such acts are supposed to have no justification ideals like independence or injustice cannot be used as a justification for these actions of terror”.<sup>39</sup>

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<sup>37</sup> See Human Rights Dissolving At the Borders? Counter-terrorism and EU Criminal Law Amnesty International EU Office, 31 May 2005. AI Index: IOR 61/013/2005.

<sup>38</sup> See United Nations, Office on Drugs and Crime, ‘*Guide for the Legislative Incorporation and Implementation of the universal Anti-Terrorism Instrument’s*, 2006, p.16.

<sup>39</sup> D. Yates, *Review of the terrorism suppression act 2002: Report of the Foreign Affairs, Defense and Trade Committee*. Wellington, New Zealand, House of Representatives, 2005

Consequently, it is obvious that the aims do not seem to be indicative of terrorist acts; however, the means; violence; intimidation; and techniques of terror merit classification as a “terrorist act”.

Most acts of terrorism are intended to be spectacular because the perpetrators want to promote their claims or send a message to as large an audience as possible. Currently, analysts, as well as social and political scientists, refer to relative data in order to evaluate the worthiness of taking a particular threat seriously. It is interesting to look at the findings of McCormack<sup>40</sup> who, whilst relying on official data, provided by the US Department itself, stated that:

“...worldwide terrorism deaths for the year 2001 as reported by the U.S. State Department, including the 3000 deaths on September 11, were about 3400. For the year 2006, the State Department classified 20,498 deaths worldwide as attributable to terrorist incidents, 13,000 of which were in Iraq. Traffic deaths in the U.S. recently have hovered at about 42,000 per year following a peak of almost 50,000 in the late 1980s. Deaths from guns in the U.S. consist of about 16,000 suicides, 10,000 homicides, and 6,000 accidents per year”.<sup>41</sup>

Terrorism manifests itself through repeated violent actions which individuals; groups; or states employ for certain criminal or political reasons<sup>42</sup>. Whereas, in the case of assassination, the direct targets of violence are not the real or intended targets. The first

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<sup>40</sup> W. MacCormack, *Legal responses to terrorism*, Newark, NJ: LexisNexis, 2007

<sup>41</sup> See W. MacCormack, ‘Values Implicated in the Struggle with Terrorism: War, Crime, and Prevention’ in *Values and Violence*, Springer, 2009, Volume 4, Part III, pp.257-277.

<sup>42</sup> A. Schmid & A. Jongman, *Political Terrorism: A New Guide To Actors, Authors, Concepts, Data Bases, Theories, And Literature*, Transaction Publishers, 2005.

victims of violence are selected usually in a very arbitrary way, from a particular population and serve as ‘message generators’.<sup>43</sup>

### 2.3 Terrorism

Terrorism, as a phenomenon, might be understood and defined as an intentional act which exploits fear through the use of deliberate violence in order to achieve political change.<sup>44</sup>

All terrorist activities tend to leave a deep impact on the first victims in addition to the targets of the attacks.<sup>45</sup> Terrorists seek to gain authority over the public generally and the government and other political parties; they aspire to provoke political change on either local or international scales.<sup>46</sup>

Terrorism’s threat to democratic societies; human rights; and general social development was echoed in numerous conventions and official government documents, including the Commission of the European Communities’ September 2001 proposal for a Council Framework Decision on Combating Terrorism.<sup>47</sup> By citing the UN General Assembly’s and the Commission on Human Rights’ resolutions, the prevailing literature and reports from NGOs pointed to the potential disintegrative effects of terrorism on the freedoms; rights; and liberties which served, also, as the basis of the European Union’s Charter of Fundamental Rights.<sup>48</sup>

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<sup>43</sup> See M. G. Marshall, ‘*Global Terrorism: an Overview and Analysis*’, University of Maryland, 11 September 2002, p.3, <http://www.systemicpeace.org/CSPpaper3.pdf>.

<sup>44</sup> B. Hoffman, ‘*Inside Terrorism*’, Columbia University Press: New York, 1998, p.43.

<sup>45</sup> B. Hoffman, *Inside Terrorism*, 2006, p. 174, cited in *Terrorism and the Media*, July 23, 2008, Deliverable 6, Work package 4, page 5, <http://www.transnationalterrorism.eu/tekst/publications/WP4%20Del%206.pdf>

<sup>46</sup> B. Hoffman, ‘*Inside Terrorism.*’ *Revised and Expanded Edition*, New York: Columbia University Press, 2006.

<sup>47</sup> See the various definitions adopted by the various countries reviewed and the influence of the Framework Decision of the European Union as it was discussed earlier in this chapter

<sup>48</sup> M. Defflem, *Terrorism and Counter Terrorism: Criminological Perspectives*, Oxford: Elsevier, 2004.

Furthermore, terrorism can have a destabilizing effect on civil society and poses an eminent threat to democratic societies or ‘legitimately constituted governments;’ therefore, whether politically motivated or otherwise, differentiating the offence from other criminal acts.<sup>49</sup> By replacing politics with violence; interrupting individuals’ freedom to choose governmental; societal; and national policies; and supplanting them with the assertion of frightening messages, backed by violence; terrorism has a chilling effect on the institutions which protect human rights constitutionally, and, thereby, disrupting society’s essential elements of democracy.<sup>50</sup>

### 2.3.1 “Old” versus “New” Terrorism

Regardless of the adopted definition, several scholars asserted that, since the mid-1990s and characterised by novel elements, ‘terrorism’ had taken a new shape. These writers formulated a ‘new’ concept, involving various actors; incentives; objectives; strategies; and actions, which they considered to be substantially different from the ‘old’ concept of terrorism, pre-1990s.<sup>51</sup> According to these analysts, the so-called ‘new’ terrorism had increased since New York’s tragic events of September 11 2001 and had become a crucial issue worldwide. Already, in anticipation of that particular date, terrorism experts, such as Laqueur; Carter; Deutch; and Zelikow were promoting the idea of a ‘new terrorism’ by suggesting, in their work, concepts such as ‘*postmodern*’<sup>52</sup> and ‘*catastrophic*’<sup>53</sup> terrorism. Later, Hoffman argued that the ‘new’ terrorism was unlike the ‘old’ ones because its

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<sup>49</sup> B. Saul, ‘Defining Terrorism to Protect Human Rights’, *FRIDE* (Working Papers), February 2006.

<sup>50</sup> M. Defflem, *Terrorism and Counter Terrorism: Criminological Perspectives*, Oxford: Elsevier, 2004. (p.1-6)

<sup>51</sup> See W. Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, Oxford University Press: London, 1999; See also Lesser, Hoffman, Arquilla, Ronfeldt, Zanini and Jenkins, *Countering the New Terrorism*, RAND: Santa Monica, 1999; or Stefan M Aubrey, *The New Dimension of International Terrorism*, Vdf Hochschulverlag: Zurich. 2004.

<sup>52</sup> W. Laqueur, “Postmodern Terrorism”, *Foreign Affairs*, 1996, 75 (5), pp. 24-36

<sup>53</sup> A. B. Carter,; J. Deutch and P. Zelikow, ‘Catastrophic Terrorism Tackling the New Danger’, *Foreign Affairs*, 1999, 77(6), pp. 80-94.

consequences were “*far more lethal threat than the more familiar ‘traditional’ terrorist groups*”.<sup>54</sup> Laqueur went further when he equated the ‘new’ terrorism with a revolution in character and emphasised the ‘radical transformation’ of the phenomenon.<sup>55</sup> Simon and Benjamin (2000; p.59) stated that:

“The old form of predominantly state sponsored terrorism is joined by a new, religiously motivated form of terrorism that neither relies on the support of sovereign states nor is constrained by the limits of violence that state sponsors have undergone themselves or placed on their proxies”.<sup>56</sup>

In order to support their arguments, the proponents, of the ‘new’ terrorism, pointed to several terrorist acts which were perpetrated since 1993.<sup>57</sup> Additionally, it was claimed that, in contrast to the violence of the old terrorism which involved rational and discriminate acts, the increased number of present day deadly and indiscriminate terrorist acts, on targets, conveyed a message: ‘Terrorists want a lot of people watching, but not a lot of people dead’<sup>58</sup>. Despite the diminution of its recurrence, the new terrorism was more lethal. Consequently, Jenkins observed that: ‘many of today’s terrorists want a lot of people watching and a lot of people dead’. Another argument was that, in contrast to the old terrorism, the new terrorism was religiously inspired;<sup>59</sup> this was predominantly secular and political in character. According to analysts, of the new terrorism, this shift has dire consequences. In contrast to secular organisations, people, with religious incentives, do not derive any kind of legitimacy from other people; their struggle being guided divinely.

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<sup>54</sup> B. Hoffman, *Inside Terrorism*, St. Andrew’s University Press, London, 1998, pp. 200.

<sup>55</sup> W. Laqueur, *The New Terrorism*, 1999, p. 4

<sup>56</sup> S. Simon and D. Benjamin, ‘America and the New Terrorism’, *Survival*, Vol. 42(1), spring 2000, pp. 59-75.

<sup>57</sup> For example the bombing of the World Trade Center in New York in 1993, and the attack with Sarin gas on the Tokyo subway system in 1995, and the bombing of the Murrah building in Oklahoma City in 1995. The subsequent bombing of American embassies in Kenya, and Tanzania, the 11<sup>th</sup> September tragic events on the US territory reinforced definitely the argument for the ‘new’ terrorism.

<sup>58</sup> B. Jenkins, *The Study of Terrorism: Definitional Problems*, Santa Monica, CA: RAND, 1980.

<sup>59</sup> S. Simon and D. Benjamin. ‘America and the New Terrorism’, *Survival*, Vol. 42(1), spring 2000, pp 59-75.

Political aims and clear goals are lost since destruction and chaos have become ends in themselves.<sup>60</sup>

In order to sum up the discussion regarding old versus new terrorism, it could be noted that two major opinions predominated. There were academics who argued that understanding the actual phenomenon of terrorism did not necessitate knowing or referring imperatively to the “old” or traditional terrorism which was seen as obsolete and anachronistic. This first group argued for analysis of the “new” terrorism as a novel concept).<sup>61</sup> However, other scholars disputed the new concept and affirmed that the new terrorism’s highlighted characteristics did not differ substantially from those of the old terrorism.<sup>62</sup>

### 2.3.2 International Terrorism and Domestic Terrorism

McCormack<sup>63</sup> distinguished between international and domestic terrorism, observing that there was more interest and focus on the former. Sanchez-Cuenca and de la Calle argued that “quantitative analysis on terrorism focuses almost exclusively on international attacks

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<sup>60</sup> M.J. Morgan, ‘The Origins of the New Terrorism’, *Parameters*, Spring, 2004, pp. 29-43.

<sup>61</sup> See B. Hoffman, *Inside Terrorism*. Columbia University Press: New York, 1998. p. 196, p. 205; D. Benjamin and S. Simon, *The Age of Sacred Terror: Radical Islam’s War Against America*. Random House, New York, 2003, p. 221 and p. 384; I. O. Lesser et al., *Countering the New Terrorism*, The Rand Corporation: Santa Monica: 1999, p. 2; and W. Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, Oxford University Press: New York:, 1999, p. 7.

<sup>62</sup> See for example: D. Tucker, ‘What is New about the New Terrorism and How Dangerous is It?’

, *Terrorism and Political Violence* vol.14 (3), Fall 2001, pp. 1-14;

T. Copeland., ‘Is the ‘New Terrorism’ Really New? An Analysis of the New Paradigm for Terrorism. *The Journal of Conflict Studies*, vol. 21 (2), Winter 2001, pp. 7-27;

I. Duyvesteyn, How New is the New Terrorism? *Studies in Conflict & Terrorism*, vol. 27 (5) 2004, pp. 439-454

D. Zimmerman, *The Transformation Of Terrorism*, Andreas Wenger: Zurich. 2003.

R. Coolsaet, *Al-Qaeda: The Myth*, Academia Press: Gent. 2005.

J. Burnett and D. Whyte, ‘Embedded Expertise and the New Terrorism’, *Journal for Crime, Conflict and the Media*, Vol.1 (4) 2005. pp. 1-18.

<sup>63</sup> W. MacComack, (2005). *Legal Responses to Terrorism*. Dayton, OH: LexisNexis Matthew Bender.

because of the absence of datasets on domestic incidents”.<sup>64</sup> Evidence, from different surveys, showed that, in reality and compared to all other forms of terrorist violence, international or ‘global’ terrorism was rather modest.<sup>65</sup> For instance, figures, given by the Memorial Institute for the Prevention of Terrorism dataset (MIPT) and covering approximately eight years (1998–2005), recorded 26,445 fatalities. However, only 6447 resulted from international terrorism, of which more than 3000 were due to the September 11 attacks.<sup>66</sup>

Sanchez-Cuenca and de la Calle emphasized that domestic terrorism represented, by far, the greatest part of all terrorist violence.<sup>67</sup> Deploing most researchers’ focus on international terrorism by, the cited authors considered that it “it truncates the sample of terrorist violence and it generates important biases”.<sup>68</sup> For instance, the most widespread and accepted idea that terrorism targets mainly civilians or non-combatants originates from what it is highlighted usually when international attacks occur. However, by examining domestic terrorism in particular, it appeared that terrorism tended to target police or military forces more systematically.<sup>69</sup> The two writers’ argument could be verified easily through the examination of how several other researchers defined or interpreted terrorism.

## 2.4 Reasons for Defining Terrorism

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<sup>64</sup> B. Saul, ‘Reasons for Defining and Criminalizing ‘Terrorism’ in International Law’. *Mexican Yearbook of International Law*, 2006, Vol. 6, pp. 419-460, Sydney Law School Research Paper No. 08/121. <http://ssrn.com/abstract=1291567>.

<sup>65</sup> J.D. Kiras, ‘Terrorism and Globalization’, in J. Baylis and S. Smith (eds.) *The Globalization of World Politics: An Introduction to International Relations*, Oxford University Press, 2004, pp. 479-498.

<sup>66</sup> V. Asal; R. K. Rethemeyer, ‘The Nature of the Beast: Organizational Structures and the Lethality of Terrorist Attacks’, *Journal of Politics*, 2008, 70 (2): 437-49.

<sup>67</sup> I. Sánchez-Cuenca and L. de la Calle, ‘Domestic Terrorism: The Hidden Side of Political Violence’, *Annual Review of Political Science*, 2009, Volume 12.

<sup>68</sup> Ibid. p.32

<sup>69</sup> Ibid or I. Sánchez-Cuenca and L. de la Calle, ‘Domestic Terrorism: The Hidden Side of Political Violence’, *Annual Review of Political Science*, 2009, Volume 12.

Apart from the key motive that drafting a general definition would contribute to harmonizing national criminal laws, other benefits might be generated from a consensual and general legal definition. For instance, with regard to the fulfilling of the double criminality requirement, in extradition treaties,<sup>70</sup> and respecting, as laid down in many treaties, the legal advice which states ‘*aut dedere aut iudicare*’ (i.e. "either prosecute or extradite") for terrorist offences.<sup>71</sup> Also with regard to the extradition issue, a definition of terrorism might help to end the confusion which reigns regarding political offences – offering an exemption to the requirement of extradition – and terrorism – for which most treaties allow no exemption from extradition.

## 2.5 The Importance of Defining Terrorism

Defining terrorism is not merely a theoretical or academic exercise but a priority.<sup>72</sup> Far from being restricted to specific countries or regions of the world, terrorism, as a phenomenon, is currently a universal problem. The consequences, of indiscriminate terrorist attacks, provoke human casualties from different nationalities; bases and training camps of terrorists are disseminated in several countries; and, despite international law,<sup>73</sup> assistance to terrorist

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<sup>70</sup> Double criminality requirement, or Dual Criminality Definition, is “a typical requirement of extradition treaties: that the conduct alleged constitute a crime in both the demanding and the delivering state.”, see L. Duhaime, *Legal Dictionary*, retrieved on, day month year, <http://www.duhaime.org/LegalDictionary/D/DualCriminality.aspx>

<sup>71</sup> See B. Saul, ‘Exclusion of Suspected Terrorists from Asylum’, Institute for International Integration Studies, Trinity College, Dublin, July 2004, Discussion Paper No 26.

<sup>72</sup> See ‘Mapping Counterterrorism: A categorization of policies and the promise of empirically-based, systematic comparisons’, 17 June 2008, p. 5, Deliverable 11, Work package 6, ‘Citizens and governance in a knowledge-based society’, <http://www.transnationalterrorism.eu/tekst/publications/WP6%20Del1%2011.pdf>

<sup>73</sup> See D. Jinks, ‘*State Responsibility for the Acts of Private Armed Groups*’, *Chicago Journal of International Law*, 4(2003), P83-95.

Jinks wrote:

“The primary rules of international law define the content of the legal obligations—that is, primary rules establish particular standards of conduct (for example, do not take property without adequate compensation). In contrast, the secondary rules of state responsibility define the general conditions under which states are to be considered responsible for internationally wrongful actions or omissions. As the International Law Commission has noted, “It is one thing to define a rule and the content of

organisations might come from states<sup>74</sup> or from groups and ethnic communities.<sup>75</sup> Since there is a consensus on the fact that terrorism is an international phenomenon, the challenge has to be faced, also, at an international level.

A consensual definition of terrorism is indispensable in formulating appropriate legislation against terrorism.<sup>76</sup> For instance, it will help in extraditing terrorists. Although there are multiform agreements between states, usually, extradition, for political reasons, is rejected, and terrorism is always political.<sup>77</sup>

The prerequisite, for defining terrorism and in order to achieve it efficiently, can be observed through the six following aspects which Ganor identified:<sup>78</sup>

1. Legislation and punishment – the laws and regulations enacted to provide the executive powers with the adequate tools for fighting terrorism. A definition of terrorism was needed to legislate in order to ban the support for terrorism; to prosecute terrorists; and to confiscate their financial resources. A distinction ought to be made between terrorism and ordinary crime. The need, for separate legislation for terrorism, stemmed from the

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the obligation it imposes, and another to determine whether that obligation has been violated and what should be the consequences of the violation." R. Ago, Second Report on State Responsibility, [1970] 2 YB Int L Commn 271,306, UN Doc NoA/CN.4/SER.A/1970/Add.1 (1970).

<sup>74</sup> P. Wilkinson, 'Can a State be Terrorist?' *International Affairs*, Royal Institute of International Affairs, Summer 1981, Vol. 57 (3), pp. 467-472.

<sup>75</sup> See P. Wilkinson, *Terrorism Versus Democracy: the Liberal State Response*. Routledge: London, 2006.

<sup>76</sup> See J. Rupérez, "The United Nations in the fight against terrorism", (Paper delivered during the 132<sup>nd</sup> International Senior Seminar Visiting Experts' Papers), 2005. Retrieved on [http://www.unafei.or.jp/english/pdf/RS\\_No71/No71\\_07VE\\_Ruperez.pdf](http://www.unafei.or.jp/english/pdf/RS_No71/No71_07VE_Ruperez.pdf)

<sup>77</sup> See Commission On Human Rights, 'Specific Human Rights Issues: New Priorities, in Particular Terrorism', Sub-Commission on the Promotion, and Protection of Human Rights, Fifty- fifth session, Agenda item 6 (c), p.26, retrieved on, <http://www2.ohchr.org/english/issues/terrorism/docs/WP1.pdf>.

<sup>78</sup> B. Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' *Police Practice and Research*, 2002, 3(4): 287-304.

enormous danger which, due to its political dimension, terrorism posed to modern society and its values.

2. In particular in the formulation and ratification of international conventions against terrorism, international cooperation was required to achieve concrete results in fighting terrorism,. Whilst providing, also, for the extradition of terrorists, these had to prohibit terrorist acts; assistance to terrorism; the transfer of funds to terrorist organizations; state support for terrorist organizations; and commercial ties with states sponsoring terrorism.
3. It was argued, also, that terrorism depended mainly on the support of States which aimed to achieve their goals through terrorist groups. It was impossible to confront the threat of terrorism efficiently without addressing the relationship between some States and terrorist groups. An important step, towards a solution, was to agree on a definition of terrorism and hence, how to deal with States sponsoring terrorism.
4. Offensive action – States ought to keep the initiative, whilst attempting to limit the capacity of terrorist organisations to operate. Accordingly, a permanent offensive had to be directed towards terrorism and, to ensure international support, there was a need for a consensually adopted definition of terrorism.
5. Popular support for terrorism – It was crucial to limit terrorist activity by undermining the ability of terrorist groups to obtain any form of support from populations. Legislation, at domestic and international levels, could deter such support; this might induce organisations, tempted to use violence for political aims, to renounce violent methods in order to maintain legitimacy amongst the population.
6. Normative Scale – a definition, distinguishing terrorism from other violent actions, would enhance international efforts to challenge the legitimacy of terrorist groups.

## 2.6 Defining Terrorism

Struggling with definitions was not a novelty in terrorism research, and scholars, involved in terrorism studies, agreed that there was genuine difficulty in finding a definition.<sup>79</sup> Following a review of the existing literature, this researcher deduced that, in view of the geopolitical and geo-strategies of the present world, encountering resistance to an agreed and universal definition, was quite comprehensible.<sup>80</sup> However, most people were aware of the main aspects of terrorism, and some might argue that the issue was not how to define it, but rather how to deal with it. People, involved in the writing of anti-terrorism laws, could not allow themselves to neglect a coherent definition of the subject of the legislation.

Gupta, a scholar deeply involved in Terrorism studies, underlined the non-existence of a general official definition of terrorism; however, he added that there were rather “many functional descriptions”<sup>81</sup> of the phenomenon. For instance, whilst identifying terrorism as a special form of political violence, Wilkinson<sup>82</sup>, vested terrorism with five characteristics.<sup>83</sup>

Terrorism remains a term that is extremely difficult to define. There were scholars who asked why it was absolutely necessary to find a legal definition of the concept. For instance,

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<sup>79</sup> See Spencer (2010, p. 1) in A. Spencer, *Tabloid Terrorist*, Palgrave Macmillan: London, 2010.

<sup>80</sup> The protagonists of the different wars illustrate such idea, from the US perspective; armed actions against their troops abroad are identified with terrorism while their own actions in foreign territories are ‘legitimate’.

<sup>81</sup> See D. K. Gupta, *Exploring Roots of Terrorism* in Tore Bjørgo (ed.) *Root Causes of Terrorism*. London: Routledge, 2004.

<sup>82</sup> P. Wilkinson. *Response to Terrorism from the Toolbox of Liberal Democracies: Their Applicability to Other Types of Regimes*, in *Countering Terrorism Through International Cooperation*. Proceedings of the International Conference on “Countering Terrorism Through Enhanced International Cooperation.” Courmayeur, Mont Blanc, Italy, 2001, 06-213, pp. 206-213.

<sup>83</sup> Firstly, terrorism is premeditated and aims to create a climate of extreme fear or terror. Secondly, it is directed at a wider audience than the immediate victims of the violence. Thirdly, it inherently involves attacks on random and symbolic targets, including civilians. Fourthly, the acts of violence committed are seen by the society in which they occur as extra-normal, in the literal sense that they breach social norms, thus causing a sense of outrage; and finally, terrorism is commonly used to influence political behaviour: forcing opponents to concede perpetrators’ demands, provoking over-reactions, serving as a catalyst or to publicise political/religious causes, inspiring followers, giving vent to deep hatred and the thirst for revenge, and helping undermine governments and institutions designate as enemies by the terrorists.”

Baxter referred to it as ‘imprecise, ambiguous, and above all it serves no operative purpose’,<sup>84</sup> and regretted that a legal concept of terrorism had been inflicted upon academia. Higgins, another eminent international lawyer, observed that, “Terrorism is a term without a legal significance. It is merely a convenient way of alluding to activities, whether of States or of individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both”.<sup>85</sup> Reflecting on the above statements, Walter questioned the necessity of finding a legal definition of the concept, suggesting that it would be preferable rather to define the criminal acts within terrorism.<sup>86</sup>

Scholars, in politics; law; history; psychology; theology; and criminology tried unsuccessfully to devise a definition of ‘terrorism’; however, they failed to come up with a single interpretation.<sup>87</sup> There was no agreement on the limits of the ‘terrorism’ phenomenon. Therefore, for analysts such as Bowel and Ganor, terrorism represented all sorts of violence except state violence. Yet, some scholars considered that people, who defended a noble cause, could not be classified as terrorists and, indeed, ought to be regarded as patriots.<sup>88</sup> There was no unanimity on what constituted ‘terrorism.’

Despite its soundness, Baxter’s view, regarding the lack of a purpose for a definition, was not shared universally. There were authors who argued that not having a universal definition made the task of international lawyers more complicated when they had to devise a legal definition.<sup>89</sup> The unavailability, from political scientists, of a factual and solid definition,

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<sup>84</sup> R. Baxter, ‘A Sceptical Look at the Concept of Terrorism’, *Akron Law Review*, 1974.

<sup>85</sup> See R. Higgins, ‘The General International Law of Terrorism’, in R. Higgins and M. Flory, *International Law and Terrorism*, Routledge: London 1997, p. 28

<sup>86</sup> C. Walter, ‘Defining Terrorism in National and International Law’, 2003, p.2, available online at: [https://www.unodc.org/tldb/bibliography/Biblio\\_Int\\_humanitarian\\_law\\_Walter\\_2003.pdf](https://www.unodc.org/tldb/bibliography/Biblio_Int_humanitarian_law_Walter_2003.pdf)

<sup>87</sup> M. Williamson, ‘Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001’. Ashgate, 2009, p. 38.

<sup>88</sup> J. B. Bell, *Trends in Terror: The Analysis of Political Violence* World Politics, 1977, 29 (3) pp. 447-481.

<sup>89</sup> B. Golder and G. Williams, ‘What is Terrorism? Problems of Legal Definition’, *M UNSW Law Journal* 2004, Vol.27(2), available online at: [http://tamilnation.co/terrorism/terrorism\\_definition.pdf](http://tamilnation.co/terrorism/terrorism_definition.pdf).

due to disagreement as to the physical reality of what constituted ‘terrorism’, led to an unsatisfactory legal definition in international legislation.<sup>90</sup> Mallison and Mallison underlined the fact that both: “Terror” and “terrorism” are not words which refer to a well-defined and clearly identified set of factual events. Neither do the words have any widely accepted meaning in legal doctrine. “Terror” and “terrorism” consequently, do not refer to a unitary concept in either fact or law”.

Yet, despite what was stated as regards shortcomings due to the absence of a consensual definition, nevertheless, most scholars, including Williamson<sup>91</sup>, insisted that it was essential to find a solution and to define a concept seen as a threat to international peace and security. It was comprehensible, also, that, in terms of priorities, a preliminary step (i.e. a definition of ‘terrorism’) was required in order to be able to move to the analysis of lawful responses to the threat.

Whilst recognising that scholars and the international community would be unlikely to agree on a universally acceptable definition of the term ‘terrorism’, Murphy did not reject participation in the debate on the ‘definitional quagmire’<sup>92</sup>. For him, there were positive aspects, in this process, since it:

“will at least provide an awareness of the difficulties which preclude consensus and will provide clarity on the main points of disagreement. An international legal definition will only be possible once those points of disagreement have been acknowledged, and, as far as possible, addressed.”

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<sup>90</sup> W. Mallison & S. Mallison, ‘*The concept of Public Purpose Terror in International Law: Doctrines and Sanctions to Reduce the Destruction of Human and Material Values*’, 1973, *Howard Law Journal*, 12.

<sup>91</sup> M. Williamson, ‘*Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001*’. Ashgate, 2009, p. 38.

<sup>92</sup> J. Murphy, ‘*State Support of International Terrorism*’, *Legal, Political and Economic Dimensions*, 1989 pp. 3-30.

### 2.6.1 Defining Terrorism in Different Countries

It is undisputable that September 11 2001 caused renewed focus and attention at a global level on the concept of terrorism. Consequently, in June 2002, the Council of Europe issued a Framework Decision (FD) on Combating Terrorism; this contained a definition of terrorism.<sup>93</sup> Based on the provisions of Article 34 (2),<sup>94</sup> of the European Union's Lisbon

<sup>93</sup> See The Council of the European Union, 'Council Framework Decision of 13 June 2002 on combating terrorism', 2002, available online at: [http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett)

K. Boyle, 'Terrorism, States of Emergency and Human Rights', *Antiterrorist Measures and Human Rights*, 2004, pp. 95-116.

<sup>94</sup> The continued basis for framework decisions is set out in transitional provisions of the Lisbon Treaty. See Treaty on European Union (Nice consolidated version), *Title VI: 'Provisions on police and judicial cooperation in criminal matters'* Article 34, Article K.6 - EU Treaty (Maastricht 1992). available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002M034:EN:HTML>

2. The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:

- (a) adopt common positions defining the approach of the Union to a particular matter;
- (b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;
- (c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;
- (d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the Contracting Parties.

3.(15) Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 205(2) of the Treaty establishing the European Community, and for their adoption acts of the Council shall require at least 62 votes in favor, cast by at least 10 members.

4. For procedural questions, the Council shall act by a majority of its members.

Article 9 of the Protocol on Transitional Provisions provides that:

The legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended in implementation of the Treaties. The same shall apply to agreements concluded between Member States on the basis of the Treaty on European Union.

Treaty, these decisions were binding on all member states, although they left room for domestic differentiation regarding the exact procedures and methods. Therefore, in order to evaluate the implementation of the Decision, it was necessary to consider definitions of terrorism within the member states' national legislations.

The majority of countries, considered in the Transnational Terrorism, Security and the Rule of Law sample, had terrorist legislation already in place preceding the Framework Decision.<sup>95</sup> It would be interesting to establish the Decision's effects with regard to current counter-terrorism efforts. Even more interesting, from this point of view, would be the analysis (set out below) of those countries which, previous to the FD, had experience in countering terrorism and, yet, during their – mostly nationally confined – struggles, had chosen deliberately not to adopt specific anti-terrorist legislation.<sup>96</sup>

The structure, used in the EU definition of terrorism<sup>97</sup>, was known, in legal research on terrorism, as a combination of the subjective and the objective approaches.<sup>98</sup> The subjective element referred to the first part of the definition, the perpetrator's intention, was divided

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See Treaty on European Union (Nice consolidated version), *Title VI: 'Provisions on police and judicial cooperation in criminal matters'* Article 34, Article K.6 - EU Treaty (Maastricht 1992). Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002M034:EN:HTML>.

<sup>95</sup> As a European research project, TTSRL was a multi-faceted research project which aimed to help Europe better understand terrorism. The research, itself, was conducted between 2006 and 2009.

<sup>96</sup> J. Burnett and D. Whyte, 'Embedded Expertise and the New Terrorism' *Journal for Crime, Conflict and the Media*, 2005, vol. 1, no. 4, pp. 1-18.

<sup>97</sup> E. Dumitriu, 'The E.U.'s Definition of Terrorism: The Council Framework Decision on Combating Terrorism', 2004, Vol. 5, No. 5, *German Law Journal*, pp. 585 – 602.

<sup>98</sup> In general, States legislators combine subjective and objective methods, thereby merging the intent of the perpetrator, with specific actions, such as ordinary general criminal offences, in order to devise a definition of terrorism. In addition, under Article 1 of the Framework Decision, terrorist offences consist of two objective elements, incrimination under national law and effective or potential consequences, "Seriously damage a country or an international organization."

into three separate goals.<sup>99</sup> The second part consisted of a list of the offences which, taken together with the intention, would be considered as terrorist offences.<sup>100</sup> Often, this sort of listing was referred to as the objective approach. This was because the classification, of whether or not the offence had occurred, was quite easy to determine and was made explicitly clear within national law. However, the perpetrator's intention contained always a subjective element since it had to be interpreted by people.<sup>101</sup> It could not be proven in and of itself, for instance by pointing to the concrete results, since that whole element was completely immaterial. To sum up, the EU definition consisted mainly of a combination of two approaches; on the one hand, an objective one, which determined, if certain actions ought to be considered as terrorist, by finding whether or not there was occurrence. On the other hand, based on the perpetrator's intention, a subjective approach classified certain acts as terrorist.<sup>102</sup>

It is worthwhile mentioning that, even before the introduction of the European Framework Decision, the majority of the TTSRL sample countries - France; Germany; Italy; Portugal; Russia; Spain; Sweden; and the United Kingdom - already had terrorist legislation in place. Amongst these nations, the definitions, employed by France; Russia; and the United

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<sup>99</sup> The subjective elements consists firstly of "seriously intimidating a population," secondly, "unduly compelling a Government or international organisation to perform or abstain from performing any act," or "seriously destabilizing or destroying the fundamental structures of a country or an international organisation."

<sup>100</sup> The Framework Decision identifies three types of offences: terrorist offences, (Article 1), offences relating to a terrorist group (Article 2), and offences linked to terrorist activities (Article 3). It is also stated in Article 4, that inciting, aiding or abetting, and attempting to commit one of the offences referred to in Articles 1 to 3 must also be incriminated in national law.

<sup>101</sup> E. Dumitriu, 'The E.U.'s Definition of Terrorism: The Council Frame-work Decision on Combating Terrorism', *German Law Journal*, 2004, Vol. 5, No. 5, p.596.

<sup>102</sup> D. L. Byman, 'Never heard of the Cinema Rex fire Abadan? It's the second-deadliest terrorist attack in modern history', *Washington Post*, May 6, 2007.

Kingdom were already quite comprehensive and detailed. However, Dimitriu observed that these countries' adopted definitions, of terrorist offences, were far from being uniform.<sup>103</sup>

France; Russia; and the United Kingdom used a combination of the subjective and the objective approaches in order to define terrorism; this was similar to the Framework Decision definition which followed theirs.<sup>104</sup> The other five countries defined terrorism, in an elusive manner, since they employed the term 'terrorism' in the legislation, but without defining it explicitly. For example, the German approach consisted of criminalizing terrorist groups (and, consequently, identifying every member of such organizations as a terrorist) without detailing either the characteristics of these groups' activities or their followers. On the other hand, without clarifying the nature of the organisations involved; their background; or their incentives, Spain employed almost the reverse of this principle by equating certain activities with terrorism only when executed by a member of an armed band or terrorist organisation.

The rest of the TTSRL countries – the Czech Republic; Denmark; the Netherlands; and Poland – introduced specific terrorist legislation but only after the adoption of the Framework Decision.<sup>105</sup> For instance, to a large extent, the Czech and Danish definitions were inspired by the EU definition; they retained the same structure and method without trying to add, amend or remove any of the conditions contained in the European document. Conversely, the Dutch approach was more elaborate and wider than the Decision. Intentionally, the

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<sup>103</sup> Dimitriu stated that: "Indeed, as of 2001 only six out of fifteen E.U. Member States, 22 had a separate incrimination for terrorist acts in their criminal law; other States were punishing terrorist acts as a common offence (infraction de droit commun). Moreover, the definitions of terrorist offences adopted in the six Member States were far from uniform."

<sup>104</sup> I. Cameron, 'Human Rights and Terrorism', *Peace and Security: current Challenges in International Law*, 2004, pp. 193-232.

<sup>105</sup> Details, about the countries definitions, are provided later in this study.

definition, adopted by Poland, did not consider at all the second part of the EU definition. It was interesting to note that, despite having terrorist legislation in place prior to the Framework Decision, Portugal and Sweden did alter their definition of terrorism substantially in order to make it conform to the EU definition.

In order to fulfill the EU definition's international criterion, other countries, with existing terrorist legislation prior to the Framework Decision, added only the precondition relative to the fact that international organisations might be targeted, also, by terrorist attacks. The circumventing manner, such the one used by the German;<sup>106</sup> Italian;<sup>107</sup> and Spanish legislators,<sup>108</sup> was amended only in Germany by adding the second part of the EU definition; left out by Italy; while Spain did not make any amendment to its definition.<sup>109</sup>

In general, it could be said that France; Italy; Russia; Spain; and the United Kingdom had not undergone any fundamental changes arising from the EU's adoption of the Framework Decision. By contrast, the Czech Republic; Denmark; Germany; the Netherlands; Poland;

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<sup>106</sup> In Germany, before the amendment of Article 129a of the law, terrorism was divided into four categories: founding a terrorist organisation; being a member of a terrorist organization; supporting a terrorist organization; and campaigning for a terrorist organization. It had never been altered before the European directives, through the Framework Decision, were introduced and adopted in 2005. Currently, it includes sub-sections referring to specific acts which qualify as terrorist when executed by a member of a terrorist organization. Therefore, although Germany added the objective element, the EU definition's subjective element was added, also, to the new formulation of Article 129a.

<sup>107</sup> In the Italian case, as for Germany, the law does not define terrorism explicitly but leaves that option open to the judiciary, which, in 1987, provided a source for a definition through its decision. The amendment, introduced by law n. 438 in 2001, Article 270-bis includes foreign governments or international organizations as targets of terrorism. In 2005, law n. 155 was enacted, defining terrorism explicitly within the Italian Penal Code and based on the European Framework Decision. Nevertheless, it insists only upon the notion of terrorist intent (subjective) and did not add the 2<sup>nd</sup> part of the FD definition, relative to the objective list of offences.

<sup>108</sup> In Spain, the amendments, adopted after the Framework Decision, widened the definition of terrorism. Thus, the 'conspiracy to perform a terrorist act' and the 'glorification of terrorism' were included in the criminal definition of what constitutes terrorism. The EU definition is certainly more detailed than the Spanish one, since it establishes a list of terrorist acts inexistent within the Spanish legislation. However, although the Spanish definition is wider and less precise, it does meet all of the FD criteria.

<sup>109</sup> See COT Institute for safety, security and Crisis Management, *Defining Terrorism*, WP3, Deliverable 4, October 2008, pp. 114-115, Netherland, available online at: <http://www.transnationalterrorism.eu/tekst/publications/WP3%20Del1%204.pdf>

Portugal; and Sweden used it clearly as a general blueprint for their own definitions. In order to have a more precise idea about the changes made, the researcher provides a short and concise overview, of the most distinctive and changing elements within the national contexts, before returning to the comparison with the EU definition and offering some conclusions.

### **2.6.2 European Union**

The EU definition referred, also, to offences, specifically concerning terrorist groups, such as founding a terrorist organization; participating in; supporting; and campaigning for terrorist organisations. Such activities were considered themselves to be participation in terrorism. In this respect, only Germany; Portugal; and Spain actually criminalized terrorist organisations and their activities, whilst other countries decided to define terrorism as the activities of founding; participating in; supporting; and campaigning for terrorist groups.

Regarding the differences with the EU definition, some noteworthy developments could be distinguished. In evaluating the amendments to terrorism definitions, already in place prior to the introduction of the Framework Decision, it could be observed that Germany; Italy; Portugal; and Sweden did amend their own definitions substantially, whilst after the introduction of the Framework Decision, France; Russia; Spain; and the UK made minor changes. As regards the application of the definition, as envisaged by the EU, it was surprising to notice that certain countries (i.e. Italy; Poland; Spain; Sweden; and the United Kingdom) had ignored intentionally and decided not to include, in their legislations, the latter part of the definition which related to the listing of criminal acts. The subjective element, which refers to terrorist intent, exists now in all countries' definitions, although, in Germany,

this was not always the case.<sup>110</sup> Lastly, all the above countries included foreign governments' offices (such as Embassies; Consulates; Chambers of Commerce) and international organisations, working within their boundaries. as possible targets of terrorist groups. This widening of possible targets suggested that there was a noticeable expansion of the scope of the definition of terrorism.

Regarding the executive powers' implementation of the newly adopted definitions, the scope and broadness of the definitions, made in Denmark; the Netherlands; Russia; Sweden; and the United Kingdom led several NGOs to express concerns.<sup>111</sup> The fact was that there was particular criticism about the scope and wording of the definitions, in those countries, would prevent people participating in genuine and legitimate political protest, with the risk of potential arrest; detention; and trial of lawful political activists. Despite reassurances by politicians, numerous cases were observed<sup>112</sup> regarding the limitations on the freedom to express dissent or to gather in certain places (e.g. close to Embassies or consulates) or to take photographs. This gave foundation to criticism and concerns made by Civil Liberties and Human Rights organisations.

### 2.6.3 United Kingdom

From 1974 to 1989, various Prevention of Terrorism (Northern Ireland) Acts were dedicated entirely to the Irish situation.<sup>113</sup> Therefore, s.9 of the 1974 Act stated that 'terrorism means

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<sup>110</sup> S. Mekhennet and F. Dexter, 'British Law Against Glorifying Terrorism Has Not Silenced Calls to Kill for Islam', *The New York Times*, August 21, 2006, <http://travel2.nytimes.com/2006/08/21/world/europe/21london.html>

<sup>111</sup> Organisations such as Article 19, Liberty, International Federation of Journalists (IFJ), National Union of Journalists (NUJ), Human Rights Watch, Amnesty International, and so on...

<sup>112</sup> In the UK, the new measures targeted photographs particularly, see, for instance, the case of M. Vallee or Gillian

<sup>113</sup> M. Aksu,; Y. Buruma, and P.H.P.H.M.C. Kempen (2006) 'Strafrechtelijke antiterrorismemaatregelen in Nederland, het Verenigd Koninkrijk, Spanje, Duitsland, Frankrijk en Italie', WODC: Eerste inventarisatie van

the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear.’ A review of such definitions, requested by the Select Committee on Home Affairs, noted several shortcomings within this definition. For instance, despite the exclusion of threats of violence, it was too broad and did not require a serious level of violence; risk to health and safety; or electronic disruption. Conversely, it was restricted in terms of intention and excluded religious and non-ideologically motivated violence.<sup>114</sup>

Additionally, another definition could be found in s.2 (2) of the Reinsurance (Acts of Terrorism) Act 1993 which criminalized people acting in connection with or on behalf of an organisation using terrorist tactics. Due to the changing circumstances, the British reviewed their antiterrorist legislation in 1996. In the Inquiry into Legislation against Terrorism<sup>115</sup>, Lord Lloyd of Berwick concluded that, in order to fight international terrorism efficiently, it was an absolute necessity to draft a different definition.

## 2.7 Debate on definitions of terrorism

Several writers gave the following definitions of terrorism. These presented a variety of perspectives which illustrated the different views expressed.

For instance, Held defined terrorism as:

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contraterrorismebeleid: Duitsland, Frankrijk, Italië, Spanje, het Verenigd Koninkrijk en de Verenigde Staten – Workdocument No. 6.

<sup>114</sup> Lord Carlile of Berwick Q.C., ‘*The Definition of Terrorism*’, (Presented to Parliament by the Secretary of State for the Home Department, by Command of Her Majesty, Home Department, 2007, Cm7052

<sup>115</sup> Lord Lloyd of Berwick, ‘*Legislation Against Terrorism*’, A consultation Paper Presented to the Parliament by the Secretary of State for the Home Department and the Secretary of State for Northern Ireland by Command of Her Majesty, 1998, Cm 4178, <http://www.archive.officialdocuments.co.uk/document/cm41/4178/4178.htm>.

“a specific form of political violence. It usually has the purpose of creating fear or terror among a population. It does not necessarily target innocent people or civilians, but it frequently does so”.<sup>116</sup>

Kapitan argued that terrorism

“is the deliberate use of violence, or the threat of such, directed upon civilians in order to achieve political objectives.”<sup>117</sup>

An earlier definition of terrorism was given by Wilkinson who stated that:

“Terrorism is the systematic use of coercive intimidation, usually to service political ends.”<sup>118</sup>

Chomsky was more precise in his definition of terrorism which he considered to be

“the calculated use of violence or the threat of violence to attain goals that are political, religious, or ideological in nature...through intimidation, coercion, or instilling fear.”<sup>119</sup>

As quoted by Ignatieff, Malik reckoned that:

“Terrorism is a violent form of politics, and it is because terrorism is political that it is dangerous. Terrorists represent causes and grievances and claim to speak for millions.”<sup>120</sup>

Hoffman’s definition of terrorism was quite extensive since he states that:

“Virtually any especially abhorrent act of violence perceived as directed against society whether it involves the activities of antigovernment dissidents or governments themselves, organised-crime syndicates, common criminals, rioting mobs, people engaged in militant protest, individual psychotics, or lone extortionists—is often labeled terrorism.”<sup>121</sup>

As an international lawyer, Bassiouni’s opinion was as follows:

“Terrorism” can be defined as a strategy of violence designed to instill terror in a segment of a population or society in order to achieve a power outcome, propagandize a cause, or inflict harm for a vengeful purpose. Both state and non-

<sup>116</sup> V. Held, *How Terrorism Is Wrong: Morality and Political Violence*. Oxford: Oxford University Press, 2008.

<sup>117</sup> T. Kapitan, ‘The Terrorism of “Terrorism”, in J P Sterba (Eds.), *Terrorism and International Justice*, Oxford University Press, NY, 2003, pp.47-68.

<sup>118</sup> P. Wilkinson, ‘The Strategic Implications of Terrorism.’ in M.L. Sondhi, *Terrorism and Political Violence*, Sondhi: Har-Anand Publications, India, 2000.

<sup>119</sup> N. Chomsky, *Hegemony or survival*. NY: Metropolitan Books, 2003.

<sup>120</sup> M. Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, Toronto: Penguin Canada, 2004.

<sup>121</sup> B. Hoffman, *Inside Terrorism*, NY, Columbia University Press, 2006.

state actors resort to such a strategy, whether in the context of war or peace. In the case of states, a state can direct terror-violence either against its own population, non-nationals under its control, or the population of another state. Similarly, non-state actors may target individuals or groups within their own state or those of another state, as well as states' interests.<sup>122</sup>

Another international law expert, Ben Saul stated:

“There are no clean lines between terrorism and other forms of political violence, and the debate about defining terrorism is also a debate about the classification of political violence in all its myriad forms: riot, revolt, rebellion, war, conflict, uprising, revolution, subversion, intervention, guerrilla warfare, and so on.”<sup>123</sup>

“Terrorism”, in the most widely accepted contemporary usage of the term, was fundamentally and inherently political. Torres argued that terrorism,

“is also ineluctably about power: the pursuit of power, the acquisition of power, and the use of power to achieve political change. Terrorism is thus violence—or, equally important ironically, perhaps, terrorism in its original context was also closely associated with the ideals of virtue and democracy.”<sup>124</sup>

In order to enable international operations against terrorists, there is a need to reach a definition of terrorism which will be approved by a wide international consensus. The expected definition should be based on the same principles approved already regarding conventional wars (i.e. inter-state conflicts), and extrapolated to non-conventional wars (i.e. between a state and an organisation).<sup>125</sup> As a source and effective mechanism, the devised definition of terrorism increases the capacity of the international community to fight terrorism by helping in the enactment of antiterrorism legislation and the drafting of specific punishments against perpetrators of terrorism and those who encourage it. It will allow the

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<sup>122</sup> C. Bassiouni, ‘Terrorism, Law Enforcement, and the Mass Media: Perspectives, Problems, Proposals’, 2009, 72(1), *The Journal of Criminal Law and Criminology*.

<sup>123</sup> B. Saul, ‘The Legal Response of the League of Nations to Terrorism’. *Journal of International Criminal Justice*, 2006, 78.

<sup>124</sup> R. Torres, En manos de los usuarios, *Periodistas*, nº 7, diciembre. Federación de Asociaciones de la Prensa de España. Madrid, (2006). pp. 46-48.

<sup>125</sup> B. Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ *Police Practice and Research*, 2002, 3(4): 287–304.

design of laws and international conventions against terrorism; terrorist organisations; states sponsoring terrorism; and, eventually, companies dealing economically with such states.

Moreover, by providing a definition on terrorism, it will be possible to prevent terrorist organisations maneuvering, within the domestic politics of certain countries, to obtain public legitimacy. In addition, part of the population, which, in other circumstances, would support such groups, will be more cautious in giving unconditional allegiance. Finally, the effective use, of the definition of terrorism, could induce terrorist groups or organisations to be more inclined towards ethical and practical considerations and, in order to reach their aims, to shift from indiscriminate terrorism to other options (e.g. guerrilla warfare), thus provoking a significant decline in international terrorism activities.<sup>126</sup>

The struggle, to define terrorism, appears to be more challenging than the struggle against terrorism itself.<sup>127</sup> The opinion, which claims that it is unnecessary and almost impossible to agree on a consensual definition of terrorism, dominates currently and for a long time, has established itself as the ‘politically correct’ one. Laqueur attempted to show that an objective, internationally accepted definition of terrorism was achievable; that the effectiveness of the struggle against terrorism depended on such a definition; and the quicker nations realized that the better for modern societies.<sup>128</sup>

The September 11 2001 terrorist attacks on US soil, and the United States of America’s subsequent efforts, to establish a large coalition to fight this threat, highlighted the debate

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<sup>126</sup> B. Netanyahu (Ed), *International Terrorism: Challenge and Response*, The Jonathan Institute, Jerusalem, 1980.

<sup>127</sup> B. Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ *Police Practice and Research*, 2002, 3(4): 287–304.

<sup>128</sup> W. Laqueur, *The Age of Terrorism*, Little, Brown and Company, Boston, Toronto, 1988.

about what constituted terrorism.<sup>129</sup> Since 2001, thousands of books and articles have been written on the subject. Silke<sup>130</sup> argued that one book, on terrorism, was published every six hours, whilst Jackson<sup>131</sup> stated that the subject area of terrorism was the “the fastest expanding areas of research in the English-speaking academic world”. Others underlined that terrorism research was becoming a ‘stand-alone subject entering a golden age of research’.<sup>132</sup> Despite the amount of literature on the topic of terrorism, this issue suffered consistently from a concrete lack of theory.<sup>133</sup>

Most researchers believed that an objective and internationally accepted definition of terrorism could be achieved hardly or agreed upon.<sup>134</sup> After all, some said, “one man’s terrorist is another man’s freedom fighter.”<sup>135</sup> Therefore, , according to the people who share the above definition of terrorism<sup>136</sup>, determining, who was a terrorist, fell into the interpreter’s subjectivist viewpoint; and, accordingly, such a fixed definition would not allow moving forward in the international fight against terrorism.<sup>137</sup>

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<sup>129</sup> The debate about the definition of terrorism did occur in different arenas, being domestic parliaments, or International organisations such as the UN, the EU, the Council of Europe (CoE), the OECD, the African Union (AU).

<sup>130</sup> See Silke, ‘Research on Terrorism’ in Chen, H; Reid, E; Sinai, J; Silke, A; and Ganor, B (eds), *Terrorism Informatics. Knowledge Management and Data Mining for Homeland Security*, New York: Springer, 2008, pp. 27-50.

<sup>131</sup> R. Jackson, ‘The Ghost of State Terror: Knowledge, Politics and Terrorism Studies’, in *Critical Studies on Terrorism*, 2008, Vol.1(3): pp.377–392. Article available online at: [http://humansecuritygateway.com/documents/ISA\\_theghostsofstateterror.pdf](http://humansecuritygateway.com/documents/ISA_theghostsofstateterror.pdf)

<sup>132</sup> See J. Shepherd, ‘The Rise and Rise of Terrorism Studies’, *The Guardian*, 3/07/2007, <http://www.guardian.co.uk/education/2007/jul/03/highereducation.research>. See as well as R Attwood, ‘Study of Terrorism Steps up to New Level’, *The Times*, 22/6/2007. <http://www.timeshighereducation.co.uk/news/study-of-terrorism-steps-up-to-new-level/209437.article>

<sup>133</sup> A. Spencer, *Tabloid Terrorist*, Palgrave Macmillan: Basingstoke, 2010.

<sup>134</sup> *Ibid.* p. 2

<sup>135</sup> The quote is in fact another version of “One man’s terrorist is another man’s freedom fighter” first written by Gerald Seymour in his 1975 book *Harry’s Game*, about a British cabinet minister killed by the Irish Republican Army (IRA).

<sup>136</sup> The relativist definition of terrorism seems rather ‘simplistic’ and weak; there are terrorist activities which cannot have any real support, and the dichotomy terrorist/freedom fighter rather reductive of the diversity of perspectives.

<sup>137</sup> Such a definition might have had some appeal for the people colonised, when they wanted to free themselves from the oppression, which is not anymore the case, in the present time .

The other extreme considered that it was enough to say that ‘what looks like a terrorist, sounds like a terrorist, and behaves like a terrorist, is a terrorist’.<sup>138</sup> Yet, targeting people, on ethnic grounds, is not only ethically wrong but, also, divisive practically and counterproductive in an open society. This thinking does not help the comprehension of an already problematic issue. In the same manner, Ganor criticized equally those who tried to categorize terrorism between ‘old and new terrorisms’; ‘bad and worse terrorism,’; ‘internal and international terrorism;’ or ‘tolerable terrorism and intolerable terrorism.’<sup>139</sup> For Ganor, such attempts revealed the subjectivity of the person doing the categorizing – such an attitude undermined the efforts towards identifying who were the real terrorists.

At the same time, there were others who argued for the necessity of having a clear and strong definition of terrorism, however, without recognizing explicitly that such a definition would be used for their own political ends<sup>140</sup> (i.e. weakening their political opponents by labeling them as terrorists or supporters of terrorism).

Ganor addressed also another aspect which seemed to hinder the efforts towards a proper definition of terrorism. The writer argued that several states, fostering ‘terrorist groups’, attempted constantly to convince the international community (for example, through the General Assembly of the UN) to define terrorism in such a way that particular ‘terrorist

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<sup>138</sup>An American citizen, James Inhofe, the Republican senator of Oklahoma, acknowledged on a TV show (CBS, 2010) that "I know it's not politically correct to say, I believe in racial and ethnic profiling." In the US in particular, profiling is commonly used. For instance, following the 2010 Christmas Day incident, the Obama administration announced that citizens from 14 countries - all but one, Cuba, were Muslim countries - would be subjected automatically to extra screening before boarding flights to the US. See Martha Teichner, *What Does a Terrorist Look Like?*, CBSNews, April 11 2010, [http://www.cbsnews.com/2100-3445\\_162-6385040.html](http://www.cbsnews.com/2100-3445_162-6385040.html).

<sup>139</sup> See B. Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ *Police Practice and Research*, 2002, 3(4): 287–304.

<sup>140</sup> See M. Crenshaw (Ed.), *Terrorism in Context*. Pennsylvania State University: Pennsylvania, 1995.

organisations', which they supported, were not included in the definition – and in doing so - justified their help to certain groups and exempted them from any eventual responsibility.<sup>141</sup>

The countries, specifically mentioned by Ganor, were Syria; Libya; and Iran. The author seemed to be less objective when he stated that these countries:

“have lobbied for such a definition, according to which ‘freedom fighters’ would be given carte blanche permission to carry out any kind of attacks they wanted, because a just goal can be pursued by all available means”.

Ganor presented no evidence about his claims. Accordingly, this researcher argues that Ganor was misled by these states' official political statements which were echoed in the mainstream media and taken out of their original context. It was interesting to investigate how other scholars considered the United States of America's hegemonic rule, which, certainly not by chance, supported Ganor's claims. For instance, Odom<sup>142</sup>, reflecting on the American concept of 'War on Terrorism' is very critical towards the path, followed by the American administration, since September 11 2001. He considered the American policy, relative to the “Global War on Terrorism”, to be ‘perverse’<sup>143</sup> and an example of ‘sustained hysteria’. Accordingly, he confirmed that he shared the opinions of the critics who considered that terrorism was not as ‘an enemy but as a tactic’ when he said:

“Because the United States itself has a long record of supporting terrorists and using terrorist tactics, the slogans of today's war on terrorism merely make the United

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<sup>141</sup> See B. Ganor, 'Countering State-Sponsored Terrorism', ICT Papers of The International Policy Institute for Counter-Terrorism, The Interdisciplinary Center, Herzlia, Israel, 1997.

<sup>142</sup> See G. W Odom, 'American Hegemony: How to Use It, How to Lose It', *Proceedings of the American Philosophical Society*, 2007, 151 (4): 410, **available online at** <http://www.middlebury.edu/media/view/214721/original/OdomPaper.pdf>

<sup>143</sup> According to Odom, The united States of America's first 'perverse' policy was its stance on Nonproliferation Policy. The author stated that:

“Although our nonproliferation policy was meant to maintain regional stability, it actually has accelerated proliferation and created instability. Given America's recent record on nonproliferation in South Asia, the lesson that Iran and others must draw is that if they acquire nuclear weapons, Washington will embrace them, as it has India and Pakistan. Moreover, because the United States permitted Israel to proliferate some years back, this adds to the incentives for all Arab states to proliferate as well.”

States look hypocritical to the rest of the world. A prudent American president would end the present policy of “sustained hysteria” over potential terrorist attacks; order the removal of most of the new safety barriers in Washington and elsewhere, and treat terrorism as a serious but not a strategic problem.”<sup>144</sup>

Odom’s perspective was more comprehensive than Ganor’s. By enlarging the picture for readers rather than focusing on three countries, he created a clearer idea about terrorism; this might mislead researchers when analysing the ‘terrorism’ phenomenon.

There were serious reservations as regards the soundness of arguments developed by a number of schools of thought on the issue of ‘terrorism; and, therefore, the divergences, between them, would make it difficult for the international community to face and fight efficiently the challenge represented by terrorist organisations. In order to illustrate the existing contradiction, Ganor believed that:

“An objective definition of terrorism is nevertheless not only possible; it is also an essential requisite in any serious attempt to combat terrorism”.<sup>145</sup>

Whilst Gutpa underlined the few tiny but definite threads which were shared in what he called the “rapidly burgeoning literature”:

It is nearly impossible to define “terrorism.” The link between sociopolitical and economic structural factors, such as poverty, lack of economic opportunity, and terrorism is weak and there is no single profile of a “terrorist”.<sup>146</sup>

However, without being able to provide a consensual definition, it would be very difficult to coordinate, in a consistent manner, the struggle against international terrorism. Consequently, the scattered efforts, as those at the present time, would go really nowhere. A

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<sup>144</sup> It is essential to underline, here, that the reported statements were not made by an American dissident or an anti-Imperialist scholar, since, under President Reagan's administration, Professor William Odom, in addition to his academic credentials, was Director of the National Security Agency (NSA).

<sup>145</sup> See B. Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ *Police Practice and Research*, 2002, 3(4): 287–304.

<sup>146</sup> See D.K. Gupta, ‘Exploring Roots of Terrorism’, in T Bjørge (ed.) *Root Causes of Terrorism*. Routledge: London, 2004.

correct and objective definition of terrorism might be based on agreed international laws and principles regarding what behaviours were permitted in conventional wars between nations.

The regulation of warfare and armed conflict, resulting from international efforts, consists of two main codes<sup>147</sup> based on legal and humanitarian considerations. These laws are set out in the Geneva<sup>148</sup> and Hague<sup>149</sup> Conventions. Despite the common use of Hague and Geneva together, each offers a distinctive approach to the problem of regulating armed conflict. The established basic principles consider that, although, due to the fact that such action is a necessary evil, it is permissible to harm soldiers deliberately during wartime, , the deliberate targeting of civilians is forbidden absolutely. Consequently, these two Conventions make a clear distinction between soldiers attacking enemy soldiers, and war criminals who attack civilians deliberately.

Academics;<sup>150</sup> politicians;<sup>151</sup> and journalists,<sup>152</sup> all use a variety of definitions of terrorism; and examples were presented previously in this study. Some definitions focus on terrorist

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<sup>147</sup> Both approaches are represented by a certain number of conventions and protocols.

<sup>148</sup> The Geneva approach distinguishes, in its definition, between combatants, civilians and war casualties and prisoners. It considers that civilians, wounded soldiers and war prisoners should be treated in a humanly appropriate way. See <http://www.answers.com/topic/geneva-and-hague-conventions#ixzz1rRPJ2U3T>.

<sup>149</sup> The Hague approach focuses instead on the rights and duties of soldiers during armed conflicts, and makes clear restrictions on behaviour, and insists on the prohibition of particular weapons and inhumane practices. See <http://www.answers.com/topic/geneva-and-hague-conventions#ixzz1rRPJ2U3T>

<sup>150</sup> See, for example, the following scholars whose statements were quoted previously in this study; M. Ignatieff, (2004); N. Chomsky, (2003); P. Wilkinson, (2000); Kapitan, (2003); Held, (2008); B. Hoffmann, (2006); Bassiouni, (2009); B.Saul, (2006); R.Torres, (2006).

<sup>151</sup> The following politicians represents only a few examples and the circumstances of their interventions, either interviews, speeches, books and so on: (Joe Biden, speech, Aug. 7, 2006); (Wesley Clark, 2003, p. 106) (George W. Bush, speech, Dec. 18, 2005); (Nelson Mandela, Larry King Live, May 16, 2000); (Rudolph Giuliani, CNN interview, Sep. 11, 2002); (Benjamin Netanyahu, 1989, p.15); (Pat Buchanan, 2004, p. 58) (Jacques Chirac, speech, Sep. 24, 1986); (Barack Obama, speech, Feb. 28, 2006); (Tony Blair, The Guardian, Friday 5 August 2005).

<sup>152</sup> See L. J. Martin, 'The Media's Role in International Terrorism', University of Maryland, Mayland, <http://pegasus.cc.ucf.edu/~surette/mediasrole.html>

organisations',<sup>153</sup> whilst others consider the incentives and characteristics of terrorism,<sup>154</sup> or the way individual terrorists behave.<sup>155</sup>

In their work on political terrorism, Schmidt and Jongman<sup>156</sup> mentioned more than hundred different definitions of terrorism these were collected from a survey which they conducted. Their research approach consisted of isolating recurring terms and ordering them according to their statistical appearance in the studied definitions.<sup>157</sup> In the academic field, there was reference often to Ganor's proposed definition of terrorism,<sup>158</sup> This justified the researcher focusing on this specific writer's work. Ganor stated that terrorism:

"is the intentional use of, or threat to use, violence against civilians or against civilian targets, in order to attain political aims."<sup>159</sup>

Three important elements were highlighted:<sup>160</sup> firstly, the nature of the action and the use or the threat of using violence. Therefore, (following this definition), it was assumed that an

<sup>153</sup> Ibid. Martin in his study stated that :

"While the mass media do, generally, cover terrorism at a rate of at least nine incidents per day worldwide, the press uses the term " terrorist" sparingly, preferring such neutral terms as guerrilla, rebel, and paramilitary, or using no value-laden adjectives at all. This raises the question of the effectiveness of terrorism. The press gives terrorists publicity but often omits the propaganda message that terrorists *would* like to see accompanying reports of their exploits, thus reducing terrorism to mere crime or sabotage."

<sup>154</sup> See P. Wilkinson, "Response to Terrorism from the Toolbox of Liberal Democracies: Their Applicability to Other Types of Regimes", in *Countering Terrorism Through International Cooperation*. Proceedings of the International Conference on "Countering Terrorism Through Enhanced International Cooperation." Courmayeur Mont Blanc, Italy, 2001, pp. 206-213.

<sup>155</sup> See U.S. Army TRADOC G2 Handbook No. 1 (Version 5.0), 'A Military Guide to Terrorism in the Twenty-First Century', *Terrorist Motivations and Behaviors*, Chapter 2, 2007, available online at: <http://www.au.af.mil/au/awc/awcgate/army/guidterr/ch02.pdf>

<sup>156</sup> A. Schmidt, & A. Jongman, (Eds.), *Political Terrorism*, SWIDOC, Amsterdam and Transaction Books, 1988.

<sup>157</sup> In terms of percentages for the use of specific terms, Schmidt and Youngman's findings were as follows: [1]. 'Violence, force' appeared in 83.5% of the definitions [2]. 'Political' 65% [3]. 'Fear, emphasis on terror' 51% [4]. 'Threats' 47% [5]. 'Psychological effects and anticipated reactions' 41.5% [6]. 'Discrepancy between the targets and the victims' 37.5% [7]. 'Intentional, planned, systematic, organized, action' 32% [8]. 'Methods of combats, strategy, tactics' 30.5%. See Schmidt and Jongman (1988), p.5.

<sup>158</sup> See 'Approaches to Defining Terrorism', in Special Topics in Criminal Justice available at: <http://www.elearnportal.com/courses/criminal-justice/special-topics-in-criminal-justice/special-topics-in-criminal-justice-approaches-to-defining-terrorism>

<sup>159</sup> See B. Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' *Police Practice and Research*, 2002, 3(4): 287-304.

<sup>160</sup> Ibid.

activity exempt from violence or a threat of violence could not be considered to be terrorism.<sup>161</sup>

Secondly, the intention, of the action was always to achieve political objectives – such as regime change; overthrow of rulers; or inducing changes in social or economic policies. The nonexistence of a political aim prevented an action being described as an act of terrorism. Committing violent actions against civilians, without political motives, was considered to be rather as a simple criminal offence or an act of insanity, but not terrorism. However, ideological or religious factors might be included within political objectives. Ganor underlined that, in addition to the fact that the concept of ‘political aim’ was sufficiently broad to include a variety of factors, the concise and exhaustive aspects, of such a definition, represented real advantages. Ideological; religious; or other motives behind political aims were judged irrelevant when it came to the definition of terrorism. In this context, Duvall and Stohl’s following statement deserves mention:<sup>162</sup>

“Motives are entirely irrelevant to the concept of political terrorism. Most analysts fail to recognize this and, hence, tend to discuss certain motives as logical or necessary aspects of terrorism. But they are not. At best, they are empirical regularities associated with terrorism. More often they simply confuse analysis”.<sup>163</sup>

Thirdly, civilians were the main target for terrorist actions. Terrorism was included in the category of political violence; however, it was distinct from the other forms of violence such as guerrilla warfare or civilian insurrection. Terrorist organisations exploited largely the vulnerability of innocent civilians; provoking anxiety; and huge coverage by a reactive media when attacks were conducted against civilians.

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<sup>161</sup> For instance, activities which include nonviolent opposition/protests, strikes, and peaceful demonstrations.

<sup>162</sup> Schmidt and Jongman (1988) quoted these authors.

<sup>163</sup> A.P. Schmidt, *Political Terrorism*, SWIDOC. Amsterdam and Transaction Books, 1984.

The three point, of the above definition, underlined that terrorism was not an unintentional activity or an accident which provoked civilian casualties who, by misfortune, were in an area known for its violent political activities. Rather, it highlighted the fact that, purposely, terrorists targeted innocent people. Therefore, civilians used as human shields to cover military activity or installations could not be considered to be ‘collateral damage’ to, if such damage was incurred in an attack aimed originally against a military target. Full responsibility was incumbent upon whoever used such shields.<sup>164</sup>

## **2.8 Conclusion:**

Throughout the years, the numerous international legal attempts, in dealing with terrorism, avoided mostly the difficulty of drafting a general definition. This chapter presented the three historical phases of the evolution of the notion of ‘terrorism’: the post Second World War phase which was the study’s starting point; the post-cold War phase which witnessed the supremacy of one superpower; and the period following the September 11 2001 events. The chapter discussed, also, the various definitions of terrorism, whether at the level of international organizations, or national legislation, or in the form of opinions of experts both within and outside academia. It stressed the primary need to formulate a consensual definition of terrorism; this was deemed crucial in enhancing the role of government in enacting legislation to fight terrorism. Therefore, there was an attempt to shed light on the controversies between different schools of thought as regards the nature of terrorism; its essence; targets; and mechanisms, and the divergence in labeling terrorism as either ‘old’ or ‘new’. There was, also, an emphasis on the motivational background which could be

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<sup>164</sup> See B. Ganor, ‘Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter?’ *Police Practice and Research*, 2002, 3(4): 287–304.

found in the more overarching construct of political violence as an attempt to illustrate the overlap between terrorism and other types of political violence, mostly considered as such by its victims and a large part of observers. In conclusion, it could be said that terrorism found its motivational factors in a general or specific frustration felt by certain groups within societies.

The study aimed to highlight the relationship between terrorism and the laws counteracting it at one end of the spectrum and the media at the other. Consequently, the following chapter defines the media; its types; its historical developments; and, finally, examine the debated relationship between the media and anti-terrorism laws.

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## **Chapter Three:**

### **Media, Terrorism and Anti-terrorism Laws**

#### **3.1 Introduction**

The previous chapter addressed the historical context of the development of terrorism and delineated the circumstances from which the enactment of anti-terrorism laws originated. Whilst underlining the distinction between international and domestic terrorism, it considers, also, the various definitions of terrorism, and the academic and institutional debates about the criteria for defining terrorism.

In this chapter, before addressing the relationship between the mass media and the laws enacted in the context of the ‘war on terror’, it is necessary to define the relevant concepts. The term ‘media’ refers to all methods or channels of information and entertainment, whilst mass media is used specifically to describe newspapers; radio; and television.<sup>165</sup> However, the revolution, in telecommunications, has affected the ‘conventional’ media and induced most media organisations to adapt themselves to the new phenomenon by accepting new norms and instruments of communication and by investing and competing to provide their services through the Internet. This chapter focuses on the media, by defining its role; its importance; its tools; and its relationship with terrorism.

#### **3.2. Definition of Media**

Media are transmission channels used to gather and deliver information. Generally, media are associated with mass communications. There are instances where they refer to only one

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<sup>165</sup> These media can be called conventional media, in contrast to the modern and alternative media provided by non-professionals on the Internet.

medium (BBC 4; CNN; the Guardian; and so on), for conveying any type of information. Mass communications encompass not only institutions but, also, the means used as technical mechanisms (e.g. press; radio; films) to diffuse information to a great number of listeners; viewers, and readers, despite their geographical locations and heterogeneity in terms of populations; cultures; and religions.<sup>166</sup> News media refers commonly to sources such as TV; radio; and newspapers. In the last two decades, there appeared, also, on the Internet, other forms of media such as reporting services; blogs; web pages; and all types of propaganda broadcasts. A new event, such as a terrorist action, is susceptible always to attracting wide attention.<sup>167</sup>

Akin observed that the term 'media' was used generally when referring to "the group of corporate entities, publishers, journalists, and others who constitute the communications industry and profession".<sup>168</sup> Also, when it related to conflict, "the press" or the journalists and reporters who wrote and reported the news referred often to "news media" as the term to describe the news industry.<sup>169</sup> News means either facts, or interpretation of facts or even the views expressed by journalists since these determine later what facts to include; which information to report; the interpretation to give; and the required space or time. The management depends on a number of factors such as: the editor's opinion; and the events which show management's bias.<sup>170</sup> However the media's role is not limited only to reporting the news, often, they create it by deciding which story is newsworthy and which is not.

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<sup>166</sup> M. Janowitz, 'The study of Mass Communication', in D L Sills (ed), *International Encyclopaedia of the Social Sciences*, MacMillan, New York, 1968, pp. 40-51.

<sup>167</sup> J. R. White, *Terrorism and Homeland Security*, Wadsworth, Belmont, California, 2011.

<sup>168</sup> J. Akin, "Mass Media", *Beyond Intractability*. Eds. Burgess G and Burgess H. Conflict Information Consortium, University of Colorado, Boulder. March 2005 <http://www.beyondintractability.org/bi-essay/mass-communication>.

<sup>169</sup> R. Schaffert, *(The Media's Influence on the Public's Perception of Terrorism and the Question of Media Responsibility*. Media Coverage and Political Terrorists. Praeger Publishers, New York, 1992.

<sup>170</sup> A. Kohut, 'Self-Censorship: Counting the Ways', *Columbia Journalism Review*, May 2000. Vol. 39 (1), p.42.

The adverse side, of the mass media, lies in the fact that the news media thrive on conflict. Often, the media present the latest catastrophe or crimes as leading stories. It is assumed that, the greater the presentation of the conflict, the greater the audience since more viewers; listeners; and readers are likely to be impressed. Therefore, the media exploit this fact and try to adjust and fabricate conflict in order to make it look more intense than it is really. Accordingly, conflict resolution stories are neglected in favour of the most spectacular, colourful, and shocking aspects of a conflict dynamic.

### 3.3 Terrorist Use of Media

Terrorist attacks occur on particular occasions, often targeting elites, and ensuring that the media can have easy access to the scenes of violence.<sup>171</sup> Consequently, media coverage can grant status and even legitimacy to opposition groups; therefore, television coverage becomes naturally one of their planned strategies and top priorities.<sup>172</sup> The news' role is to generate profit for large media firms and, within the media world, fierce competition exists in order to obtain profits for their respective shareholders. Consequently, the media rely extensively on government reports and a new term, called 'parachute journalism', has emerged.<sup>173</sup>

Another drawback, of the modern media, is their dependence on advertisements; this may affect their neutrality.<sup>174</sup>

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<sup>171</sup> R. W. Schaffert, *Media Coverage and Political Terrorists: A Quantitative Analysis*, Greenwood, 1992.

<sup>172</sup> E. Sanders, 'Results of FCC's Media Studies Are Released', Los Angeles Times, Oct 2002.

<http://pqasb.pqarchiver.com/latimes/202977141.html?did=202977141&FMT=ABS&FMTS=FT&desc=California%3b+Results+of+FCC%27s+Media+Studies+Are+Released>

<sup>173</sup> "Parachute journalism" is a pejorative term used, in media circles, to refer to a practice whereby outsider journalists are sent, for a short period, to cover an event abroad without having the necessary knowledge of the politics; traditions; and culture of the place. Consequently, the news reports are likely to be inaccurate.

<sup>174</sup> For example, some media do not report certain stories that might affect their advertisers' interests. According to a survey made in 2000, "...about one in five (20 percent) of local and (17 percent) (of) national reporters say they have faced criticism or pressure from their bosses after producing or writing a piece that was seen as damaging to their company's financial interests". See Kohut, A (2002).

In the United States of America's constitution, the existing provisions, of relating to freedom of expression, do not control how the news media select and present stories, particularly in times of war.<sup>175</sup> Authoritarian regimes impose, also, restraints on journalists; these range from fines to imprisonment. However, due to the nature of modern society, people depend on the media to be informed and, even if accounts are limited or biased, do seek access to the world's events.<sup>176</sup> Here, it is important to mention that technological advances facilitate access to all forms of information, making it difficult to assess the soundness of the sources.

### 3.3.1 Terrorists' Incentives and Objectives for using the Media: Stating the Problem

Fromkin pointed out that those political movements, which opted for terrorist action, chose such violent and extreme instruments because they lacked material resources; supporters; finance; or territory. These were the pre-conditions for any legitimate political action.<sup>177</sup> For Crenshaw, terrorism represented an indirect strategy to achieve political aims, by influencing audiences through the media.<sup>178</sup> Kydd and Walter observed that terrorists differed in the audiences which they intended to influence and in the messages which they wanted to convey to selected audiences.<sup>179</sup> For instance, some groups used violent action, convinced that their opponents would comply with their demands. Others wanted to provoke indiscriminate repression by governments: a reaction which would serve their cause; destabilize the government; and give a form of legitimacy to the use of violence. By using terrorist violence, other groups wanted to show their strength (i.e. their capacity to

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<sup>175</sup> According to survey of 287 US journalists, "about a quarter of those polled have personally avoided pursuing newsworthy stories". See Kohut, A (2002)

<sup>176</sup> D. Laws, 'Representation of Stakeholding Interests'. The Consensus Building Handbook. Thousand Oaks: Sage Publications. 1999.

<sup>177</sup> D. Fromkin, 'The strategy of terrorism', *Foreign Affairs*, 1975, 53(4), 683–698.

<sup>178</sup> M. Crenshaw, 'The causes of terrorism', *Comparative Politics*, 1981, 13(4), 397–399.

<sup>179</sup> A. Kydd, and B. Walter, 'The strategies of terrorism'. *International Security*, 2006, 31(1), 49–79.

undermine their adversaries) to their supporters and to gain the sympathy of others. For all these motives, media attention was essential since it represented the vehicle through which terrorists conveyed their messages to various audiences and, therefore, a key goal was to influence the scale and tone of media coverage of their attacks.<sup>180</sup>

It would be pertinent to consider the potential objectives which terrorists wanted to achieve by approaching the media. Alexander et al. believed that terrorists might interact with the media for three specific aims: firstly to attract the attention of a wide audience; secondly to have a form of recognition; and, thirdly, to have the proper channels through which to legitimise their action.<sup>181</sup> Another scholar, Gerrits, considered instead the psychological interaction between terrorists and the media.<sup>182</sup> He pointed out that, from such a perspective, the aims could be listed as follows: demoralising the enemy; showing their destructive power; gaining sympathy and spreading terror; and panic in the public minds. This was because the media was the best instrument to use in order to achieve all these aims. For Bandura, terrorist organisations used the media for moral justification; to gain sympathy and to intimidate their opponents.<sup>183</sup>

In a similar vein, Stohl argued that terrorists were interested primarily in the audience and not the victims.<sup>184</sup> He emphasized that the way, in which the audience reacted, was as

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<sup>180</sup> B. Jenkins, 'International terrorism: A new mode of conflict' in David Carlton and Carlo Schaerf (eds.), *International terrorism and world security*, Croon Helm: London, 1975. See also Brigitte L. Nacos, *Mass-Mediated Terrorism: The Central Role of the Media in Terrorism and Counterterrorism*, Rowman & Littlefield, 2002 and B Hoffman, *Inside Terrorism*, Columbia University Press, USA, 2006.

<sup>181</sup> See Alexander et al, *Terrorism: Theory and Practice*, Westview Press: Boulder, 1979, p. 162.

<sup>182</sup> R.P.J.M. Gerrits, "Terrorists' Perspectives: Memoirs," in: D.L. Paletz, and A. Schmid, *Terrorism and the Media*, Sage: London, 1992, p. 29-61; and C.D. Vinson, "Introduction," in: D. L. Paletz and A. Schmid (1992), *Terrorism and the Media*, London: Sage, 1992, p. 1-5.

<sup>183</sup> A. Bandura, "Mechanisms of Moral Disengagement," in: W. Reich, (Ed.), *Origins of Terrorism; Psychologies, Ideologies, Theologies, States of Mind*, Woodrow Wilson Centre Press: Washington, 1998, pp. 161-191.

<sup>184</sup> Stohl (1985) quoted in S. L. Rhine; S. E. Bennett; R. S. Flickinger, *After 9/11: Television viewers, Newspaper readers and Public Opinion about Terrorism's Consequences*, (Paper prepared for presentation at the Annual Meeting of the American Political Science Association), Boston Massachusetts – August 29<sup>th</sup> - September 1<sup>st</sup> 2002.

important as the act itself. Therefore, the terrorists' key objectives were: gaining media attention; national and international audiences; and access to decision-makers. This explained, also, why terrorist groups choose judiciously specific locations to carry out their violent acts, so as to gain wide media coverage.

Without dismissing the previous analysts' opinions, Nacos (2007) combined their findings in a comprehensive framework. She highlighted 'Four Media-Centered Goals': the first consisted of gaining the attention and awareness of a variety of audiences and, thus, intimidating their targets. The second goal was to convey their message in order that the public recognised the motives for their actions. The third was to obtain the respect and sympathy of those in whose name they conducted their violent acts. The final objective was to gain the same legitimacy; status; and treatment as enjoyed by political actors.<sup>185</sup>

### 3.4 Interdependence Media and Terrorism

Terrorism attracts media and media attract terrorism. It is a symbiotic relationship, although, in terms of proportions, the terrorists seem to need the media more than the media need them.<sup>186</sup> Current historical development showed that, during the last decade, there could be found several examples of the mutually beneficial relationship between terrorist groups and the media.<sup>187</sup> Analysts quote often Margaret Thatcher's famous statement "publicity is the oxygen of terrorism",<sup>188</sup> made during her time as British Prime Minister between 1979 and

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<sup>185</sup> B. L. Nacos, op.cit B. L. Nacos, *Mass-Mediated Terrorism: The Central Role of the Media in Terrorism and Counterterrorism*, Rowman & Littlefield, 2002 ,p.20

<sup>186</sup> A. C. Ekwueme and Rev. Fr. P. M. Obayi, 'Boko Haram Assault on Nigeria: Towards Effective Mass Media Response', *New Media and Mass Communication*, Vol. 5, 2012, at [www.iiste.org](http://www.iiste.org)

<sup>187</sup> D. Rohner and B. S. Frey. 'Blood and ink! The common-interest-game between terrorists and the media', *Public Choice*, 2007,133: pp. 129–145 [http://bsfrey.ch/articles/C\\_471\\_07.pdf](http://bsfrey.ch/articles/C_471_07.pdf)

<sup>188</sup> British Prime Minister, Margaret Thatcher, in R. W. Apple Jr., Meese Suggests Press Code on Terrorism,. *NewYork Times*, July 18, 1985.

1990, .<sup>189</sup> In some ways, Thatcher expressed explicitly what other politicians and government official preferred to formulate more subtly (and think privately). For her, things were straightforward; and, for the media, she suggested a very simple solution, however unrealistic, - not paying attention to terrorist acts and, consequently, to avoid reporting them. She considered that such an approach would withhold oxygen and dissuade further terrorism actions. Thatcher's assertion, derived from logical reasoning, might be plausible since one of the terrorists' main objectives was to convey a message of fear to people, whether involved in the action or not.

Nacos expressed a similar view in saying,

“While publicity has been a central goal of most terrorists throughout history, the means of communication have advanced from word-of-mouth accounts by witnesses to news reporting in the print press, radio, newsreel, and eventually television, which has greatly enhanced terrorists' propaganda capabilities. More recently, the World Wide Web has emerged as a new and the perhaps the most potent propaganda vehicle for terrorist groups and “lone wolves,” as well as for the advocates of political violence.” “Without massive news coverage the terrorist act would resemble the proverbial tree falling in the forest: if no one learned of an incident, it would be as if it had not occurred.”<sup>190</sup>

Ganor's statement, regarding the relationship between the media and terrorism, was even stronger,

“Terrorists are not necessarily interested in the deaths of three, or thirty – or even of three thousand - people. Rather, they allow the imagination of the target population to do their work for them. In fact, it is conceivable that the terrorists could attain their aims without carrying out a single attack; the desired panic could be produced by the

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<sup>189</sup> E. R. Muller; R. F. J. Spaaij, & A. G. W. Ruitenbergh, *Trends in terrorism*, Alphen aan de Rijn: Kluwer, Netherlands, 2003. See also J. D. Vieira, ‘Terrorism at the BBC: The IRA on British Television’, in A. O. Alali & K. K. Eke, *Media coverage of terrorism, methods of diffusion*. Sage: London, 1991, pp. 73-85.

<sup>190</sup> B. L. Nacos, “Accomplice or Witness? The Media's Role in Terrorism.” *Current History*, April 2000, Vol. 99 (636), p. 174-178.

continuous broadcast of threats and declarations – by radio and TV interviews, videos and all the familiar methods of psychological warfare.”<sup>191</sup>

Hoffman, another expert on terrorism, consolidated Nacos’ and Ganor’s perspectives by stating:

“With the help of the media – willingly or not – terrorism easily reaches global audience. Between media and terrorism, there exists a very interactive (symbiotic) relationship.”<sup>192</sup>

Later, the same author (Hoffman, 2006) went further later and argued that:

“without the media’s coverage the act’s impact is arguably wasted, remaining narrowly confined to the immediate victim(s) of the attack, rather than reaching the wider ‘target audience’ at whom the terrorists’ violence is actually aimed.”<sup>193</sup>

Generally however, media personnel dismissed Thatcher’s suggested course of action since it could be observed that mass media played a crucial role in disseminating and amplifying the terrorists’ messages. Reports, such as the one issued by the Sixth Framework Programme<sup>194</sup>, contended that, in fact, the media benefitted from terrorist acts. It was beyond contention that a relationship existed between the media and terrorism. However, it was legitimate to determine the nature of such a relationship and to find out whether, as stated by Thatcher, publicity was the oxygen of terrorists and if, in some ways, the media, benefitted from terrorist acts. It was said, sometimes, that the media and terrorists “sleep in the same bed, but with different dreams.” It was undeniable that the media thrived in reporting violence since such news increased the audience. Therefore, they reacted promptly

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<sup>191</sup> See B. Ganor, *Terror as a Strategy of Psychological Warfare*, International Institute for Counter-Terrorism, July 15, 2002 <http://212.150.54.123/articles/articledet.cfm?articleid=443>.

<sup>192</sup> B. Hoffman, *Inside Terrorism*, Columbia University Press, New York, 2003.

<sup>193</sup> Ibid, page 174.

<sup>194</sup> See “Terrorism and the Media”, TTSRL, July 23, 2008, Deliverable 6, Work package 4, <http://www.transnationalterrorism.eu/tekst/publications/WP4%20Del%206.pdf>.

when terrorist actions occurred. Publicising terrorism was very fruitful for the media, especially in reinvigorating their competitiveness in attracting a larger audience.<sup>195</sup>

Chenoweth stressed that:

“Sensational media coverage also serves the terrorists in their recruiting, teaching, and training techniques. The press, therefore, is inadvertently complicit in fulfilling terrorists’ objectives”.<sup>196</sup>

By their nature, the media had an insatiable appetite for unusual, disturbing, circumstantial, and highly dramatic stories. Mueller quoted what he termed as a cynical aphorism of a business newspaper:

‘If it bleeds it leads’ and its less obvious corollary, if it doesn’t bleed, it certainly shouldn’t lead and indeed, may not fit for print at all’.<sup>197</sup>

Jenkins observed that, for media outlets, it made no difference that ordinary crimes exceeded significantly the victims of terrorism. They did not allocate time proportionally according to the number of deaths in the world. They preferred to report on unusual, alarming, or dramatic circumstances. Therefore, it was rather very subjective.<sup>198</sup> The famous Brazilian guerrilla, Carlos Marighella, wrote in his guide ‘*Mini-manual of the Urban Guerrilla*’ that:

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<sup>195</sup> See B.L. Nacos “Terrorism and Media in the Age of Global Communication,” In: Hamilton, D.S., (Ed.), *Terrorism and International Relations*, 2006. Center for Transatlantic Relations: Washington, DC, p. 81-102. Nacos was quite explicit in the following statement:

“While I do not suggest that the news media favor this sort of political violence, it is nevertheless true that terrorist strikes provide what the contemporary media crave most – drama, shock, and tragedy suited to be packaged as human interest news.” pp. 81-82.

<sup>196</sup> See E. Chenoweth, *The Inadvertent Effects of Democracy on Terrorist Group Emergence*, (Document published as Discussion Paper at Belfer Centre for Science and International Affairs), June 2006, [http://belfercenter.ksg.harvard.edu/files/chenoweth\\_2006\\_06.pdf](http://belfercenter.ksg.harvard.edu/files/chenoweth_2006_06.pdf)

<sup>197</sup> J.E. Mueller, *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats and why we believe them*, Free Press, New York, 2006, p. 40.

<sup>198</sup> B. M. Jenkins, ‘The Psychological Implications of Media-covered Terrorism’, *Rand Paper Series*, 1981, p.2, <http://www.rand.org/pubs/papers/2005/P6627.pdf>.

“The war of nerves or psychological war is an aggressive technique, based on the direct or indirect use of mass means of communication and news transmitted orally in order to demoralize the government. In psychological warfare, the government is always at a disadvantage since it imposes censorship on the mass media and winds up in a defensive position by not allowing anything against it to filter through.”<sup>199</sup>

### 3.5 Terrorism as a Communicative Action

“A wider consideration of terrorism from a communicative prism leads to see it as a communicative action”.<sup>200</sup>

Zurutuza referred to Laqueur who considered terrorism to be “propaganda by deeds” since its violent acts constituted a kind of publicity claim to attract the attention of audiences towards the terrorist groups’ demands.<sup>201</sup>

In such a situation, terrorists needed mass media and prepared carefully their violent actions in order to ensure wide press coverage in prime time and to reach the maximum audience possible. Since most of the audience did not witness their deeds, the media were expected to be and were used as loudspeakers. The success of an act “depends almost entirely on the amount of publicity it receives”.<sup>202</sup> Zurutuza insisted on the peculiarity of terrorism as a communicative action because she was unconvinced by those who considered terrorist violence to be an end in itself. Jenkins seemed to share the same opinion in stating that the terrorists’ real concerns were not the number of victims of their violent deeds but how many people would watch later.<sup>203</sup> For Schmid, the real aim was to terrify people and undermine

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<sup>199</sup> C. Marighella, ‘Mini-manual of the Urban Guerrilla’ in Jay Mallin, *Terror and Urban Guerrillas. A Study of Tactics and Documents*, University of Miami Press: Florida, 1982, p.104.

<sup>200</sup> C. Zurutuza, ‘Terrorism as a Communicative Action: a proposal for the study of government response’, in Banu Baybars Hawks & Lemi Baruh, *Societies under Siege: Media, Government, Politics, and Citizens’ Freedoms in an Age of Terrorism*, 2010, p.18, (international conference held at Kadir Has University, Istanbul in 2009), <http://www.khas.edu.tr/uploads/pdf-doc-vb/SocietiesUnderSiege.pdf>.

<sup>201</sup> W. Laqueur, *Terrorism*, Weidenfeld and Nicolson: London, 1977.

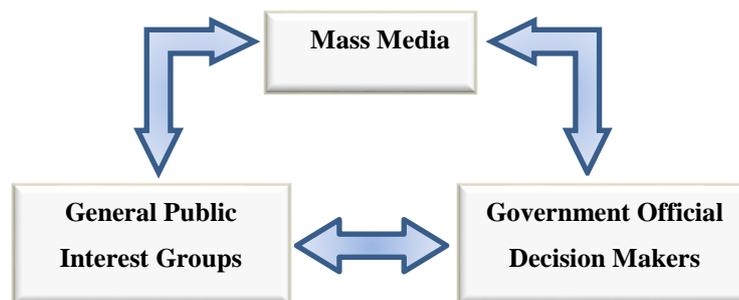
<sup>202</sup> Ibid.p.135.

<sup>203</sup> B.Jenkins, “Should Our Arsenal against Terrorism Include Assassination?” Rand Paper P-7303, January 1987.

authorities. Violence was used to communicate with a certain category of people. The victims were not the priority, they were only instrumental. Therefore, violence was a message for third parties.<sup>204</sup> Karber stated that,

“The terrorist’s message of violence necessitates a victim, whether personal or institutional, but the target or intended recipient of the communication may not be the victim”.<sup>205</sup>

Tuman observed that the communicative action (i.e. terrorism) expected a response in the sense of raising public awareness of the terrorists’ ‘legitimate’ demands and, thus, increasing pressure on governments).<sup>206</sup> Violence was a meticulously planned and choreographed spectacle, intended to allow access to the media circuit. The media, willingly or involuntarily, ensured, by their presence, the entry of terrorists into the political communication triangle (see Figure 1.1), constituted by citizens; mass media; and public institutions.<sup>207</sup>



**Figure 1.1: The Triangle of Political Communication (Nacos, 2007, 15)**

<sup>204</sup> A. P. Schmid, 'Frameworks for Conceptualising Terrorism', *Terrorism and Political Violence*, 2004, Vol.16 (2), pp.197-221, available online at:

[http://www.olympiaseminars.org/2012/readings/Cycle\\_C/Schmid\\_Conceptualizing%20Terrorism.pdf](http://www.olympiaseminars.org/2012/readings/Cycle_C/Schmid_Conceptualizing%20Terrorism.pdf)

<sup>205</sup> P. Karber, 1971, 'Urban terrorism: Baseline data and a conceptual framework', *Social Science Quarterly*, 52, p. 529. Article available online at:

<sup>206</sup> J. S. Tuman, *Communicating terror: The rhetorical dimensions of terrorism*, Sage: California, 2003.

<sup>207</sup> B.L. Nacos, *Mass-Mediated Terrorism: The Central Role of the Media in Terrorism and Counterterrorism*, (2nd edition) (2007), Lanham, Md.: Rowman & Littlefield Publishers, Inc. p.15.

Weimann and Winn adopted the metaphor of violence as a staged performance for people “whose discourse has a script and whose actions are choreographed to achieve the exposure and media attention”.<sup>208</sup>

### 3.6 Terrorist Use of the Internet

In modern times, the means and variety of universally available communication has attracted terrorist groups which saw, in the internet and other modern electronic devices, a real opportunity to spread their messages, using media instruments of great convenience. The new and emerging media facilitated the spreading of terrorist publications through websites. Baran highlighted the benefits of the electronic revolution by stating that:

“New technologies have simply allowed the dissemination of terrorist messages to reach a broader audience with a more concise message”.<sup>209</sup>

In the same vein, Michel Moutot, a French journalist from the Agence France Press (AFP), observed that terrorists did not need any more to strive in conveying their messages. Having replaced the ‘official’ media, the Internet was much quicker and it was more effective to use it.<sup>210</sup> Therefore, in the field of terrorism, the Internet appeared to have supplanted efficiently the conventional media since, now, terrorist groups were able to edit and broadcast, on a global scale, any message or programme which they wanted.<sup>211</sup> By reaching various audiences, either through the “old” or the “new” media, terrorists’ material could serve to attract more people to their cause. Consequently, the Internet appeared to be an instrument

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<sup>208</sup> G. Weimann & C. Winn, *The theater of terror: Mass media and international terrorism*, Longman: New York, 1994, p. 14.

<sup>209</sup> M. R. Torres Soriano, ‘Terrorism and the Mass Media after Al Qaeda: A Change of Course?’, *Athena Intelligence Journal*, 2008, Vol. 3, No 1, pp. 1-20,  
[http://www.upo.es/export/portal/com/bin/portal/upo/profesores/mrtorsor/profesor/1213692696893\\_al\\_qaeda\\_and\\_the\\_mass\\_media-athena.pdf](http://www.upo.es/export/portal/com/bin/portal/upo/profesores/mrtorsor/profesor/1213692696893_al_qaeda_and_the_mass_media-athena.pdf)

<sup>210</sup> B. L. Nacos, *Mass-Mediated Terrorism: The Central Role of the Media in Terrorism and Counterterrorism*, Rowman & Littlefield, 2002

<sup>211</sup> B. Klopfenstein, ‘Terrorism and the exploitation of media’, in A. P. Kavoori and T. Fraley (eds), *Media, Terrorism, and Theory*, Rowman and Littlefield, USA, 2006, pp.107-120.

which increased the spread of terrorist propaganda and furthered their operational objectives at little expense or risk.

### 3.7 Governments and Media

In developing countries where dictatorships predominate, the interference, of governments in the control of the media, was a well-known fact. However, it was more surprising when the censorship was sought to be imposed by a representative of the country which was the promoter of the Freedom of Speech enshrined in its constitution.<sup>212</sup>

Price reported that:

“In the opening days of the war in Afghanistan, Secretary of State Colin Powell called the Emir of Qatar seeking his cooperation in moderating the views of Al Jazeera, the now famous satellite service with an important demographic of Arab viewers.”<sup>213</sup>

Before the September 11 2001 events, Al Jazeera was seen as a source of hope in a region where the media were under the governments’ strict control. However, perceptions changed following the American led invasion of Afghanistan. Many officials, in the American

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<sup>212</sup> United States First Amendment – Annotation 6: Freedom of Expression--Speech and Press

Adoption and the Common Law Background

Madison's version of the speech and press clauses, introduced in the House of Representatives on June 8, 1789, provided: "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."<sup>1</sup> The special committee rewrote the language to some extent, adding other provisions from Madison's draft, to make it read: "The freedom of speech and of the press, and the right of the people peaceably to assemble and consult for their common good, and to apply to the Government for redress of grievances, shall not be infringed."<sup>2</sup> In this form it went to the Senate, which rewrote it to read: "That Congress shall make no law abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and consult for their common good, and to petition the government for a redress of grievances."<sup>3</sup> Subsequently, the religion clauses and these clauses were combined by the Senate.<sup>4</sup> The final language was agreed upon in conference. See Annotation 6 - First Amendment, *Freedom Of Expression--Speech And Press*, FindLaw, available online at: <http://constitution.findlaw.com/amendment1/annotation06.html#1>

<sup>213</sup> M. E. Price, *Media and Sovereignty: The Global Information Revolution and its Challenge to State Power*, Massachusetts Institute of Technology: Massachusetts, 2002, p.6.

Administration, considered the Arab channel to be hostile to its declared campaign against terrorism. In private, the Arabic media was labelled as the “media of the terrorist”. Broadcasting Osama Bin Laden’s videos of was a matter of real concern for the American administration.

Several methods were used to make the Arabic channel friendlier to the American perspective and foreign policies. However, as well as constant efforts to try to convince Al Jazeera to renounce from airing what they saw as propaganda, the Americans used, also, another technique by proposing that the channel conducted a series of interviews with its officials in order to counter balance the Islamic perspective. In addition, the State Department considered buying air time on Al Jazeera in order to send positive advertisements to the huge number of Arab viewers, and to present a better image than that of its soldiers invading and occupying Arab lands militarily.

The US Administration tried, also, to promote new competitors to Al Jazeera, through finance or other means, such as giving them access to satellite services. The American bombing of Al Jazeera offices in Kabul and Baghdad represented another means of intimidating the Arab media and deterring other media outlets from following similar lines. Indeed, Al Jazeera represents a case study in understanding the behaviour of powerful nations and their governments which are keen to modify the infrastructures and the market to control and influence the conveyance of messages.

### **3.8 Laws and Human Rights in the United Kingdom**

In the United Kingdom, although such rights were not assured by a single codified constitution, the early recognition of human rights for its citizens occurred long before most other countries in the world. However, at the beginning of the twenty-first century, the non-

legislative tradition was abandoned with the passing of the Human Rights Act 1998 (HRA);<sup>214</sup> this helped to codifying most of the rights enshrined within the ECHR.<sup>215</sup>

### 3.8.1 The Development of Human Rights in the United Kingdom

This part, of the thesis, gives an overview of the concept of human rights and how that concept developed because, mainly, the freedom of expression and free media were integral parts of human rights. Amongst the United Kingdom's nations, England and Wales do not have a codified constitution, whilst Northern Ireland and Scotland do.<sup>216</sup> The secular antagonism between Britain and France, once the two major world powers, might explain the divergence between the two countries in terms of political organization. Yet, there are more tangible and obvious reasons to understand why the European states' adoption of constitutions by was not emulated in Britain. As a geographical entity, Britain, separated from the continent, is, also, intentionally distinct from its continental neighbours. However the revolutionary concepts of the 1789 French Revolution, which became constitutional principles, were not alien to the UK. The *Magna Carta Libertatum* goes back to 1215, whilst the *Statute of Due Proces*', based on the principle of due process, was adopted in 1354. Nowadays, English courts invoke still both the Magna Carta and the concept of due process which, in 1689, was integrated into the English Bill of Rights.<sup>217</sup>

The relatively recent adoption of the Human Rights Act 1998 was exceptional since the UK had not promulgated previously any *written* constitutional statement on human rights.

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<sup>214</sup> In Scotland, the Human Rights Act came into force in 1999. See Kühne (2006)

<sup>215</sup> The European Convention on Human Rights was ratified by the United Kingdom in 1951.

<sup>216</sup> The constitution for Scotland was provided by the Scotland Act 1998, whilst Northern Ireland had a written Constitution from 1973 onwards; this was repealed and replaced, in large part, by the Northern Ireland Act 1998.

<sup>217</sup> In 2001, the case *Lewis v. Attorney-General of Jamaica*, [2001] 2 A.C. 50 (P.C. 2000), in which five Jamaican men sentenced to death appealed the constitutionality of the execution of the sentence, on the grounds that the method of execution, constituted a form of cruel and inhuman punishment contrary to both Magna Carta and the English Bill of Rights. Slynn (2005)

English judges estimated that it was unnecessary to positively create such rights since English law was founded upon the conviction that individuals were free to behave as they wanted as long as they did not infringe the law.<sup>218</sup> Thus, the absence of legal restrictions or prohibitions were considered essentially as appropriate evidence for the existence of a right. English liberal pragmatism might be, also, a further reason for the absence of codified fundamental rights.<sup>219</sup>

In the twentieth century, however, the situation changed significantly: in 1950, the European Convention of Human Rights was adopted and was ratified by the UK in 1951. In fact it was the first state to do so.<sup>220</sup> In the same spirit, as early as 1966 the UK granted its citizens the right to lodge complaints directly before the European Court of Human Rights.<sup>221</sup> However, despite this early ratification, the ECHR's influence on UK's legal system was rather limited (though not negligible),<sup>222</sup> when compared with the influence it had in other countries which ratified it.<sup>223</sup>

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<sup>218</sup> See H-H. Kühne, (2006) *Strafprozessrecht - Eine systematische Darstellung des deutschen und europäischen Strafrechts*. Heidelberg: C. F. Müller

<sup>219</sup> See J. Rivers (2001), *Menschenrechtsschutz im Vereinigten Königreich*. *Juristenzeitung* 3: 127-132

<sup>220</sup> Following the human tragedies, committed since WWI, and in order to protect human rights, international institutions and tribunals were established. Thus, the Charter of the United Nations and the Universal Declaration on Human Rights extended beyond national boundaries which, hitherto, had only domestic regard for human rights. See Spencer (1999).

<sup>221</sup> See J.R.Spencer; N. Padfield (2006) *L'intégration des droits européens en droit britannique*. *Rev. Sc. Crim.* 3: 537-550

<sup>222</sup> The ECtHR rulings led to important changes in the law of criminal procedure. For instance, in the case of *Republic of Ireland vs. UK* (1978) 2 EHRR 25, the Strasbourg court ruled that the interrogation techniques, used during the troubles in Northern Ireland, were in clear violation of Art. 3., which prohibited torture and inhuman or degrading treatments. Promptly, the UK legislators drafted the Police and Criminal Evidence Act 1984 which was, in fact, a revision of the English law on criminal procedure and evidence. The Section 76, of this Act, specifies that confessions, obtained through inhuman or degrading treatment, were deemed unacceptable. See Spencer (1999).

<sup>223</sup> For instance, in the Netherlands, the ECHR is applicable directly. For this country, the particularity is the fact that international law ranks higher than domestic law, inducing courts to apply the ECHR. See Swart (1999).

International treaty obligations do not bind UK courts unless they are incorporated into domestic statutes. This confirms the UK's dualist tradition in this field,<sup>224</sup> since courts are expected to apply domestic law, assuming that it would not differ substantially from the ECHR, and, in such a situation, interpreting it to conform. Nevertheless, where domestic law clashed with the European Convention, the courts were supposed to continue to apply domestic law.<sup>225</sup>

In the UK, the limited application of the ECHR - prior to the passage of the Human Rights Act 1998<sup>226</sup> – might be the result of the British parliamentarians' perception of the concept of sovereignty by.<sup>227</sup> The British insist on the fact that, in any liberal democracy, the laws, drafted by a sovereign and elected parliament, represent the will of the people. Accordingly, in British courts, British judges are expected to implement such laws implemented by without having to question them or to test their validity against what is deemed to be "higher" legal principles.<sup>228</sup> Nowadays, the British argument, regarding the concept of parliamentary sovereignty, is contested increasingly in view of international geopolitical developments which affect traditional concepts of national sovereignty. At the international level, the promulgation of human rights namely the founding of the European Court of Human Rights,

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<sup>224</sup> Nevertheless, Warbrick (2004) believed that the dualism in question was fading when it came to human rights. Spencer and Padfield (2006) examined, in-depth, the relationship between UK's law and European rights.

<sup>225</sup> Thus, in *Regina v Secretary of State for the Home Office, ex parte Brind* [1991] 1 AC 696, the UK government did not allow the BBC's diffusion of interviews with representatives of some North Ireland organisations, such as Sinn Fein. However, the journalists' claim that the interdiction was in violation of the European Convention (Art. 10) was rejected by the Law Lords who argued that the law, which authorised the Home Secretary to ban a particular programme, had to be implemented, regardless of the articles of the mentioned Convention.

<sup>226</sup> The Human Rights Act of 1998 came into force in October 2000.

<sup>227</sup> This was asserted clearly in the Government's White Paper on human rights "*the courts should not have the power to set aside primary legislation (...) on the ground of incompatibility with the Convention. This conclusion arises from the importance which the Government attaches to parliamentary sovereignty.*" Secretary of State (1997) Secretary Of State (1997), at 2.13

<sup>228</sup> For example, the constitutional rights of citizens.

and the creation of the European Union, convinced many European states involved to relinquish some of their powers to this relatively newly constituted body.<sup>229</sup>

The adoption, of the HRA 1998, did influence the British courts as regards human rights matters. Through their enshrinement in statute, many of the European Convention's guarantees became important in terms of the hierarchy of norms; this prevails over case-law in the UK. It was mentioned earlier that, when a conflict occurred between domestic law and the European Convention before the HRA came into force, domestic law prevailed.<sup>230</sup> Now, the enactment of the HRA 1998 obliged national courts to apply the Act equally with the implementation of other domestic statutes. The HRA 1998, itself, had a subsequent effect on the way in which courts reconsidered the traditional law on human rights. Section 3(1) stated that where possible other laws ought to be interpreted in accordance with the Convention.<sup>231</sup> Consequently, in the UK, what is known as "the literal rule" of statutory interpretation was abandoned. This rule meant that, if the wording was unambiguous, a clear legal text ought to be interpreted literally. Section 3 of the Human Rights Act 1998<sup>232</sup> made such an interpretation obsolete because, now, the courts were expected to interpret the text according to the Convention.<sup>233</sup>

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<sup>229</sup> Elliott (2007) mentioned the case, examined by the House of Lords, of *Jackson (House of Lords, Regina (on the application of Jackson) v Attorney General*, 13 October 2005, UKHL 56, 2006 1 AC 262. During that session Lord Steyn stated that a "pure and absolute" conception of parliamentary sovereignty was "out of place" in modern Britain, whilst Lord Hope confirmed his peer position by saying that "parliamentary sovereignty is no longer, if it ever was, absolute".

<sup>230</sup> See the Case *Saunders* [1996] 1 CrAppR 463, when British legislation obliged Saunders to answer questions, and, later, used his answers in court as evidence against him. Such dealing is contrary to the "fair trial" principles under Art. 6(1) of the European Convention. The English Court of Appeal held that English courts could have recourse to the European Convention on Human Rights and decisions thereon by the European Court of Human Rights only in the case of ambiguity in the UK's law. Following the appeal, made by Saunders, at the Strasbourg Court, this Court ruled later that Art. 6(1) of the ECHR had been breached, in view of the disrespect for the right to silence enshrined in the fair trial principle of Art. 6(1) (*Saunders v UK* (1997) 23 EHRR 313).

<sup>231</sup> S. 3(1) of the Act stated that: "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

<sup>232</sup> S. 3(1) read as follows: "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

<sup>233</sup> See J.R. Spencer; N. Padfield (2006) L'intégration des droits européens en droit britannique. *Rev. Sc. Crim.* 3: 537-550

In practice, judges were determined to find consistencies between their traditional laws and the European Convention. They keep trying to make the existing laws compatible with the ECHR, using wide and far-reaching interpretations to this end.<sup>234</sup> In the case of complete impossibility of interpreting domestic law according to the ECHR, Spencer mentioned two distinct situations. In the case of domestic *case-law*, since the enactment of the HRA 1998, the ECHR had to prevail, whilst, in the case of incompatibility between domestic *statutory* law and the ECHR, the domestic law had to prevail.<sup>235</sup>

The solution found by the courts, in order not to contravene the norms imposed through the European Convention of human rights, was to declare their incompatibility; without affecting the validity of the norms, this was meant to draw the government's attention to the problem raised and to prompt British legislators to alter the law according to the HRA's requirements. In case the government was well intentioned and decided to make the required changes, a special 'fast track' procedure existed.<sup>236</sup> Consequently, the place, given to the human rights provided by the Convention, was reinforced certainly, although it did not have the same authority as the constitution in other countries.<sup>237</sup> Another important procedure is that, once new legislation is adopted, the government must issue a statement confirming that the new Bill is in accordance with the European Convention.<sup>238</sup>

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<sup>234</sup> See Slynn (2005); The House of Lords confirmed this practice when it stated that Art. 3 of the HRA 1998 demanded interpretation in conformity with the Convention, although in the case of incompatibility with the clear wording of a domestic provision (*Sheldrake v Director of Public Prosecutions* [2004] UKHL 43 (para. 44)). See also Elliott (2007).

<sup>235</sup> See J.R. Spencer (1999) English Criminal Procedure and the Human Rights Act 1998. *Israel Law Review* 33: 664-677

<sup>236</sup> See s. 10 and schedule 2 of the HRA 1998, and Elliott and Quinn's study (2006)

<sup>237</sup> Such as in the United States, Germany or Spain, to name a few

<sup>238</sup> 67 S. 19(1) of the Act.

A close examination of the competent organs, which may ensure compliance with human rights, should not prevent underlining the fact that, due to the parliamentary sovereignty mentioned earlier, in Britain, the courts' influence on legislative decisions is extremely limited. There is not any particular domestic legal proscription on legislating in a way which is inconsistent with fundamental human rights.<sup>239</sup> This is despite the fact that House of Lords and Supreme Court rulings show an increasing respect for human rights and are considered seriously by the British government.<sup>240</sup>

Although there is no pressure or legal compulsion on legislating in conformity with human rights, until now it can be said that there is good will and a real intention to legislate according to the international norms of human rights.<sup>241</sup> Nonetheless, writers, such as Elliott, underlined the enduring risks by stating that majority rule could undermine the review of executive or legislative actions.<sup>242</sup> In the UK, the absence, of a constitution, suggests necessarily the nonexistence of a constitutional court which, in case of a violation of his human rights, induces a British citizen to refer to the European Court of Human Rights<sup>243</sup>.

Indeed, the absence, of an internal instrument to ensure the respect for human rights, was one of the main reasons for finding, in Strasbourg, a relatively high percentage of cases from

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<sup>239</sup> Elliott, (2007). Another writer, Spencer underlined as well that: "*If there is one matter of principle on which British politicians of all shades of opinion seem invariably to agree, it is the importance of preserving the sovereignty of Parliament.*" See Spencer (1999).

<sup>240</sup> As the adoption of the Prevention of Terrorism Act 2005 proved, this was a clear reaction to the House of Lords' Declaration of incompatibility of indefinite detention of foreign terrorist suspects (s. 23 of the Anti-Terrorism, Crime and Security Act 2001) with Arts. 5 and 14 ECHR (*A & Others v. Secretary of State for the Home Department*, [2004] UKHL 56)

<sup>241</sup> 70 For instance, this will was manifested, by the fact that, in order to prevent infringement of Art. 5 ECHR, the British legislator issued derogations from Art. 5 ECHR, invoking Art. 15 ECHR, (Elliott (2007), at 6 and 7)

<sup>242</sup> Elliott stated that "under the UK's present constitutional arrangements, the jurisdiction of British courts to review executive and legislative action for compatibility with human rights norms ultimately remains vulnerable to majority rule."

<sup>243</sup> Under Art. 34 of the European Convention of Human Rights

the UK.<sup>244</sup> Nevertheless, in certain circumstances, the Supreme Court (formerly the House of Lords), the highest national court, makes rulings on the compatibility of British law and jurisprudence with the Human Rights Act 1998.<sup>245</sup> These cases are considered for this study, especially those linked with anti-terrorism legislation. It is important to observe that there is no need to compare the number of cases, which the UK submitted to the ECtHR, with the number of other states' cases where judgments were made by constitutional courts. This is because, depending on the country being considered, the requirements regarding the admissibility and merits are different.

At the Constitutional Courts level and contrary to what happens usually on the European mainland, , the number of cases, dealt with by the Supreme Court is very small. In addition, a high degree of discretion is present when deciding whether or not it is necessary to rule on the submitted matter<sup>246</sup>. Its judgments are confined to elements of the law which the Court of Appeal considers to be essential.<sup>247</sup> Therefore of the are not so, although they are more considered and elaborate compared to judgments made by other countries' constitutional

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<sup>244</sup> See C. Warbrick. 2004. Emergency Powers and Human Rights: The UK Experience. In *Legal Instruments in the Fight Against International Terrorism – a transatlantic dialogue*, ed. JWIN C. Fijnaut, pp. 361-408. Leiden, Boston Martinus Nijhoff Publishers

<sup>245</sup> The rulings of the House of Lords, made since 1996, are available online at <http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm>

<sup>246</sup> This was suggested in s. 33(2) of the Criminal Appeal Act 1968, which stated: “*The appeal lies only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.*” The formulation “shall not be granted unless...” suggests that the general rule is, in fact, not to grant the appeal, except if the matter presents an importance to the general public importance or the Court of Appeal or the House of Lords considered that it was relevant to rule upon it.

<sup>247</sup> See s. 12(3) of the Administration of Justice Act 1969 (c. 58).

courts, there are not so many Supreme Court's rulings.<sup>248</sup> The Supreme Court's decisions have a binding effect on all other British courts.<sup>249</sup>

As regards the ECtHR, Elliott and Quinn mentioned that its place, within British courts, was not defined in an adequate way.<sup>250</sup> Section 2 of the HRA 1998 stated that a British court was required only to take account of the cases decided by the ECtHR. The latter's decisions were not binding. In reality, British courts followed the ECtHR's jurisprudence since they risked having their rulings defeated by Article 81 of the ECtHR. Nevertheless, there were exceptions when that jurisprudence was not followed.<sup>251</sup>

### 3.9 Human Rights and Anti-terrorist Legislation in The United Kingdom

In 2005, Lord Hoffman, concerned with the UK government's response to terrorist acts, made a strong statement in the House of Lords:

"I do not underestimate the ability of fanatical groups of terrorists to kill and destroy, but they do not threaten the life of the nation. The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory".<sup>252</sup>

### 3.10 Human Rights in the UK after the Second World War

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<sup>248</sup> For instance, the House of Lords adopted only 79 decisions in 2000, compared with the 429 decisions in German *Bundesverfassungsgericht*, and the 312 decisions of the Spanish *Tribunal Constitucional*. The lowest number was registered in France with the *Conseil Constitutionnel* adopting only 43 decisions by.

<sup>249</sup> Until 1966, they bound, also, subsequent decisions of the House of Lords. In 1966, the Lord Chancellor issued a Practice Statement saying that the House of Lords were no longer bound by its previous decisions. In practice, the House of Lords overrules only rarely one of its earlier decisions. See Elliott and Quinn (2006).

<sup>250</sup> Thus, in *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions*, [2001] UKHL 23, the House of Lords held: "In the absence of some special circumstances it seems to me the court should follow any clear and constant jurisprudence of the European Court of Human Rights. If it does not do so there is at least a possibility the case will go to that court which is likely in the ordinary case to follow its own constant jurisprudence." In fact, this view resembled the view taken by most courts in continental countries. It made the difference between case law and written legislation less rigid since, although, in theory, they were allowed to do so. In practice, judges, in continental legal systems, were, also, reluctant to deviate from High Court decisions,.

<sup>251</sup> C. Elliott and F. Quinn (2006). *Criminal Law*, Longman,

<sup>252</sup> Lord Hoffman, in House of Lords, *A (FC) and others (FC) v Secretary of State for the Home Department*, [2005] UKHL 71, at 96 and 97.

As the oldest democracy, the UK has one of the longest traditions of human rights.<sup>253</sup> However, the UK was confronted with terrorism for a longer period than any other European country. Although some anti-terrorist laws existed before this period, this section sheds light on the UK's terrorism laws after the Second World War. For decades, the challenge, represented by the IRA in the Northern Ireland conflict, induced the adoption of special legislation. For instance, the Civil Authorities (Special Powers) (Northern Ireland) Act 1922 represented the most extensive of the special measures allowing Unionist control of Northern Ireland.<sup>254</sup> Prevention of Terrorism Acts, which came into force between 1974 and 1989, were based on the Prevention of Violence Act 1939;<sup>255</sup> this was repealed in 1973.<sup>256</sup>

In the 1960s and early 1970s, the escalation of violence in Northern Ireland compelled the British government to suspend the Northern Ireland Parliament in 1972,<sup>257</sup> and to introduce Direct Rule.<sup>258</sup> However, the Direct Rule system did not remove the existing emergency legislation. The UK Government's claim, that the 1973 Northern Ireland (Emergency Provisions) Act (EPA)<sup>259</sup> was a replacement for various Special Powers Acts enacted between 1922 and 1943, was questioned by Donohue, who observed that the new "statute

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<sup>253</sup> Which goes back as early as 1215, with The *Magna Carta*, which provided already the *habeas corpus* rule.

<sup>254</sup> See *Civil Authorities (Special Powers) Act (Northern Ireland), 1922*, CAIN Web Service, available online at: <http://cain.ulst.ac.uk/hmsso/spa1922.htm>

<sup>255</sup> The *Prevention of Violence Act 1939* was a response to the Irish Republican Army (IRA) campaign of violence from 1939 to 1940, known as the S-Plan, against the UK's civilian; economic; and military infrastructures. The 1939 act expired in 1953 and was repealed in 1973 and replaced by the Prevention of Terrorism Act.

<sup>256</sup> G. Ísaksson. (2009). Human rights against anti-terrorist laws: Are human rights in the UK in jeopardy because of the nation's increasing anti-terrorist laws? University of Akureyri

<sup>257</sup> The Northern Ireland Parliament represented the home rule legislature of Northern Ireland, founded by the *Government of Ireland Act 1920*; this body functioned from 7 June 1921 to 30 March 1972. It was abolished subsequently under the Northern Ireland Constitution Act 1973.

<sup>258</sup> Direct rule was a political system which referred to the administration of Northern Ireland directly from Westminster, seat of the British Parliament. According to the terms of a new Temporary Provisions Act, the Direct Rule was established, for the first time, on 28 March 1972. This system was abolished finally on 8 May 2007, with the holding of elections and the creation of the Northern Ireland Assembly.

<sup>259</sup> The main characteristics, of the Northern Ireland (Emergency Provisions) Act 1973, was the abolition of the death penalty in Northern Ireland, and the establishment of the Diplock courts, where terrorism related offences were tried by a judge without jury. Its anti-terrorism provisions were replaced by subsequent legislation. See *Northern Ireland (Emergency Provisions) Act 1973*, Legislation.gov.uk, available online at: [http://www.legislation.gov.uk/ukpga/1973/53/pdfs/ukpga\\_19730053\\_en.pdf](http://www.legislation.gov.uk/ukpga/1973/53/pdfs/ukpga_19730053_en.pdf)

simply renamed the vast majority of the regulations”.<sup>260</sup> She underlined that the 1973 EPA kept unaltered the Government’s extensive powers in terms of “detention, proscription, entry, search and seizure, restrictions on the use of vehicles, the blocking of roads, the closing of licensed premises, and the collection of information on security forces”.<sup>261</sup>

In the Diplock Report, two essential changes were made: the abolition of the jury system and, irrespective of the offender’s motivation, the establishment of certain crimes as “scheduled offences” (i.e. terrorist crimes).<sup>262</sup>

The general powers, allocated to the Civil Authority in Northern Ireland, were retained by the UK government, through the authority given to its representative, the Secretary of State

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<sup>260</sup> See L. K. Donohue, *Civil Liberties, Terrorism, and Liberal Democracy: Lessons from the United Kingdom*

HARVARD Kennedy School archive, 2000, p.4, available online at: [http://www.hks.harvard.edu/var/ezp\\_site/storage/fckeditor/file/pdfs/centers-programs/centers/taubman/working\\_papers/donohue\\_00\\_civillib.pdf](http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/taubman/working_papers/donohue_00_civillib.pdf)

<sup>261</sup> Ibid. p. 4

<sup>262</sup> See Report of the Commission to Consider Legal Procedures to deal with Terrorist Activities in Northern Ireland. In the Summary and Conclusion of the report it is highlighted that scheduled offences referred to terrorist crimes.

(f) Recommended changes in the administration of justice, unless otherwise stated, apply only to cases involving terrorist crimes, defined as scheduled offences (paragraphs 6, 7, 114-119 and the Schedule).

(g) Trials of scheduled offences should be by a Judge of the High Court, or a County Court Judge, sitting alone with no jury, with the usual rights of appeal (paragraphs 35-41).

(h) The armed services should be given power to arrest people suspected of having been involved in, or having information about, offences and detain them for up to four hours in order to establish their identity (paragraphs 42-50).

(i) Bail in cases involving a scheduled offence should not be granted except by the High Court and then only if stringent requirements are met (paragraphs 51-57).

(j) The onus of proof as to the possession of firearms and explosives should be altered so as to require a person found in certain circumstances to prove on the balance of probabilities that he did not know and had no reason to suspect that arms or explosives were where they were found (paragraphs 61-72).

(k) A confession made by the accused should be admissible as evidence in cases involving the scheduled offences unless it was obtained by torture or inhuman or degrading treatment; if admissible it would then be for the court to determine its reliability on the basis of evidence given from either side as to the circumstances in which the confession had been obtained (paragraphs 73-92).

for Northern Ireland to “make provisions additional to the foregoing provisions of this Act for promoting the preservation of the peace and the maintenance of order”.<sup>263</sup>

Originally, as its name suggests, the Emergency Provisions Act 1973 (EPA) was intended to be, only a temporary measure. In 1974, Merylin Rees, the Secretary of State for Northern Ireland stated that “The [1973 EPA] makes emergency provisions and is by its nature temporary, to cover the period of an emergency. If its provisions are to be renewed, clearly it is necessary to demonstrate that the emergency continues in force.”<sup>264</sup> However, it remained in force for twenty-six years.

In 1975, the UK Government amended the 1973 Act and, three years later, enacted the Northern Ireland (Emergency Provisions) Act 1978.<sup>265</sup> Further successive EPAs, enacted

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<sup>263</sup> G.F.Ísaksson. (2009)*Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws?*, University of Akureyri, Faculty of Law and Social Sciences, Law division, Iceland..

<sup>264</sup> See House of Commons debate, *Northern Ireland (Emergency Provisions)*, (intervention of the Secretary of State, Mr Merylin Rees), House of Commons, Deb 09 July 1974 Vol. 876 cc1273-31 available online at: <http://hansard.millbanksystems.com/commons/1974/jul/09/northern-ireland-emergency-provisions>

<sup>265</sup> In the introduction of the Act (23 March 1978), it was stated that it was “An Act to consolidate, with certain exceptions, the Northern Ireland (Emergency Provisions) Act 1973, the Northern Ireland (Young Persons) Act 1974 and the Northern Ireland (Emergency Provisions) (Amendment) Act 1975. See *Northern Ireland (Emergency Provisions) Act 1978*, Legislation.gov.uk, available online at: [http://www.legislation.gov.uk/ukpga/1978/5/pdfs/ukpga\\_19780005\\_en.pdf](http://www.legislation.gov.uk/ukpga/1978/5/pdfs/ukpga_19780005_en.pdf)

respectively in 1987;<sup>266</sup> 1991;<sup>267</sup> and 1996<sup>268</sup>, whilst expanding certain powers and suspending others, followed mainly the previous legislation.

The argument, regarding the preservation of the 1973-96 Emergency Provisions Acts, (EPAs') changed slightly, becoming an essential instrument in the on-going fight against terrorism.<sup>269</sup>

Accordingly, for the mainland, the UK adopted the Prevention of Terrorism Acts (PTA), and the Emergency Provisions Acts (EPA) for Northern Ireland. It was decided to deal with terrorist acts mainly through the criminal justice process; occasionally modified, to a certain extent, in order to face the different problems resulting from the nature of terrorist groups and their intimidation methods of people; witnesses; or jurors.<sup>270</sup> The new wave of terrorist acts, perpetrated since the beginnings of the twenty-first century has concerned British

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<sup>266</sup> The Northern Ireland (Emergency Provisions) Act 1987 was repealed on 27 August 1991. The first part of the Act consisted of the Amendments of the EPA 1978. The following list represented the changes made

1. Limitation of power to grant bail in case of scheduled offences.
2. Maximum period of remand in custody in case of scheduled offences.
3. Power of Secretary of State to set time limits in relation to preliminary proceedings for scheduled offences.
4. Court for trial of scheduled offences.
5. Admissions by persons charged with scheduled offences.
6. Entry and search for purpose of arresting terrorists.
7. Power to search for scanning receivers.
8. Power of Secretary of State to direct the closure etc. of roads.
9. Additional offence relating to proscribed organisations.
10. Extension of categories of persons about whom it is unlawful to collect information.
11. Offences relating to behaviour and dress in public places.
12. Compensation.
13. Expiry and eventual repeal of 1978 Act.

<sup>267</sup> Northern Ireland (Emergency Provisions) Act 1991, [27th June 1991] was "An Act to re-enact, with amendments, the Northern Ireland (Emergency Provisions) Act 1978, the Northern Ireland (Emergency Provisions) Act 1987 and Part VI of the Prevention of Terrorism (Temporary Provisions) Act 1989; and to make further provision for the preservation of the peace and the maintenance of order in Northern Ireland". See *Northern Ireland (Emergency Provisions) Act 1978*, Legislation.gov.uk, retrieved on, [http://www.legislation.gov.uk/ukpga/1978/5/pdfs/ukpga\\_19780005\\_en.pdf](http://www.legislation.gov.uk/ukpga/1978/5/pdfs/ukpga_19780005_en.pdf)

<sup>268</sup> Northern Ireland (Emergency Provisions) Act 1996 (repealed on the 19<sup>th</sup> February 2001) was "An Act to re-enact, with omissions and amendments, the Northern Ireland (Emergency Provisions) Act 1991; and for connected purposes." (17<sup>th</sup> June 1996)

<sup>269</sup> A. Mowbray, *Cases and Materials on the European Convention on Human Rights*, Oxford University Press; 2Rev Ed edition (24 May 2007).

<sup>270</sup> Bonner (2000): The United Kingdom's Response to Terrorism: the Impact of Decisions of European Judicial Institutions and of the Northern Ireland 'Peace Process'. In *European Democracies Against Terrorism. Governmental Policies and Intergovernmental Cooperation*, ed. F Reinales, pp. 31-71. Dartmouth, Hants: Ashgate

legislators, and the 2005 London bombings and the 2007 Glasgow airport incident appeared to have confirmed their preoccupations about the security of their country. These particular acts prompted the passage of further laws to secure the safety of UK citizens.

### 3.11 Events Post September 11 2001

The UK enacted legislation known as the Anti-terrorism, Crime and Security Act 2001,<sup>271</sup> with the adoption of measures which were rejected previously from the Terrorism Act 2000<sup>272</sup>. The 2001 Act provided powers to inspect premises and deny access to specified persons; additional powers of arrest in, and removal from, aircraft and airports; wider powers in respect of the regulation of aviation security and enhanced powers to detain aircrafts; provision for the retention of communications; traffic data; the creation of an offence of using noxious substances to harm or intimidate (there was, also, provision in relation to hoaxes involving harmless substances); and asset freezing powers where an individual, entity or country posed a risk to the UK economy, the life or property of UK nationals or residents.<sup>273</sup> Even for non-terrorist cases, it allowed Military Police to operate outside military bases. Part 4 enabled foreigners to be detained indefinitely as terrorist suspects.<sup>274</sup>

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<sup>271</sup> The Anti-terrorism, Crime and Security Act 2001 was enacted on 14 December 2001.

<sup>272</sup> In 2000 the incoming Labour government and Parliament enacted the Terrorism Act 2000 (TA). Whilst repealing the Prevention of Terrorism Act (PTA) and much of the Emergency Provisions Act (EPA), the 2000 TA provided, for the first time, what was meant to be a permanent anti-terrorist law in Britain. Inspired by the PTA it diverged from it in several aspects. The 2000 TA allowed the ban of terrorist organizations and the seizure of their finance; it created, also, new offences such as “directing terrorism” whilst giving more powers of arrest and detention. New elements were the possibility of arresting people, in the United Kingdom, for inciting terrorism abroad and widened the definition of terrorism to include “the use or threat of action, designed to influence the government or intimidate a section of the public, for a political, religious or ideological cause where this action or threat of action involves violence or damage to property or creates a serious risk to the health or safety of a section of the public”. See S.Breau; S. Livingstone and R. O’Connell *Anti-Terrorism Law and Human Rights in the United Kingdom post September 11*, Human Rights Centre, Queens University Belfast. Available at: <http://www.britishcouncil.org/china-society-publications-911.pdf>

<sup>273</sup> See G. F. Ísaksson (2009). *Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws?* Faculty of Law & Social Sciences. Law division. available at: [http://skemman.is/stream/get/1946/3641/10733/1/BA\\_Ritger%C3%B0.pdf](http://skemman.is/stream/get/1946/3641/10733/1/BA_Ritger%C3%B0.pdf)

<sup>274</sup> UN Security Council, <http://www.un.org/sc/members.asp>.

Subsequently, the Criminal Justice Act 2003 was issued; this extended a terrorist suspect's period of detention for questioning from 7 to 14 days.<sup>275</sup> This step action was justified by claiming forensic analysis of chemical weapon materials might not be completed in 7 days.<sup>276</sup>

Then, the Prevention of Terrorism Act 2005 was enacted, the main feature of which was the "control order"; this was a form of house arrest.<sup>277</sup> This spawned over 50 hours of debate in Parliament; however, it was passed just in time to become applied to 4 terrorist suspects.<sup>278</sup> The next Act, drafted after the 7 July 2005 London bombings,<sup>279</sup> was the Terrorism Act 2006. This created the offence of "glorifying" terrorism and increased the period, for which terrorist suspects could be detained without charge, to 28 days.<sup>280</sup> Originally, the government sought a 90 day period, and attempted to justify this by claiming that the key evidence, on which charges were based, might be coded on one of thousands of hard disks, and it could

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<sup>275</sup> B. Dickson, *The Detention of Suspected Terrorists in Northern Ireland and Great Britain*, 43 Rev. L.U. Rich.. 927 (2008-2009).

<sup>276</sup> See G.F. Ísaksson; G. Friðgeir (2009) , *Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation's increasing anti-terrorist laws?*, University of Akureyri, Faculty of Law and Social Sciences, Law division, Iceland..

<sup>277</sup> See Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006. Twelfth Report of Session 2005–06, page 14. Available at: <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/122/122.pdf>

<sup>278</sup> See G.F. Ísaksson; G. Friðgeir(2009), *Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation's increasing anti-terrorist laws?*, University of Akureyri, Faculty of Law and Social Sciences, Law division, Iceland.

<sup>279</sup> L. Bondí, Building Peace in the 21st Century. Legitimacy and Legality: Key Issues in the Fight Against Terrorism, *The Fund for Peace*, September 11 2002, p.33, <http://www.fundforpeace.org/publications/reports/keyissues.pdf>

<sup>280</sup> See M.Arden, Meeting the challenge of terrorism: The experience of English and other courts, Australian Law Journal, 2006, 80:818. Rt Hon Lady Justice M. Arden, DBE, Member of the Court of Appeal of England and Wales. The speech was presented on 16 August 2006 at the John Lehane Memorial Lecture (Supreme Court of New South Wales). The text is available online at: [http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/Speech\\_lj\\_arden\\_Meeting\\_the\\_challenge\\_of\\_terrorism\\_04122006.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/Speech_lj_arden_Meeting_the_challenge_of_terrorism_04122006.pdf)

take a very long time to search them. However, it did not succeed in obtaining Parliamentary approval for such a change.<sup>281</sup>

Opponents, of the 2006 TA, focused on sections 1 and 23. Section 1 made the encouragement of terrorism an offence, whilst section 23 extended the detention period for terrorist suspects. According to Parker,<sup>282</sup> Act 2006 encountered harsh criticism and resistance from human rights organisations and civil liberties groups. The Act's most contentious aspect was the attempted increase of the detention period without charge for suspects from 14 days to 90 days. The Blair Government argued that, given the complexities of modern terrorism and the evidence gathering process, the police and intelligence services had insisted on this requirement in order to be able to carry out their investigations appropriately.<sup>283</sup> Eventually, the motion was defeated since the parliamentarians were far from being convinced by the executive's arguments. Nevertheless, the increase of the period, from 14 to 28 days, won the MPs' approval.

Less than a week before the enforcement of the 2008 Counter-terrorism law, photographers were complaining about the police forces' attitudes towards them. They believed that section 76 of the new anti-terrorism law would be very restrictive and would leave professional photographers open to fines and arrest. The National Union of Journalists was convinced that the new measures would impair further media professionals; restrict the freedom of the press; and increase the harassment of photographers. Marc Vallee, who covered all kind of

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<sup>281</sup> Ibid.

<sup>282</sup> See Parker Implementation of the UK Terrorism Act 2006–The Relationship between Counterterrorism Law, Free Speech, and the Muslim Community in the United Kingdom versus the United States Emory International Law Review p.p. 711-758 Volume 21, Issue 2 (2007)

<sup>283</sup> See S.Hewitt (2008) *The British War on Terror: Terrorism and Counter-Terrorism on the Home Front Since 9/11*,

protests, affirmed that the police harassed photographers repeatedly by using the stop and search powers under section 44 of the Terrorism Act 2000.<sup>284</sup>

The Counter-Terrorism Act 2008 allowed police questioning of suspects after they were charged, and required convicted terrorists to notify the police of their whereabouts.<sup>285</sup> In the Act, the highest profile provision was a measure to allow the police to detain terrorist suspects for up to 42 days before being charged.<sup>286</sup>

### 3.12 The Effect of Anti- terrorism laws on Freedom of Expression

<sup>284</sup> According to Vallee, the extension of powers, brought by the new legislation, were likely to worsened the situation and, due to its vague formulation, would not help to prevent abuse Vallee commented: "They will now be able to arrest you if a photograph could potentially incite or provoke disorder. But isn't that any protest?" Justin Tallis, freelance journalist said that he was targeted by the police. "I moved to London six months ago and it's already happened to me two or three times." Val Swain, a member of Fitwatch, a collective which photographed police intelligence teams taking pictures of protesters, said: "I took a picture of an officer on my camera phone and he walked over and said, 'you are going to delete that'. We're in a public place, he's in a public role and he knew that. They've been gearing up for it but so far they've stopped short of arresting people. Now they will have the power to do it." Jeremy Dear, general secretary of the NUJ, said: "Police officers ... believe they have the power to delete images or to take editorial decisions about what can and can't be photographed. The right to take photos in a public place is a precious freedom. It is what enables the press to show the wider world what is going on." See J. Adetunji, 'Photographers fear they are target of new terror law',

*The Guardian*, 12 February 2009. Available at:

<http://www.guardian.co.uk/media/2009/feb/12/photographers-anti-terror-laws>

See also M. Vallee, 'Documenting dissent is under attack', *The Guardian*, 12<sup>th</sup> February 2009, available online at: <http://www.guardian.co.uk/commentisfree/2009/feb/11/police-terrorism-photography-liberty-central>

<sup>285</sup> See part 4 on the notification requirements at

<http://www.legislation.gov.uk/ukpga/2008/28/contents/enacted>

<sup>286</sup> However, despite the fact a majority of the Parliament's MPs approved the extension of the period of police detention of terrorist suspects, without any criminal charges, from 28 days to 42 days, the government's provision were defeated heavily in the House of Lords. Furthermore, a clause was inserted into the Counter-Terrorism which read:

- For the avoidance of doubt, nothing in this Act allows the Secretary of State to extend the maximum period of pre-charge detention beyond 28 days

See <http://www.publicwhip.org.uk/division.php?date=2008-10-13&number=1&house=lords> .

As for the 28 day period, this provision, passed in 2006, was renewed annually by the UK Parliament. However, in July 2010, the 28 day period was renewed only for six month. Then, in January 2011, the legislation expired; this meant legally that the pre-charge detention reverted back to 14 days. In 2012, The Protection of Freedoms Act 2012 amended the provision and reduced the pre-charge detention period permanently to a maximum of 14 days. It could be observed that, compared to other democracies, 7 days in Ireland; 4 days in Italy; 2 days in the USA; and 1 day in Canada; the 14 days period continued to represents the longest period;.

Freedom of expression and the right to seek; receive; and convey information is one of the most fundamental human rights, enshrined in Article 19 of the United Nations Universal Declaration of Human Rights.<sup>287</sup> However, such a right is not absolute and should be exercised subject to certain qualifications. For instance, states have the right to limit freedom of expression for the sake of ‘morality; public order; and general welfare’.<sup>288</sup> Therefore, any debate, about the implementation of Article 19, must be contextual and intended to find the right balance between, on one hand, the concerns of media professionals and, on the other, those of governments.

Human rights organisations argued that, due to anti-terrorism laws, the right to the freedom of expression faced significant challenges.<sup>289</sup> The most significant, of these challenges, appeared with the emergence of new crimes relating to speech which was seen to encourage terrorism, either directly or indirectly. Restrictions were expanded from existing prohibitions on incitement to much broader and less well defined areas such as glorifying or apologising for terrorism. In addition, there were countries which adopted extensive prohibitions on

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<sup>287</sup> Article 19 states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The full text of the UN Universal Declaration of Human rights is available at: <http://www.un.org/en/documents/udhr/index.shtml#a19>

<sup>288</sup> Articles 29 (2) and 29 (3), of the UN Declaration, give states the right to limit freedom of expression in certain contexts.

29 (2): “ In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

29 (3): These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

<sup>289</sup> Since the beginning of the twenty-first century, The enactment of anti-terrorism laws, in most countries of the world, was underlined particularly.

criticism of national institutions and symbols. Internet-based speech was influenced, also, in various attempts to block or remove websites with controversial content.<sup>290</sup>

In 2008, Terry Davis, the Secretary General of the Council of Europe, stated that the European Convention on Human Rights<sup>291</sup> and the European Court of Human Rights' related case law "remain the fundamental standards regarding the right to freedom of expression and information in all situations including times of crisis."<sup>292</sup>

The Council of Europe standards and guidelines, on protecting freedom of expression and information in times of crisis, recommended that Member States ought not to use vague terms when imposing restrictions of freedom of expression and information in times of crisis.<sup>293</sup> Incitement to violence and public disorder ought to be defined clearly adequately. Article 10, of the European Convention on Human Rights, provides for strong protections on freedom of expression under whilst allowing states to protect national security. However,

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<sup>290</sup> Russian Federal Law No. 148-FZ, of 27 July 2006, amending Articles 1 and 15 of the federal law "On Countering Extremist Activity".

<sup>291</sup> Section I Article 10 of the European Convention on Human Rights states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>292</sup> See Directorate General of Human Rights and Legal Affairs, *Freedom of expression in times of crisis: Guidelines of the Committee of Ministers of the Council of Europe*, July 2008, available online at: <http://www.coe.int/t/dghl/cooperation/media/publications/Guidelines%20crisis-20080828160132en.pdf>.

<sup>293</sup> See I. Nikoltchev, Council of Europe, Directorate of Human Rights. *Guidelines on Protecting Freedom of Expression and Information in Times of Crisis*, IRIS 2007-10:2/1 Committee of Ministers, available online at: <http://merlin.obs.coe.int/iris/2007/10/article1.en.html>

in many cases by stretching the allowable justifications permitted by the European Court of Human Rights (ECtHR), domestic laws appear to be in violation of the requirements of the ECHR. Often, national security and the fight against terrorism are invoked to justify repression of protected speech.

### 3.13 Media and Human Rights Organisations

The aims and agendas, of human rights organisations, do not converge necessarily with those of the media. In his book about ethical journalism, Aiden White, General Secretary of the International Federation of Journalists (IFJ) pointed out that:

“In fact, while journalists often do good, it is not their purpose. Most journalists may well sign up to the notion that democratic pluralism and respect for human rights form the core of a unifying political ideology, but few wish to be told to follow a particular party, policy or strategy.”<sup>294</sup>

Human rights organisations believe that human rights issues do not have enough media coverage and, when it is done, there is a lack of depth. In a 2002 report, it was stated that:

“The basic difference in the cultures of news organisations and human rights advocacy organisations is that the latter are concerned with all human rights issues, everywhere, while the former are interested merely in issues that are newsworthy. The news media are interested in human rights only inasmuch as it bears on news — on a war in progress, for example — although it must be said that the interest of the media in human rights varies across the media spectrum and from country to country.”<sup>295</sup>

For various reasons, the relationship, between such organisations and the media, has not improved over the last two decades. Human rights organisations took the opportunity offered by the technological revolution and, instead of relying only on media reporting of human rights, opted to conducting their own research. This generated information which, then, was

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<sup>294</sup> See A. White, “*Ethical Journalism Initiative*”, Published in International Federation of Journalists, Belgium, 2008, p.40

<sup>295</sup> See International Council on Human Rights Policy, ‘*Journalism, Media and the Challenge of Human Rights Reporting*’, 2002, Versoix, Switzerland, p.17

provided to the media in order to convey the message to a wider audience. The same report continued:

“Human rights NGOs have established themselves as vital sources of information, before and during crises, and as long-term monitors of human rights. Information about human rights violations is systematically released by NGOs, often in great detail and with accuracy. Therefore, human rights organisations have, become essential sources of information for media”<sup>296</sup>

The same document underlined the media organisations’ concerns as regards, to what extent, they considered increased the human rights organisations’ attempts to direct journalism priorities. The dilemma, for media organisations, was how to keep an independent stance when, due to dire economic constraints, they had to rely increasingly on NGOs reports for a large part of their international coverage.

There is no doubt that, in view of the nature of their activities, human rights organisations tend to be partisan, and rightly so, since they are standing with one party against alleged oppression by the authorities. They should be aware that the media have, also, a distinctive perspective; this should be accepted and respected as legitimate and valid. The existing gap and occasional misunderstanding, between human rights groups and the media, has to be reduced, especially when the rights of journalists are under threat or being abused since only human rights group may be interested in their cases. Human rights organisations should not have a monolithic vision on the media. They should recognise the media’s legitimate role as powerful counterbalancing instruments of communication and actors in the policy process, rather than regarding them as the “raison d’être” of the denunciation of human rights abuses. A mutual appreciation is essential in facing the growing challenges from the legislature; the executive; the police; and the security services.

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<sup>296</sup> Ibid. p.101

### **3.14 Conclusion**

The relationship between the media and authorities has been always and continues to be laden with incompatible interests. On one hand, the media is expected to provide accurate, reliable, useful and appropriate information. From a media perspective, in open and modern societies, information belongs to the people and the role, of journalists, guided by ethical considerations, is, after confirming its reliability, and editing as necessary, to deliver or return it to its 'rightful owners'. On the other hand, decision-makers; judges; the police; and security services have another perspective on how to deal with information; this is seen as an essential instrument for carrying out political policies. Accordingly, it should be used; controlled; and spread in order to fit with the government's strategic interests. Politicians do have a particular opinion of what constitutes the public interest and, quite often, this tends to conflict with an independent media perspective.

As natural reflexes, governments or authorities, trusted by their citizens to ensure their safety and protect their lives; wealth; and property, do exert censorship and control of information . Governments promulgate legislation meant to maintain the rule of law without encroaching on the civil liberties of the people who elected them. The media function instead according to different incentives. The priority, for journalists, is to tell the truth and be independent under any circumstances. Such behaviour does not prevent them being aware of the impact of their reporting; writing; and images on society. Democratic principles must be respected in all situations. The media are not ill-intentioned, although a competitive spirit might induce them to rush their reporting, following their instincts, in order to reveal what they believe the public should know.

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There has been present always a mutual suspicion between the media and executive powers. It is not a new phenomenon. There are real and permanent struggles over access to information, and both sides are not keen to cooperate willingly or work together. In the UK, the challenge, for the media, is the multiplication of laws which occurred since the advent of the twentieth century and particularly since the tragic events of New York in September 2001. Most journalists consider the implementation of the laws as an infringement of their jealously protected independence. In relation to the 'war on terror', the government and legislature demand unquestioning allegiance from the media whether or not this involve a reduction of civil liberties and less respect for human rights in the response to the threat of terrorism.

Media people argue that journalists should not intervene directly in the way society is run. That is not their purpose. People, who join the media profession, follow ideals where the core elements are loyalty; pluralism; and respect for human rights. Most independent media people refuse to submit themselves to the dictates of authorities; executive powers; and police or security services. Anti-terrorist laws represent an enormous challenge for journalists; reporters; cameramen; photographers and all media professionals. The multiplicity of abrogation and amendments, made to the various statutes enacted since the Terrorism Act 2000, proves that the laws are far from being perfect. Challenging anti-terrorism-laws and their interpretation by the executive is the natural reaction of the media and civil liberties and human rights organisations. In criticising anti-terrorism laws, the media are defending not only their right to conduct their profession according to a specific ethical code. They are, also, making people aware about the risks of endangering the existing balance between the security of citizens and their civil liberties.

This chapter defined the concept of media and discussed its types and how it developed. The following chapter discusses the UK Anti-Terrorism Laws and their impact on the media.

## **Chapter Four:**

### **UK Anti-Terrorism Laws: A Critical Overview**

#### **4.1 Introduction**

The previous chapter addressed more widely the issue of the media and terrorism. It considered the existing and particular relationship between the two entities and the governments' attitudes towards the media. The distinctive roles, of the media and human rights organisations, were considered, also. In addition, it was suggested that anti-terrorism laws, enacted in the context of the new paradigm "war on terror", were targeting not only terrorists, whether individuals; groups; or organisations but also, were used by governments as a pretext to muzzle the independent media; make them submissive to the official line; and to echo positively the executive's policies.

This chapter analyses how the "war on terror" and the enactment of anti-terrorism laws by several countries in the world, and particularly the United Kingdom, affected media organisations and professionals in terms of gaining access to information, along with an increase in accusations of incitements to 'terrorism' or glorification of "extremism". The chapter sheds light, also, on the anti-terrorism laws which were enacted particularly in the UK and the European Union and which were believed to have impacted upon the media's and journalists' freedom.

Most worldwide governments, which were keen to counter firmly the growing menace of terrorism, felt compelled to react by taking drastic measures; these affected citizens' civil liberties and the people's way of life. The new measures, which the authorities deemed necessary, included restrictions on speech; surveillance; and the blocking of internet access

or other means of communications. A substantial number of journalists and human rights organisations were very critical about the new legislation, which were adopted in a hasty manner. They considered that, already, existing laws had affected seriously freedom of expression whilst providing little benefit in terms of fighting terrorism.<sup>297</sup> It was argued that the new anti-terrorist laws paid little attention to human rights which, subsequently, were infringed.

#### 4.2 The Role of Media in Supporting Political Action.

Before considering the enactment of laws and their effect on the media It is essential to examine the role of the media in the life of the state and its citizens,. This media role was covered widely during an international conference in Italy,<sup>298</sup> and, due to their relevance to the topic of this study, it is important to look at some of the proceedings. By reviewing articles given by media professionals it is possible to know more about their position in modern society.<sup>299</sup> Therefore, in order to explore concrete evidence and to assess it fairly it is vital to consider these questions, in depth.

Nowadays, the term, Fourth Power<sup>300</sup>, is used to refer to editorialists or journalists, who have some power to influence the executive powers or the destiny of leaders. However, it could be noticed that, after the September 11 events, the press made a contribution, in an uncritical

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<sup>297</sup> For instance, the International Federation of Journalists (IFJ) and Liberty, a UK non-party membership organisation; these are at the heart of the movement for fundamental rights and freedoms in the United Kingdom.

<sup>298</sup> Three significant interventions were given during the international conference “Media between Citizens and Power Venice in 2006

<sup>299</sup> The media own perspective, about their role, is important in understanding their mechanisms.

<sup>300</sup> The term ‘fourth power’ derives in fact from the coined term fourth estate attributed to the nineteenth century historian, Carlyle, who attributed it instead to Edmund Burke. Carlyle stated what follows: “Burke said there were Three Estates in Parliament; but, in the Reporters’ Gallery yonder, there sat a Fourth Estate more important than they all. It is not a figure of speech, or a witty saying; it is a literal fact, .... Printing, which comes necessarily out of Writing, I say often, is equivalent to Democracy: invent Writing, Democracy is inevitable. .... Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government, with inalienable weight in law-making, in all acts of authority. It matters not what rank he has, what revenues or garnitures: the requisite thing is that he has a tongue which others will listen to; this and nothing more is requisite.” Carlyle (1905) pp.349-350

way, to the war on Iraq, by being “strong with the weak and weak with the strong<sup>301</sup>” and, therefore, losing some of their credibility<sup>302</sup> with the public.

Whilst the media showed courage in reporting the events of the war on Iraq, which was deemed the bloodiest war ever,<sup>303</sup> some thought they were controlled by political agents. The complexity, of the situation, meant that it was impossible to know what really happened in Iraq, in order to make the people, responsible for that particular war, accountable before the international community.<sup>304</sup> In the contemporary world, it is a fact that many tragedies occur without being reported and numerous parts of the world live in media darkness.<sup>305</sup> It has become clear, also, that the media are driven no longer by the search for truth<sup>306</sup>.

In the age of globalisation, the media is essential and indispensable for the balance of power. However, in various instances, the media’s standing with economic and political powers engendered a crisis between the media and the public, who, nowadays, tend to distrust what is published or broadcast by mainstream outlets. Often, the media are the main interlocutors of politicians. They can either contribute to their ascendance to power or provoke their political fall; this explains the power of the media and their importance in the eyes of leaders and decision-makers. Media are, also, an instrument used by leaders; rulers; or policymakers to influence public opinion or to strengthen popular support.<sup>307</sup>

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<sup>301</sup> The writer, who made this statement, meant that the media did not play their original role and accepted instead to convey the rhetoric of the American administration as well as British political statements (strong) without challenging them, or giving some credit to the Iraqi version (weak).

<sup>302</sup> See R. Reale, in International Seminar *Media Between Citizens and Power* Venice, 23-24 June 2006 Workshops. P. 12, [http://www.theworldpoliticalforum.net/wp-content/uploads/wpf2006/06\\_media\\_between\\_c-p\\_venice/documenti/speeches\\_workshops.pdf](http://www.theworldpoliticalforum.net/wp-content/uploads/wpf2006/06_media_between_c-p_venice/documenti/speeches_workshops.pdf)

<sup>303</sup> Ibid. In page 13 Reale stated that “Regarding big political choices, the media scene has been at most dominated by the men of the spinning machine, the consensus machine, by communicators at the service of governments. They succeeded in exploiting with ability the arrogance of some reporters to instigate public opinion against liberal information.”

<sup>304</sup> The contrasting figures reported by media outlets regarding the number of civilian victims.

<sup>305</sup> Media darkness in the sense that there is a total absence of the media and who decides what is important to report and what is not relevant for the interest of the media corporations.

<sup>306</sup> It is no longer a priority for the media to unveil the truth to the public.

<sup>307</sup> In particular, the popular support to authoritarian regimes or imperial actions on the world scene.

Iouchkiavitchious<sup>308</sup> insisted on the importance of having independent media and free press since they were experiencing great pressures and difficult working conditions. For instance, it is not only the journalists' professional integrity, which is at a risk, but, also, the journalists' very lives<sup>309</sup> are threatened. The risks, encountered by journalists, exist even in real democracies where, occasionally, they are arrested and jailed for professional reasons such as refusing to disclose their sources.<sup>310</sup> For Wallstrom, the free market's supremacy had not produced pluralism but, instead, had allowed the concentration of the media in a few hands which tended to be connected to the sources of political and economic power. She believed that such a situation undermined the capacity of civil society to have its say in "democratic governance".<sup>311</sup>

There was a tension between press freedom and the tendency of governments to limit that freedom; this represented the original pattern of the conflict between citizens and the state in liberal democracies.<sup>312</sup> The lawful regulation, of this tension, is depicted in the UK and elsewhere, nevertheless, there is a clear legal realisation that, as a Fourth Power, the media has a legitimate and worthy role to play in the political process with the function of promoting openness and democratic political processes.<sup>313</sup> Nevertheless, most governments

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<sup>308</sup> See H. Iouchkiavitchious whostated that:

'press freedom is under great pressure everywhere. Politicians are for the press freedom when they are fighting for a power, but when they come to the power they are not so interested in the press freedom.'  
In International Seminar *Media Between Citizens and Power* Venice, 23-24 June 2006 Workshops. P. 22,

[http://www.theworldpoliticalforum.net/wpcontent/uploads/wpf2006/06\\_media\\_between\\_cp\\_venice/documenti/speeches\\_workshops.pdf](http://www.theworldpoliticalforum.net/wpcontent/uploads/wpf2006/06_media_between_cp_venice/documenti/speeches_workshops.pdf)

<sup>309</sup> The number of journalists killed worldwide can be found in the following Committee to Protect Journalists link. "911 Journalists Killed since 1992" Available at: <http://www.cpj.org/killed/>

<sup>310</sup> See "United States Attack on Journalists' Right to Protect Sources "Violates First Amendment". Press release of the International Federation of Journalists (IFJ) 11 October 2004. Article available online at: <http://www.ifj.org/en/articles/united-states-attack-on-journalists-right-to-protect-sources-violates-first-amendment-says-ifj>

<sup>311</sup> M. Wallstrom, Vice-president of the European Commission, in charge of Institutional Relations and Communication Strategy, Sweden, 2006.

<sup>312</sup> J. Keane, *The Media and Democracy*, Cambridge: Polity Press, 1991.

<sup>313</sup> M. Chesterman, *Freedom of Speech in Australia: A Delicate Plant*, Ashgate: Dartmouth. 2000

have passed anti-terrorism laws since 2001, which limit media freedom and freedom of speech. The way, in which individual rights and liberties are affected, has received considerable analysis.<sup>314</sup>

### 4.3. International Responses to Terrorism

The multiplication of terrorist actions in the last two decades, which culminated with the attack on the Twin Towers on September 11 2001 in the United States of America, prompted reactions worldwide. However, it was not only states or governments who decided to legislate quickly and to give the executive the legal means to combat terrorism. International bodies including the UN; EU; OECD; NATO; and the Council of Europe (CoE) adopted many international agreements. These appeared to be encroaching upon the citizens' freedom of expression and to neglect some of the fundamental human rights agreed upon at an international level; these were such as the importance of a free media in democratic and modern societies.

In order to understand what occurred on the international scene immediately after September 11 2001, it is important to note that all international organisations asked for international cooperation. For instance, the UN reacted through Resolution 1368 in which they called for increased cooperation between states to confront and defeat terrorism.<sup>315</sup> Equally, the North Atlantic Treaty Organisation (NATO) reasserted Article 5 of its Charter,<sup>316</sup> which stated that aggression, against any NATO member country, would be considered as aggression towards

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<sup>314</sup> I. Barker, 'Human rights in an age of counter-terrorism', *Australian Bar Review*, 2005, 26: 267–86.

<sup>315</sup> United Nations Security Council (2001, 12 September) Security Council Resolution 1368 (2001) Adopted by the Security Council at its 4370th meeting, on 12 September 2001.S/RES/1368 (2001). New York: United Nations, available online at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement>

<sup>316</sup> Despite the fact that Article 5 of NATO's Charter was never used during the whole Cold War period.

all members of the Treaty<sup>317</sup>. The Council of Europe (CoE) required fast responses in terms of state cooperation regarding criminal matters.<sup>318</sup>

Researchers, such as McNamara<sup>319</sup>, considered that the counter-terrorism laws, introduced by most governments to guarantee the security of their citizens, definitely limited the freedom of the media. The tension, between the media and the British government's intention to restrict that freedom, denoted the typical conflict between state and society, particularly in liberal democracies such as the UK.<sup>320</sup> Numerous scholars and researchers believed that the dramatic events, of September 11 2001, acted as a pretext for the continuing struggle between citizens and state, and a way of legitimizing the enactment of restrictive laws limiting media freedom.<sup>321</sup>

#### 4.4. International Events which led to New Anti-terrorism Laws

The terrorist acts, conducted on American territory on September 11 2001, were unprecedented in United States of America history.<sup>322</sup> The response, to such an aggression, brought about what the American administration termed "the war on terror",<sup>323</sup> in all its,

<sup>317</sup> On 12 September, NATO decided that, if it was determined that the attack, against the United States of America, was directed from abroad, it ought to be regarded as an action covered by Article 5 of the Washington Treaty. This was the first time, in the Alliance's history, that Article 5 was invoked. See: NATO Topics, 'what is article 5?', February 2005, <http://www.nato.int/terrorism/five.htm>

<sup>318</sup> See Council of Europe, Committee of ministers, 'Recommendation Rec (2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organised crime', 19 September 2001, available online at:

[http://www.coe.int/t/dlapil/codexter/Source/CM\\_Recommendation\\_2001\\_11\\_EN.pdf](http://www.coe.int/t/dlapil/codexter/Source/CM_Recommendation_2001_11_EN.pdf)

<sup>319</sup> L. McNamara, 'Counter-terrorism Laws: How They Affect Media Freedom and News Reporting', *Westminster Papers in Communication and Culture*, 2009, Vol. 6(1): 27-44

<sup>320</sup> J. Keane, *The Media and Democracy*, Cambridge: Polity Press, 1991

<sup>321</sup> L. McNamara, 'Counter-terrorism Laws: How They Affect Media Freedom and News Reporting', *Westminster Papers in Communication and Culture*, Vol. 6(1), 2009, p: 27-44.

<sup>322</sup> Until 11 September 2001, and from an American perspective, the only reminiscence of an attack of such a magnitude on U.S.A. soil went back to Pearl Harbour, Hawaii, in December 1941. Similar to the September 11 terrorist attacks in New York and Washington, the Japanese raid on Pearl Harbour was called a defining moment in American history.

<sup>323</sup> The term 'response' is nevertheless subjective because there are writers such as Sardar; Chomsky; Ali; and Lindauer who argued that, in some ways, the USA's foreign policies were a key factor behind the September 11 attacks. Successive American governments were not immune from the blame since their policies provoked violent reactions.

military; financial; or judicial forms.<sup>324</sup> Usually, the authorities do not find it difficult to govern in times of stability whether in political; economic; or social arenas.<sup>325</sup> Conversely, real challenges appear when circumstances are less stable and more complex and require more appropriate instruments. Numerous questions have arisen at different levels regarding the evaluation of responses by states towards the observance of the rule of law and the capacity of democratic governments to deal with the issue of terrorism without violating the principles of liberal democracies.<sup>326</sup> These values, which form the backbone of society,<sup>327</sup> are based on the freedom of expression; the right to dissent; the freedom of belief; the right to access and provide information; and the right to political activism. The rule of law is reckoned to be an excellent control measure in times of instability and disorder. In times of crisis, legislation is believed to be a gauge of governments' success or failure.<sup>328</sup>

In exceptional situations, governments' weak responses may lead to more and even greater challenges, and can stimulate rivalry amongst States. For instance, after the dismembering of the Soviet Union, the United States of America faced a difficult dilemma.<sup>329</sup> They had to choose whether to adhere completely to the concept of the rule of law or to follow their own political, economic and military schemes, without considering the lawfulness of the means used to achieve their targets.<sup>330</sup> This researcher noted that, despite

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<sup>324</sup> D. Edwards and D. Cromwell, *Guardians of Power, The Myth Of The Liberal Media*. London. Pluto Press, (2006).

<sup>325</sup> E. Barendt & L. Hitchens, *Media Law, Cases and Materials*, Pearson Education Limited, England, 2000.

<sup>326</sup> These questions were raised by academics; politicians; media professionals; and human rights organisations.

<sup>327</sup> R. Edwards, *An investigation into terrorism legislation in the United Kingdom and its effects on civil liberties*. Glasgow Caledonian University, (Dissertation 2005).

<sup>328</sup> P. A. Thomas, 'Emergency and Anti-Terrorist Powers, 9/11: USA and UK', *Fordham International Law Journal*. 2002, pp.1193-1233

<sup>329</sup> Being the only remaining superpower, they found themselves without their traditional challenger .

<sup>330</sup> Two schools of thought, Unilateralism and Multilateralism, dominated the debate regarding the USA's role after the fall of the Soviet Union. Unilateralists argued that the world was unpredictable and dangerous and, therefore, the USA had to use power to protect and propagate its interests and values. In fact, the USA used its overwhelming military, economic, and political power to build an international order so that its pre-eminence, in the world, was maintained and perpetuated. Multilateralists argued that there were circumstances in which the United States of America ought not to act unilaterally, and most key challenges, facing the USA, would

the unexpected rise of a new wave of international terrorism, world leaders reaffirmed their determination to respect the binding effect of international law and to resort to international legal instruments to face all sort of challenges. However, in the USA, successive administrations, whether Democrat or Republican, refused to recognise the International Criminal Court (ICC) and other fundamental treaties.<sup>331</sup> When the USA was exposed to violent acts such as the 9/11 attacks, the American administration resorted to unilateralism and did not refer strictly to international law. It disregarded the existing approved legal instruments which the world communities had put in place at the level of international organisations such as the United Nations.<sup>332</sup>

By examining the making of international law in the aftermath of the Cold War, Krisch found that whilst the US played a leading role in fostering treaty negotiations, it tended to opt out

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not be resolved through unilaterally. For them, multilateral approaches were required to deal with terrorism; the proliferation of nuclear, chemical, and biological weapons; illegal drugs; and organized crime.

See C. Krauthammer, America and the World' *Foreign Affairs*, 1990/91, Vol. 70, No. 1 available from Lexis/Nexis Academic Universe. See also S. Joseph, *The Paradox of American Power: Why the World's Only Superpower Can't Go it Alone*, New York: OUP, 2002, p. 40.

<sup>331</sup> Richard Goldstone wrote:

“When the United Nations Security Council established the ad hoc criminal tribunals for the former Yugoslavia and Rwanda, it conferred jurisdiction on those courts on the basis that the crimes amenable to their jurisdiction were international crimes that attracted universal jurisdiction. With regard to these developments, the United States played a contradictory role. Generally, the Congress and successive Presidents supported the recognition of universal jurisdiction for such shocking crimes. At the same time they objected to United States citizens, and especially members of the military, becoming amenable to foreign or international courts. This approach is demonstrated by the United States opposition to the International Criminal Court, the Kyoto Protocol on global warming and the Protocol to the Torture Convention which seeks to make prisons subject to international inspection.”

See R. Goldstone, 'The Tension between Combating Terrorism and Protecting Civil Liberties', Institute of Human Rights, University of Connecticut, 2005, available online at:

<http://humanrights.uconn.edu/documents/papers/TerrorCivilRightsRGGoldstone.pdf>

See also M. Freeman, and H. Ross (eds). *Law and Philosophy*, Oxford University, Oxford, 2008

<sup>332</sup> The United States took a leading role in the writing of treaties such as the Covenant of the League of Nations; the Kellogg-Briand Pact; the United Nations Charter; the Nuclear Non-Proliferation Treaty (NPT); and the Human Rights Covenants. However, histories of the League Covenant; the Universal Declaration on Human Rights; and Havana Charter on the International Trade Organization suggested that, the United States of America withdrew its adhesion to the far-reaching obligations of those multilateral treaties. This pattern persists to this day (Malone, 2003). See D.M. Malone and Y.F. Khong, (eds), 'Unilateralism and U.S. Foreign Policy: International Perspectives', Lynne Rienner Publishers, 2003.

of the resulting treaties by not ratifying them.<sup>333</sup> The researcher underlined the fact that such American attitudes were more apparent after the end of the Cold War. The Krisch's proposed analysis was based on two aspects. The first one showed explicitly the United States of America working to "establish strong legal rules for other states" whilst seeking, for itself, the right to be "exempt from or even . . . above" these rules.<sup>334</sup> The second and less apparent one was the consequence of the first; this was the fact that, since the 1990s, the United States of America had grown more powerful.

In considering the case of the war against Afghanistan, one ought to point out that there was a controversy around the legality of that particular war. The US administration declared that it was its right to respond to aggression against its own territory, referring to its own interpretation of international law, and, despite some dissent and a timid reaction from other members of the international community, military intervention did take place.<sup>335</sup> In such situations, the rule of law was neglected since the laws were interpreted only from the executive power's perspective.<sup>336</sup>

Democracies, established on the basis of the rule of law, ought to ensure such basic rights of their citizens under the criminal justice system as habeas corpus; the presumption of innocence until evidence proved otherwise; and transparency of a trial in appropriate courts of justice. Furthermore, the accused had to have the right to legal advice representation.

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<sup>333</sup> The International Criminal Court (ICC); the Comprehensive Nuclear Test Ban Treaty (CTBT); the amended Convention on the Law of the Sea; the Kyoto Protocol; and the Convention on Biological Diversity were cases in point. See N. Krisch, 'Weak as Constraint, Strong as Tool: The Place of International Law in U.S. Foreign Policy', in D.M. Malone & Y.F. Khong, (eds.), *Unilateralism and U.S. Foreign Policy: International Perspectives*, 2003, 41-70

<sup>334</sup> See N. Krisch, loc.cit.

<sup>335</sup> See "*No War Against Afghanistan!*", Speech delivered by Professor F.A. Boyle at the Illinois Disciples Foundation, Champaign, Illinois on October 18, 2001, <http://www.ratical.org/ratville/CAH/fab112901.html>

<sup>336</sup> The most powerful nation on earth, interpreting international law according to its own perspectives and interests, lead to more instability in the world, as witnessed following the invasion of Iraq by the USA and its allies.

Additionally, sentences ought to be proportional to the crime.<sup>337</sup> Other rights ought to include the right to oppose the official discourse; the right to denounce executive abuses; the right to dissent; and the right to oppose peacefully what was believed to be unfair or contradictory to the fundamental values of an open society.<sup>338</sup>

However, after September 11 2001, a tangible change happened in the USA. The core problem appeared when the rule of law was considered no longer to be the norm, and the executive's highest ranks considered that they were not bound by norms of good governance.<sup>339</sup> This shift was evidenced through a USA administration official's following confession to Ron Suskind, an American journalist,:

“We are an Empire now, and when we act, we create our own reality. And while you are studying that reality – judiciously, as you will – we will act again, creating other new realities, which you can study too, and that is how things will sort out. We are history's actors...and you, all of you, will be left to just study what we do.”<sup>340</sup>

Such testimony, from a high profile American administrator, reflected the attitude of an executive power which did not respect the principles of an open society based on justice; transparency; and truth.<sup>341</sup> Contempt, for the media, in a democracy based on the rule of law, is likely to cause unrest and unpredictable consequences for the civil society in general.

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<sup>337</sup> Dickinson underlined the fact that “Article 12 of the International Covenant on Civil and Political Rights (“ICCPR”) requires that defendants be assured the right to choose their own counsel, to have reasonable opportunities to prepare their defenses, to be presumed innocent until proven guilty, to know the charges against them, and to appeal. The treaty also forbids discrimination on account of “race ... and national origin”. See L. A. Dickinson, Using Legal Process to fight Terrorism: Detentions, Military Commissions, International Tribunals, and the Rule of Law. In *Southern California Law Review*, 2002, vol 75, p1407.

<sup>338</sup> R. Foot; J. Gaddis, and A. Hurrell, (eds), *Order and Justice in International Relations*, Oxford University, Oxford, 2007.

<sup>339</sup> T. F. Farr, *World of Faith and Freedom. Why International Religious Liberty Is Vital to American National Security*. Oxford University: Oxford. 2008

<sup>340</sup> R. Suskind. “Faith, Certainty and the Presidency of George W. Bush”, *New York Times*, October 17, 2004. It was later revealed that the official was Karl Christian Rove, Senior Advisor and Deputy Chief of Staff to President George W. Bush from 2001 to 2007.

<sup>341</sup> A. Francis, The Cost of Terrorism: The Relationship Between International Terrorism and Democratic Governance, *Terrorism and Political Violence*, 2008, vol 20: p 257–270.

During the Bush era at the White House, a circumspect perspective, on the role of the media, was shared by US officials such as Andrew Card<sup>342</sup> for whom the media did not represent the people. He had reservations as regards the media's check-and-balance function.<sup>343</sup> When a journalist asked Andrew Card whether or not he believed that the press had a legitimate check-and-balance function, he answered by stating: "Absolutely not, Congress has a check-and-balance function; the judiciary does, but not the press."<sup>344</sup>

This claim to be making history, with the media playing a minimal role, is concerning because if societies allow the executives to have ultimate discretion without regulation, the rules of democracy are changed with alarming consequences for society. Altman, a researcher and media columnist, argued that the way, in which the American administration and its ideological allies dealt with the media, signified that everything was done to prevent; reduce; and weaken the "media's ability to practice their original function, which is to hold power accountable". It was clear to Altman that the Bush Administration did not recognise the constitutional role of the press.<sup>345</sup>

Another element to consider was the role, of academia, in seeking answers about terrorist actions. For instance, Ignatieff discussed the eventual responses to the threat of terrorism and made it clear that the fight against terrorism ought not to be limited only to legislating

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<sup>342</sup> Andrew Card was a former White House Chief of Staff from 2000 to 2006.

<sup>343</sup> G.L. Munck "Measures of Democracy, Governance and Rule of Law: An Overview of Cross-National Data Sets" School of International Relations University of Southern California Paper prepared for World Bank workshop on "Understanding Growth and Freedom from the Bottom Up" Washington, DC, July 15-17, 2003. Available online at: [http://siteresources.worldbank.org/INTMOVOUTPOV/Resources/2104215-1148063363276/071503\\_Munck.pdf](http://siteresources.worldbank.org/INTMOVOUTPOV/Resources/2104215-1148063363276/071503_Munck.pdf)

<sup>344</sup> See *Interview Ken Auletta*, Frontline, 13<sup>th</sup> June 2006, a leading American journalist, who writes *The New Yorker's* Annals of Communications column s[2003], available online at: <http://www.pbs.org/wgbh/pages/frontline/newswar/interviews/auletta.html>

<sup>345</sup> E. Alterman, George W. Bush's war on the press, in "Media Between Citizens and Powers", Proceedings of an International Seminar, 23-24 June 2006 – San Servolo, Venice, Italy.

and enforcing the new adopted laws. It ought to ensure, also, that political life in democracies was free from violence. He added that it was through violence that terror was defeated.

“It may require coercion, deception, secrecy, and violation of rights. How can democracies resort to these means without destroying the values for which they stand? How can they resort to the lesser evil, without succumbing to the greater?”<sup>346</sup>

This statement suggested abandoning political ethics justified the kinds of abuses which the world had witnessed since the “War on terror” was announced by the Bush administration. However, a few years later, Ignatieff acknowledged his early misperceptions as regards to the war on Iraq and said he was wrong in supporting the invasion of that country.<sup>347</sup>

Professor Falk, an eminent scholar of International law, appraised the war on Afghanistan immediately after the September 11 2001 events.<sup>348</sup> He argued against the existence of credible or practical alternatives to war and rejected any UN involvement; the use of missile strikes (as used in the past by previous American administrations); or diplomatic efforts reinforced by sanctions. All these options appeared unworkable:

“Each of these alternative options generally seemed unable to punish the perpetrators or end the threat, and so the case for war prevailed as national policy without mainstream dissent.”<sup>349</sup>

Professor Falk described the views which prevailed in political circles and which seemed to be subject to the pressure of the general sentiment felt in America in the aftermath of the

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<sup>346</sup> M. Ignatieff, *The Lesser Evil, Political Ethics in an Age of Terror*, Edinburgh University Press: Edinburgh, 2004.

<sup>347</sup> Ibid.

<sup>348</sup> See R. Falk, *Appraising the war against Afghanistan*, Social Science Research Council, 2002, available online at: <http://essays.ssrc.org/sept11/essays/falk.htm>

<sup>349</sup> In 2002, Professor Falk wrote an article for the Social Science Research Council Essay Forum, and referred to the decision to invade Afghanistan as the only solution left to the Bush administration

September 11 events. Yet, he ought not to have ignored the ‘credible legal alternatives’ mentioned by other experts in law; these are discussed below. More than a decade later, there is still a war in Afghanistan, with all its consequences on the world scene; consequently, it would be interesting to know whether or not Professor Falk expected such an outcome when he wrote his paper.

Professor Francis Boyle, an equally eminent expert on international law, offered an alternative opinion regarding the legality of the war on Afghanistan.<sup>350</sup> He explained that acts of terrorism such as the ones, which occurred on September 11 2001, were dealt with generally as “a matter of international and domestic law enforcement”. In order to reinforce his argument he mentioned directly the existence of a treaty on point.<sup>351</sup> Referring to the way in which the United Nations dealt with terrorism<sup>352</sup> he described how it was agreed to itemise terrorism into units and deal with them separately. For example, it was decided to criminalise certain specific aspects of criminal behaviour, such as the destruction of a civilian aircraft whilst in service, and in this case “the Montreal Sabotage Convention<sup>353</sup> is directly on point”.

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<sup>350</sup> See “*No War Against Afghanistan!*”. Speech delivered by Professor F. A. Boyle at the Illinois Disciples Foundation, Champaign, Illinois on October 18, 2001. Available online at: <http://www.ratical.org/ratville/CAH/fab112901.html>

<sup>351</sup> See Prof. Boyle’s article, Available online at: <http://www.ratical.org/ratville/CAH/fab112901.html>

<sup>352</sup> Despite the fact that the United Nations has not been able to agree on a formal definition of terrorism, as discussed in another chapter of this study.

<sup>353</sup> According to Professor Boyle “The 1971 Montreal Sabotage Convention is directly on point here, and provides a comprehensive framework for dealing with the current dispute between the United States and Afghanistan over the tragic events of 11 September 2001. Both States are contracting parties to the Montreal Sabotage Convention, together with 173 other States in the World. The United States is under an absolute obligation to resolve this dispute with Afghanistan in a peaceful manner as required by UN Charter Article 2(3) and Article 33 as well as by the Kellogg-Briand Pact of 1928, as well as in accordance with the requirements of the Montreal Sabotage Convention--all of which treaties bind most of the States of the World. In addition, the United States should offer to submit this entire dispute to the International Court of Justice in The Hague (the so-called World Court) on the basis of the Montreal Sabotage Convention, and should ask the Government of Afghanistan to withdraw its Reservation to World Court jurisdiction as permitted by article 14(3) of the Montreal Sabotage Convention. Furthermore, all other contracting parties must invoke the Montreal Sabotage Convention against both the United States and Afghanistan in order to produce a peaceful resolution of this dispute”. See “Invoke Montreal Sabotage Convention” by Francis A. Boyle. Available online at: <http://www.themodernreligion.com/terror/wtc-msc.html>

Both the USA and Afghanistan were parties to the cited Convention and, consequently, it would have been possible to have recourse to this legal regime to deal with the dispute.<sup>354</sup>

Boyle's strong arguments challenged the opinions of those who supported intervention in Afghanistan and weakened the presented legal arguments to support the case for war. Another legal opinion was given by Professor Marjorie Cohn gave another legal opinion.<sup>355</sup> Without neglecting the traumatic effect provoked by the September 11 2001 events, she considered that, from a legal perspective, that the war against Afghanistan was illegal. For her, the bombings were a flagrant violation of both international law and United States law,

“... set forth in the United Nations Charter, a treaty ratified by the U.S. and therefore part of the supreme law of the land under the U.S. Constitution.”

The U.N. Charter provides that all member states must settle their international disputes by peaceful means, and no nation can opt unilaterally for the use of military force except in self-defence.<sup>356</sup> Focusing on the role of the United Nations Security Council, Professor Cohn insisted that it was the only body which could authorise the use of force, or decide the form of action to be taken to maintain or restore international peace and security.<sup>357</sup> This contradicted Professor Falk's view that there were no credible alternatives to war.

Cohn listed five possible options: firstly, the possibility for the United States to sue Afghanistan in the International Court of Justice (ICJ) for harbouring people supposedly involved in the 11<sup>th</sup> September attacks, and to demand their arrests; secondly, there was the economic sanctions route and that of diplomacy; thirdly, it was possible to establish an

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<sup>354</sup> Professor Boyle deplored that The Bush administration decided to ignore the Montreal Sabotage Convention. There was, also, the U.N. Terrorist Bombing Convention which was, also, directly on point.

<sup>355</sup> M.Cohn is an associate professor at Thomas Jefferson School of Law in San Diego, expert in International Human Rights Law. See Marjorie Cohn article “Bombing of Afghanistan is illegal and must be stopped”, *Jurist*, November 6, 2001, , <http://www.jurist.org/forum/forumnew36.htm>

<sup>356</sup> In fact, the USA's argument was that it was acting in self-defence.

<sup>357</sup> See M.Cohn, loc.cit. “Bombing of Afghanistan is illegal and must be stopped”, *Jurist*, November 6, 2001 , <http://www.jurist.org/forum/forumnew36.htm>

international tribunal to try terrorist suspects; fourthly, a U.N. force could be created “to make arrests, prevent attacks or counter aggression”; and, finally as a last resort, the UN could authorise “the application of armed force with the Military Staff Committee”.<sup>358</sup> Cohn’s opinion was based on factors which respected international law; encouraged cooperation between states for the resolution of conflicts; and the finding of solutions without recourse to war.

Yet another academic, Lietzau, was convinced of the legality of military intervention<sup>359</sup> in Afghanistan. He represented the American administration’s position and refuted implicitly Cohn’s and Boyle’s arguments. He argued that the scale, of the September 11 2001 terrorist attacks, confirmed that the previous law enforcement responses were obsolete, and that using military force was more than a legitimate option, it was an obligation. In order to give more weight to his argument he considered that the September 11 2001 terrorist attacks made world opinion acknowledge that that events were above mere criminal conduct, equating them with an act of war. Accordingly, he stated that it was necessary to respond in a violent way,

“Primarily as a preventive measure, but undoubtedly attended by punitive aspects that traditionally are associated with law enforcement concepts. The use of military force in response to September 11 has been well received both internationally and domestically.

There was a clear disregard of international law by Lietzau, who justified the military option as an obligation. The claims that the decision. to go to war was supported universally,

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<sup>358</sup> Ibid.

<sup>359</sup> William K. Lietzau, ‘Combating Terrorism: Law Enforcement or War?’ in *Terrorism and International Law: Challenges and Responses*, 2002, p75, <http://www.iihl.org/iihl/Album/terrorism-law.pdf> . The author is Lieutenant Colonel, United States Marine Corps, Office of the General Counsel, Department of Defense. LLM, U.S. Army Judge Advocate General’s School; JD, Yale Law School; BS, U.S. Naval Academy.

seemed rather overstated. For instance, on the other side of the spectrum, another academic gave another perspective of the situation by enlarging the picture of “terrorism”<sup>360</sup>. Therefore, to describe the American administration’s actions in response to the September 11 2001 attacks, Professor Henry Laurens used the term ‘state terrorism’; this was defined as: the ‘use (of) violence to keep the monopoly of the violence’.<sup>361</sup>

Other supporters of war option such as Martin Kramer<sup>362</sup> went beyond supporting the war against Afghanistan in stating that,

“Making 9/11 a turning point in the Middle East will require a lot more than the demonstration effect of the Afghan victory”.

He asked later whether September 11 2001 would be a watershed for the Arab world.

According to him:

“If the United States leaves it to the Middle East, the answer will be "no." But it might become a "yes" — if America only shows the same resolve in Arabia that it has shown in Afghanistan.”

By suggesting that the United States should extend its interventionism in the Arab world, Kramer presented a particular perspective of the world order. Here, it could be underlined that the opinions and influence of writers, such as Kramer, had a real impact on policymakers, and contributed to the build-up of the war on Iraq.

#### **4.5 Terrorism Act 2000 and Regulations of Investigatory Powers Act 2000**

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<sup>360</sup> What the researcher means here is that the term terrorist cannot be limited to non-state actors or its proponents confined in a particular geographical area, in certain populations, in certain cultures or religion.

<sup>361</sup> H. Laurens : « Le terrorisme d'état use de la violence pour garder le monopole de la violence » statement made during an interview for Canal Académie (Henry Laurens is Professor of history at the College de France)

<sup>362</sup> See M. Kramer, “From Afghanistan to Araby Sept. 11 and the Mideast”, *National Review Online*, December 10, 2001, <http://www.meforum.org/98/from-afghanistan-to-araby>

The Terrorism Act (TA) 2000<sup>363</sup> consisted not only of a compilation of all previous Acts but impacted, also, on several provisions of the HRA 1998. By contrast with earlier legislation, which had only a temporary character,<sup>364</sup> the TA 2000 was given permanent status and was constructed in a more considered, principled and comprehensive manner.<sup>365</sup> The main introduced amendments were in the provisions relative to all types of terrorism,<sup>366</sup> and were made available, on a permanent basis, throughout the whole United Kingdom. The definition of terrorism was expanded, also, to include religiously motivated international terrorism,<sup>367</sup> which was not linked necessarily with the political struggle of Northern Ireland – whilst the power, to make exclusion orders, was abandoned. The power to extend the detention of people depended no longer on administrative authorisation but rather on demanded judicial authorisation.<sup>368</sup> Furthermore, under s.41 (2), an arrested person's right to have access to legal assistance might be postponed for up to 48 hours.<sup>369</sup>

In view of what was underlined earlier, it could be argued, here, that the right, to a proper defence, was incompatible with such a provision since an arrestee needed legal assistance in the first hours of his/her arrest. In addition to the postponement of the access to a solicitor, the right to silence was limited to the first hours of the arrest since arrestees are told that unfavourable inferences might be deduced from their silence.<sup>370</sup> The other cause for concern

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<sup>363</sup> The TA 2000 was based on a report, produced by Lord Lloyd of Berwick and Mr Justice Kerr, as regards to the laws aspects relative to Northern Ireland and on a survey of terrorist threats produced by Professor Wilkinson, *Inquiry into Legislation against Terrorism*, Cm. 3420, London, 1996. Eventually, the government supported the report; for further information see 'Legislation Against Terrorism' (Cm. 4178, London, 1998).

<sup>364</sup> These legislations were adopted rapidly due the immediate public need.

<sup>365</sup> All provisions, with the exception of those concerning Northern Ireland, limited to seven years, were to be permanent. However, with the events of September 11 2001 and the enactment of more drastic and authoritarian laws, most provisions of the TA 2000 became obsolete in the eyes of the British legislators.

<sup>366</sup> See Section of the TA 2000.

<sup>367</sup> See section 112 (S.112) of the TA 2000

<sup>368</sup> See section 41 and section 8 of the TA 2000.

<sup>369</sup> It can be observed that, in case of other indictable offences this right cannot exceed thirty-six hours. See PACE 1984, S.42 (2).

<sup>370</sup> The Strasbourg court held that denying access to a lawyer, for the first forty-eight hours of police questioning, was incompatible with the accused's rights under Art. 6 ECHR. See *John Murray v UK*, Judgment of 8 February 1996 (application no. 18731/91), at 66

was the Act's definition of terrorism.<sup>371</sup> The widening, of the meaning, was so significant that the provisions might be applied, also, in cases that did not require necessarily using special powers and offences.<sup>372</sup> Actually, the UK government acknowledged openly the definition's width.<sup>373</sup> Moreover, s.118 imposed a legal burden on the defence to prove certain issues.<sup>374</sup>

In addition, s.57 relating to the general offence of possession of articles of terrorism articles deserved greater examination. According to the terms of this provision, possession of an article was considered to be an offence if the circumstances gave rise to a reasonable suspicion that the possession was for a purpose connected with the commission; preparation; or instigation of an act of terrorism.<sup>375</sup> Walker observed that there was no requirement for

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<sup>371</sup> See section 1 (s.1) of the TA 2000 reads as follows:

(1) In this Act "terrorism" means the use or threat of action where— (a) the action falls within subsection (2), (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it [**?something missing**].

<sup>372</sup> Talbot, (2003), at S.138 et seq.

<sup>373</sup> The acknowledgement was made during legislative debates. See House of Commons Debates, 1999-2000, vol.341, col.152.

<sup>374</sup> S.118 provides for two situations: first, the case where it is a defence to prove a particular matter, such as in ss.12 (4) or 39 (5) (a) TA 2000 (s.118 (1) and (2)), and second, the case where the court may make assumptions or accept a fact as sufficient evidence unless a particular matter is proved, such as in ss.57 (1) and (3) (s.118 (3) and (4)). In total, s.118 is applicable to ss.12 (4), 39 (5) (a), 54, 57, 58, 77 and 103 TA 2000 (and, until they were repealed, also to ss.13, 32 and 33 of the EPA 1996). See Walker (2002).

<sup>375</sup> S.57. Possession for terrorist purposes.

(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person, charged with an offence under this section, to prove that his possession of the article was not for a purpose connected with the commission; preparation; or instigation of an act of terrorism.

(3) In proceedings for an offence under this section, if it is proved that an article—

(a) was on any premises at the same time as the accused, or

(b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public, the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it.

(4) A person guilty of an offence under this section shall be liable

(a) on conviction on indictment, to imprisonment for a term not exceeding 15 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

proof of a terrorist purpose in the mind of the possessor, or for proof for eventual links with proscribed organisations. Consequently, if animal rights activists considered sabotaging a laboratory, even they could be included.<sup>376</sup> It was not clear whether the burden of proof, as regards the possession of particular items, was a simple ‘evidential’ burden, obliging the defence to raise merely a doubt regarding the question of possession, with the result that the prosecution had the ‘persuasive’ burden of persuading the jury of the guilt or innocence of the accused.<sup>377</sup>

Mention ought to be made, also, of ss.44 (7) which granted the police powers to stop and search individuals even in the absence of terrorist suspicion. Doubts arose about its conformity with the ECHR and the HRA 1998, inducing the House of Lords to examine it.<sup>378</sup> Eventually, the Lords eventually dismissed this view and held that the provision did not violate Articles 5 or 8 of the ECHR.

A measure, adopted before the September 11 2001 attacks, but which had an impact on counter terrorism investigations, was the Regulation of Investigatory Powers Act (RIPA)

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See *Provision 57, Terrorism Act 2000*, [legislation.gov.uk](http://www.legislation.gov.uk), available online at: <http://www.legislation.gov.uk/ukpga/2000/11/section/57?view=plain> .

<sup>376</sup> See C.Walker (2006). *Cyber-Terrorism: Legal Principle and Law in the United Kingdom*. *Pennsylvania State Law Review*, Vol 1001(3) p. 627 . available online at <http://www.court21.ac.uk/docs/penn07d.pdf>  
In the same paper Walker observed that:

“The wide range of articles which may attract suspicion highlights the problematic nature of section 57. The actions of the suspects at this stage are highly equivocal – persons with overalls and balaclavas may be preparing for an attack on a police patrol or on a rabbit warren. In this way, there is an extension of the criminal law to put people in the dock for activities which do not require activities directly related to terrorism or with the intention of being involved in terrorism.”

See C.Walker, ‘Cyber-Terrorism: Legal Principle and Law in the United Kingdom’, *penn state law review*, 2006, Vol. 110, p.647, available online at: <http://www.court21.ac.uk/docs/penn07d.pdf> .

For more details about the criticism made by the author see , also, C. Walker, *Blackstone’s guide to The Anti-Terrorism Legislation*, Oxford University Press, 2002, p.171-174.

<sup>377</sup> See C. Walker (2002), who quoted the speech of Lord Hope in the Judgement *R v Director of Public Prosecutions, ex parte Kebilene* [1999] UKHL 43, at 992-993.

<sup>378</sup> See the application of *Gillan (FC) and another (FC) v Commissioner of Police for the Metropolis and another*. [2006] UKHL 12.

2000.<sup>379</sup> This Act was a reaction to the House of Lords judgment in *Regina v Khan*,<sup>380</sup> where it appeared that the police were implanting illegally listening devices in houses.<sup>381</sup> The Strasbourg Court condemned this practice when examining the *Halford* case.<sup>382</sup> The European Court held that there was a breach of Ms Halford's right to a private life and correspondence as enshrined in Article 8 of the ECHR. Furthermore, the Court considered that, due to the absence of any legal provision justifying such interference her private telecommunications were intercepted illegally.<sup>383</sup> The absence, of a legal basis justifying secret surveillance, gave rise to a number of cases<sup>384</sup> in Strasbourg against the UK on the basis of violation of Article 8 of the ECHR. The RIPA 2000 sought to update the law relating to the interception of communications.<sup>385</sup> It was interesting to observe that, unlike other intrusive methods to gather evidence, this technique did not require an authorisation from a judge, but from the Home Secretary.<sup>386</sup> The fact that the government was happy to override

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<sup>379</sup> For more insight on the RIPA 2000, see Akdeniz, Taylor and Walker Regulation of Investigatory Powers Act

2000, *Criminal Law Review*, February 2001, pp 73-90.

<sup>380</sup> [1997] AC 558.

<sup>381</sup> Such an action was conducted usually on the basis of advice given in a Home Office circular. The speedy legislative response to *Khan* was Part III of the Police Act 1997, which allowed the interference of the police with property, or with wireless telegraphy, when a senior officer considered that such actions might be of substantial value in preventing or detecting serious crimes and those objectives could not be achieved by other means (s.93). See also Spencer (2004), at S.188 et seq.

<sup>382</sup> See Judgment of 25 June 1996 (application no. 20605/92).

<sup>383</sup> The then existing *Interception of Communication Act 1985* applied only to public and not to private telecommunication.

<sup>384</sup> See, for instance the following cases:

- *Malone v UK*, Judgment of 2 August 1985 (application no. 8691/79),
- *Khan v UK*, Judgment of 12 May 2000 (application no. 35394/97).
- *Taylor-Sabori v UK*, Judgment of 22 October 2002 (application no. 47114/99).
- *Allan v UK*, Judgment of 5 November 2002 (application no. 48539/99).
- *Chalkley v UK*, Judgment of 12 June 2003 (application no. 63831/00).
- *Lewis v UK*, Judgment of 25 November 2003 (application no. 1303/02).
- *Perry v UK*, Judgment of 17 July 2003 (application no. 63737/00).

<sup>385</sup> The RIPA 2000 replaced entirely the previous Interception of Communication Act 1985.

<sup>386</sup> In fact, before 1985, Home Secretaries used to issue warrants for telephone tapping without any legal basis. This led to a condemnation, see *Malone* case mentioned in footnote 93) where the European Human Rights Court held that tapping telephones without a legal basis violated Article 8 of the ECHR. The UK government reacted by issuing the Interception of Communications Act 1985. Under this Act, the Home Secretary's authorisation by the was given a legal framework, and a network of rules was established to ensure that his authorisations would not be examined in the ordinary courts. See Spencer (2005).

the principles, of the Convention measures, was another matter for concern since it threatened civil liberties and rights to freedom of expression and information.

The combination of this state of affairs along with the evidential rules, guiding telephone-tapping, was very worrying,<sup>387</sup> especially when it was seen against background of English evidence law, according to which it was primarily the evidence's relevance which determined whether or not it was admissible in court.<sup>388</sup> The rule might present some advantages since, using privacy-infringing wire-tapping, it reduced the amount of police investigations. The rationale being, if the evidence would not be admitted in court, there was no need to obtain it through wiretapping.

However, since, under English law, the Home Secretary rather than judges had to authorise telephone taps, the only way to assess the legality, of such applications, would be by admitting them as evidence in court. Such a solution was not practical under the current legal framework,<sup>389</sup> and suggested that there was no means for judicially controlling telephone interceptions. A dire consequence, of the inadmissibility of evidence obtained via wiretapping, was, perhaps, more perturbing, in particular, if that was the only evidence which might prove the suspect's guilt, and it could not be used in court. With reference to

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<sup>387</sup> Under s.17 of the RIPA 2000, telephone-tap evidence, despite being obtained legally, could not, in any case, be permissible or admissible in court. See RIPA 2000, s.17.

<sup>388</sup> It can be observed that under English law, the basic rule is that evidence is admissible if it is relevant (SIAC in Court of Appeal, *A, B, C, D, E, F, G, H, Mahmoud Abu Rideh, Jamal Ajouaou v Secretary Of State for the Home Department*, August 2004, [2004] EWCA 1123., at 242). A wide range of discretion is given to English judges under the English ordinary criminal law regarding whether or not particular evidence can be admitted during the trial. Similarly, s.78 of the PACE 1984 provides that the court can refuse to allow evidence if it appears that, 'having regard to all the circumstances, including the circumstances under which the evidence was obtained, the admission of evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it'. So, unlawfully obtained evidence can be excluded, to avoid the risk of jeopardising the fair trial principle. However, in other circumstances, it can be admitted, as in the case of *Khan vs. UK* [1997] AC 558 (HL). Planting and aural surveillance device in defendants' homes without their knowledge is seen as unlawful. The recording obtained in Khan's case confirmed that Khan was involved in drug trafficking, and eventually it was admitted as evidence. The Strasbourg Court held that the admission of this evidence did not violate the fair trial principle of Art. 6(1) ECHR, see *Khan v UK* (application no.35394/97) [2000] Crim. LR 684.

<sup>389</sup> *Ibid*

the wide detention powers, approved temporarily under the Anti-terrorism, Crime and Security Act 2001,<sup>390</sup> Spencer stated that the Home Secretary wanted to solve such a problem,

"Not by abolishing the ban, but by abolishing the need for trials and giving himself the legal power to put them under house arrest without one."<sup>391</sup>

A thorough examination of the various laws showed the existing differences existing between them.

For instance, it was noticeable that the Anti-terrorism, Crime and Security Act 2001 contained measures rejected previously by the TA 2000, whilst a substantial number of provisions were added.<sup>392</sup> These new provisions related to weapons of mass destruction; the requirement for disclosure of financing activities; measures to improve the security of pathogens and toxins; powers to inspect premises and deny access to specified persons; additional powers of arrest in, and removal from aircraft and airports; wider powers in respect of the regulation of aviation security and enhanced powers to detain aircrafts; provision for the retention of communications; traffic data; creation of an offence of using noxious substances to harm or intimidate (There was also provision in relation to hoaxes involving harmless substances.); asset freezing powers where an individual; entity; or country posed a risk to the UK economy; the life; or property of UK nationals or residents.<sup>393</sup>

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<sup>390</sup> J.R. Spencer 2005. Is the reason for excluding telephone-tap evidence in court to protect state security or to spare the Home Secretary's blushes. *New Law Journal* 155, 7166: 309

<sup>391</sup> Ibid.

<sup>392</sup> According to Breau et al., (2001) "The Act includes no fewer than 129 sections and eight schedules. The matters covered include: seizure of terrorist property; regulation, disclosure and retention of information; offences relating to racial and religious hatred; offences relating to weapons of mass destruction; security of nuclear and aviation institutions; new police powers; executive law making powers in respect of European security cooperation, and the detention of suspected international terrorists." See S. Breau; S. Livingstone and R. O'Connell, "Anti-Terrorism Law and Human Rights in the United Kingdom post September 11", Human Rights Centre, Queens University Belfast, article available online at: <http://www.britishcouncil.org/china-society-publications-911.pdf>

<sup>393</sup> G. F. Ísaksson "Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation's increasing anti-terrorist laws?", University of Akureyri, Faculty of Law and Social Sciences, Law division, Iceland. 2009.

Other purposes of the Anti-Terrorism, Crime and Security Act 2001 were to allow the Military Police, in any circumstances, to intervene outside military bases,<sup>394</sup> and to enable the arrest and indefinite detention of foreigners.<sup>395</sup>

UK anti-terrorism legislation is presented usually as temporary<sup>396</sup> or exceptional measures, taken in order to counter particular situations. However, much of it has remained on the statute book. The main characteristics and incentives, of the various Acts, can be summarised as follows; the Terrorism Act 2000 expanded the definition of terrorism and included both domestic terrorism and all political, religious or ideological forms<sup>397</sup> which used or threatened violence against people or property.<sup>398</sup> It created new offences such as incitement to commit terrorist acts<sup>399</sup>, and strengthened the power, of the police and of other

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<sup>394</sup> The interventions were not limited only to terrorist cases.

<sup>395</sup> In part 4 of the Act

<sup>396</sup> With the exception of the Terrorism Act 2000 which had originally a permanent status

<sup>397</sup> See section s. 111 of the TA 2000. Much of the legal argument surrounding the passage of the Terrorism Act focused on the definition of "terrorism". Section 1, of the Act, elaborates the meaning of "terrorism" over five subsections. "Terrorism" can mean the threat of, as well as the use of, an action. Section 1(4) makes it clear that this "action" can occur anywhere within or outside the UK. Similarly, the persons; property; or government affected by the threat or action itself can be anywhere in the world. The purpose, of the action or threat, is important for the definition of terrorism. The purpose must be to influence government "or to intimidate the public or a section of the public" for any "political, religious or ideological cause" (S1 (1) b and c). The types of action are defined in Section 1 (2) and include "serious violence against a person"; "serious damage to property"; endangering a person's life; creating a "serious risk to the health and safety of the public"; and "seriously" interfering or disrupting an electronic system. "Terrorism" is defined, also, by the weaponry involved, whether or not it is designed to be used to influence government or the public. Firearms and explosives deployed in any of the actions in S1(2) means that "terrorism" is involved. UK Terrorism Act 2000, new definition of "terrorism" can criminalise dissent and extra-parliamentary action. Available online at: <http://www.statewatch.org/news/2001/sep/15ukterr.htm>

<sup>398</sup> See section 112 (s.112) of the TA 2000

<sup>399</sup> See TA 2000 chapter 11 under the title of *Inciting terrorism overseas* where it is stated that 59.

- (1) A person commits an offence if
  - (a) he incites another person to commit an act of terrorism wholly or partly outside the UK, and
  - (b) the act would, if committed in England and Wales, constitute one of the offences listed in subsection (2).
- (2) Those offences are:
  - (a) murder,
  - (b) an offence under section 18 of the Offences against the Person 1861 c. 100. Act 1861 (wounding with intent),
  - (c) an offence under section 23 or 24 of that Act (poison),
  - (d) an offence under section 28 or 29 of that Act (explosions), and
  - (e) an offence under section 1(2) of the Criminal Damage Act 1971 1971 c. 48. (endangering life by damaging property).

security services, including stop and search and pre-charge detention for seven days.<sup>400</sup> The Anti-Terrorism, Crime and Security Act 2001 gives the Home Secretary the power to detain indefinitely and, without having to try them in court, foreigners who are suspected of terrorism. The 2001 Act extended, also, the executive's power regarding the freezing of suspected terrorists' bank accounts or assets.<sup>401</sup> The Criminal Justice Act 2003 increased the period, for which individuals could be detained without charge, from seven to fourteen days, and added a prohibition on the "glorification" of terrorism.<sup>402</sup> The Prevention of Terrorism

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<sup>400</sup> See chapter 11 of TA 2000 Part III entitled Extension of detention under section 41 *Warrants of further detention*

29.

(1) A police officer of, at least the rank of superintendent, may apply to a judicial authority for the issue of a warrant of further detention under this Part.

(2) A warrant of further detention—

(a) shall authorise the further detention under section 41 of a specified person for a specified period, and

(b) shall state the time at which it is issued.

(3) The specified period in relation to a person shall end not later than the end of the period of seven days beginning—

(a) with the time of his arrest under section 41, or

(b) if he was being detained under Schedule 7 when he was arrested under section 41, with the time when his examination under that Schedule began.

<sup>401</sup> See Anti-terrorism, Crime and Security Act 2001 c. 24 Part 2 Orders Section 5 Contents of order.

(1) A freezing order is an order which prohibits persons from making funds available to or for the benefit of a person or persons specified in the order. .

(2) The order must provide that these are the persons who are prohibited.

(a) all persons in the United Kingdom, and .

(b) all persons elsewhere who are nationals of the United Kingdom or are bodies incorporated under the law of any part of the United Kingdom or are Scottish partnerships.

(3) The order may specify the following (and only the following) as the person or persons to whom or for whose benefit funds are not to be made available.

(a) the person or persons reasonably believed by the Treasury to have taken or to be likely to take the action referred to in section 4;

(b) any person the Treasury reasonably believe has provided or is likely to provide assistance (directly or indirectly) to that person or any of those persons.

<sup>402</sup> See Part 13 of the Criminal Justice Act 2003, under the title of *Detention of suspected terrorists* 306 on period of detention without charge of suspected terrorists.

(1) Schedule 8 to the Terrorism Act 2000 (c. 11) (detention) is amended as follows.

(2) At the beginning of paragraph 29(3) (duration of warrants of further detention) there is inserted "Subject to paragraph 36(3A)".

(3) In sub-paragraph (3) of paragraph 36 (extension of warrants)—

(a) at the beginning there is inserted "Subject to sub-paragraph (3A),", and

(b) for the words from "beginning" onwards there is substituted "beginning with the relevant time".

(4) After that sub-paragraph there is inserted—

"(3A) Where the period specified in a warrant of further detention—

(a) ends at the end of the period of seven days beginning with the relevant time, or

(b) by virtue of a previous extension (or further extension) under this sub-paragraph, ends after the end of that period, the specified period may, on an application under this paragraph, be extended or further extended to a period ending not later than the end of the period of fourteen days beginning with the relevant time.

Act 2005 introduced the concept of ‘control orders’ to restrict the activities, of individuals suspected of "involvement in terrorist-related activity", even if there is not enough proof to charge them.<sup>403</sup> The Terrorism Act 2006 doubled the period of pre-charge detention<sup>404</sup> and, finally, the Counter-Terrorism Act 2008 allowed the interrogation after people were charged;<sup>405</sup> also, it allowed constables to take fingerprints and DNA samples from people

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(3B) In this paragraph “the relevant time”, in relation to a person, means—

(a) the time of his arrest under section 41, or

(b) if he was being detained under Schedule 7 when he was arrested under section 41, the time when his examination under that Schedule began.”

<sup>403</sup> See section 2 of Prevention of Terrorism Act 2005. Making of non-derogating control orders

(1) The Secretary of State may make a control order against an individual if he

(a) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity; and

(b) considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to make a control order imposing obligations on that individual.

<sup>404</sup> Section 23 of the *Terrorism Act 2006* extended the maximum period of detention between arrest and charge from 14 to 28 days. *Extension of period of detention of terrorist suspects*

(1) Schedule 8 to the Terrorism Act 2000 (c. 11) (detention of terrorist suspects) is amended as follows.

(7) For sub-paragraphs (3) and (3A) of that paragraph (period for which warrants may be extended)

substitute

“(3) Subject to sub-paragraph (3AA), the period by which the specified period is extended or further extended shall be the period which—

(a) begins with the time specified in sub-paragraph (3A); and

(b) ends with whichever is the earlier of—

(i) the end of the period of seven days beginning with that time; and

(ii) the end of the period of 28 days beginning with the relevant time.

<sup>405</sup> See ss. 22 to 27 of the Counter-Terrorism Act 2008. PART 2. Post-charge questioning of terrorist suspects.

22 Post-charge

questioning: England and Wales

(1) The following provisions apply in England and Wales.

(2) A judge of the Crown Court may authorise the questioning of a person about an offence—

(a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or

(b) after the person has been sent for trial for the offence, if the offence is a terrorism offence or it appears to the judge that the offence has a terrorist connection.

(3) The judge—

(a) must specify the period during which questioning is authorised, and (b) may impose such conditions as appear to be necessary in the interests of justice, which may include conditions as to the place where the questioning is to be carried out.

(4) The period during which questioning is authorised—

(a) begins when questioning pursuant to the authorisation begins and runs continuously from that time (whether or not questioning continues), and

(b) must not exceed 48 hours. This is without prejudice to any application for a further authorisation under this section.

(5) Where the person is in prison or otherwise lawfully detained, the judge may authorise the person’s removal to another place and detention there for the purpose of being questioned.

(6) A judge must not authorise the questioning of a person under this section unless satisfied—

(a) that further questioning of the person is necessary in the interests of justice,

(b) that the investigation for the purposes of which the further questioning is proposed is being conducted diligently and expeditiously, and

(c) that what is authorised will not interfere unduly with the preparation of the person’s defence to the charge in question or any other criminal charge.

subjected to control orders.<sup>406</sup> In addition, it amended the definition of terrorism by inserting a racial cause.<sup>407</sup>

#### 4.5.1 Impact of Human Rights Act 1998 and UK terrorism Legislation on Media

It was argued that the Human Right Act 1998 was unable largely to have a positive effect on the contents and enforcement of UK's terrorism laws.<sup>408</sup> Under the Act, Courts had limited power since, when they found incompatibility between legislation on terrorism and the Act, they could make only a “declaration of incompatibility” which left it to the government to

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(7) Codes of practice, under section 66 of the Police and Criminal Evidence Act 1984 (c. 60), must make provision about the questioning of a person by a constable in accordance with this section.

(8) Nothing, in this section, prevents codes of practice under that section making other provision for the questioning of a person by a constable about an offence—

(a) after the person has been charged with the offence or been officially informed that they may be prosecuted for it, or

(b) after the person has been sent for trial for the offence.

(9) In section 34(1) of the Criminal Justice and Public Order Act 1994 (c. 33) (effect of accused's failure to mention facts when questioned or charged: circumstances in which the section applies) after paragraph (b) insert— “; or (c) at any time after being charged with the offence, on being questioned under section 22 of the Counter-Terrorism Act 2008 (post-charge questioning), failed to mention any such fact”.

(10) Nothing in section 36 or 37 of that Act (effect of accused's failure or refusal to account for certain matters) is to be read as excluding the operation of those sections in relation to a request made in the course of questioning under this section.

<sup>406</sup> See section 18 of the Counter-Terrorism Act 2008. Material not subject to existing statutory restrictions

(1) This section applies to—

(a) DNA samples or profiles, or

(b) fingerprints that are not held subject to existing statutory restrictions.

<sup>407</sup> See section 75 of the Counter-Terrorism Act 2008. *Amendment of definition of “terrorism.”*

75 Amendment of definition of “terrorism” etc

(1) In the provisions listed below (which define “terrorism”, or make similar provision, and require that the use or threat of action is made for the purpose of advancing a political, religious or ideological cause), after “religious” insert “, racial”.

<sup>408</sup> It is stated in the review of the Human Rights Act 1998 that “*The Human Rights Act has had an impact upon the Government's counter-terrorism legislation. The main difficulties in this area arise not from the Human Rights Act, but from decisions of the European Court of Human Rights.*” See the Review of the Implementation of the Human Rights Act, July 2006. Department of Constitutional Affairs. Justice, Rights and Democracy. Earlier, in December 2004, the House of Lords stated that the detention powers were incompatible with the ECHR.

decide whether or not to change the law.<sup>409</sup> Consequently, in one case,<sup>410</sup> the House of Lords declared that a section of the Anti-Terrorism Crime and Security Act 2001 - the prescribed indefinite detention of terrorist suspects and the implicit discrimination against them based on their nationality or immigration status - was incompatible with human rights.<sup>411</sup> Lord Nicholls stated:

“Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law. It deprives the detained person of the protection a criminal trial is intended to afford. Wholly exceptional circumstances must exist before this extreme step can be justified.<sup>412</sup>

Other critics of the Act 2001, such as Gearty,<sup>413</sup> observed that an “irrational distinction” was made between British citizens and foreigners, implying that only non-British people were susceptible to conducting terrorist activities. Therefore, in order not to infringe the European Convention of Human Rights, instead of deporting the foreigners to their country of origin, indefinite imprisonment without charge or trial would have been the best solution. However,

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<sup>409</sup> In an UK government document there is a clear statement which said that:

“It is however wrong to suggest that the judiciary can, using the Human Rights Act 1998, overturn legislation. That Act only permits the High Court, the Court of Appeal or the House of Lords/Supreme Court to declare legislation to be incompatible with the Convention rights. A declaration of incompatibility does not strike down legislation or remove it from the statute book, as is the case in some jurisdictions.

The above quote can be found at the following link:

<http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jud-acc-ind/judges-and-parliament>

<sup>410</sup> On 16 December 2004, a specially-convened committee of nine law lords sustained that the detention of foreigners without trial breached the European convention on human rights incorporated into domestic law by the Human Rights Act 1998. The legal decision was based on a finding that the act was discriminatory (as it only applied to foreign nationals) and that it breached the right to liberty guaranteed under Article 5.

<sup>411</sup> See House of Lords Session 2004–05 [2004] UKHL 56 *on appeal from: [2002] EWCA Civ 1502* Opinions of the Lords of Appeal For Judgment in the Cause A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) X (FC) and another (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) on Thursday 16 December 2004. The Appellate Committee comprised: Lord Bingham of Cornhill; Lord Nicholls of Birkenhead; Lord Hoffmann; Lord Hope of Craighead; Lord Scott of Foscote; Lord Rodger of Earlsferry; Lord Walker of Gestingthorpe; Baroness Hale of Richmond; and Lord Carswell.

<sup>412</sup> See p.47 of the document on the ruling.

<sup>413</sup> Gearty, ‘Terrorism and Human Rights’, in *Government and Opposition*, 2007, Vol. 42, No. 3, pp. 340–362.

this discriminatory measure proved to be inadequate since it appeared that British men conducted the July 2005 terrorist attacks on the London transport system.

The power given to the Home Secretary to decide on the indefinite imprisonment of suspects was also a concern to Lord Hoffmann, who made the following remarks:

“[This case] calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention. The power which the Home Secretary seeks to uphold is a power to detain people indefinitely without charge or trial. Nothing could be more antithetical to the instincts and traditions of the people of the United Kingdom.”<sup>414</sup>

Lord Hoffman addressed, also, the government arguments about the need for provision, by stating strongly that it would have had the opposite effect to that intended, and that:

"The real threat to the life of the nation ... comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for parliament to decide whether to give the terrorists such a victory.”<sup>415</sup>

However, despite all the above views, the government maintained its position and, instead of repealing the powers of detention, decided to add the new concept of “control orders”.

Under the Prevention of Terrorism Act 2005, these orders extended the power of detention without trial to the whole UK population.<sup>416</sup>

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<sup>414</sup> See p. 50 of the document on the ruling.

<sup>415</sup> See p.53 of the document on the ruling

<sup>416</sup> In 2005, accepting the Government’s proposal, the Parliament passed a Bill which was meant to respond to the objections of the Law Lords. It related to the imposition on people suspected of “terrorism-related activity” of two types of control order: one *derogating* because it might involve deprivation of liberty contrary to Article 5 of ECHR and another one, labelled as *non-derogating*, since it would fall short of deprivation of restrictions on liberty and would not be incompatible with the European Convention. To meet the requirement of non-discrimination, the Bill was extended to the whole UK population instead of being limited only to foreign nationals.

According to s.1 of the Prevention of Terrorism Act 2005, a control order is an order imposing obligations deemed necessary, either by the Secretary of State or by a court, to prevent the involvement of individuals in terrorism-related activity. 16 examples of types of obligation are given in the section and, although they are quite illustrative, they are not exhaustive. For instance, the examples include restrictions on possession and use of articles and substances; use of services or facilities; work or business activities; place of residence and

#### 4.5.2. Criticism of the Terrorism Act 2000

Terrorism legislation has existed in the United Kingdom since long before the September 11 2001 attacks. However, this section focuses first on the Terrorism Act 2000 due to the fact that it represents an important change from previous laws. For instance, it was the first British legislation which gave an extensive definition of terrorism, and provided a long list of proscribed terrorist organizations beyond those linked with the Irish question. The Act allowed the police to detain suspected terrorists for questioning for up to 7 days.<sup>417</sup>

Authors, such as Smith<sup>418</sup> and Forster<sup>419</sup>, considered the TA 2000 to be the ‘core act of the United Kingdom’s anti-terror laws’, whilst Walker stated that the TA 2000 represented a useful initiative “to fulfil the role of a modern code against terrorism”. However, he criticised the legislation for failing to reach expected standards in all respects. Accordingly, he accordingly observed that:

“There are aspects where rights are probably breached, and its mechanisms to ensure democratic accountability and constitutionalism are even more deficient.”<sup>420</sup>

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persons given access to it; movements “to, from or within” the UK; and requirements to surrender passport; giving specified persons access to places of residence or other premises; to allow search of those places and the removal of objects found; to co-operate in being photographed or monitored; to provide information when demanded; and to report to a specified person at a specified time or place when requested. These wide-ranging obligations were likely to be costly. However, they were not expected to be imposed indiscriminately and automatically, and would rather be tailored to the suspects, and be under judicial supervision. Any breach of a control order carries a maximum penalty of 5 years in prison.

<sup>417</sup> G.F.Ísaksson, , *Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws?* University of Akureyri, Faculty of Law and Social Sciences, Law Division, Iceland. 2009.

<sup>418</sup> See R. K.M. Smith: *Textbook on International Human Rights*, 2007, Oxford University Press inc.

<sup>419</sup> See Forster, 2009 Chapter 12 Control orders: borders to the freedom of movement or moving the borders of freedom Forster and Terrorism Act 2000 as the ‘core act of the United Kingdom’s anti-terror laws’ *A war on terror? : the European stance on a new threat, changing laws and human rights implications* Wade M and Maljevic A (eds): Springer, London

<sup>420</sup> C. Walter, *Blackstone Guide to The Anti-Terrorism Legislation*. Oxford University Press, Oxford, 2002.

Smith argued that the TA 2000 contained changes to previous legislation which were more “structural rather than substantive”.<sup>421</sup> However, the fact could not be denied that anti-terrorism laws which were “stated comprehensively and permanently in one code”<sup>422</sup> represented an innovation. However, despite the permanent status given to that new Act by British legislators, according to the policy makers, the TA 2000 became obsolete, soon. In his study, Smith considered that, whilst assessing the measures needed to confront the challenges of terrorism “it is important to keep perspective and proportion”.<sup>423</sup>

In another study, Smith noted that the TA 2000 was meant really to be the last British statement of the law on terrorism.<sup>424</sup> In his interpretation of the introduction of that particular piece of legislation, he maintained that the motives behind the Act were neither new nor a reaction to the September 11 attacks.<sup>425</sup> The existing statute books, relating to the Northern Ireland question, were full already of offences addressing terrorism. Therefore, before the September 11 2001 attacks, and due to political progress in Northern Ireland, the country “decided to place, within a revised framework, the legislation designated hitherto as “Temporary””.<sup>426</sup>

### 4.5.3 Impact of Terrorism Act 2000 on Human Rights and Media

Enforcement, of the provisions of the Terrorism Act 2000, might be considered to be a breach of certain Articles of the European Convention on Human Rights (ECHR).<sup>427</sup> This

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<sup>421</sup> See R. K.M. Smith: Textbook on International Human Rights, 2007, Oxford University Press inc.

<sup>422</sup> Ibid.

<sup>423</sup> Ibid

<sup>424</sup> For the permanent character of the Terrorism Act 2000, see Kevin Gillan, City University (London) *Anti-Terror Legislation and the Judicial Review Process: A Personal Story*, Lecture presented to law students at Queens University, Belfast, 13<sup>th</sup> March 2007, available online at:

[http://www.kevingillan.info/wpcontent/uploads/2008/04/gillan\\_judicial\\_review\\_lecture.pdf](http://www.kevingillan.info/wpcontent/uploads/2008/04/gillan_judicial_review_lecture.pdf)

<sup>425</sup> See R. K.M. Smith: Textbook on International Human Rights, 2007, Oxford University Press inc.

<sup>426</sup> Ibid.

<sup>427</sup> See the Gillan case and Rowe (2001)

was not due necessarily to an incompatibility of the Act with the Articles of the Convention, but “the facts of individual cases may produce violations”.<sup>428</sup> Any review of the powers, contained in the Terrorism Act 2000, suggested an invasion of liberties.<sup>429</sup> It could be argued,

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<sup>428</sup> Rowe (2001). In his 2001 review of the operation of the Prevention of Terrorism (Temporary Provisions) Act 1989 (amended as explained by Lord Bingham in paragraph 9 of his opinion) and the Northern Ireland (Emergency Provisions) Act 1996, Mr John Rowe QC said this of the power to stop and search those entering or leaving the United Kingdom with a view to finding out whether they were involved in terrorism: ‘The “intuitive” stop

37. It is impossible to overstate the value of these stops ...

38. I should explain what I mean by an “intuitive stop”. It is a stop which is made “cold” or “at random”—but I prefer the words “on intuition”—without advance knowledge about the person or vehicle being stopped.

39. I do not think such a stop by a trained Special Branch officer is “cold” or “random”. The officer has experience and training in the features and circumstances of terrorism and terrorist groups, and he or she may therefore notice things which the layman would not, or he or she may simply have a police officer's intuition. Often the reason for such a stop cannot be explained to the layman.’

79. Later in his review, Mr Rowe noted the more general stop and search powers originally contained in sections 13A and 13B of the 1989 Act that ‘these powers were used sparingly, and for good reason’. I respectfully agree that the section 44 power (as it is now) should be exercised sparingly, a recommendation echoed throughout a series of annual reports on the 2000 Act by Lord Carlile of Berriew QC, the independent reviewer of the terrorist legislation appointed in succession to Mr Rowe—see most recently paragraph 106 of his 2005 report, suggesting that the use of the power ‘could be cut by at least 50 per cent without significant risk to the public or detriment to policing.’ To my mind, however, that makes it all the more important that it is targeted as the police officer's intuition dictates rather than used in the true sense randomly for all the world as if there were some particular merit in stopping and searching people whom the officers regard as constituting no threat whatever. In short, the value of this legislation, just like that allowing people to be stopped and searched at ports, is that it enables police officers to make what Mr Rowe characterised as an intuitive stop.

<sup>429</sup> For instance, stopping, arresting and detaining people under certain powers are clearly drafted in Article 5; while a burden of proof on the defendant in a criminal case might relate to Article 6; while questioning and searching powers might be linked to Article 8; disclosure of information may engage Article 10, and proscription may engage Articles 10 and 11.

In 2003 a journalist and a peaceful protester were stopped and searched by the police using powers under section 44 of the Terrorism Act 2000. Section 44 allowed police to stop and search anyone within a designated area without any need for suspicion of any kind. An area can be designated whenever the senior police officer making it considers it ‘expedient’ for the prevention of acts of terrorism. Liberty, a human rights organisation took the case to the ECHR and in January 2010. The Court considered that this broadly drafted power was in breach with the right to respect for the applicants’ private lives, and held there was a clear interference in person’s private life when a person and their belongings are forcibly searched. So, any limitation had to be in conformity with law, pursue a legitimate aim and be necessary and proportionate. In the case mentioned above, section 44 was held to fail the first test. The Court held that the powers of authorisation and stop and search were not properly constrained and were not subject to adequate legal safeguards against abuse. The Court held that, as “there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer”, the power was not in accordance with law and therefore the limitation on the right to a private life could not be justified. The judgment was made final in June 2010 and following this, the Home Secretary announced that stops and searches of individuals under section 44 would be suspended pending a review of the legislation (Quinton and Gillan case).

also, that, despite the fact that the European Convention jurisprudence required explicitly that domestic law ought to be precise and foreseeable, the legislation was not clear enough.<sup>430</sup>

#### 4.5.4. Offences under the Terrorism Act 2000

Certain offences might represent a challenge, if not a threat, to a journalist whilst investigating or looking for a source of information. For instance, s.12 of the Terrorism Act 2000 prohibited individuals to invite support for a proscribed organisation. However, under this section, the provisions were limited to non-financial support of a banned organisation, in terms of management; or assistance in arranging a meeting to help a ‘terrorist’ organisation to promote its activities; or to be addressed by a person who belongs to a proscribed organisation; or participating in a meeting knowing that its aim is to encourage such an organisation.<sup>431</sup> Conviction made the offender liable to a maximum of 10 years imprisonment. Therefore, if a journalist was approached by an individual or by a group, labelled as ‘terrorist’; or was given some material to be broadcast (videos; tapes; or printed documents) s/he might be prosecuted under s.12. It seemed that the provision was intended to target the media in general and journalists in particular.

Section 15 criminalised fund-raising for terrorist purposes.<sup>432</sup> It mentioned three kinds of offences: the solicitation of funds or property for terrorism; the receipt of money or property

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<sup>430</sup> Here, the concept of “law” must here be interpreted, moreover, in the same way as in the Convention generally, that is, as requiring rules that are accessible, and reasonably precise and foreseeable in their application. This has implications, e.g., for the rules on the use of lethal force in law enforcement. See D Korff. “The right to life, *A guide to the implementation of Article 2 of the European Convention on Human Rights*”. Human Rights Handbooks, No 8, <http://www.unhcr.org/refworld/docid/49f184722.html>

<sup>431</sup> See Section 12(2). SC Res 1373 (n 61), paragraph 2(a) and (d), section 12(3) and section 12(6)

<sup>432</sup> Fund-raising for terrorist purposes (section 15). For this particular issue, see (Appendix 4 in this thesis) See section 15, subsection (1); See section 15, subsection (2) Subsection (3) Corresponding to article 2(1) of the Financing Convention (n 61), and paragraphs 1(b) and 1(d) of SC Res 1373 (n 61).

for terrorism; and the provision of money or property knowing, or having reasonable cause to suspect, that this might be used for the purposes of terrorism. It was an offence, also, to use money or other property intended to serve terrorism; or have money or property with the intention of using it; or having reasonable grounds to believe that it would be used to support terrorist activities.<sup>433</sup> All kinds of support, whether financial or otherwise, to people, suspected to be promoting terrorism, was an offence.<sup>434</sup> Also, prohibited, was the concealment; removal from jurisdiction; transfer; or other form of action intended to help or facilitate the retention or control of terrorist property.<sup>435</sup> During their investigations, journalists might have to pay persons providing information. If, in doing so, they contravened the law, then, denial of access, to such a common journalistic method, would prevent them accessing necessary information.

The fourth part, of the Terrorism Act 2000 is dedicated mainly to terrorist investigations; associated cordons; information; and evidence.<sup>436</sup> Special powers are established pertaining to the establishment and maintenance of cordons.<sup>437</sup> A police officer can obtain a warrant to access and search premises during a terrorist investigation, and can seize any material found on the property or on the suspected person.<sup>438</sup> In special circumstances<sup>439</sup>, a higher ranking

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<sup>433</sup> Use or possession of money for terrorist purposes (Section 16) subsection (1), and Section 16, subsection (2). Not required by, but relevant to, article 2(1) of the Financing Convention (n 61), and paragraphs 1(b) and 1(d) of SC Res 1373 (n 61).

<sup>434</sup> Funding terrorism (section 17), corresponding to article 2(1) of the Financing Convention (n 61), and paragraphs 1(b) and 1(d) of SC Res 1373 (n 61).

<sup>435</sup> Money laundering for terrorist purposes (section 18(1)). Not required by, but relevant to, article 2(1) of the Financing Convention (n 61), and paragraph 1(b) and 1(d) of SC Res 1373 (n 61). Not required by, but relevant to, article 2(1) of the Financing Convention (n 61), and paragraph 1(b) and 1(d) of SC Res 1373 (n 61).

<sup>436</sup> See section 32, where a ‘terrorist investigation’ is extensively defined as the commission, preparation or instigation of acts of terrorism; or as an act which appears to have been done for the purpose of terrorism; or as the resources of a proscribed organisation; or as the possibility of making an order for the inclusion of an organisation in the list of proscribed organisations in Schedule 2 of the Act; or to the commission, preparation or instigation of any offence under the TA 2000.

<sup>437</sup> See sections 33–37

<sup>438</sup> See Schedule 5 to the Act, paragraph 1

<sup>439</sup> such as in case of “great emergency”

member of the police is entitled to issue a warrant, instead of a justice of the peace.<sup>440</sup> The monitoring of a matter, related to terrorism, is one of the Secretary of State's prerogatives.<sup>441</sup> Judicial authorities do not have any role, and, providing that it will help the terrorist investigation, the police can obtain information about a person from his/her financial institution.<sup>442</sup> On the other hand, disclosing information, believed to prejudice a terrorist investigation, is an offence.<sup>443</sup> If the suspected person is a journalist or a photographer, the seizure of his material and its analysis might jeopardise his future work; his personal safety; and he might risk prosecution. In addition, people, who were his/her sources for sensitive issues not related to terrorism, almost certainly would stop providing him with information, in order to protect their own identities. It appears that different branches of the security apparatus of the UK government are given too much power, to the detriment of the public in general and media professionals in particular.

#### **4.5.5. Counter-Terrorism Powers**

Part 5 of the Terrorism Act 2000 established a set of powers linked to the stopping; arrest; and search of suspected terrorists. Section 40 defined a "terrorist" as an individual who was either "concerned in the commission; preparation of instigation of acts of terrorism"; or who had committed one of the offences under various sections<sup>444</sup> of the Act. Any individual might be arrested without a warrant, provided that the police had plausible reasons to see him/her as a suspected terrorist.<sup>445</sup> The police's detention, of a terrorist suspect, falls under

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<sup>440</sup> See Schedule 5, paragraph 15).

<sup>441</sup> See Schedule 5, paragraph 15(3).

<sup>442</sup> See Schedule 6

<sup>443</sup> It is an offence under section 39 of the Terrorism Act 2000.

<sup>444</sup> See sections 11, 12, 15–18, 54, and 56–63 of the Terrorism Act 2000.

<sup>445</sup> See section 41 of the Terrorism Act 2000.

Schedule 8, whilst pre-charge investigative detention is dealt with in s.16(1). Sections 42 and 43 addressed powers to search “terrorist” premises.

The stop and search provisions, under ss.44-47, provided the police with special powers<sup>446</sup>. Initial authorisation had to come from a very high ranking police officer, with responsibility for that specific geographical area, whereupon the granted powers could be used immediately. However, within 48 hours, confirmation of this authorisation had to come from the Secretary of State, otherwise the authorisation expired. The period of authorisation could not exceed 28 days.

#### **4.6. Anti-Terrorism Crime and Security Act 2001**

The Anti-terrorism, Crime and Security Act 2001 (ATSC Act 2001), which built on the Terrorism Act 2000, provided additional powers. Contextually, it represented primarily the UK’s answer to the events of 9/11 and added substantially to the provisions of the TA 2000. By addressing the penalisation and confiscation of terrorist property and cash, the ATSC Act 2001 intended to adopt UN Security Council decisions.<sup>447</sup> Parts 6 to 9 addressed, also, the security of nuclear weapons; pathogens; toxins; and aviation facilities. The Act came into force in December 2001.

The introduction, of the ATCS Act 2001, encountered some scepticism amongst academia and organisations such as the Joint Committee on Human Rights. Indeed, it was criticised harshly,<sup>448</sup> especially with regard to the controversial issue of the option of indefinite detention, without trial, of foreign nationals who were suspected to be linked to international

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<sup>446</sup> See Sections 44-47 of the Terrorism Act 2000.

<sup>447</sup> Decisions drafted in UNSCR 1373 (2001).

<sup>448</sup> Reports by the Joint Committee on Human Rights, *Anti-Terrorism, Crime and Security Bill, Second Report*, 14 November 2001, and *Anti-Terrorism, Crime and Security Bill, Fifth Report*, 3 December 2001.

terrorism.<sup>449</sup> The establishment of this form of detention was motivated by the fact that it would not be possible to try such suspects for several reasons: firstly, because of the sensitive nature of the evidence; secondly, because the high standard of proof needed for successful prosecution is difficult to achieve; and, thirdly, because extradition or deportation was not an option, due to its incompatibility with the European Court of Human Rights jurisprudence.<sup>450</sup>

Yet, it was possible to deport suspected foreign terrorists, provided that their presence was considered to be a risk to national security, or where there was no threat of torture in the state to which they were deported.<sup>451</sup> Furthermore, Walker pointed out that deportation might not be the right solution since there was no assurance that, once out of the UK, the suspect would not resume his/her activities from abroad.<sup>452</sup>

It appeared soon, following the enactment of the ATCS Act 2001<sup>453</sup>, that some of its provisions would clash with the rights guaranteed by the European Convention on Human Rights.<sup>454</sup> However, the ECHR was not supreme over Acts of Parliament and, therefore, it could not be argued that there was any violation of the principle of Parliamentary sovereignty. However, that did not mean that UK legislators ought to ignore s.3 of the Human Rights Act 1998, according to which,

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<sup>449</sup> See Part IV of the Anti-terrorism, Crime and Security Act 2001.

<sup>450</sup> It is stated in the jurisprudence of the ECHR that “non-British nationals may not be deported to their state of origin if they face a risk of being tortured in the receiving state, as such a deportation would breach Article 3 of the European Convention on Human Rights (ECHR). See the case of *Chahal Vs United Kingdom*, App. No. 22414/93, 23 *EHRR* 413.

<sup>451</sup> For this particular point, see section 7 Nationality, Immigration and Asylum Act 2002 and section 97A Immigration, Asylum and National Security Act 2006.

<sup>452</sup> Walker, *MLR* 70 (2007), 433, commenting the Report of the Privy Councillor Review Committee, *Anti-terrorism, Crime and Security Act 2001 Review: Report* (2003–04 NC 100) Pt D, paragraph. 195.

<sup>453</sup> In particular, the controversial provisions on the detention without trial

<sup>454</sup> Such as Article 5 of the European Convention on Human Rights. It is important to mention that, since the enactment of the Human Rights Act 1998, most of the rights, which were originally in the HR Act 1998, have been integrated into the U K’s domestic law.

So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.<sup>455</sup>

In addition, the House of Lords could present a declaration of incompatibility if such incompatibility<sup>456</sup> occurred between an Act of Parliament and the ECHR.<sup>457</sup> Then, the Government might repeal and replace the offending provisions.<sup>458</sup> However, the UK Government's acknowledgment, of its violation of the right to liberty<sup>459</sup>, made it opt for derogation from Article 5.<sup>460</sup>

Another point, highlighted by critics of the ATCSA 2001, was the inadequacy, of Part 4, which focused on the security problem originated primarily by foreign nationals.<sup>461</sup> The House of Lords found that, in addition to the discriminatory character of Part 4, the circumstances, for applying for derogation from Article 5 ECHR (by The UK's government) were unsuitable, so that the provision was considered to be in violation of the right to liberty.<sup>462</sup> Finally, in January 2005, the UK Government recognised the incompatibility and decided to replace Part 4 with new legislation. Consequently, in March 2005, the Prevention of Terrorism Act 2005 (PTA 2005) introduced the control order scheme.

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<sup>455</sup> See section 3 of the HRA 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/42/section/3>

<sup>456</sup> See Section 4 (1) and (2) HRA 1998.

<sup>457</sup> However, such alternative does not affect the validity of the legislation. See Section 4 (6) HRA 1998.

<sup>458</sup> See Wadham et al., *Blackstone's Guide to the Human Rights Act 1998*, pp. 93–97, paragraphs 6.21–6.31. Oxford University Press, Oxford

<sup>459</sup> As set out by Article 5 ECHR in Part 4 of the ATCSA 2001,

<sup>460</sup> See Human Rights Act 1998 (Designated Derogation) Order 2001 (SI No. 2001/3644). In section 15 ECHR are mentioned the conditions to fulfil in order that a derogation can be made. In 2004, the legality of the provisions of Part 4 of the ATCSA 2001 and the government's decision to apply for a derogation from Article 5 ECHR was challenged by nine claimants who were detained under section 23 ATCSA 2001. The House of Lords repealed the derogation order and issued an order of incompatibility concerning section 23 of the ATCSA 2001. A violation of the prohibition of discrimination detention scheme, set out in Article 14 ECHR, was found (due to its discriminatory scope). The pertinence of the detention rules to foreign suspects was considered to be the only main weakness of the detention system.

<sup>461</sup> The terrorist attacks, in London on 7 July 2005, were carried out by British extremists. See Fenwick, *Civil Liberties and Human Rights*, Routledge - Cavendish, 2007, p. 1422–3

<sup>462</sup> *A and others v Secretary of State for the Home Department (No. 1)* [2004] UKHL 56; [2005] 2 WLR 87. Most Lords considered the measures to be disproportionate responses to the circumstances; for instance see Lord Bingham, paragraph 73, Lord Hoffmann, paragraphs. 96–97, and Lord Hope, paragraphs 119–120.

#### 4.7. The Prevention Terrorism Act 2005/ Control Order System

The Prevention Terrorism Act 2005 introduced the system, known as “control orders” introduced by to ensure the prevention of terrorist acts. Control orders are preventive orders which are applied, to individuals suspected to be involved in terrorist activities, in order to prevent further participation in such activities.<sup>463</sup> A control order is considered to be an option of last resort, expected to be used solely to deal with a potential threat posed by a person where prosecution is deemed to be unworkable.<sup>464</sup> Section 8(2) imposes a duty on the Secretary of State to consult the chief officer of the relevant police force to decide if the available evidence might be used for an eventual prosecution,<sup>465</sup> and, once an order is made, the possibility, of a prosecution for an offence related to terrorism, has to be kept under review. However, in practice, it is feared that imposition of a control order is preferred to prosecution.<sup>466</sup> Conte stated that,

“... the sole purpose of the enactment of the Prevention of Terrorism Act 2005 was to replace the regime of detention without trial under Part 4 of the ATCSA 2001 by repealing sections 21–32 of the latter Act.”<sup>467</sup>

Control orders arrived a substitute for the 2005 Act and are defined by s.1 (1) as orders enforcing obligations on persons for “... purposes connected with protecting members of the public from a risk of terrorism.” There are non-derogating control orders and derogating control orders.<sup>468</sup> The first category is an order, imposed by the Government in the belief

<sup>463</sup> The definition of control orders is given as follow in section 1 (1) PTA 2005: “In this Act “control order” means an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism”.

<sup>464</sup> Such impracticality might be due to the fact that evidence cannot be used in court, or, in case of foreign nationals whose presence in the UK is seen as a threat to national security, due to the prohibition to deport them to states where they will be put under torture. See *Chahal v United Kingdom* 23 EHRR 413

<sup>465</sup> See section 8 (2) PTA 2005

<sup>466</sup> Fenwick, *Civil Liberties and Human Rights*, Routledge - Cavendish, 2007, p. 1440

<sup>467</sup> D. Conte (2009). See section 16(2)(a) of the Prevention of Terrorism Act 2005

<sup>468</sup> Walker (2006) argued that “In both the cases, the order must be confirmed by a court. The orders issued in 2005 fell ‘not very short of house arrest’ (Lord Carlile, First Report of the Independent Reviewer pursuant

that there is no infringement of the right to liberty, and, consequently, there is no need to apply for a derogation of Article 5 of the ECHR.<sup>469</sup> On the other hand, if following an imposition of an order, potential infringements, of the right to liberty, appear, the UK Government has to require a derogation of Article 5. In this case, firstly, the Home Secretary must opt out of Article 5 and, then, ask the High Court for authority to grant such an order.<sup>470</sup>

In the UK, there are various offences concerned directly with control orders.<sup>471</sup> Among them is the failure to comply with an obligation imposed on the person by a control order<sup>472</sup> and travelling abroad and returning without, in terms of s.9(2), the authorities' knowledge. If a control order does not forbid travelling outside the UK, the 'controlee' return should be notified to a specified person and the fact that the control order expires whilst the individual is abroad should not absolve him/her from make the required notification.<sup>473</sup> Another offence consists of obstructing knowingly the service of a control order in terms of s.9(3). Walker considered that control orders clashed with the provisions of the ECHR, and he argued that;

“...though this level of restraint appears to be incompatible with Article 5 of the European Convention on Human Rights, no derogation notice has been issued”.<sup>474</sup>

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to Section 14(3) of the Prevention of Terrorism Act 2005 (Home Office, London, 2006), paragraph 43. .) See Walker's "Clamping Down on Terrorism in the United Kingdom", *Journal of International Criminal Justice* 4 (2006), 1137-1151, Oxford University Press, available online at: <http://jicj.oxfordjournals.org/content/4/5/1137.full.pdf>

<sup>469</sup> Non derogating control orders have a yearly lifespan, they are made as well as revoked by the Home Secretary and might be renewed annually.

<sup>470</sup> The derogating control orders last for 6 months and can be renewed every 6 months after.

<sup>471</sup> See section 9(1). Control Orders were brought in by the Government under the 2005 Prevention of Terrorism Act. In practice a control order involves severe restrictions on who a person can meet, where he/she can go and all cases so far have involved electronic tagging. What is concerning is the fact that they might eventually be permanent, and the person under such a regime does not have to be accused of any crime and neither he/she can be told why they are under suspicion.

<sup>472</sup> See section 9(4). If convicted the individual risks a maximum penalty of 5 years imprisonment.

<sup>473</sup> Regarding the offence under section 9(1), conviction on indictment carries a maximum penalty of 5 years imprisonment See section 9(4)

<sup>474</sup> See Walker (2006) "Clamping Down on Terrorism in the United Kingdom", *Journal of International Criminal Justice* 4 (2006), 1137-1151, Oxford University Press, available online at: <http://jicj.oxfordjournals.org/content/4/5/1137.full.pdf>

Chakrabarti, the director of Liberty, expressed the perspective of human rights organisations when she observed that the rushing, of the control orders system through Parliament, affected seriously both human rights and freedoms. She observed that:

“The writing on the wall is that justice must never be compromised in the name of security, and we urge Parliament to again reject counterproductive anti-terror measures in the next round.”<sup>475</sup>.

In 2010, Liberty produced a report which expressed a list of grievances regarding Control orders. It suggested that the control order system was:

“unsafe and unfair, it abrogates the right to fair trials and presumption of innocence, allows endless restrictions on liberty based on secret intelligence and suspicion rather than charges, or evidence. It was originally intended as a temporary regime, but it does not work, with many of those subject to control orders absconding, and many other orders being struck down by the courts. Aside from the human cost of control orders, millions of pounds have been spent on administering control orders and defending litigation.”<sup>476</sup>

In 2012, Liberty issued another briefing whereby it criticised the new Coalition Government’s policies. Whilst original control orders were scrapped and replaced by the Terrorism Prevention and Investigation Measures (TPIMs), Liberty considered that the new measures were simply a ‘control order-lite’, reviving the worst parts of the previous control order system.<sup>477</sup>

#### 4.8. Terrorism Act 2006

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<sup>475</sup> The statement was made in 2006, a year after the introduction of control orders. See the Press Release of Liberty entitled “Independent Reviewer Calls to renew Prevention of Terrorism Act 2005”. available at <http://www.liberty-human-rights.org.uk/media/press/2006/independent-reviewer-calls-to-renew-prevention-of-terrorism-act-2005.php>

<sup>476</sup> See Liberty, *Liberty’s response to the Coalition Government’s Review of Counter-Terrorism and Security Powers 2010*, 2010, Report available online at <http://www.liberty-human-rights.org.uk/pdfs/policy10/from-war-to-law-final-pdf-with-bookmarks.pdf> p.7.

<sup>477</sup> See Liberty, *Terrorism Prevention and Investigation Measures*, available online at: <http://www.liberty-human-rights.org.uk/human-rights/terrorism/control-orders/index.php>

Walker considered the Terrorism Act 2006 to be the direct consequence of the London bombings of 7 July 2005.<sup>478</sup> By introducing this new Act, the UK Government intended to comply with the Council of Europe 2005 Convention on the Prevention of Terrorism.<sup>479</sup> However, despite the claims of being in accordance with the European Convention, Walker noticed what he considered to be “discrepancies between the Act and the Convention, such as in the new offences against the “encouragement’ of terrorism”.<sup>480</sup> Conte presented another perspective;<sup>481</sup> this was that the British authorities regarded the Terrorism Act 2006 as a vehicle for implementing the call upon UN Member States to restrain incitement to terrorism.<sup>482</sup> Sections 1 and 2, of the Act, created the offences of encouragement of terrorism and dissemination of terrorist publications. Under s.1, the main offence concerns the publication of statements which might be interpreted by readers as

“...a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism or specified offences”

Just as the 2001 Act was a rushed response to the September 11 2001 terrorist attacks, the Terrorism Act 2006 was drafted in response to the London bombings. Its most significant element was the extension of pre-charge detention, for questioning by police, from 7 to

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<sup>478</sup> See C. Walker “Clamping Down on Terrorism in the United Kingdom”, *Journal of International Criminal Justice* 4 (2006), 1137-1151, Oxford University Press, available online at: <http://jicj.oxfordjournals.org/content/4/5/1137.full.pdf>

<sup>479</sup> See Council of Europe Convention on the Prevention of Terrorism, which was opened for signature on the 16<sup>th</sup> May 2006, CETS 196, and entered into force 1 June 2007. Document available online at: <http://www.official-documents.gov.uk/document/cm69/6901/6901.pdf>

<sup>480</sup> See C. Walker. “Clamping Down on Terrorism in the United Kingdom”, *Int. Criminal Justice*, 4(5), p. 1141, (2006), Oxford University Press, available online at: <http://jicj.oxfordjournals.org/content/4/5/1137.full.pdf>.

<sup>481</sup> A. Conte, *Human Rights in the Prevention and Punishment of Terrorism Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand*. Springer London 2010

<sup>482</sup> See Implementation of Security Council resolution 1624 (2005): report of the United Kingdom in response to the Counter-Terrorism Committee’s questions, UN Doc S/2006/398 (2006).

twenty-eight 28 days.<sup>483</sup> For Rahman, harsh criticism,<sup>484</sup> of the Terrorism Act 2006, was justified due to serious breaches of fundamental freedoms and rights. Commenting on the controversial s.1, he listed the people and organisations susceptible to be liable under that provision,

“This covers most mediums, including sermons, speeches, chants at demonstrations, and written material including the internet.”<sup>485</sup>

In considering s.1 (3) in the light of Article 10 of the ECHR,<sup>486</sup> he observed that s.1 had a negative impact on the fundamental right to freedom of expression. He added that, in addition to being incompatible with a protected right, the legislation was imprecise as regards to what constitutes precisely an offence:

“It is unclear how many ‘some members’ of the public would be required to constitute the offence, or indeed, to what extent it would be ‘likely’ that they should be encouraged to commit acts of terrorism or what constitutes ‘glorification’. It is anticipated that such loose drafting will give rise to many legal challenges”.<sup>487</sup>

<sup>483</sup> See A. Rahman, Guide to the New Terrorism Legislation, Dealing with all three Terrorism Acts and their Developments, available at: <http://www.rahmanravelli.co.uk/assets/files/terrorism-defence.pdf>, The 90 days, proposed by the Blair government, was rejected by the Parliament who considered that proposal was an outrageous negation of liberty. See also Walker, 2006 on that last statement.

<sup>484</sup> Rahman stated that TA 2006 “has been heavily criticised for being an erratic and draconian set of provisions.”

<sup>485</sup> A solicitor by profession, Rahman noticed that section 1 made 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’; an offence carrying a sentence of up to seven years imprisonment.

<sup>486</sup> Section 1(3) reads: ‘For the purposes of this section, 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 - \* (a) glorifies the commission or preparation (whether in the past, the future or generally) of such acts or offences; and \* (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.’

Article 10 provides that: ‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers... 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law, and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

<sup>487</sup> See A. Rahman, Guide to the New Terrorism Legislation, Dealing with all three Terrorism Acts and their Developments, available at: <http://www.rahmanravelli.co.uk/pr/terrorism-defence.pdf> . The 90 days

During their daily functions, journalists; reporters; investigators; or any media professionals might be considered to be offenders if they were found in possession of ‘sensitive’ material or were suspected of distributing ‘terrorist publications’. If journalists did have documents which were considered to be terrorist ‘statements’, whether in writing or in any other form of communication, they would be regarded automatically as circulating ‘terrorist publications’.<sup>488</sup> The question becomes problematic when one has to determine what exactly is meant by a ‘terrorist publication’. Is it when the contents are to be interpreted by an audience as direct or indirect encouragement to them to commit acts of terrorism? Or is material which risks being used in the commission or planning of terrorism acts by the people to whom it is made available? An accused might argue that the document or material, found in his/her possession, did not express his/her views or endorsement; this is often the case with journalists, who are looking for a scoop rather than motivated by ideological considerations.<sup>489</sup> Section 5 makes it an offence to be involved in the ‘preparation of terrorist acts’. This is directed against those who cannot be charged with attempting to commit a terrorist act.<sup>490</sup> This provision is very wide and is based on the accused’s intention to commit or assist in terrorism acts. If such an intention is established, any act might be considered to be conduct in preparation of terrorist acts.<sup>491</sup>

Regarding the provisions on ‘glorifying’ of terrorism, Walker gave some interesting examples when he stated that it was crucial to the debate as to whether or not,

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proposed by the Blair government was rejected by the Parliament who considered that proposal as an outrageous negation of liberty. See, also, Walker, 2006 on that last statement.

<sup>488</sup> Terrorist statements can be written; audio; electronic; or visual recordings.

<sup>489</sup> See the report of the International Federation of Journalists (2008). Available online at: [http://ethicaljournalisminitiative.org/pdfs/EJI\\_book\\_en.pdf](http://ethicaljournalisminitiative.org/pdfs/EJI_book_en.pdf)

<sup>490</sup> Provided that the intention was either to commit an act of terrorism or to assist in committing terrorist acts

<sup>491</sup> For example, enquiring about a course to learn how to fly. The sentence, for this offence, is life imprisonment.

“an offence might criminalize people like supporters of the armed opposition to the South African Apartheid, and more close to the present day the calls for the prosecution of Cherie Booth (Tony Blair’s wife), who stated publicly that ‘in view of the illegal occupation of Palestinian land I can well understand how decent Palestinians become terrorists’”.<sup>492</sup>

The coming into force, of the Terrorism Act 2006, made the ‘glorification’ of terrorism a criminal offence,<sup>493</sup> and, simultaneously, proscribed ‘extreme’ political groups and organisations.<sup>494</sup>

For Liberty, the British human Rights group, denying passionate speech and preventing non-violent political parties, from dissenting, was not the best approach to take. Crossman, Liberty’s Policy Director, , believed that the new powers, given to the executive, would have a negative effect since people would feel less safe.<sup>495</sup> Outlawing dissident groups and organisations would induce them to work underground, whilst singling out particular minority groups might discriminate against genuine opposition to dictatorship.

Media professionals from the developing world and countries, where freedom of expression and information was denied, traditionally were welcomed, in the UK, and allowed to express

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<sup>492</sup> See Walker (2006) “Clamping Down on Terrorism in the United Kingdom”, *Journal of International Criminal Justice* 4 (2006), 1137-1151, Oxford University Press, available online at: <http://jicj.oxfordjournals.org/content/4/5/1137.full.pdf>

<sup>493</sup> The provisions, of the Terrorism Act 2006, came into force on 13 April 2006. Sections 1 to 22, together with Schedule 1; b) sections 26 to 36, together with Schedule 2; c) sections 37(1) to (4) and 38; d) sections 37(5) in so far as it relates to the entries in Schedule 3 brought into force by sub-paragraph (e) below; and e) all of the entries in Schedule 3 except those relating to paragraph 36(1) of Schedule 8 to the Terrorism Act 2000 and section 306(2) and (3) of the Criminal Justice Act 2003 (Liberty).

<sup>494</sup> 47 international terrorist organisations are proscribed under the Terrorism Act 2000. Of these, two organisations are proscribed, under powers introduced in the Terrorism Act 2006, as glorifying terrorism. 14 organisations, in Northern Ireland, are proscribed under previous legislation. The list of the proscribed political groups and organisations can be found at the following government website: <http://www.homeoffice.gov.uk/publications/counter-terrorism/proscribed-terror-groups/proscribed-groups?view=Binary>

<sup>495</sup> See G. Crossman, ‘New Terrorism Act Powers will make Britain less safe’, Liberty, (April 2006) , available online at: <http://www.liberty-human-rights.org.uk/media/press/2006/new-terrorism-act-powers-will-make-britain-less-safe.php>

freely their political opinions.<sup>496</sup> Liberty expressed reservations about draft proposals to devising new offences linked with the encouragement of terrorism and dissemination of terrorist publications. It argued that there were sufficient means in the Terrorism Act 2000 and in the existing common law to tackle any problem.<sup>497</sup>

#### 4.9. Counter-Terrorism Act 2008

Conte<sup>498</sup> stated that the Counter-Terrorism Act 2008 “deepens and widens” existing legal measures on counter-terrorism.<sup>499</sup> Amongst other things, the powers to gather and share information were improved.<sup>500</sup> On sentencing, s.30 made “it an aggravating feature for the purpose of sentencing if an offence has or may have a terrorist connection.”<sup>501</sup> The Act allows police questioning of suspects after they were charged, whilst convicted terrorists have to notify the authorities about their locations. Other important provisions include the pre-charge detention of terrorist suspects for up to 42 days, and the banning of all photographs of the police in public places.<sup>502</sup> In her review of Clive’s book on terrorism and the law, Ramage’s opinions underlined that, amongst researchers, there was a strong belief

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<sup>496</sup> Journalists fled their countries fearing persecution and found asylum in the UK. However, the draconian legislation, enacted during the last decade, is likely to prevent them to denounce and work towards the changes in their countries of origin. See also Liberty’s Press release entitled “New Terrorism Act Powers will make Britain less safe” available online at: <http://www.liberty-human-rights.org.uk/media/press/2006/new-terrorism-act-powers-will-make-britain-less-safe.php>

<sup>497</sup> Liberty’s statement, on the Terrorism laws, was as follows:

Proposal to create new offences of encouragement and dissemination of terrorist publications are extremely broadly drafted. They do not require any intention to incite others to commit criminal acts. The Terrorism act 2000 and existing common law means there is already very broad criminal law. Any difficulty in bringing prosecutions can be largely attributed to factors such as the self-imposed ban on the admissibility of intercept evidence.

<sup>498</sup> See Conte (2009). In fact, this researcher reviewed all UK’s Counter-terrorism Acts.

<sup>499</sup> See Walker, (2006) “Clamping Down on Terrorism in the United Kingdom”, *Journal of International Criminal Justice* 4 (2006), 1137-1151, Oxford University Press, available online at: <http://jicj.oxfordjournals.org/content/4/5/1137.full.pdf>

<sup>500</sup> See Part 1

<sup>501</sup> See section 30, quote taken from Conte, 2009.

<sup>502</sup> G.F. Ísaksson, , *Human rights against anti-terrorist laws. Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws?*, University of Akureyri, Faculty of Law and Social Sciences, Law division, Iceland. 2009.

as regards the incompatibility between certain Acts such as the Counter-Terrorism Act 2008 and international human rights.<sup>503</sup>

Certainly, the UK Government is responsible for the protection of all UK citizens from terrorism. However, such an objective should not be achieved by or serve as a justification for abusing their rights and ethical values or restricting their civil liberties. Any attempt to neglect such boundaries is not only imprudent but, also, unproductive.<sup>504</sup> Ramage believed that the Counter-Terrorism Act 2008 Act created very challenging requirements for people convicted of conducting terrorist activities:

“... Anyone sentenced to five years or more for a terrorism offense or a terrorism-related offense would be subject to these notification requirements for the rest of their lives. Any breach would be punishable by up to five years in prison.”<sup>505</sup>

The writer’s concerns were linked particularly to the fact that, regardless of whether or not the conviction resulted from a fair trial, respecting international standards, the requirements might be applied forcibly on individuals who were convicted abroad rather than by a British court.

#### **4.10. Characteristics of Anti-Terrorism Laws and Implications for Human Rights and Media**

Certain general characteristics might be highlighted following the examination of anti-terrorism laws. Firstly, inevitably, a certain number of anti-terrorism laws limit citizens’

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<sup>503</sup> According to Ramage (2009):

“It is well established in international human rights law that any interference with the fundamental right to liberty must be shown to be strictly necessary and proportionate. The government has failed to provide any evidence that the 28-day limit prevented the police from bringing charges at all or forced them to bring lesser charges”.

<sup>504</sup> Ibid.

<sup>505</sup> See Ramage, 2009. Blackstone’s guide to the Anti-Terrorism Legislation 2009 Clive Walker. Oxford University Press. Book Review by S. Ramage. Available online at:

<http://www.sallyramage.net/28-Blackstone's%20guide%20to%20antiterrorism-%202009.pdf>

human rights such as the right to liberty of movement<sup>506</sup>; the right of inviolability of their home and property<sup>507</sup>; the right to privacy<sup>508</sup>; to freedom of association<sup>509</sup>; to freedom of conscience<sup>510</sup>; and the right not to suffer discrimination<sup>511</sup>. Equally, there are, also, basic procedural human rights which are affected by anti-terrorism laws. These are such as the right to a proper defence;<sup>512</sup> and the right to remain silent and not incriminate himself/herself.<sup>513</sup> It is not this researcher's intention to dispute the need for anti-terror legislation as a whole, or to affirm that there is always a flagrant violation of citizens' rights. He aimed to highlight the elements, in the laws, which restrict certain liberties, and to question the justification of the restrictions when they are implemented on a large scale (i.e. extended to the whole population and to the media professions in particular.)

Restrictions on citizens' rights might be indispensable and acceptable in particular circumstances. Civil liberties or human rights need not be granted always in absolute terms, or on a permanent basis. There are situations where a conflict occurs between rights.<sup>514</sup> In general, people accepted having some of their rights restricted in order to combat terrorism. However, most people believed that that this ought to be achieved through temporary and exceptional measures, not permanent restrictions. Another concern was that the new limitations ought to be clear and proportional. Therefore, in order not to create further

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<sup>506</sup> Prolongation in custody; indefinite detention of foreign nationals; detention without trial; exclusion orders

<sup>507</sup> House search; bugging operations

<sup>508</sup> Privacy is restrained further, from telephone tapping over data storing and sharing, to grid search etc.

<sup>509</sup> Proscribing organisations through the ban of certain associations deemed to encourage or promote terrorism.

<sup>510</sup> See Incitement to terrorism; glorification of terrorism; Racial and Religious Hatred Act.

<sup>511</sup> Equality, before the law, was jeopardised by the special treatment of foreign national suspects, UK's ATCSA 2001 part IV, regulating indefinite detention of foreign terrorist suspects.

<sup>512</sup> Arrested suspects do not have access to defence lawyer during the first 48 hours of detention and, more concerning, is the fact that such a normal procedure is not allowed, also, during police interrogations.

<sup>513</sup> In the UK, negative inferences from silence are admitted, whilst European States such as Germany; France; and Spain do have provisions for the reduction of sentences for criminals who agree to collaborate with the authorities. For the accused, incriminating themselves seems to be the only alternative for sentence reduction.

<sup>514</sup> Victims of terrorism do have the same right to life as the perpetrators of crime who ignore such right for others.

problems instead of solving them, the authorities were expected to implement anti-terrorism laws in a responsible and sensitive manner. By looking back to the evolution of the law in the UK since the enactment of the Terrorism Act 2000, it appears that the public's expectations were far from being satisfied. Confidence invested, in the legislative and executive powers, was ill founded. Most analysts; observers; media people; and civil liberties organisations, criticised vehemently the various anti-terror laws, which were considered to be unclear or ambiguous, and, in particular, the very wide and general definition of terrorism adopted by the Terrorism Act 2000.<sup>515</sup>

The above definition causes concern. Indeed, the created category is very broad, to the extent that the provisions may be applied in cases that do not justify the use of specialised powers and offences.<sup>516</sup> Additionally, it is essential to ensure that there are limits to the extent of human rights restrictions. When limitations are left only to the discretion of authorities, there are real risks. There are cases where it is surely inappropriate to limit human rights, since the concerned rights are very narrow already.<sup>517</sup> It could be argued that the limitations were

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<sup>515</sup> The definition was extended to include religiously motivated international terrorism. See S.112. . S.1 of the TA 2000 reads:

(1) In this Act "terrorism" means the use or threat of action where (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause. (2) Action falls within this subsection if it (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person's life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system. (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied. (4) In this section (a) "action" includes action outside the United Kingdom, (b) a reference to any person or to property is a reference to any person, or to property, wherever situated, (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and (d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom. (5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

<sup>516</sup> The wideness of the definition was highlighted during legislative debates (see House of Commons Debates, 1999-2000, vol. 341, col. 152.)

<sup>517</sup> In the UK, the authorities reckoned that it was necessary to make a declaration under Article 15 of the European Convention on Human Rights, thereby allowing itself to suspend certain rights such as the right to liberty in some circumstances (Art. 5 ECHR). Furthermore, the right to silence is definitely jeopardised if

so excessive that no possible threat could justify them, e.g. the provisions imposed by the ATCSA 2001 allowing indefinite detention of foreign terrorist suspects; these were quashed, finally, by the House of Lords in 2005, following the 7 July 2005 bombings in London.<sup>518</sup>

In view of the above cases, it is perfectly reasonable to assess, on the one hand, whether there is compatibility between UK anti-terrorism laws and their implementation on the ground, and, on the other hand, human rights. The number of cases brought before the Court of Strasbourg showed clearly that when it came to terrorism matters and to the adoption of related laws, British legislators had negligible respect for human rights. In addition, it appeared that a hasty adoption of new legislation, as a reaction to a terrorist action, was very likely to infringe or violate human rights. Moreover, to the increased risk of breaching citizens' rights, was added another type of risk, the neglect of principles contained in the general criminal law.<sup>519</sup> For instance, as enshrined in the concept of legality, aspects such as the principle of legal clarity and certainty<sup>520</sup>; the prohibition of the use of analogy in criminal law;<sup>521</sup> and, finally, the principles of minimal intervention and proportionality.<sup>522</sup>

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negative inferences can explicitly be drawn from the silence of the accused. The "Criminal Evidence (Northern Ireland) Order 1988" restricted the suspect's 'right to silence' by providing that the failure of a suspect to provide explanations might lead to inferences and eventually conviction. Defence counsels asked the House of Lords, if a suspect arrested under s.14 of the PTA 1989 had (i) a right at common law to be accompanied and advised by a solicitor during interviews with the police or (ii) if such right did not exist at common law, could it now be said to exist in of The Criminal Evidence (Northern Ireland) Order 1988. The House of Lords stated that it was "the clearly expressed will of Parliament that persons arrested under s.14 (1) of the PTA should not have the right to have a solicitor present during interview," and it was "impermissible for the House to develop the law in a direction which is contrary to the expressed will of Parliament." See also "Opinions of the Lords of Appeal for judgment in the cause" *Regina v. Chief Constable of the Royal Ulster Constabulary (Respondent)* available at:

<http://www.publications.parliament.uk/pa/ld199798/ldjudgmt/jd971016/begley.htm>

<sup>518</sup> The belated repeal of this provision was mainly due to the terrorist attacks in London when it was found that the perpetrators were British born.

<sup>519</sup> A. Ashworth, *Principles of Criminal Law*, Oxford University Press: Oxford. 2006.

<sup>520</sup> This principle is undermined not only in the UK but, also, in other countries, the very notion of 'terrorism' not being defined further.

<sup>521</sup> For the British case s. 57 (3) of the Terrorism Act 2000 is a good example of such prohibition.

<sup>522</sup> The introduction of new criminal offences such as the controversial issue of the 'encouragement of terrorism' (S.1 of the TA 2006) included indirect incentive like 'glorification of terrorism'. The maximum sentence provided for such offence is seven years imprisonment. Other offences regarding the dissemination of terrorist publications (s.2); the preparation of terrorist acts (s.5) (life imprisonment); and training for terrorism (s.6). The offence was introduced to implement the requirements of Art. 5 of the 'Council of Europe Convention on the Prevention of Terrorism', according to which parties are required to criminalise 'public

All the above mentioned principles of criminal law are important. However, in the context of this study where the laws targeted certain areas, it was essential to consider, in particular, fundamental principles such as the presumption of innocence;<sup>523</sup> and the principle of minimal intervention and proportionality. The concept of the “presumption of innocence” represents the only way to ensure that people, accused of a crime, are not tried hastily and convicted unjustly. The general recognition, of this principle, is based on Blackstone’s adage in his Commentaries on the Laws of England: “Better that ten guilty persons escape, than that one innocent person suffers”.<sup>524</sup> The purpose, of the presumption of innocence, is to give maximum chances to the accused person. It is believed, also, that the severity of penal consequences requires more attention to be paid to the presumption of innocence.<sup>525</sup>

The principle of minimal intervention and proportionality is the other basic principle to be respected in order to ensure that the role of criminal law is followed properly. Excessive criminal measures might be frustrating in modern and open societies. They can provoke, also, counter-productive reactions; boost criminal behaviour; and weaken the confidence in the executive’s power. Retreat from these basic principles undermines the criminal justice

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provocation to commit a terrorist offence’. The restriction, on the freedom of speech connected to this offence, is obvious. Therefore, it is opportune to ask if the offences under the TA 2006 are proportionate, by referring to the freedom of speech (s.1 (1) (b) HRA 1998 in conjunction with Art. 10 of the ECHR).

<sup>523</sup> In Latin “*Ei incumbit probatio qui dicit, non qui negat*” the presumption of innocence means that a suspected person is innocent until proven otherwise. Application, of this principle, is a legal right of the accused in criminal trials. Accordingly, it is the prosecution which has to produce the burden of proof; this consists of evidence and testimony admissible by the law, and obtained lawfully, proving that the accused is guilty beyond a reasonable doubt. If it is not the case, the accused must be freed.

<sup>524</sup> The ten-to-one rule is an important one in criminal law. It reinforces the principle of “presumption of innocence”. See Elies Van Sliedregt (2009). *A contemporary reflection on the presumption of innocence*, in *Revue Internationale de Droit Pénal* 2009/1-2 (Vol. 80). See also L Laudan. “The Presumption of Innocence: Material or Probatory?”, *Legal Theory*, 2005, issue 4, pp 333-361,

[http://www.derecho.uach.cl/documentos/Laudan\\_presumption\\_of\\_innocence.pdf](http://www.derecho.uach.cl/documentos/Laudan_presumption_of_innocence.pdf)

<sup>525</sup> See C.M.V. Clarkson ‘*Understanding criminal law*’, Sweet & Maxwell; 4<sup>th</sup> edition, 2005.

system. People can regard the state's illegitimate use of force as an abuse of power which can lead to the destabilisation, of the state, and an increase of civilian disobedience.<sup>526</sup>

#### **4.11. The National Union of Journalists (NUJ) and Counter Terrorism Powers**

After considering anti-terrorism laws and identifying what, theoretically, might be problematic in the legislation, it is important now to consider the opinion of the main actors, the media. In order to do so, the study considers the concerns raised by the NUJ, deemed to be the body which is most representative of the media in the UK.<sup>527</sup> The NUJ contributed to the Rapid Review of Counter Terrorism powers and focused on law enforcers' use of terrorism legislation with regard to photography. For the Union, taking photographs or filming was part of the duties undertaken and expected to be done by media professionals. According to them, any attempt to prevent the accomplishment of this task cannot be acceptable, and the authorities should not prevent or restrict the journalists' or photographers' recording of events other than with reference to objective and justifiable criteria. The police should not be able to use powers, relating to terrorism, arbitrarily to stop and search media people.

Nevertheless, The NUJ protested against only what they considered to be abuse of their rights. In 2005, the Union tried, also, to prompt changes through initiatives such as collaborating with two important media associations,<sup>528</sup> and seeking to agree improvements

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<sup>526</sup> Civil disobedience is the conscious, individual or collective violation of a law, regulation, or edict. The order violated is usually deemed to be immoral or unjust by those undertaking the action. Civil disobedience also includes disobeying neutral orders, which serve as symbols of more general opposition. The intentional breaking of immoral laws represented a form of remaining true to one's beliefs. In the 1770s, Granville Sharp, resigned from the London War Office rather than authorise arms to put down the colonial rebellion in North America. See C. E. Miller, *A Glossary in Terms and Concepts of peace and conflict studies*, University of Peace, Costa Rica, 2<sup>nd</sup> edition, 2005, pp.18-19, <http://www.africa.upeace.org/documents/GlossaryV2.pdf> and Albrecht (2003).

<sup>527</sup> The National Union of Journalists (NUJ) represents 38,000 members working in the media field; these members include freelancers; writers; reporters; editors; sub-editors; illustrators; and photographers.

<sup>528</sup> The British Press Photographers Association (BPPA) and the National Association of Press Agencies (NAPA)

in the way the police behaved towards the media generally and towards photographers in particular. The first initiative saw guidelines produced in January 2006.<sup>529</sup> NUJ members were involved, also, in the campaign group ‘I’m a Photographer, Not a Terrorist’.<sup>530</sup> The NUJ drew attention to what it considered to be a “disparity between the framework provided by legislation, policy and guidance when compared to the operational practice of police officers.”<sup>531</sup>

The NUJ addressed, also, certain provisions of anti-terrorism laws and made a number of comments regarding their interpretation. They considered that s.43 of the Terrorism Act 2000<sup>532</sup> ought not to be interpreted to suggest that being a journalist, in possession or using a camera, consisted of sufficient evidence of suspicious activity linked to potential terrorist activities. In addition, to avoid any ambiguity, it was suggested that the definition of ‘reasonable suspicion’ be amended in order to avoid misuse and potential abuse.

The NUJ requested simply that s.44, of the Terrorism Act 2000, ought to be abolished.<sup>533</sup>

They considered that it was inconceivable that police officers ought to be empowered to

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<sup>529</sup> The Met Guidelines were adopted by ACPO <http://www.londonfreelance.org/fl/0704acpo.html> and explain how the police are expected to allow access to media workers.

<sup>530</sup> The anti-terrorism legislation and its enforcement by the police led to this campaign meant to respond to abuses against photographers. The misuse of anti-terrorism laws prompted the union of professional and amateur photographers in defence of press freedom and civil liberties. The campaign protested against photographers being targeted indiscriminately as potential terrorists, and argued that the making of collective visual histories was undermined by the misuse of the new laws. The campaign was concerned, also, that there were still laws which police used to harass photographers.

<sup>531</sup> The way guidance, given to police officers, was the object of concerns. The police officers were instructed on how to deal with photographers via emails or through the police intranet. In addition, NUJ members claimed that a flagrant lack of understanding of new laws; policy; and guidance, by police officers was blatant. The NUJ suggested that “Specific guidance on how to treat media workers should be included in police media policies, media training and public order training.”

<sup>532</sup> S.43, of the TA 2000, gives law enforcers the power to stop and search a person reasonably suspected to be a terrorist in order to check if he/she is in possession of articles which may constitute evidence against him/her.

<sup>533</sup> Section 44, of the Terrorism Act 2000, allows police officers the power to search anyone in an ‘authorised area’ without reasonable suspicion to find out if he/she is in possession of articles which may constitute evidence that the person is a terrorist.

search anyone without reasonable suspicion that an offence had been committed. However, the Union was ready to make concessions in this matter, and was prepared to see the scope of s.44 limited significantly, when adding that “safeguards should be added to ward against abuse and it must be necessary to have prior judicial authorisation.”<sup>534</sup> Commenting on s.58 of the same Act,<sup>535</sup> the Union advised the executive to ensure that appropriate training was given to the police forces involved in that area and the proper scope of their powers communicated to them. For instance, they ought to be aware that, under s.58, taking photographs, of the police, was not a crime.<sup>536</sup> NUJ members complained that police constantly demand that they showed their materials under this provision. In their daily practices, intimidation; forced delays; and harassment prevented photographers from carrying out their jobs.

In 2008, a new section was added to the TA 2000 - s.58A. This provides that a person commits an offence if he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism; or he possesses a document or record containing information of that kind.<sup>537</sup> This section aims to protect members of the armed forces; intelligence services; and police officers from being targeted by terrorists. The maximum sentence, for this offence, is a jail term of 10 years. However, it is a defence for a person, charged with an offence under this section, to prove that they had a reasonable

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<sup>534</sup> See National Union of Journalists, ‘*NUJ response to the Rapid Review of Counter Terrorism powers*’, p.3, Available online at: <http://media.gn.apc.org/fl/1011poli.pdf>

<sup>535</sup> Section 58 of the Terrorism Act 2000

<sup>536</sup> The sections 43, 44 and 58 of the Terrorism Act 2000 are expected to be in accordance with the rules on Excluded Material (which includes Journalistic Material) and Special Procedure Material as set out in the Police and Criminal Evidence Act (PACE). It is provided that the police must obtain a warrant to search for this type of material. Another key point is that police officers should provide a court order before deleting or destroying photographs, film or digital images.

<sup>537</sup> Under the new section 58A (added by section 76 of the Counter-Terrorism Act 2008), eliciting; publishing; or communicating information on members of the armed forces; intelligence services; and police officers, which is “likely to be useful to a person committing or preparing an act of terrorism”, will be an offence carrying a maximum jail term of 10 years.

excuse for their actions. Consequently, an individual, charged with such an offence, may prove that he or she acted genuinely, without intending to do any harm. The NUJ reacted to s.58A by stating that there ought to be, also, a clear public interest defence for journalists.<sup>538</sup> In addition, they reiterated criticism of s.44 by giving figures which proved that, in practice, the section served no useful purpose.<sup>539</sup>

Despite the flagrant abuse of the stop and search powers, the Union observed that the Home Secretary, Theresa May, wanted to scrap the form which recorded stop and search.<sup>540</sup> There is no doubt that, in a functioning open and modern democracy, accountability and transparency are indispensable through proper monitoring – even if it was reported (by the NUJ) that stop and searches records were inaccurate,<sup>541</sup> and there was an excessive discretion for police forces on the ground with few safeguards against the misuse of anti-terrorism laws. They believed that legitimate journalistic endeavour ought to constitute reasonable justification for their activities, and that anti-terrorism powers were not devised for harassing the media by preventing professionals from doing their jobs of taking photographs or filming a scene.<sup>542</sup>

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<sup>538</sup> See National Union of Journalists, '*NUJ response to the Rapid Review of Counter Terrorism powers*', p.4, Available online at: <http://media.gn.apc.org/fl/1011poli.pdf>

<sup>539</sup> Rowlands quoted Home Office Statistical Bulletin 2008/09 where it was stated that "Police invoked powers afforded to them under section 44 to stop and search people on 256,026 occasions in England and Wales between April 2008 and March 2009. The Metropolitan Police and Transport Police were responsible for 95% of this total. Of this figure, only 1,452 stops resulted in arrest, less than 0.6% of the total number, and the vast majority of these were for offences unrelated to terrorism. In November 2009, the Home Office published information to show a 37% decrease in the use of section 44 for the first quarter of 2009-10, but the figure of 36,189 still equates to an average of 398 people being stopped every day in April, May and June 2009."

See M. Rowlands, '*Statewatch Analysis, UK: The Misuse of Section 44 stop and search powers continues despite European Court ruling*', Available online at <http://www.statewatch.org/analyses/no-105-uk-section-44.pdf>

<sup>540</sup> See National Union of Journalists, '*NUJ response to the Rapid Review of Counter Terrorism powers*', p.4, Available online at: <http://media.gn.apc.org/fl/1011poli.pdf>

<sup>541</sup> Ibid. p.4 If not all stop and search operations are recorded, it is possible that a significant number has been ignored.

<sup>542</sup> Public Order Intelligence Unit and the Criminal Intelligence Database In London, Forward Intelligence Teams (FIT) are managed by the Metropolitan police's 'Public Order Intelligence Unit', which is part of the public order unit. The NUJ, who claimed that there were tangible proofs regarding the targeting of some NUJ members by the FIT, asked for explanations from the police and the Home Office. There was a real concern about the purpose and means of monitoring journalists. The NUJ do have questions which remain unanswered:

#### 4.11.1 Protection of Sources

The NUJ expressed, also, concerns as regards the protection of journalistic sources.<sup>543</sup> It was alleged that the police and authorities had circumvented that protection by “ phone tapping, monitoring of internet traffic and mobile telecommunications; direct seizures of journalists’ material including computers and notebooks; requiring media to provide film as evidence; and turning the journalist witness into the defendant.”<sup>544</sup>

Compelling the disclosure of sources might not compromise only journalists’ professionalism but, also, might put them in real danger when the issue was linked with terrorism. A journalist’s role does not include being an informant to authorities.<sup>545</sup>

#### 4.11.2 Cases of misuse of terrorism legislation recorded by the NUJ

Although these were certainly not the only examples, even during the period from 2008 to 2011 to which they are confined, the following examples represent instances of how law enforcers misused UK legislation,.

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“How is information obtained by the FIT processed and retained? Are individuals listed by name and who has access to these records? For what period of time are the records, including video and audio footage, retained and what are the guidelines pertaining to the retention and use of information relating to members of the press?”

<sup>543</sup> A journalist right, to protect his/her sources, is a well- recognized right in international law, specifically by the United Nations; Council of Europe; and the Organization for Security and Co-operation in Europe. The European Court of Human Rights found in several cases that it was an essential part of freedom of expression.

<sup>544</sup> A case brought by the NUJ on behalf of member, Bill Goodwin, resulted in a major landmark judgement at the European Court of Human Rights. The judgement set new case law for Europe and required the UK government to amend the law. Successive governments have failed to do so and the cases continue. In recent months and years anti-terrorism laws are being used against journalists. In the UK, particularly in Northern Ireland, there were regular cases of the police searching and seizing journalists’ material under anti-terrorism laws.

<sup>545</sup> In 2007, the Council of Europe recommended that journalists ought not to be required to hand over notes; photographs; audio; and video in crisis situations to ensure their safety. Detection and investigative measures, meant to identify sources, must be prohibited and legislation on national security or anti-terrorism measures should not include media sources. The only exceptions must be the ones specified by the CoE or the ECtHR.

### Waterloo Station

An NUJ Member, passing through Waterloo station on 8 May 2009, witnessed Police Community Support Officers (PSCOs) detaining a male, who was lying on the floor in full view of the public and appeared distressed, crying out that he was hurt and had done nothing wrong. The journalist recorded the incident from a distance so as not to interfere with any police operation, wanting independent evidence of what had happened and hoping his presence would offer re-assurance. Instead the journalist, himself; became the subject of unwarranted and unlawful police attention. The journalist complained that he was threatened with arrest if he did not delete the six photographs he had managed to take.

### Docklands

In December 2008, a NUJ member was detained for more than 45 minutes by police while covering a wedding in London's Docklands. Her camera was removed forcibly by an officer who told her: "we can do anything under the Terrorism Act." She said, also, that she was "informed that she could not use any footage of the police car or police officers and that if she did there would be 'severe penalties'".

### Kent Police

An NUJ Member was subjected to a number of stop and searches by police during the protest at Kingsnorth Climate Camp in the week beginning 8 August 2009. The Member was not part of the Climate Camp Protest and was stopped and searched by the Police under s.44.

"This was a massive policing operation involving officers drawn from forces all over the country. The media were filmed and searched entering and leaving the field where the protest camp was. On one occasion after photographing a rather brutal arrest of protesters who had been filming the police, we were detained for over an hour. We were then followed to a restaurant several miles away and were filmed through the window by the police Forward Intelligence Team. On that particular day I was stopped and searched three times and detained for over two hours."

### Skyline Photographs

On 10 May 2010, a NUJ Member went to One Aldermandbury Square in the City of London, to take a portrait of one of the architects responsible for the change in London Skyline. He was approached by the Police who stopped him under s.44.

### Materials & Information

In 2008, the police instructed a NUJ Member to hand over materials in relation to his work reporting on terrorist organisations. Whilst the police can apply for such orders under the 2000 Terrorism Act, this case is believed to be unprecedented because the main person, of interest to the police, volunteered to speak openly to them.

In 2008, a Milton Keynes NUJ Member was awaiting trial on charges alleging she obtained information illegally from the police.<sup>546</sup> –

### **4.11. Conclusion**

It was noticed, throughout this section, that terrorist events had a real impact on legislators.

Nevertheless, rather than the consequences of the acts or the level of threat, it was the media

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<sup>546</sup> The case was mentioned, without details, in the NUJ response to the Rapid Review of Counter Terrorism powers). However, in an article published in Statewatch analysis *Media freedoms in the UK curtailed by police “culture of suspicion” and double standards*” M.Rowlands wrote:

“Sally Murrer, was accused of “aiding and abetting misconduct in a public office”. She was arrested in May 2007 on the basis of her association with police officer, Mark Kearney, who she was alleged to have helped leak classified information. Having been under surveillance for months by security services – including having her car bugged – police carried out simultaneous raids on her home and place of work, the *Milton Keynes Citizen* newspaper. She has twice been held in police detention; strip-searched; and told repeatedly during interrogations that she would be jailed for life. And yet it remained unclear exactly what Murrer has done to warrant the charges brought against her and the treatment she had received. All of the stories, for which she used Kearney as a source, such as the arrest of a local footballer and the identity of a man killed in a fight, were relatively ordinary and localised and posed no threat to national security. Certainly Murrer’s methods, of obtaining information, were no different from those used by journalists throughout the country. However, in February 2008, Kearney revealed that he had taken part reluctantly in a covert operation to bug a conversation between Labour MP Sadiq Khan and a constituent he was visiting in prison. Murrer said “this may be the missing piece of the jigsaw”, and speculated that “they tried to discredit the whistleblower and the journalist they thought he was going to blow the whistle to and destroy the story that way...they were trying to ruin him, destroying me in the process.” Murrer’s legal team is trying currently to have the case thrown out, arguing that bugging her conversations with Kearney breached her rights as a journalist under Article 10 of the *Human Rights Act*. However, if she does go to trial and is found guilty, a precedent will be set for the imprisonment of any journalist who receives information from a police or government source without official sanction.

See M. Rowlands, ‘*Media freedoms in the UK curtailed by police “culture of suspicion” and double standards*’, Statewatch Analysis, the full article available online at:

<http://www.statewatch.org/analyses/no-73-uk-police-press-and-protests.pdf>

coverage, of such incidents, which affected the legislators more. Terrorists were aware of the indirect ‘help’, which they could obtain from media outlets, and had not spared their efforts to attract media attention. The overlapping of interests, between media organisations and terrorist groups, induced the state to look with circumspection (and, sometimes, with suspicion) on the role of media professionals and to question which side they were on. Such behaviour, from the authorities, made them pay less regard to the fundamental issues of human rights and freedom of speech; information; and opinion. It could not be denied that most of the laws, enacted in the UK in this area, restricted some fundamental human rights. In addition, it was noted that some general principles, of criminal law, were neglected, also. It was remarkable that the UK was the only European State which asked for derogation from Article 5 of the European Convention of Human Rights (ECHR). Whilst some argued that the UK’s adoption of the Human Rights Act 1998 reinforced substantially the value of the ECHR in domestic case-law, due to the events of September 11 2001, the UK adopted the longest ever period of detention without warrant.

This study noted that, often, the legislative process which followed the events of September 11 2001 was hasty. For instance, the ACTSA 2001, a very lengthy and draconian piece of legislation, was drafted apparently in just over a couple of months. The other observation, to be made regarding the general tendency of anti-terror laws, was that, despite the fact that they were meant to address principally the problem of terrorism, they were used to address other forms of crimes and delinquency (illegal immigration; fraud; and so on). This illustrated a very wide interpretation of the law by police officers on the ground. The police seemed to consider that, if there was the slightest possibility that a certain person might represent a threat to the public, that person had to be stopped under the appropriate provisions of anti-terrorist laws.

This researcher noted, also, that, more often, terrorism laws were extended rather than restricted. Such a phenomenon did not appear to be linked necessarily with real threats. Enacting provisional laws and temporary Acts in the UK and, then, giving them in fact a permanent status, by continuously extending them, did not seem to obey sound reasoning. The general tendency, amongst legislators, to adopt laws hastily in this area, was not counter-balanced by any inclination to abolish them when all evidence suggested that they served no useful purpose.

Frequently, the use of the threat of terrorism was a pretext used to serve different agendas, not necessarily related to the challenge of terrorism. In considering the various measures, adopted by the UK and other European countries, it was noticeable that the following ‘anti-terrorism’ measures were applied in most countries: extension of the period of detention; detention without a charge; and prolonged police custody. It could not be denied that, in addition to exerting a huge psychological and social pressure, this form of custody, might prompt the detainee, also, to say what his interrogators wanted him to say. If he was convinced that it was the only way to be released earlier. In the UK, pre-charge detention was fixed, firstly, to seven days and, then, extended to fourteen days, before reaching twenty-eight days and reducing again to 14 days.

Other excessive measures were solitary confinement; house arrest; telephone tapping; bugging operations; video surveillance; use of private informers and undercover agents; the extension of police powers, the banning of terrorist associations (a controversial in terms of who was to be on the list, who ought to decide, under which criteria) and criminalising mere membership of such associations; freezing of assets; obliging financial institutions to report suspicious transactions (once again, raising the issue of who decided that a transaction

was suspicious, and on which basis). Similarities were noted regarding the level of available sentences for terrorism.

In conclusion, it could be said that the UK anti-terrorism laws impacted significantly on freedom of movement and restricted the right to privacy, and, moreover, people, working in the media professions, were the first to be affected. Another element, observed in the examined laws, was the change from a repressive phase (i.e. pursuing the people who committed crimes) towards a more preventive phase. Such a move suggested that most provisions, of UK anti-terrorism laws, focused on police powers during preliminary investigation; criminalising preparatory activities; and instigations of terrorism before any terrorist act has been committed.

The new focus on preventing harmful actions was motivated by the change in the nature of today's terrorism. In order to avoid tragedies and large number of victims such as happened on September 11 2001, it was deduced that intervening, after a human catastrophe, was not as useful as intervening to prevent it. Under the old law, the police and prosecution could do nothing about preparatory actions unless the law were to criminalise the making of preparations for a harmful act. Yet, problems arose when it appeared that, as a consequence of the new law, one compromised not only the presumption of the suspect's innocence but, also, that of a large part of the population. Consequently, the traditional "presumption of innocence" became a "presumption of culpability" which obliged accused persons to prove their innocence. The following chapter discusses, in depth, the particular cases affected by the British Anti-terrorism Laws and a few cases from EU countries which arose in the context of the international co-operation in counteracting terrorism.

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## **Chapter Five**

### **The Anti-Terrorism Laws and Media**

#### **5.1. Introduction**

The previous chapter considered the concept of the “war on terror” and the enactment of anti-terrorism laws by various institutions and governments. It considered, also, how media organisations were affected by the new laws, and how media professionals were restricted in terms of access to information. In addition, the chapter shed light on anti-terrorism laws enacted in the UK; in the USA; and in certain European countries. Particular attention was given to laws believed to have negative consequences on human rights generally and, in particular, upon the freedom of media and journalists.

This chapter considers the purpose of introducing laws on terrorism and, then, makes a comparison between the laws enacted in the UK; in the USA; and in Europe. In considering the positions of international organisations, governments; international media institutions; human rights organisations; and, finally, academics, there is a discussion of the various stances, taken by different parties on the issue of Media and Anti-terrorism Laws. Another aspect, addressed in this chapter, is the cooperation between states to face the rising threat of terrorism. In order to avoid sticking only to a theoretical approach, a number of concrete cases are presented. These are such as the Taysir Alluni Case; the particular cases of Al-Jazeera; the BBC; and Indymedia and those of media professionals arrested by a number of European countries under the provisions of the new anti-terrorism legislation. Finally, there is an assessment of criticisms made against UK anti-terrorism laws and the effect of the Terrorism Act 2000 on human rights and media.

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Amongst the public; governments; and international organisations, there is a unanimous acknowledgement about the necessity of having appropriate legislation in order to face new challenges such as terrorism. Therefore, following the September 11 2001 events, international communities considered the need to give appropriate responses and to prevent the recurrence of such devastating acts which were targeted mainly at normal citizens. However, legislating, to such effect, without limiting fundamental liberties, was a huge challenge. Despite its experience in dealing with internal terrorism, the United Kingdom seemed to have had flaws in its various post 9/11 statutes. Different reasons might explain the shortcomings of the anti-terrorism laws, amongst them, the inability, of international organisations such as the UN or the EU, to reach an agreement about the definition of terrorism. The profusion of meanings made national governments adopt their own interpretations and legislate according to their own understandings. On the positive side, it could be said that those drafting UK laws accepted some of the reservations expressed by human rights organisations, and amended anti-terrorist laws accordingly. However, the remaining question was: were those amendments adequate or effective? There were, also, dissenting voices who, from the beginning, argued that there was no need, in the UK, to reinforce anti-terrorism laws since the existing legislation was strong enough to address the issue.

The UK is a country well-known for its tradition of allowing all citizens to express their opinions and feelings (i.e. freedom of expression; speech; belief and so on) without being subjects to any form of prosecution, as long as no social disturbance is caused. However, the terrorist acts which occurred in the United States (2001); Madrid (2004); and London (2005); induced Western governments and the UK, in particular, to enact laws which reduced civil liberties. It is interesting to consider the effects of these laws on the media profession generally and on journalists; photographers; and reporters in particular. This covers a fair

amount of the ground dealt with in the previous chapter. However, whilst that chapter sought to provide a critical overview of British law, this chapter illustrates, through practical examples, how the law impacted on media professionals.

## 5.2. Purpose of Introducing Laws on Terrorism

In the so-called ‘age of terror’ most countries, in the world, introduced new laws. There were several reasons for such attitudes, on the part of executive powers, which were determined to defeat, by all means, the rising threat of terrorism. However, it could be argued that terrorism was not a new phenomenon in British history or politics. The UK Government justified its enactment of new anti-terrorist laws by pointing out that since September 11 2001 the world had entered a new phase in terms of threats, and that it was perfectly normal to react swiftly to prevent further terrorist acts. The UK Government did not want to be blamed for inaction in case of tragedies, due to acts of terrorism, or to lose ground on domestic politics.<sup>547</sup>

Any look, at British history, confirms that although the British case was quite distinct in comparison with the legislation of other European countries, the United Kingdom experienced a long wave of domestic terrorism with dramatic consequences. The North Ireland problem might explain why, in the past, UK legislators took very strict measures,<sup>548</sup> even if this might be claimed to be a rather an unnecessary<sup>549</sup> reaction.

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<sup>547</sup> The Madrid bombing affected Spanish politics with the people changing their votes in the 2004 elections and sanctioning the government in charge. 191 civilians lost their lives in the Madrid bombing. Spain’s general election three days later was upset and contrary to pollsters’ expectations; the incumbent Partido Popular was defeated by the Partido Socialista Obrero Español (PSOE).

The British government did not want to suffer, as the Spanish government had, the consequences of a vote sanction from the people; a vote based on anger against their way of handling terrorism and securing the safety of their population)

<sup>548</sup> For instance, the UK was the only state who issued derogation orders under Article 15 ECHR, in order to avoid having to justify itself in Strasbourg on basis of Article 5 ECHR, relative to the right to liberty and security of the person

<sup>549</sup> A conspicuous juridical arsenal and an elaborated legislative framework against terrorism already existed in the UK.

### 5.3. UK Laws compared with the USA and European Anti-terrorism Laws

Following the 7 July 2005 terrorists attacks in London, Conservative and Labour politicians expressed their respective positions through the media, and made public what they had in mind for the future in terms of legal proposals. For instance, Michael Howard, the Tory leader, made strong accusations against British judges, whom he claimed were guilty of “aggressive judicial activism” which prevented MPs addressing efficiently the challenge of terrorism. A few weeks after the London bombings he wrote:

“Given that judicial activism seems to have reached unprecedented levels in thwarting the wishes of Parliament, it is time, I believe, to go back to first principles. The British constitution, largely unwritten, is based on the separation of powers.”<sup>550</sup>

Equally, Tony Blair, the Prime Minister, warned judges explicitly that he might have to ignore parts of the Human Rights Act 1998, if the courts continued to obstruct the deportation of what he called extremists to unsafe countries. Klug and Wildbore stated:

In 2005, when Tony Blair told us “the rules of the game are changing”, he said, also, “Should legal obstacles arise, we will legislate further, including, if necessary amending the Human Rights Act”. Statement on anti-terror measures: Press Conference, 5 August 2005”.<sup>551</sup>

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<sup>550</sup> See M. Howard’s article in the Telegraph, 10<sup>th</sup> Aug 2005. “*Judges must bow to the will of Parliament*”.

Available online at: <http://www.telegraph.co.uk/comment/personal-view/3618954/Judges-must-bow-to-the-will-of-Parliament.html>

<sup>551</sup> See F. Klug and H. Wildbore Protecting rights: how do we stop rights and freedoms being a political football? Article available online at: <http://www2.lse.ac.uk/humanRights/articlesAndTranscripts/unlockDemocracy.pdf>

See, also, the Amnesty International Report: Los Derechos Humanos, una promesa incumplida. Available online at: <http://www.amnesty.org/es/library/asset/EUR45/004/2006/es/ce28ddd-d45b-11dd-8743-d305bea2b2c7/eur450042006en.html>

Although the principle of parliamentary sovereignty gives the UK government much greater power than the judiciary, such political intrusions, in legal matters, were unprecedented.

Undermining the independence of the judiciary, and the jurisdiction of international legal treaties, contravenes the achievements of modern democratic societies, based on the separation of powers between the executive; the legislature; and the judiciary. One of the judiciary's prerogatives is to ensure that the constitution is respected and to object if it notices that new legislation is susceptible of encroaching on citizens' civil liberties.

In the USA, the American administration's passing of the Patriot Act<sup>552</sup> a few weeks after the September 11 2001 events was largely welcomed. However, the international community questioned soon its use for countering terrorism.<sup>553</sup> It was argued that, in order to face the challenge of terrorism, the executive power ignored the international human rights law and country's own bill of rights.<sup>554</sup> Under President Bush, the American administration, was determined to take all necessary measures to protect American citizens from further terrorist attacks.

The American Constitution prescribes the following Presidential oath:

"I do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."<sup>555</sup>

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<sup>552</sup> USA Patriot Act stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

<sup>553</sup> In particular, the establishment of the camp at Guantanamo and the extraordinary renditions, both of which are in clear contravention with international law.

<sup>554</sup> See Helen Herman, 'PATRIOT Games: Terrorism Law and Executive Power', *Jurist*, 2006, <http://jurist.law.pitt.edu/forumy/2006/01/patriot-games-terrorism-law-and.php>

<sup>555</sup> See The essential Liberty Project, "About the Oath on Constitution" available at: <http://essentialliberty.us/about/oath/>

The American Congress showed a worrying passivity; whilst the courts were not involved particularly. Constitutional structures are useless if executive powers are not politically accountable. Such circumstances require informed and active constituency. The Patriot Act debates proved that by conveying public concerns through actions and, eventually, votes, it was possible to involve representatives actively. The Bill of Rights Defense Committee resolutions were concerned about several elements such as the “sneak and peek”,<sup>556</sup> and “libraries” provisions of the Patriot Act.<sup>557</sup> For instance, in order to preserve the American

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<sup>556</sup> Sneak and Peek Warrants are legal instruments, provided by the Patriot Act (section 213), which consist of delayed-notification search warrants. In a federal crime, they allow a search and seizure of a property without need to notify the suspected person. The government should a priori present a ‘reasonable cause’ to the court as regards to the necessity to delay the notification to avoid an “adverse result” such as destruction of evidence, intimidation of witnesses, and so on.

Patriot Act. Sec. 213. Authority for Delaying Notice of the Execution of a Warrant.

Section 3103a of title 18, United States Code, is amended--

(1) by inserting `(a) IN GENERAL- ' before `In addition'; and

(2) by adding at the end the following:

(b) DELAY- With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if--

(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705);

(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510), or, except as expressly provided in chapter 121, any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and

(3) the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.'

See the full text available online at:

<http://thomas.loc.gov/cgi-bin/query/F?c107:1:/temp/~c1078U19V2:e48053>:

<sup>557</sup> Libraries Provision is a legal instrument provided by the Patriot Act (Section 215). It extends FBI’s power to seize records of terrorist activities, specifically business records and “any tangible things (including books, records, papers, documents, and other items).” Section 215 is called the libraries provision because it could potentially be used to subpoena a list of books checked out from a library, or a list of websites visited at a library computer, all without notifying the suspect.

Patriot Act. Sec. 215. Access to Records and other items under the Foreign Intelligence Surveillance Act.

Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended by striking sections 501 through 503 and inserting the following:

- SEC. 501. Access to certain Business Records for Foreign Intelligence and International Terrorism investigations.

(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall--

(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

Constitution, and to ensure that the executive power ought to operate on the same footing as the other two powers, it was necessary to follow through on those resolutions, ensuring a more active role of the Congress in checking the executive branch, and strengthening the role, of the courts, in order to achieve an appropriate balance between the three powers.<sup>558</sup>

Whilst legislation differs from one European country to the next, since 2001, European countries have been making great efforts at the European Union level, to ensure they have cohesion and shared objectives, with the UK playing an essential in this process.<sup>559</sup> In addition, the Council of Europe Parliamentary Assembly demanded that countries scrutinise the details of incoming terrorism legislation; diminish their reservations; and, whilst

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(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Each application under this section--

(1) shall be made to--

(A) a judge of the court established by section 103(a); or

(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

See the full text available online at:

<http://thomas.loc.gov/cgi-bin/query/F?c107:1:./temp/~c1078U19V2:e48053>

<sup>558</sup> See “*Civil Liberties and the War on Terrorism*”, available at: <http://www.newsbatch.com/civlib.htm>

<sup>559</sup> See S.Breau, S. Livingstone and R. O’Connell, ‘Anti-Terrorism Law and Human Rights in the United Kingdom post September 11’, *Human Rights Centre, Queens University Belfast*. Article available online at: <http://www.britishcouncil.org/china-society-publications-911.pdf>. See also K. Roach talk on “The 9/11 effect: Comparative counter terrorism(2012) available at :<http://www.youtube.com/watch?v=nTitrMBbRk>

extending the authority of the police, ratify conventions against the ‘new’ challenge of terrorism.<sup>560</sup>

## **5.4. Positions taken by Different Parties on the Issue of Media and Anti-terrorism Laws**

### **5.4.1. Position of Governments post 9/11**

The terrorist acts, against the twin towers in the USA, provoked an understandable and emotionally charged effect worldwide. However, politicians rushed to express feelings which, a decade later, might be seen as imprudent and in some ways discriminatory. For instance, President Bush mentioned the word “crusade”, whilst Prime Minister Blair stated that, in some ways, the perpetrators envied and abhorred the western our way of life. Blair underlined that it was a struggle about values, adding:

“Our values are our guide. They represent humanity's progress throughout the ages. At each point we have had to fight for them and defend them. As a new age beckons, it is time to fight for them again.”<sup>561</sup>

Such statements were more than mere slips of the tongue; however, these were personal opinions which, in no circumstances, a politician ought to share with the public. In addition, both the UK and US governments reacted in a way which caused concern for the defenders of civil liberties in the West. For instance, in 2001, David Blunkett, the British Home

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<sup>560</sup> See Parliamentary Assembly, Media and terrorism, Report Committee on Culture, Science and Education, Doc. 10557, 20 May 2005, Rapporteur: Mr Josef Jařab, Czech Republic, Liberal, Democratic and Reformers’ Group. Available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc05/edoc10557.htm>

<sup>561</sup> See Tony Blair’s article “A Battle for Global Values”. From *Foreign Affairs*, January/February 2007. Available online at: [http://castinet.castilleja.org/users/cstory/IR/articles/blair\\_article.pdf](http://castinet.castilleja.org/users/cstory/IR/articles/blair_article.pdf)

Secretary, declared that it was possible to live in a libertarian, airy-fairy world, with everyone free to do what they wanted believing the best of everybody and “then they destroy us”<sup>562</sup>

During the reading of the Antiterrorist, Crime and Security Bill,<sup>563</sup> Lord Roker, the Home Office Minister, was even more explicit when he claimed, of the Bill. that,

“...it strikes a balance between respecting our fundamental liberties and ensuring that they are not exploited. The problem is that in a tolerant liberal society. If we are not guarded we will find that those who do not seek to be part of our society will use our tolerance and liberalism to destroy that society. That is reality.”<sup>564</sup>

It seemed certain that politicians wanted to justify the new legislative measures, which were introduced, and were preparing UK citizens so that they would cooperate and accept a reduction of their civil liberties. There has been real tension between the press and governments who seek to limit media freedom; this represents the original pattern of the conflict between citizens and state in liberal democracies.<sup>565</sup> The lawful regulation, of this tension, is sought in the UK and elsewhere. However, there is a clear legal realisation that, as a Fourth Power and with the function of promoting openness and democratic political processes, the media has a legitimate and worthy role to play in the political process .<sup>566</sup> Nevertheless, most governments introduced anti-terrorist laws which reduced freedom of

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<sup>562</sup> See P. Hillyard, ‘In defense of Civil liberties’, in Scraton (ed.) *Beyond September 11: An anthology of dissent*, pp. 107-12, London, Pluto Press, (2002).

<sup>563</sup> Immediately after the September 11 2001 events, the UK government reviewed the anti-terrorist law passed in 2000. The new law, called Antiterrorist, Crime and Security Act (ACTSA), expanded police powers in order to prevent the funding of terrorist organisations; and to tighten the control of the immigration. However, more importantly, it was to extend the power and funding of the intelligence gathering community. Such amendments can be compared with what happened in the United States with the PATRIOT Act which gave more power to the FBI. The new element, of the UK legislation, was the introduction of an extension of the detention without trial to 14 days.

<sup>564</sup> Hansard, House of Lords, 27<sup>th</sup> November 2001, col.143

<sup>565</sup> J. Keane, *The Media and Democracy*, Cambridge: Polity Press, (1991)

<sup>566</sup> M. Chesterman, *Freedom of Speech in Australia: A Delicate Plant*, Ashgate: Dartmouth. (2000)

information and freedom of speech. Consequently, there was considerable analysis about the way in which human rights and civil liberties were affected.<sup>567</sup>

#### **5.4.2 Position of international organisations (UN, EU, NATO)**

The UN, EU, and the Council of Europe (CoE) and other international and regional organisation bodies enacted laws and implemented international agreements which were unpopular amongst human rights organisations; media professionals; and defenders of civil liberties. In particular, concerns were expressed as regards the effects of the new legislation on the normal citizens' freedom of expression and the lack of attention accorded to human rights.

In the aftermath of the September 11 2001 events, most international organisations were convinced that the scourge of terrorism would be defeated only through international cooperation. As was mentioned in the preceding chapter, it was the United Nations who took the lead by calling for increased collaboration between all states' executives.<sup>568</sup> NATO's decision to invoke Article 5 of its charter was unprecedented,<sup>569</sup> whilst the Council of Europe (CoE) recommended its members to cooperate fully and to face, what was seen as the most urgent threat (i.e. terrorism).

In Council of Europe Resolution 1271 (2002), it was stated explicitly that:

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<sup>567</sup> I. Barker, 'Human rights in an age of counter-terrorism', *Australian Bar Review* (2005), Vol 26: p 267–86.

<sup>568</sup> United Nations Security Council, Security Council Resolution 1368 (2001) Adopted by the Security Council at its 4370<sup>th</sup> meeting, on 12 September 2001.S/RES/1368 (2001). New York: United Nations, (12 September 2001). Available online: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement>

<sup>569</sup> Article 5 is at the basis of a fundamental principle of the North Atlantic Treaty Organisation. It provides that if a NATO Ally is the victim of an armed attack, each and every other member of the Alliance will consider this act of violence as an armed attack against all members and will take the actions it deems necessary to assist the Ally attacked.

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“The combat against terrorism must be carried out in compliance with national and international law and respecting human rights.”<sup>570</sup>

The same document addressed the issue of extradition and, in reiterating its opposition to the death penalty regardless of the crime committed, the Assembly refused to make any exceptions to the rule that nobody could be extradited if they would face the death penalty. Accordingly, CoE members were advised not to extradite suspected terrorists to countries where the death penalty remained in operation; it being an indispensable requirement of assurance on that matter before carrying out a deportation. However, since assurances were based on individual and exceptional cases, even assuming that it was respected by both parties, such a clause did not help the improvement of human rights. In addition, torture and ill-treatment do not appear in the resolution; this implies that regimes, with poor human rights records, are free to carry on their inhuman practices.

Another Council of Europe Recommendation, about terrorism,<sup>571</sup> restated that the fight against terrorism ought not to be pursued to the detriment of fundamental rights and freedoms as defined by the ECHR and the CoE legislation. In 2005, the Parliamentary Assembly of the Council of Europe (PACE) made another recommendation,<sup>572</sup> insisting that the fact that terrorist actions were witnessed worldwide ought not to be used as an excuse for reducing freedom of expression and information, the media being one of the essential foundations of democratic society. The public had the right to be informed about what was happening in its surroundings and beyond, from petty crimes to terrorist activities and

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<sup>570</sup> See Parliamentary Assembly, Council of Europe, *Combating terrorism and respect for human rights*, Resolution 1271(2002)[1], <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/eres1271.htm>

<sup>571</sup> See Parliamentary Assembly, Council of Europe, *Combating terrorism and respect for human rights*, Recommendation 1550(2002), available online at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EREC1550.htm>

<sup>572</sup> See Parliamentary Assembly, Council of Europe, *Media and terrorism*, Recommendation 1706 (2005), <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11108&Language=EN>

potential terrorist threats. It was, also, through the media that the state policies and responses to terrorism were transmitted to the people.

Recalling the declaration of the Committee of Ministers,<sup>573</sup> the Assembly stressed that Article 15, of the ECHR, ought not to be referred to in order to restrict the freedom of the press beyond the existing limitations of Article 10, paragraph 2 of the Convention.<sup>574</sup>

The Committee made it clear that terrorist actions were not considered legally as war, and certainly would not seriously affect lives in democracies. Amongst the recommendations made to the States, the Committee of Ministers stressed that Members and observers ought to ensure that the public and media were informed regularly about government policies and

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<sup>573</sup> See Committee of Ministers, Council of Europe, *Declaration on freedom of expression and information in the media in the context of the fight against terrorism*, (adapted by the Committee of Ministers on 2 March 2005), <https://wcd.coe.int/ViewDoc.jsp?id=830679&Site=CM>.

See, also, the Recommendation Rec(2003)13 of the Committee of Ministers to Member States on the provision of information through the media in relation to criminal proceedings, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2003\)13&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2003)13&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

<sup>574</sup> Article 15 states as regards to the Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 10 of the ECHR states as regards to the Freedom of expression :

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The full text of the European Convention on Human Rights is available online at:

[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf)

decisions regarding terrorist threats. Therefore, it was required to refrain from barring or, even, restricting improperly the diffusion of

“information and opinions in the media about terrorism as well as about the reaction by state authorities to terrorist acts and threats under the pretext of fighting terrorism.”

It was considered, also, essential to ensure that media reporting on terrorism were aware of the security situation to prevent journalists from being “exposed to dangers caused by terrorists or the anti-terrorist action of state authorities.”<sup>575</sup>

In 2011, the PACE, concerned by the challenges encountered by media professionals, made a Recommendation whereby it insisted that its Member States should take proper and adequate initiatives to ensure the protection of the right of journalists to refuse to disclose the origin of their sources. The Assembly was concerned particularly about the fact that,

“large number of cases, in which public authorities, in Europe, have forced, or attempted to force, journalists to disclose their sources, despite the clear standards set by the ECtHR and the Committee of Ministers. These violations are more frequent in member states without clear legislation.”<sup>576</sup>

This researcher believes that, ten years after the September 11 2001 events, having the Council of Europe making such a statement is additional evidence that the enforcement of anti-terrorism laws, enacted in Europe, did infringe seriously the fundamental rights of journalists.

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<sup>575</sup> See Council of Europe, Parliamentary Assembly, ‘*Recommendation 1706 (2005) Media and terrorism*’, Available online at: <http://assembly.coe.int/Documents/AdoptedText/ta05/EREC1706.htm>

<sup>576</sup> See Parliamentary Assembly, Council of Europe, *The protection of journalists’ sources*, Recommendation 1950 (2011), <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta11/erec1950.htm>.

### 5.4.3 The Position of Academics; Analysts; and Observers

Despite wide organisational mobilisation, not everybody shared the concerns of the international entities and national governments. It was evident that most people believed that the challenge of terrorism needed to be addressed. However, agreement, on the means to deal with it, was not universal. Analysts, such as McNamara,<sup>577</sup> emphasised that the anti-terrorist laws, enacted after the September 11 2001 events, had a negative impact on freedom of speech generally and on the freedom enjoyed previously in the media profession. Despite the country's traditional liberalism, the relationship, between the various UK governments and part of the media, deteriorated considerably.<sup>578</sup> There were, also, extreme views, amongst some scholars, as regards the laws' real intentions. Were they a pretext for more control of its citizens by the state?<sup>579</sup>

Dealing with terrorism does not mean necessarily infringing the principles of democracy. Values such as freedom of opinion, expression, and belief; the right of dissent; and of accessing or providing information, should not be altered or reduced under any pretext. States, based on the rule of law, do not need to suspend such crucial principles in difficult times. Legislation is an instrument which tests the performance and the ability of political bodies to deal with crises.<sup>580</sup> In modern democracies, citizens' rights should be ensured by respecting essential principles as habeas corpus; the presumption of innocence; and the provision to the accused of unbiased trials in courts, with proper legal advice and representation. Citizens are entitled, also, to oppose the government's official discourse; to

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<sup>23</sup> L. McNamara, 'Counter-terrorism Laws: How They Affect Media Freedom and News Reporting', *Westminster Papers in Communication and Culture*, Vol. 6(1), 2009, p: 27-44.

<sup>578</sup> J. Keane, *The Media and Democracy*, Cambridge: Polity Press, 1991.

<sup>579</sup> L. McNamara, 'Counter-terrorism Laws: How They Affect Media Freedom and News Reporting', *Westminster Papers in Communication and Culture*, Vol. 6(1), 2009, p: 27-44.

<sup>580</sup> P. A. Thomas, 'Emergency and Anti-Terrorist Powers, 9/11: USA and UK', *Fordham International Law Journal*, 2002, pp.1193-1233.

protest; to denounce; or to oppose, in a civil manner, what they see as the governing authorities' abuse or manipulation of the public.<sup>581</sup>

The negative aspect, which is quite common in executive circles, is a real contempt, for the media, because, often, they unveil illegal dealings or criticise too overtly or too much; they are seen rather as the 'enemy'. In modern liberal societies, reducing the role of the media, when they are not manipulated intentionally to serve the objectives, of the current political and economic power, is particularly disconcerting. There are real and genuine concerns about allowing governments, without accountability or regulation, to use their discretion on sensitive issues,; certainly, it affects negatively both principles of democracy and aspirations of an open society. The media's real function<sup>582</sup> is an essential element considered in the context of this study.<sup>583</sup> The reviewing, of the media professionals' opinions regarding their profession, is essential in order to determine their place in modern and open societies.<sup>584</sup>

Often, the Media are considered to be the Fourth Power<sup>585</sup> of a democratic system. They influence not only the other three legitimate powers but, also, influence policymakers and the destiny of leaders. Two years after the tragic events of September 11 2001, the mainstream media played a decisive role and contributed heavily to the preparation of the Iraq war. At that time, Reale categorised the media's position as being "strong with the weak

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<sup>581</sup> R. Foot, J. Gaddis, and A. Hurrell, (eds), *Order and Justice in International Relations*, Oxford University Press, 2007.

<sup>582</sup> The media is a go between element, the state on one side and citizens on the other.

<sup>583</sup> Several significant interventions were given at an international conference, "*Media between Citizens and Power*".from 23 to 24 June 2006 in Venice,

<sup>584</sup> The media's own perspective, about their role, is important in understanding their mechanisms.

<sup>585</sup> The term 'fourth power' derives, in fact, from the coined term fourth estate attributed to the nineteenth century historian, Carlyle, who attributed it instead to Edmund Burke. Carlyle stated what follows: "Burke said there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important than they all. It is not a figure of speech, or a witty saying; it is a literal fact, .... Printing, which comes necessarily out of Writing, I say often, is equivalent to Democracy: invent Writing, Democracy is inevitable. .... Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government, with inalienable weight in law-making, in all acts of authority. It matters not what rank he has, what revenues or garnitures: the requisite thing is that he has a tongue which others will listen to; this and nothing more is requisite." Carlyle (1905) pp.349-350

and weak with the strong”.<sup>586</sup> For this writer,<sup>587</sup> during the Iraq ‘episode’, the media lost their credibility<sup>588</sup> amongst their respective populations. The media scene was controlled by political agents who showed courage in reporting the events of the war on Iraq which was deemed to be the bloodiest war ever<sup>589</sup>. The complexity, of the situation, made it impossible to know what really happened in Iraq, in order to make the people, responsible for that particular war, accountable before the international community.<sup>590</sup> Nowadays, there is an awareness about the subjectivity of reporting. Often, many tragedies are ignored either consciously or inadvertently and, consequently, several categories of people ignore what is happening actually in some parts of the world. It can be said that they are living in ‘media darkness’.<sup>591</sup> It has become clear, also, for reasons such as the “corporatisation” of the media and the “embourgeoisement” of journalists, that certain parts of the media information are not interested in the search for the truth<sup>592</sup>.

The rather pessimistic judgement of writers, such as Reale, does not alter the fact that, in the current era, the media’s role remains essential and indispensable for the balance of power. The corporate media’s tendency, to support the economically and politically powerful, has weakened its relationship with the public. The media profession, by its nature and

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<sup>586</sup> The writer, who made this statement, meant that the media did not play their original role and accepted instead to convey the rhetoric of the American administration and British political statements (strong) without challenging them, or giving some credit to the Iraqi version (weak).

<sup>587</sup> R. Reale is journalist and Professor of Theories and Techniques of Television Information at the University of Padua, Italy.

<sup>588</sup> See R.Reale, International Seminar *Media Between Citizens and Power* Venice, 23-24 June 2006 Workshops. P. 12, available online at: [http://www.theworldpoliticalforum.net/wp-content/uploads/wpf2006/06\\_media\\_between\\_c-p\\_venice/documenti/speeches\\_workshops.pdf](http://www.theworldpoliticalforum.net/wp-content/uploads/wpf2006/06_media_between_c-p_venice/documenti/speeches_workshops.pdf)

<sup>589</sup> Ibid. On page 13 Professor Reale stated that

“Regarding big political choices, the media scene has been at most dominated by the men of the spinning machine, the consensus machine, by communicators at the service of governments. They succeeded in exploiting with ability the arrogance of some reporters to instigate public opinion against liberal information.”

<sup>590</sup> The contrasting figures, reported by media outlets, regarding the number of civilian victims.

<sup>591</sup> Media darkness means being unaware, due to the lack of reporting, or the biased positioning of the media.

<sup>592</sup> It is not a priority anymore for the media (controlled by corporations and economic factors rather than by ethical considerations or pure professionalism) to unveil the truth to the public.

development, represents the voices and concerns of citizens and, consequently, its professionals find themselves as the main interlocutors of politicians. They can contribute either to their political rise or provoke their fall; in some circumstances, this explains their importance for politicians or decision-makers. It is believed, also, that the media are instruments used by leaders; rulers; or policymakers to convey, to the public, their opinion or to strengthen their popular support.<sup>593</sup>

A former UNESCO official acknowledged that the independent media were essential, stressing the great pressures to which they were subject and their difficult working conditions. She criticised politicians who “are for press freedom when they are fighting for power, but when they come to power they are not so interested in press freedom.”<sup>594</sup>

Expanding on the issue of disclosure of sources the same author stated:

“For many years, for us the examples of the free press were not China, of course, but the United States, Canada or other democratic countries. But now, after nine years we were astonished to find that in some of these democratic countries journalists can go to jail for not disclosing their sources of information.”<sup>595</sup>

Wallstrom argued that, due to the free market’s supremacy, there was no longer fair pluralism since the market had led to the media being concentrated in the hands of a few agencies and offices of political and economic power. Such a situation prevented most parts, of the civil society, having their say on political matters.<sup>596</sup>

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<sup>593</sup> It is a classical way used in particular by authoritarian regimes or imperial actions to gain popular support on the world scene.

<sup>594</sup> See H. Iouchkiavitchious, International Seminar *Media Between Citizens and Power* Venice, 23-24 June 2006 Workshops. p. 22, available online at: [http://www.theworldpoliticalforum.net/wp-content/uploads/wpf2006/06\\_media\\_between\\_c-p\\_venice/documenti/speeches\\_workshops.pdf](http://www.theworldpoliticalforum.net/wp-content/uploads/wpf2006/06_media_between_c-p_venice/documenti/speeches_workshops.pdf)

<sup>595</sup> Ibid. page 22

<sup>596</sup> M. Wallstrom, Vice-President of the European Commission, in charge of Institutional Relations and Communication Strategy, Sweden, 2006.

#### 5.4.4 The Position of the International Federation of Journalists (IFJ)

Media organisations were uneasy about the restrictive nature of anti-terrorism laws,<sup>597</sup> as were human rights and civil liberties institutions.<sup>598</sup> In the UK, Cram<sup>599</sup> and MacNamara<sup>600</sup> raised concerns whilst, in the USA, the Reporters' Committee considered the issue.<sup>601</sup> Banisar examined the European scene.<sup>602</sup> Several studies considered the effects of anti-terrorism laws on the access to information; on media organisations generally; on freedom of speech; and on journalists in particular.<sup>603</sup>

McNamara focused on the effects, of counter terrorism laws, on the freedom of media and the press.<sup>604</sup> He examined the way anti-terrorism laws affected the media's ability to inform and report on matters of public interest. He found evidence of direct and alarming effects of counter terrorism laws on the freedom of both media and the press, especially after the September 11 events. For him, the new laws limited the freedom of media organisations and made them pay more attention to the law.<sup>605</sup> Ross observed that the media played a

<sup>597</sup> J. Herman, (ed.), 'State of the News Print Media in Australia 2007: Supplement to the 2006 Report', Sydney: Australian Press Council, 2007.

<sup>598</sup> F. Moorhouse, 'The writer in a time of terror', *Griffith Review*, 2006, 14: 4–54.

<sup>599</sup> I. Cram, 'Regulating the media: some neglected freedom of expression issues in the United Kingdom's counter-terrorism strategy', *Terrorism and Political Violence*, 2006, 18: 335–55. Article available online at:

<http://www.tandfonline.com/doi/pdf/10.1080/09546550600570184>

<sup>600</sup> See L. McNamara Counter-terrorism Laws: How They Affect Media Freedom and News Reporting', *Westminster Papers in Communication and Culture*, Vol. 6(1), 2009, p: 27-44.

<sup>601</sup> See E. Miller, *Here we go again: journalists, police gear up for the 2012 political party conventions* Reporters Committee, 2012, vol 36, no.3, <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-summer-2012/here-we-go-again-journalist>

<sup>602</sup> See D. Banisar, *Speaking of terror: a survey of the effects of counter-terrorism legislation on freedom of the media in Europe*, Council of Europ, (2008),

[http://www.coe.int/t/dghl/standardsetting/media/doc/banisar\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/banisar_en.pdf)

<sup>603</sup> A. Schoenholtz, and J. Hojaiban, *International Migration and Anti-Terrorism Laws and Policies: Balancing Security and Refugee Protection, Policy Brief*, Institute for the Study of International Migration, Walsh School of Foreign Service, Georgetown University. 2008

<sup>604</sup> L. McNamara, (2009). The International Federation of Journalists did also express concerns about the impact of the laws on the media profession.

<sup>605</sup> See D. Banisar (2008)

significant role in events related to terrorism actions. He mentioned the fact that many terrorist groups had their own media to propagate their claims, or else, they put pressure on official media.<sup>606</sup> He identified the most common challenges, encountered by the media, as selective reporting and self-censorship of stories.

Often, journalists are intimidated whilst trying to contact people linked or suspected to conduct terrorist actions.<sup>607</sup> Restrictions are imposed on them by their informers, with the risk of losing their contacts or being physically harmed. Not only the profession but, also, the lives of journalists are in jeopardy.<sup>608</sup> The risks, encountered by journalists, exist under all types of political regimes, even in democracies, where journalists can be stopped; arrested; and jailed for doing their job or refusing to disclose their sources.<sup>609</sup>

There is, also, the editorial discretion factor, whereby the existence of an interesting story does not suggest that, automatically, the editor will publish it. Another important element is the lack of experts in terrorism, amongst journalists, and national security agencies misinforming journalists. There are instances where these agencies used the media to serve specific purposes, through what is known as “strategic leaks”.<sup>610</sup> In other circumstances, the media obstruct counter-terrorist efforts unintentionally.<sup>611</sup> There is, also, amongst the various media organisations, the competition factor which certainly affects the methods used

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<sup>606</sup> J. Ross, *Deconstructing the terrorism-news media relationship*, R. Paper, University of Baltimore, 2007

<sup>607</sup> See B., Leonard; B. Weinberg, P. Davis, *Introduction to Political Terrorism*, McGraw-Hill Higher Education, New York, 1989.

<sup>608</sup> The number of journalists, killed worldwide, can be found in the following link Committee to Protect Journalists. “911 Journalists Killed since 1992 “ Available at: <http://www.cpj.org/killed/>

<sup>609</sup> See International Federation of Journalists (IFJ), ‘United States Attack on Journalists’ Right to Protect Sources “Violates First Amendment”, October 2004. <http://www.ifj.org/en/articles/united-states-attack-on-journalists-right-to-protect-sources-violates-first-amendment-says-ifj>

<sup>610</sup> Ibid.

<sup>611</sup> See Counter-Terrorism White Paper, Published by the Department of the Prime Minister and Cabinet, Australia, 2003.

to collect news and deliver it to the public.<sup>612</sup> In 2005, journalists, from all over the world, attended the International Federation of Journalists conference.<sup>613</sup> In the conclusions, which were issued, it was stated that the war, on terror, represented an overwhelming challenge to the human rights and civil liberties established after WWII.<sup>614</sup> The disproportionality of the response to terrorism was highlighted.<sup>615</sup>

The IFJ expressed, also, its concern regarding the apparent connection drawn between global migration and security. Suspecting non-citizens to be potential terrorists and legislating accordingly was thought not to help the fight against terrorism. Instead, it criminalised actually a section of the population without providing tangible results in terms of enhanced security. The new strategies, put in place to fight terrorism, neglected the real causes of migration which were poverty and inequality, not the goal of committing crimes or planning terrorist actions.<sup>616</sup> The powers, given to the police, led to the establishment of a surveillance society, whereby citizens became accountable increasingly to the authorities. This undermined democratic norms since they were introduced through covert secretive processes, outside the supervision of Parliament.<sup>617</sup> The legislation, enacted worldwide after

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<sup>612</sup> S. Chermak, (2003). "Marketing Fear: Representing Terrorism After September 11." *Journal of Crime, Conflict and the Media*, Vol. 1, No. 1.

<sup>613</sup> See B. Hayes and A. White, *Background Paper On Challenges for Journalism and Civil Liberties*, International Federation of Journalists, April 2005, <http://www.ifj.org/assets/docs/093/092/42b2c5d-91b4a5c.pdf>

<sup>614</sup> In the introduction of the report, it is stated that "The criticism, attacks and harassment of Arab media and of Al-Jazeera in particular has been widespread and persistent including even a "denial of service attack" from the US which prevented public access to Al-Jazeera's newly launched English language website for several weeks."

<sup>615</sup> For regimes, with poor record on human rights and freedom of expression, the 'war on terror' provided excuses to go after opposition groups accused of being 'terrorists'.

<sup>616</sup> "The tightening of control on Global migration, the international security policies, and the triggering of several wars and occupation diverted attention and resources away from the root causes of global migration and insecurity: poverty and inequality. The equation is simple: increased police powers, a compliant private security industry, and data collection and surveillance on an unprecedented scale grant extensive new powers to the state."

<sup>617</sup> See B. Hayes and A. White, *Background Paper On Challenges for Journalism and Civil Liberties*, International Federation of Journalists, April 2005,

the September 11 2001 events, gave new emergency and extended powers to governments,<sup>618</sup> thus enabling the executives to bypass the legislature.

For the IFJ, the review of the reports from selected countries, “confirms that the effects of the war on terrorism are even more pronounced in the world of journalism”.<sup>619</sup> The reports observed that the new laws discouraged legitimate journalistic work about terrorism. It was becoming more problematic for journalists to track changes in policy; to follow state activities; or to provide key information to citizens. Journalists faced restrictions on freedom of movement; constant demands from authorities to reveal sources of information; and pressure from politicians to follow the official line on security issues.<sup>620</sup>

For the IFJ, respect for human rights and democracy are the benchmarks of civilised society. Democracy cannot operate without freedom of expression, the independence of the media and the people’s right to know.<sup>621</sup> It rejects indiscriminate violence and the claim that people should give up some of their fundamental rights for more security. Democratic states enacted laws which undermine “almost half of the minimum standards set out in the 1948 UN Universal Declaration on Human Rights”.<sup>622</sup> The IFJ was concerned by the construction of a worldwide registration and surveillance infrastructure whereby citizens and journalists were registered, “their travel tracked globally, and their electronic communications and transactions monitored”.<sup>623</sup>

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<sup>618</sup> In fact, it includes civil administration, communications, transport, electricity and other key aspects of material life.

<sup>619</sup> A Special Report by the International Federation of Journalists and Statewatch

<sup>620</sup> Ibid.p.57. See the 16<sup>th</sup> point of the conclusions made.

<sup>621</sup> Ibid. p.59

<sup>622</sup> Ibid . p.58

<sup>623</sup> Ibid. p.58

The IFJ recommended that states should not sacrifice civil liberties in the defence of public safety. It suggested that states repeal provisions which violated fundamental rights and freedoms.<sup>624</sup> International cooperation ought not to deviate from its preventive and protective aims and become a global instrument for surveillance, and social control of societies.<sup>625</sup> In 2008, Rosand et al.,<sup>626</sup> highlighted the fact that, after the September 11 events, 17 UN Special Rapporteurs and independent experts, of the UN Commission on Human Rights, expressed their concern over the scope of the antiterrorism laws adopted by various governments and their eagerness in “targeting groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists, and the media.”<sup>627</sup>

It was argued, also, that anti-terrorism laws undermined more personal security than any terrorist attack.<sup>628</sup> In terms of media control, since the ‘War on Terror’, the legislative and executive actions, generated by the American Administration, were deemed to be responsible for the decline of the freedom of the press.<sup>629</sup> The number of arrests, of journalists and the muzzling of media, rose significantly since 2003.<sup>630</sup> Since 2001, the continuous violation of press freedom was linked closely to the anti-terror laws adopted by several countries.<sup>631</sup>

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<sup>624</sup> Ibid. p.59

<sup>625</sup> Ibid. p.59

<sup>626</sup> See E. Rosand; A. Millar, and J. Ipe, *Human Rights and the Implementation of the UN Global Counter-Terrorism Strategy, Hopes and Challenges*, 2008, Available at: [http://www.globalct.org/images/content/pdf/reports/human\\_rights\\_report.pdf](http://www.globalct.org/images/content/pdf/reports/human_rights_report.pdf)

<sup>627</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism*, September 2003, p. 8, Available at: <http://www.ohchr.org/Documents/Publications/DigestJurisprudenceen.pdf>

<sup>628</sup> See, e.g., Amnesty International, “Annual Report: 2006: Secretary-General’s Message”, <http://www.amnesty.org/en/library/asset/POL10/001/2006/en/52433fd0-d46f-11dd-8743-d305bea2b2c7/pol100012006en.html>

P. Hoffman. "Human Rights and Terrorism." *Human Rights Quarterly* 26. No. 4 (November 2004): p 933

<sup>629</sup> See, for instance, Reporters Without Borders reports, ‘United States’, Reporters Without Borders, 22 June 2004: [http://www.rsf.org/article.php3?id\\_article=10612](http://www.rsf.org/article.php3?id_article=10612).

<sup>630</sup> Ibid.

<sup>631</sup> See “2003 Round-up Reporters Without Borders”, Charter 97, 6 January 2004, available online at: <http://www.charter97.org/eng/news/2004/01/06/borders>

### **5.5. EU-U.S. Counterterrorism Cooperation:**

The increased cooperation, between the EU and USA was in line with the 9/11 Commission's recommendation, according to which the USA ought to develop a "comprehensive coalition strategy"; "exchange terrorist information with trusted allies;" and improve border security through better international cooperation.<sup>632</sup>

Some measures, found in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108- 458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110- 53) reflected these sentiments and were in line with EU-USA counterterrorism efforts, especially those related to the improvement of border controls and transport security. During the EU-USA Summit, held in 2009 in Washington, the two partners confirmed their intention to cooperate and face the threat represented by international terrorism. In June 2010, the EU and the USA adopted a new "Declaration on Counterterrorism" to strengthen the anti-terrorism collaboration and to highlight the commitment to the rule of law.

In 2011, the US National Strategy for Counterterrorism reaffirmed the USA's willingness to pursue its partnership with the EU and the European Parliament to sustain their efforts in developing counterterrorism measures to ensure mutual security and protect all world citizens. Upholding individual rights was highlighted, also, in the statement. Top members of the US administration meet at the ministerial level with EU representatives on a yearly basis, whilst a working group, of senior officials, meets twice a year to address police matters and judicial cooperation against terrorism. The USA and EU entities have created, also,

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<sup>632</sup> See K. Archick, *U.S.-EU Cooperation Against Terrorism* May 21, 2012, CRS Report for Congress, available online at: <http://www.fas.org/sgp/crs/row/RS22030.pdf>

mutual liaison relationships, with Europol having two liaison officers in Washington, and the USA maintaining an FBI officer in The Hague. In November 2006, a USA liaison position was established at Eurojust headquarters in The Hague as part of a wider USA - Eurojust agreement to facilitate cooperation between European and American prosecutors on terrorism and other cross-border criminal cases.<sup>633</sup>

As this co-operation continues, for each country, there are special characteristics which give the laws and measures special shape. For instance, Spain is a country which has been dealing with terrorism for a long time.<sup>634</sup> The Spanish authorities have been concerned always by the subversive activities conducted by independentist movements such as Euskadi Ta Askatasuna” or ETA; this can be considered to be domestic terrorism. However, things changed substantially with the increase in international terrorism, and Spain was not immune from threats. Prominent figures, of the Jihadist Salafist movement, posted numerous messages, on the Internet, targeting Spain. Recalling Spain’s Muslim past (711-1492), the promoters, of international terrorism, consider Spain to be a continuation of Al Andalus.<sup>635</sup> In light of all these worrying elements, Spanish security forces reviewed their strategies and included potential acts from religiously motivated international groups, alongside nationalistic groups, such as ETA, which used violence and presented serious security threats.

Despite all precautions taken, a tragedy occurred, with the bombing of a train, in Madrid, on the 11 March 2004, confirming the apprehensions of Spanish authorities and the determination of terrorists to pursue their lethal operations. For this study, it is worthwhile

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<sup>633</sup> See K. Archick (2012) . U.S.-EU Cooperation against Terrorism October 3, 2012. CRS Report for Congress Prepared for Members and Committees of Congress. Available at: <http://www.hsdl.org/?view&did=724410>

<sup>634</sup> The terrorist threat existed in Spain for more than 30 years.

<sup>635</sup> Al Andalus was the name of Portugal and most of medieval Spain (Iberia peninsula)

considering the Spanish experience and institutional measures taken after the Madrid bombings. The government established a comprehensive legal framework capable of dealing with both ethnic-linguistic-nationalistic terrorism and international religion-based terrorism. There were some cases, involving Arab media professionals, which showed how, post September 11 2001, Spain responded to what was alleged to be a terrorist case, and which, initially, caught the interest of the international media, including the accusation of Taysir Alunni, senior reporter of the well-known Arab Media Channel Al Jazeera.

Alluni's case symbolised the effects which anti-terrorism laws had on the media generally and on Arab and Muslim journalists in particular. Known for his exclusive interview with Bin Ladin after the September 11 2001 events, he was arrested in Spain for alleged links to terrorism. Alluni joined Al Jazeera in 1999, and worked in Kabul. During the American war in Afghanistan, he was the only foreign journalist there. His coverage damaged the image of the American action and, after the American bombing of Al Jazeera's office in Kabul, Alluni had to leave the country. In 2003, Alluni covered, also, the American led invasion of Iraq, where he escaped the American bombing of the Al Jazeera Baghdad bureau.

Alluni was arrested in Spain 2003 and accused of misuse of his position to carry out an interview with Bin Ladin. Alluni's colleagues stated that it was his role, as a journalist, which disturbed the American administration.<sup>636</sup> In March 2005, Alluni was released but was put under house arrest pending his trial. The journalist criticised the Spanish government, stating "I no longer believe that the rule of law exists in this country. The trial will be highly politicised and a media affair". Subsequently, Alluni was tried; found guilty;

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<sup>636</sup> 'When a white man meets a terrorist, he's a great journalist. And when an Arab journalist meets a terrorist, he's a terrorist' Marlow, 2003: 17).

and condemned to seven years in prison.<sup>637</sup> In 2006, nearly a year after Alluni's imprisonment, Leslie Crawford, a journalist from the Financial Times, went to a Spanish prison to interview Alluni.<sup>638</sup> What follows is a significant passage of the article:

“Alony's trial, following normal Spanish procedure, was not heard by a jury. Case material for and against the defendant was submitted in writing to a panel of three judges. The public part of Spanish trials is relatively brief and concentrates on cross-examination of defendants and witnesses. Pedro Rubira, the prosecutor, devoted about half the cross-examination to Alony's time in Afghanistan and, in particular, the bin Laden interview.<sup>639</sup>

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<sup>637</sup> See L. Crawford, 'A dangerous Subject', *Financial Times*, 14<sup>th</sup> July 2006. She gives more details about the trial in this article.

In the 600-page indictment, only two arguments are offered as evidence of Alony's guilt. First, Alony was accused of "financing a terrorist network" and "transporting funds for terrorists" by taking in March 2000 \$4,000 to Mohamed Bahaia, a Syrian who worked for a charitable organisation in Kabul. Bahaia had lived in Granada, Alony's hometown. The prosecution claimed that Bahaia was a "known terrorist", without providing evidence of this.

Second, Alony was accused of helping Mustafa Setmariam, another "known terrorist" who lived in Granada in the early 1990s. According to the prosecution, Setmariam had been a guest at Alony's home. When Alony arrived in Kabul, Setmariam was working for the Taliban information ministry. The prosecution claimed Setmariam and Bahaia were members of al-Qaeda, and that Alony called in his favours to obtain the bin Laden exclusive. Sheltering alleged terrorists and acting as a money courier were sufficient to allow the prosecution to conclude that Alony was "one of the most relevant members of the Spanish cell of al-Qaeda, who contributed to its national and international structure, and who made use of his activities as a journalist to commit acts of support, finance, control and co-ordination as befitted his position as a qualified militant of a criminal organisation".

<sup>638</sup> See L. Crawford A dangerous subject, *Financial Times*, London - Friday, July 14, 2006

<sup>639</sup> This is the exchange between the Spanish prosecutor and Alluni as reported by Crawford:

- "Can you tell us when you began your relations with the Taliban government?" Rubira asked.
- "Me or al-Jazeera?" Alony replied.
- "No you. I am interested in you, not in al-Jazeera," the prosecutor said.

Rubira wanted to establish that Alony went to Afghanistan on his own initiative, driven by his sympathy and links to al-Qaeda; Alony was at pains to make clear that he was posted there by al-Jazeera. Rubira told the court

- "Alony's merits as a journalist were not credited before the bin Laden interview. Therefore his journalistic skills could not have been the reason why al-Jazeera hired him."

That statement was repeated in the verdict which condemned Alony for collaborating with terrorists.

Al-Jazeera was not asked to submit written evidence or give evidence in court, so the prosecutor's attack on Alony's professional qualifications was allowed to go unchallenged."

Alluni spent seven years of his life either behind bars or under house arrest. However, he never gave up and submitted an appeal to the European Court for Human Rights, claiming that the Spanish judiciary had violated his basic rights. The European Court ruled on 17 January, 2011, that:

“A sentence of seven- year jail term handed down by Spanish Court against Alluni over charges of collusion with a terror organisation is not legal”<sup>640</sup>

In addition, the ECtHR required Spain to give Alluni financial compensation and fined Spain 16 thousand euros. One of the seven counts, presented by the defence, was enough to convince the Court to rule out the Spanish Court's verdict. The European Court decision underlined the Spanish judiciary's violation of Article 6.1 of the ECHR.<sup>641</sup>

Alluni's case was far from being an isolated one; nevertheless, it remains symbolic.<sup>642</sup>

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<sup>640</sup> See *European court: Al Jazeera's Alluni trial illegal*, ruling reported on the 19<sup>th</sup> January, 2012, by the Doha Centre for Media Freedom. The DCMF is an organisation working for press freedom and quality journalism in Qatar, the Middle East and the world. See Doha Centre for Media Freedom, *European court: Al Jazeera's Alluni trial illegal*, 9/01/2012. Article available online at:

<http://www.dc4mf.org/en/content/european-court-al-jazeera%E2%80%99s-alluni-trial-illegal>

<sup>641</sup> Article 6.1 of the ECHR guarantees the inalienable right of citizens to have a fair and independent trial. Article 6.1 of the European Court of Human Rights (ECHR) reads:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

See Council Of Europe, *'The European Convention on Human Rights and its Five Protocols'*, 1995, available online at: <http://www.hri.org/docs/ECHR50.html>

<sup>642</sup> Hundreds of journalists are imprisoned only for conducting their media duties. Crawford reported the concerns of Julliard of Reporters. Without Borders: "We are very worried about the spread of anti-terrorism legislation and the way this is being used to suppress press freedoms". The French journalist observed that a well-known practice was authoritarian regimes using anti-terror laws to suppress dissent, was. But, what disturbed the media was the use of these laws to suppress freedom of speech in the Western world. According to the Committee to Protect Journalists (CPJ), 24 countries imprisoned journalists in 2005, up from 20 nations the year before. Of the 125 journalists in prison at the end of 2005, 78 of them had been jailed for "anti-state" activities, including subversion. The USA detained another professional from Al-Jazeera, Sami al-Haj (in Guantanamo). The CPJ said that leaks of classified information, in the USA showed that the Justice Department had warned reporters that they could be prosecuted under espionage laws. According to Ann Cooper, executive director at CPJ, "Journalists covering conflict, unrest, corruption and human rights abuses face a growing risk of incarceration in many countries, where governments seek to disguise their repressive acts as legitimate legal processes,"

In the UK, Neil Garrett was arrested, in October 2005, under the Official Secrets Act 1989. He was accused of the publication of internal police information regarding the police shooting of Jean Charles de Menezes. The report revealed that, in order to prevent criticism, the police misled the public about de Menezes' behaviour to justify his shooting. Garrett was freed eventually in 2006 – Garrett, who was working for *ITV News*, was arrested and detained several times under the Official Secrets Act.<sup>643</sup> However, eventually, he faced no actual charges.<sup>644</sup>

In Northern Ireland, in 2003, the Police had to pay extensive damages following their search of the office and home of Liam Clarke, the Northern Ireland editor of the *Sunday Times*, after he published a book which contained transcripts of phone calls which the security services intercepted illegally. The Police Ombudsman described the raid as “poorly led and ... an unprofessional operation”.<sup>645</sup>

Another incident, occurred in November 2005, when Lord Goldsmith, the Attorney General, warned media and, in particular, UK news organisations that, if they persisted in writing about the leaked memo relating to the transcript of exchanges between Tony Blair and George Bush about the bombing of Al Jazeera television headquarters, journalists faced possible prosecution under s.5 of the Official Secrets Act 1989. Keogh and O'Connor, the two political staff at the origin of the leak, were tried and sentenced respectively to six and three months in jail. Keogh had to pay, also, £5,000 towards the prosecution's £35,000 costs. As regards freedom of information, the British government, in order to reduce media use of the Freedom of Information Act 2004, imposed fees for accessing information.<sup>646</sup> The Lord

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<sup>643</sup> See Banisar (2008). *Speaking of terror* page 16

<sup>644</sup> See BBC's article “No-one will face charges over the alleged leak of papers from the Jean Charles de Menezes shooting probe” available at: <http://news.bbc.co.uk/1/hi/uk/4976450.stm>

<sup>645</sup> See J.Grimston's article: “Police in raid on ST journalist face discipline”. Available online at: [http://www.thesundaytimes.co.uk/sto/news/uk\\_news/article240607.ece](http://www.thesundaytimes.co.uk/sto/news/uk_news/article240607.ece)

<sup>646</sup> See <http://www.ico.gov.uk/> and for the details regarding the fees there is a document available at: [http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/guide/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/fees\\_cost\\_of\\_compliance\\_appropriate\\_limit.ashx](http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/fees_cost_of_compliance_appropriate_limit.ashx)

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Chancellor<sup>647</sup> said: “Freedom of information was never considered to be, and for our part will never be considered to be, a research arm for the media”.

### 5.6. Cases of Journalists Arrested in European countries

In the past decade, there was a significant increase in cases, where laws relating to the disclosure of state secrets or provisions in the criminal code, were used against representatives of the media. However, the Courts dealt with most cases in an adequate manner, in that, often, they judged police actions or the laws to be illegal or unjustifiable. For instance, in November 2006 in Denmark, three journalists, from the *Berlingske Tidende*, were put on trial under the Criminal Code accused of publishing material leaked from the Ministry of Defence. However, the Court judged that wh this leak was in the public interest and the journalists were cleared. In 2005 in Holland, a reporter was charged under the Criminal Code because he made public (on a TV show) information left by an intelligence officer in a car two years earlier. However, the public prosecutor abandoned the case by in February 2006. In February 2006 in Romania, in, several journalists were questioned and two were arrested because of the information they received from a former soldier who served in Iraq and Afghanistan. Due to the fact that the received information had not been published but given to the Romanian Government, the Supreme Court ordered the release of one of the two detained journalists. In 2003, the Swiss Government opened proceedings against the editor of *Sonntags Blick* for publishing photos of an underground military establishment. In 2007, reporters, working for the same Swiss newspaper *Sonntags Blick* , appeared in court and were prosecuted under the military penal code. They were accused of publishing an

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<sup>647</sup> Lord Falconer, during Lecture in memory of lord Gareth Williams, The National Archives, 21 March 2007,

<http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/speeches/2007/sp070321.htm>

Egyptian Government fax which confirmed the existence of secret prisons run by the American Government. The fax was supposed to have been intercepted and leaked later by the Swiss military. The court acquitted the journalists involved in April 2007.<sup>648</sup>

### 5.7. Criticism regarding UK Anti-terrorism Laws

The UK was the only European country authorising an increase in the period for which suspects could be detained without charge. The argument, put forward by the policymakers, was that the intention was to obtain information from the suspects. What most concerned human rights organisations was the fact that, in some cases, the arrested person did not have the opportunity to contact a lawyer for up to forty eight hours. The new laws restricted, also, the accused's right to silence; the legislators aiming to encourage suspects to reveal what they knew, despite being aware that such a measure struck at the right not to incriminate oneself. Another issue, of concern, was the wide and ever-increasing powers given to police forces to deal with cases of terrorism. In comparison with the police elsewhere in Europe, British police had much greater powers. In contrast to what happens usually in countries, such as France or Spain,<sup>649</sup> in the UK, the police decide whether or not to open an investigation, whilst preliminary investigations are conducted without external interference.<sup>650</sup>

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<sup>648</sup> See D. Banisar, D (2008) Speaking of terror. Professor Banisar wrote on page 15 of his report that: "There has been a significant trend in the increased use of state secret laws to penalise whistle-blowers and journalists who publish information of public interest. A review in 2007 by the Organization for Security and Co-operation in Europe (OSCE) found that nearly half of its 56 participating States imposed legal liability for journalists who obtained or published classified information. 60 The study found dozens of cases in recent time where journalists were prosecuted for publishing secrets. Many of these cases have related to the current debates on anti-terrorism with journalists publishing articles of public interest based on leaked classified documents."

<sup>649</sup> In these countries, it is the public prosecutor who decides whether or not to open an investigation.

<sup>650</sup> The police's full independence lasts until the formal institution of the investigations when the cases are referred directly to the public prosecutor.

Essentially, the RIPA 2000 updated the law relating to the interception of communications.<sup>651</sup> It is essential to note that, unlike other intrusive methods for gathering evidence, this method needs only the Home Secretary's approval. A specific authorisation, from a judge, is not required.<sup>652</sup> Furthermore, under s.17 of the RIPA 2000, telephone-tap evidence, even when obtained legally, cannot be admitted in court<sup>653</sup>, although, under English evidence law, it is the generally the relevance of the evidence which determines its admissibility.<sup>654</sup> The rule might present some advantages should it reduces the amount of police investigations using privacy-infringing wiretapping. The argument is that, if the evidence is inadmissible in court, there is no incentive to obtain it through wire-tapping.

According to critics, human rights, and civil liberties organisations, the UK Government's assessment, of the level of terrorist threat, is far from being justified.<sup>655</sup> Analysts, such as

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<sup>651</sup> The RIPA 2000 replaced entirely the previous Interception of Communication Act 1985.

<sup>652</sup> In fact, before 1985, Home Secretaries used to issue warrants for telephone tapping without any legal basis; this led to a condemnation see Malone case mentioned in footnote 93) where the European Human Rights Court held that tapping telephones, without a legal basis, violated Art. 8 of the ECHR. Then, the UK government reacted by issuing the Interception of Communications Act 1985. Under this Act, the Home Secretary's authorisation was given a legal framework, and a network of rules was established to ensure that his authorisations would not be examined in the ordinary courts. See Spencer (2005).

<sup>653</sup> Under s.17 of the RIPA 2000, telephone-tap evidence, despite being obtained legally, cannot be permissible in any case or admissible in court. See RIPA 2000, s.17.

<sup>654</sup> Under English law, the basic rule is that evidence is admissible if it is relevant (SIAC in Court of Appeal, *A, B, C, D, E, F, G, H, Mahmoud Abu Rideh, Jamal Ajouaou v Secretary Of State for the Home Department*, August 2004, [2004] EWCA 1123., at 242). A wide range of discretion is given to English judges under the English ordinary criminal law regarding whether or not particular evidence is admitted during the trial. Similarly, s.78 of the PACE 1984 provides that the court can refuse to allow evidence if it appears to the court that, 'having regard to all the circumstances, including the circumstances under which the evidence was obtained, the admission of evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it'. So, unlawfully obtained evidence can be excluded, if there is a risk that the fair trial principle is jeopardised. However, in other circumstances, it can be admitted, as in the case of *Khan v UK* [1997] AC 558 (HL). Planting and aural surveillance device in defendants' homes, without their knowledge, is seen as unlawful. The recording, obtained in Khan's case, confirmed that Khan was involved in drug trafficking. Therefore, it was admitted as evidence. The Strasbourg Court held that the admission, of this evidence, did not violate the fair trial principle of Art. 6(1) ECHR, see *Khan v UK* (application no.35394/97) [2000] Crim. LR 684.

<sup>655</sup> For instance, ARTICLE 19, an international human rights organisation defending and promoting freedom of expression and information, around the world, states in an article, that "Anti-terror laws trigger executive powers that are very restrictive on human rights, often with reduced judicial oversight. As a matter of principle, their use should be confined to those circumstances when such severe restrictions can truly be deemed "necessary". Therefore, anti-terror laws should be drafted narrowly and be proportionate to the legitimate aim pursued – protecting national security. See The Impact of UK Anti-Terror Laws on Freedom of Expression Submission to ICJ Panel of Eminent Jurists on Terrorism, Counter-Terrorism and Human Rights. Available at: <http://www.article19.org/data/files/pdfs/analysis/terrorism-submission-to-icj-panel.pdf>

Fenwick, criticized the UK's anti-terrorism laws as sometimes disproportionate.<sup>656</sup> The UK's security measures are believed to be more in tune with the American White House. Consequently, they have eroded progressively civil liberties enshrined in international human rights; humanitarian law; and national constitutions protecting human or civil rights.<sup>657</sup>

UK legislation provoked tensions between the executive and civil liberties and human rights organisations. Some British judges, such as Lord Hoffmann, expressed, also, reservations in cases under the Human Rights Act whilst Members of Parliament dissented from their government policies.<sup>658</sup> Critics said that they were concerned about the new laws since the definition of terrorism was wider than what was expected, whilst there was, also, an increase in the period of pre-charge detention. Liberty, the British human rights organisation, stated that the extent, of this period, was unique in any modern state.<sup>659</sup> Concern was expressed, also, regarding the introduction of the control order system; the 'exaggerated' use of closed

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<sup>656</sup> See H. Fenwick. The Anti-Terrorism, Crime and Security Act 2001: A Proportionate Response to 11<sup>th</sup> September? *The Modern Law Review*, Blackwell Publishers, MA, USA, 65:5, September 2002)p.724-725. According to Fenwick (2002) "...democratic governments are perfectly entitled to take extraordinary measures if faced with a threat of atrocities on anything like the scale of those who occurred on the 11<sup>th</sup> September. But since it is unarguable that counter-terrorist measures such as detention without trial are opposed to democratic ideals, they should be subjected to the most rigorous tests for proportionality". See also C Gearty, 'Terrorism and Human Rights', *Government and Opposition*, 2007, Vol 42, No.3, p340-360.

<sup>657</sup> Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. The organisation underlines that it "... has long maintained that the most effective legislation is that which identifies and addresses a specific gap in the law. Unfortunately, we believe that much terrorism legislation has been excessive and has proved counterproductive". See Liberty's Second Reading Briefing on the Counter-Terrorism Bill in the House of Lords: Part 2 - Non detention extension provisions July 2008.  
<http://www.liberty-human-rights.org.uk/pdfs/policy08/counter-terrorism-bill-non-detention-provisions-2nd-reading-lords.pdf>

<sup>658</sup> Since their inception, 'Liberty', the British Civil Liberties and Human Rights Organisation has followed the development of UK terrorism laws and regularly, through open letters; reports; and newsletters highlighted its observations to the executive. There are, also, International organisations such as Amnesty International; Human Right Watch.; Article 19; and the International Federation of Journalists and so on who monitor the UK legislation closely. See, for instance, the 2010 report of Human Rights Watch, "Without Suspicion. Stop and Search under the Terrorism Act 2000",  
<http://www.hrw.org/sites/default/files/reports/uk0710webwcover.pdf>

<sup>659</sup> See Liberty's Report "Terrorism Pre-Charge Detention. Comparative Law Study", 2010, available online at: <http://www.liberty-human-rights.org.uk/policy/reports/comparative-law-study-2010-pre-charge-detention.pdf>

tribunal proceedings; the extensive use of stop and search powers; and the restriction of the right to protest or dissent from the government policy.<sup>660</sup>

The Gillian case of, reported in the previous chapter, is worth recalling. The concerned person, himself, who was stopped and searched under the Terrorism Act 2000, stated that:

“A broader question here was raised by the practice of the Metropolitan Police Commissioner of a rolling series of authorisations every 28 days, which were all subsequently confirmed by the Home Secretary without limitation or alteration. From 19<sup>th</sup> February 2001 until at least October 2003 these supposedly exceptional powers were available to any police officer anywhere in area covered by the London Met.”<sup>661</sup>

The use of the powers, by a police officer, represents the third stage of the authorised process,<sup>662</sup> with, nevertheless, a recommendation that they

“...may be exercised only for the purpose of searching for articles of a kind which could be used in connection with terrorism”.<sup>663</sup>

In fact, most everyday items articles might be considered in connection with terrorism. For example, a journalist might have a map of the London underground; a document from anonymous sources; a mobile phone; or a camera All might serve in planning terrorist acts.

In another s.45(1)(b) it is emphasised that the use of the powers may be exercised:

“...whether or not the constable has grounds for suspecting the presence of articles of that kind”.

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<sup>660</sup> Lord Hoffmann, member of the panel of Lords has been one of the strongest critics of UK anti-terrorism laws.

<sup>661</sup> See K. Gillan Lecture, presented to law students at Queens University, Belfast, 13 March 2007. Anti-Terror Legislation and the Judicial Review Process: A Personal Story, [http://www.kevingillan.info/wp-content/uploads/2008/04/gillan\\_judicial\\_review\\_lecture.pdf](http://www.kevingillan.info/wp-content/uploads/2008/04/gillan_judicial_review_lecture.pdf)

<sup>662</sup> The process, through which the police use the provisions of Sections 44-47 of the TA 2000, goes through three stages. The first one consists of obtaining an authorisation to use the act in a specific area. The second stage involves the Secretary of State who has to confirm the authorisation, within 48 hours (if the deadline is not respected the authorisation expires). It is worth observing that the authorisation, in question, has a lifespan of 28 days. The third stage is the enforcement of the powers by a police officer.

<sup>663</sup> As regards to the limits of the powers see Section 45(1) (a)

Part 6, of the Terrorism Act, highlighted several other offences.<sup>664</sup> For instance, it is considered to be an offence to hold any physical thing susceptible to be,

“... for a purpose connected with the commission, preparation or instigation of an act of terrorism”.<sup>665</sup>

It provided, also, that any collection; recording; or possession of information, which might profit an individual committing or planning to execute a terrorist act, was a crime.<sup>666</sup> Another offence relates to eliciting or trying to obtain information about a person who is (or has been) a member of the armed forces; the police; or another intelligence service. It is believed that such endeavours can profit people intending to commit or arranging the commission of an act of terrorism.<sup>667</sup> In addition, the Terrorism Act 2000 extended the prohibition to encouraging an act of terrorism outside the United Kingdom.<sup>668</sup> There are, also, sections addressing the incitement of acts susceptible to constitute offences within the UK.<sup>669</sup>

At first sight, it seems that these reviewed provision, of the Terrorism Act 2000, were driven by rational considerations. There is no reason to doubt the genuine intentions of the policy-makers and the drafters of the legislation.<sup>670</sup> However, problems appear if one considers carefully the terms used and their later interpretation by law enforcers. Consequently, those, who interpreted and applied, the law did interfere with the freedom of expression and rights

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<sup>664</sup> Contraveners risk up to 15 years imprisonment. The maximum sentence for this offence was increased from 10 years to 15 years under section 13 (1) of the Terrorism Act 2006

<sup>665</sup> Possessing an article for terrorist purposes, section 57(1) Linked to SC Res 1373 (n 61) paragraph 2(d).

<sup>666</sup> Punishable by up to 10 years' imprisonment. Collection of information for terrorist purposes, section 58 (1), relevant to SC Res 1373 (n 61) paragraph 2(d)

<sup>667</sup> Section 58A. Eliciting, publishing or communicating information about members of armed forces as inserted by section 76 of the Counter-Terrorism Act 2008 It is prohibited, also, to publish or communicate the obtained information

<sup>668</sup> Incitement to terrorism (sections 59–61) as relevant to SC Res 1624 (n 61) paragraph 1(a).

<sup>669</sup> Where the offence incited is murder, wounding with intent, poisoning, explosions, or endangering life by damaging property: for England and Wales see section 59(2). For Northern Ireland, see section 60(2). For Scotland see section 61(2),

<sup>670</sup> The legislation was meant originally to prevent and reduce terrorism activities.

of people generally and journalists in particular.<sup>671</sup> In addition, the police also used these provisions systematically when there was no good reason to do so.<sup>672</sup> The Home Office directives as regards what constitutes a "reasonable suspicion" or invoking the TA 2000, has not prevented police officers acting as they see fit.<sup>673</sup> Often, journalists or photographers<sup>674</sup> were stopped and searched under the suspicion of involvement in terrorist activities whilst they were only doing their job. A confirmation of the abuse came from the police officers themselves. For instance, in 2009, the Association of Chief Police Officers (ACPO) advised its members to stop using s.44 against photographers, judging the practice as unacceptable.<sup>675</sup>

The introduction, of the ATCS Act 2001, was met with scepticism by academics and organisations such as the Joint Committee on Human Rights. Indeed, it was criticised harshly,<sup>676</sup> especially as regards the controversial issue of the option of indefinite detention without trial of foreign nationals suspected to be linked to international terrorism.<sup>677</sup>

<sup>671</sup> See "Watching the Detectives: the media and anti-terrorism laws", online video, Front Line Club, 7<sup>th</sup> July 2009, <http://www.frontlineclub.com/post/>

<sup>672</sup> Several UK newspapers stated that using section 44 of the TA 2000 was ineffective. For instance, the Telegraph confirmed that not a single arrest was made for terrorism-related offences. A total of 101,248 stops and searches were made under section 44 of the TA 2000 in 2009/10, but only one in every 200 led to an arrest and none were terror-related (Home Office figures). The powers allow officers to stop anyone in a specified area without the need for reasonable suspicion. In the UK, 506 arrests were made after people were stopped and searched under section 44 of the TA, 0.5 % of the 101,248 stops and searches, compared with 10 per cent of stops carried out using non-terror powers. But the use of the stop and search powers fell by 60 per cent compared with 2008/09. See 'Terrorism Act: No terror arrests were made after 100,000 stop-and-searches', *The Telegraph*, 28 Oct 2010 Available online at : <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/8092328/Terrorism-Act-No-terror-arrests-made-after-100000-stop-and-searches.html>

See, also, No terror arrests in 100,000 police counter-terror searches, Alan Travis article, published by The Guardian, on the 28<sup>th</sup> October 2010. Available online at: <http://www.guardian.co.uk/uk/2010/oct/28/terrorism-police-stop-search-arrests>

<sup>673</sup> See the Home Office guidelines issued in 2009 and available at:

<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/012-2009>

<sup>674</sup> Taking photographs is allowed by the Copyright, Designs and Patents Act 1988, however new limitations on photography were added to the Counter-Terrorism Act 2008).

<sup>675</sup> The police made guidelines as regards the way of dealing with photographers. However, M. Vallee and other members of the National Union of Journalists affirmed that, on the ground, the rules were not respected <http://www.newspapersoc.org.uk/2/sep/10/police-guidance-on-photographers>

<sup>676</sup> Reports by the Joint Committee on Human Rights (Session 2001–02), *Anti-Terrorism, Crime and Security Bill, Second Report*, 14 November 2001, and *Anti-Terrorism, Crime and Security Bill, Fifth Report*, 3 December 2001.

<sup>677</sup> See Part IV of the Anti-terrorism, Crime and Security Act 2001.

The establishment, of this form of detention, was motivated by the fact that it might not be possible to try suspects for several reasons; firstly, because of the sensitive nature of the evidence.<sup>678</sup> Secondly, the involved offences were difficult to prove beyond reasonable doubt. Thirdly, extradition or deportation was not an option, due to its incompatibility with the European Court of Human Rights jurisprudence.<sup>679</sup> Yet, it was possible to deport suspected foreign terrorists provided their presence was considered to be a risk to national security and there was no possibility that they would be tortured in the state to which they were deported.<sup>680</sup> Walker underlined another drawback, of deportation, when he pointed out that there was no assurance that, once deported, the suspect would not resume his/her activities from abroad.<sup>681</sup>

Due to the nature of their work and the means they use to obtain their information, media professionals, can be considered easily to be law-offenders if they possess what is regarded as ‘sensitive’ material or are suspected of distributing ‘terrorist publications’. If they have merely documents which are considered to be terrorist ‘statements’<sup>682</sup>, they will fall automatically into the category of those who circulate ‘terrorist publications’.<sup>683</sup>

## 5.8. Review of UK Anti-Terrorism Laws

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<sup>678</sup> The evidence, presented in court for potential trials, would have jeopardised the investigations in course, and alerted the terrorists at large.

<sup>679</sup> It is stated in the ECHR jurisprudence that “non-British nationals may not be deported to their state of origin if they face a risk of being tortured in the receiving state, as such a deportation would breach Article 3 of the European Convention on Human Rights (ECHR). See the case of *Chahal Vs United Kingdom*, App. No. 22414/93, 23 EHRR 413.

<sup>680</sup> For this particular point, see section 7 Nationality, Immigration and Asylum Act 2002 and section 97A Immigration, Asylum and National Security Act 2006.

<sup>681</sup> Walker, *MLR* 70 (2007), 433, commenting the Report of the Privy Councillor Review Committee, *Anti-terrorism, Crime and Security Act 2001 Review: Report* (2003–04, NC 100) Pt. D, paragraph. 195.

<sup>682</sup> Terrorist statements can be written, audio, electronic or visual recordings.

<sup>683</sup> Obviously, since the enactment of the anti-terrorist laws, journalists are very cautious, it might be useful to recall the bases on which Taysir alluni was condemned, although if it turned out that the accusations were baseless for the European Court of Human Rights, any pragmatic journalists will prefer to avoid the fate of Alluni.

In July 2010, the Home Secretary announced the UK Government's intention to review its terrorism legislation, including counter-terrorism and security powers.<sup>684</sup> The review focused particularly on issues relating to security and civil liberties. Public concern, regarding certain sensitive and controversial counter-terrorism and security powers, induced the executive to consider making appropriate amendments in order to protect the public without contravening their fundamental liberties. The Home Secretary's intention was to ensure that the powers and measures, covered by the review, were really necessary; effective; and proportionate, whilst respecting both UK's international obligations and human rights.<sup>685</sup>

The 2011 Review of Counter-Terrorism and Security Powers<sup>686</sup> addressed eight key counter-terrorism and security powers;<sup>687</sup> amongst them those, directly of concern to media professionals, such as stop and search powers; restrictions on photography; and access to information by journalists. The reviewers asserted that, in certain areas, the UK's counter-terrorism and security powers were 'neither proportionate nor necessary'<sup>688</sup> and recommended, inter alia, the following amendments: the return to 14 days as the norm for

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<sup>684</sup> See HM Government 'Review of Counter-Terrorism and Security Powers. Summary of Responses to the Consultation, Jan.2011 Cm 8005, available online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97969/sum-responses-to-cons.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97969/sum-responses-to-cons.pdf) This document summarises the responses to the review of counter-terrorism and security powers which was announced by the Home Secretary on 13 July 2010. It sets out, also, the consultation process that was followed on the review.

<sup>685</sup> Ibid. See introduction of the document page 2.

<sup>686</sup> See "Review of Counter-Terrorism and Security Powers. Review Findings and Recommendations". Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, January 2011. Available at: <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>

<sup>687</sup> The following are the issues addressed: Pre-charge detention of terrorist suspects, including the possibility to reduce it to 28 days; the Terrorism stop and search (section 44); Photography and the use of counter-terrorism powers; The Regulation of Investigatory Powers Act and local authorities; Access to communications data; Groups or organisations that espouse or incite hatred or violence; Deportation of foreign nationals engaged in terrorism without infringing legal and human rights obligations; and the Control orders.

<sup>688</sup> Ibid. p. 14 where it is stated, as regards to the Control Order regime that:

A number of contributors raised concerns about the impact the obligations could have on the well-being of the person and their family. Some contributors also believed that control orders could be potentially indefinite and that this was disproportionate.

the detention of a terrorist suspect; the end of the indiscriminate stop and search powers;<sup>689</sup> the end to the use of the most intrusive powers under the Regulation of Investigatory Powers Act (RIPA);<sup>690</sup> and the need for magistrate approval before using any RIPA methods.<sup>691</sup> In addition, it was suggested that the UK's human rights obligations be respected when considering the deportation of foreign nationals involved in terrorist activities.<sup>692</sup> It was recommended that the control order regime be abolished and replaced by a new regime which would be less intrusive and more focused.<sup>693</sup>

### 5.9. The Particular cases of Al-Jazeera; the BBC; and Indymedia

The “war on terror” created a pervasive atmosphere of fear, where the freedom of the media was under strong pressure either from terrorist acts or from counter-terrorism measures passed by governments in response to what was seen as a ‘new’ threat for modern societies. The struggle saw the press facing several challenges, and conflict between the executive and media organisations meant that press freedom and pluralism were the main victims of the ‘war’.<sup>694</sup> Despite the encountered problems, and the physical dangers for media professionals, journalists struggled and continue to struggle in order to fulfil their mission of informing people about what it is happening in the world.

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<sup>689</sup> The stop and search powers were provided in Section 44 of the TA 2000

<sup>690</sup> The Regulation of Investigatory Powers Act 2000 (c.23) (RIPA) regulates the powers of local authorities when carrying out surveillance and investigation, or covering the interception of communications.

<sup>691</sup> Ibid. page 11, where it is stated that:

A number of contributions received from organisations outside of local government argued that local authorities should not use the investigatory techniques covered by RIPA at all and that their use should be limited to tackling terrorism and serious organised crime. Amongst this group, there was a view that if local authorities were to retain the power to use RIPA, then, its limitation to serious crime and the requirement for magistrate's approval were positive steps.

<sup>692</sup> See the introduction of the report p.4. Available online at:

<http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>

<sup>693</sup> In the same report, in the findings section, p.6, it is stated that: “The end of control orders and their replacement with a less intrusive and more focused regime. Additional resources will be provided to the police and security agencies to ensure the new measures are effective not only in protecting the public but in facilitating prosecution.”

<sup>694</sup> Several casualties, amongst journalists and media staff, have been recorded by the International Federation of Journalists (IFJ), since the beginning of the 21<sup>st</sup> Century.

People, eager to understand the context and complexities of the terrorist threat, rely mainly on journalists. However, as information is itself a weapon of choice for governments, they try constantly and assiduously to use their powers to influence the media coverage.<sup>695</sup> The media experience in the United States of America ; the appearance of unexpected voices in the Arab world, such as the satellite channel Al-Jazeera; and the clash between the UK Government and the BBC are only few examples showing the war on terrorism's impact on journalism. For instance, the Qatari Al-Jazeera, a prominent actor on the media scene, was praised and criticised in equal measure.<sup>696</sup>

Media, in the United States of America, were subject, also, to intense scrutiny in the aftermath of the September 11 events. A number, of high profile court cases, attempted to force journalists to reveal their sources of information.<sup>697</sup> Britain was not immune from the antagonism between the media and government over the war on terrorism. Conflict appeared soon between the Blair government and the BBC over the right to report the origins of the war in Iraq. In the UK, journalists were more aware about the impact of the war and the arguments regarding Iraq, and were not subject to the same constraints or pressures as

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<sup>695</sup> Often, the motivations are to achieve their political and strategic interests

<sup>696</sup> Al-Jazeera offices in Kabul and Baghdad were bombed and destroyed by the US army, and its journalists killed in different circumstances. The mistrust of *Al-Jazeera* was felt, also, deeply in political circles. Disliked by most Arab governments, it provoked, also a particular resentment in the White House where officials, accused it explicitly of helping terrorists. It is believed that it was under the American administration influence that the interim Iraqi authorities decided to ban the station from Baghdad in 2004.

<sup>697</sup> In February 2005, the US Court of Appeals, for the District of Columbia Circuit, upheld a jail sentence for journalists Matthew Cooper of *Time* magazine and Judith Miller of the *New York Times*, for refusing to disclose their sources. They refused to disclose their sources to a grand jury set up to investigate the leaks from the White House which led to the identity of a CIA agent, Valerie Plame, being revealed in the press. Two other journalists were cited for questioning about their sources in this case: Tim Russert of *NBC* and Walter Pincus of the *Washington Post*. Robert Novak, who was the first to publish Plame's name, on July 14, 2003, had refused always to say if he had been questioned about his sources. Miller investigated the Plame case but ended up not writing any story about it. Cooper wrote in *Time* (July 17, 2003) that government officials had leaked Plame's identity. He was given a jail sentence in August 2004; this was lifted after his source waived their confidentiality agreement and allowed him to answer the grand jury questions.

American journalists. The evidence, presented by the Blair government to justify the Iraq war, provoked fierce exchanges between the Government and the BBC, such a confrontation with Downing Street being unprecedented in the history of the BBC.<sup>698</sup>

With the Indymedia affair<sup>699</sup> in 2004, the laws, adopted to fight the ‘war’ on terrorism, revealed, for the first time, a disturbing picture of how international legal assistance agreements were going to be used in future. The IFJ, worried about the involvement of the UK police with other agencies, called for an investigation to explain the seizure of Indymedia web sites.<sup>700</sup> It considered the international police operation an unacceptable and intrusive action against independent journalism.<sup>701</sup> The IFJ argued that UK law ought to have protected Indymedia and not allowed the FBI to assert its jurisdiction in the UK.<sup>702</sup> Later, the seized servers were returned without formal explanation, impeding Indymedia’s quest for legal redress.<sup>703</sup> The IFJ concluded that “procedural guarantees in international law have failed to keep pace with global law enforcement cooperation and now pose a serious challenge to established human rights protections”.<sup>704</sup>

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<sup>698</sup> The battle led to the death of David Kelly, the source for journalists covering the story. The government’s intention to spin information, in order to achieve its own strategic interests clashed with the media role which felt a real political pressure and intimidation. The row erupted over a radio broadcast and an allegation that government had manipulated intelligence information deliberately to support its contentions about the existence of weapons of mass destruction in Iraq in order to justify going to war. After the death of Dr Kelly, the Government appointed an inquiry, under Lord Hutton, who concluded that the BBC did not behave appropriately. Consequently, the Director General of the BBC and the Chairman of the Board were forced out of office.

<sup>699</sup> Indymedia’s London-based servers were seized by by the FBI in October 2004, taking down the independent media network’s websites in 21 countries. Such action was seen as an outrageous act of disruption. *Indymedia* sites were very challenging and their independent reporting covered several areas, in particular political and social justice issues.

<sup>700</sup>, As regards the police operation, itself, the IFJ stated “The way this has been done smacks more of intimidation of legitimate journalistic inquiry than crime-busting”. The FBI visited *Indymedia* in the US inquiring about the publication on the French site *Indymedia* of photos of Swiss police photographing anti-globalisation protests. The Italian police were also concerned by *Indymedia* coverage of the prosecutions of police officers following the G8 meeting in Genoa in 2001.

<sup>701</sup> The police forces’ conduct during the demonstrations was criticised heavily.

<sup>702</sup> The IFJ argued that, following a request for assistance from the Swiss and Italian authorities, the FBI in the US served Rackspace, the parent company of *Indymedia*’s UK-based service provider, with a subpoena to turn over the London-based servers.

<sup>703</sup> For more details about the Indymedia, see the material available online at: <http://www.indymedia.org/fbi/>

<sup>704</sup> See A.White, ‘Journalism, Civil Liberties and the War on Terrorism’, International Federation of Journalists IFJ, 2005, p. 7, Available online at: <http://www.ifj.org/assets/docs/255/050/01e26ff-83e2532.pdf>

**5.10. Conclusion**

It was noted, throughout this chapter, that terrorist events had a real impact on legislators. Nevertheless, it was media coverage of the incidents which affected the legislators more than the consequences of the acts or the level of threat. The more media attention a terrorist incident obtained, the quicker the legislature reacted to it. Also, the more quickly legislation was brought forward, the less attention was given to human rights. Moreover, a number, of general characteristics of anti-terror laws, were identified. Most restricted certain human rights (in particular, basic procedural human rights). In addition, sometimes, but not always, these restrictions were justified and, sometimes, general principles of criminal law were ignored. Furthermore, a number of peculiarities, of different countries, might be identified. Consequently, the UK stands alone as the only examined State which, under Article 15 of the ECHR, derogated from its obligations under Article 5. Moreover, although the adoption, of the Human Rights Act 1998, strengthened considerably the value of the ECHR in domestic case-law, after the September 11 2001 events, the UK adopted the longest ever periods of detention without trial .

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## **Chapter Six:**

### **Conclusion**

The September 11 2001 events will remain probably the major event of the twenty-first century for several reasons. It provoked a cataclysm at various levels of modern societies. Firstly, as a human catastrophe, it was the cause of loss; pain; grief; and incomprehension, whilst engendering a profound feeling of insecurity for citizens worldwide. The responses, to such a tragedy, from warfare to draconian police measures and drastic legislation were multiple and, often, were unconsidered. In modern democratic countries, The citizens' initial reaction was to trust their governments and to support the taken measures, without questioning the new policies or challenging the authorities.

Yet, such early unconditional support faded soon when it was noticed that the policies and taken measures infringed, in open societies based on the rule of law, several fundamental citizens' rights. Indeed, the governments' initial motives were well-intentioned and aimed at preventing future occurrence of terrorist actions targeting innocent civilians in their own territories. Therefore, no one contested the enactment of anti-terrorism laws. Indeed, there was unanimity as regards the necessity to legislate quickly and strongly. However, later, it appeared that the taken legislative steps threatened the ideal of liberty on which, traditionally, modern liberal democracies were built. It appeared soon to citizens that the anticipated anti-terrorism legislation turned out to be a burden, and represented a danger to democratic principles. Then, the new challenge was to find equilibrium between the need for national security and the preservation of the civil liberties.

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Amongst the actors, affected by the new legislation, was the independent media. They were concerned not only to ensure the safety of citizens but, also, to widen their ability to exert control. Consequently, executive powers decided to tighten and expand their ability to control information, and balanced traditional commitments to media freedom against national security needs. Therefore, limitations were imposed on the freedom to access information and to publish without the risk of prosecution. Furthermore, the new anti-terrorism laws became key instruments to muzzle media professionals.

Often, the media was accused of not fulfilling its role adequately and, therefore, influencing the political climate and the democratic process. The media was the cornerstone of democracies, due to its function as a provider of indispensable political information to the public. For politicians and decision-takers, the new security environment might have an impact on society similar to the pre-Cold War ambience, before the bipolar geopolitical world configuration and the imposition of the ‘Cold War’ paradigm. Similarly, the tragic events of September 11 2001 accelerated the crowning of a new paradigm which was, in gestation, the ‘war on terror’. Influential political analysts and historians contributed heavily to the naissance of the new paradigm by emphasising, through their theories and writings, the ineluctable clash of civilisations. Other academics and social scientists considered the public discourse on terrorism to be unhealthy and irrationally influenced. The responsibility of part of the media (which was far from being a monolithic bloc) could not be denied; they played a significant role by shifting, firstly, the academic debate to the public arena and, then, by amplifying the so-called terrorism threat. Finally, it was decreed that the world was entering the ‘age of terror’; justifying all forthcoming initiatives and measures to annihilate the new peril, despite the risks of negative effects on human rights and civil liberties. It was that, even before they began to be enforced on the ground, the anti-terrorism laws drafted rapidly and enacted endangered freedom of information and speech. The universal

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condemnation, of terrorism and the avalanche of hasty legislation to combat it, affected particularly the media professionals throughout the world, not only those working in authoritarian countries but, also, those living in the more liberal Western states. Investigative journalists; reporters; photographers; cameramen; and editors all suffered from the restrictions imposed by the new laws.

During this study, the examination of anti-terrorism laws demonstrated some shortcomings in most legislation, such as the inability to reach a consensus regarding the definition of terrorism. However, it was not only a problem found in the laws. International institutions; governments; academics; media; and the general public had, also, various interpretations of the concept. It was not easy to assess what consequences such divergences might have on national or international relations. In the same vein, it would be very difficult to find common procedures to confront terrorism either on domestic or international levels. The inability, to define the phenomenon, complicated the implementation of any kind of measure or programme intended to confront such a threat to international peace and security and prevented efficient cooperation.

Furthermore, allowing States to decide what violent actions constituted terrorism, instead of facilitating the finding of shared legal instruments, generated ambiguities and discrepancies in the legislation of particular states. As a phenomenon, terrorism is an act which exploits fear through the use of intentional violence for the achievement of political change. Although it impacts, firstly, on the victims of terrorist attacks, it seeks to reach a wider public audience in order to produce political changes on international levels, if not, internally. Indeed, there is a mutual profitability between terrorism and the media. However, the amplification, of this situation, in political spheres does not reflect the real extent of the overlap.

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Certainly, media coverage is fundamental for terrorist groups since it gives them a status and, even, legitimacy superior to non-violent opposition groups. Therefore, in their aims; planning; strategies; and choices of priorities, media attention is an important factor. On the other hand, the media needs usually to generate profits for shareholders. The fact that a relationship exists between the media profession and terrorism is not in doubt; however, linking the two might lead to erroneous conclusions. It is undeniable that the media gains by reporting terrorist actions. This kind of news boosts the audience and, therefore, journalists and editors do react fairly instantly when terrorist acts occur. Broadcasting terrorism is very profitable for media outlets, strengthening their competitiveness in attracting a wider audience.

As regards interference by governments in media affairs, it is indisputable that, due to the predominance of authoritarian regimes, developing countries suffer more from state control of the media. What was less expected, for observers, was the sudden restrictions and limitations, which appeared with the ‘war on terror’, from policymakers of countries renowned as modern, liberal and democratic, promoters of civil liberties and all sort of freedom for their citizenry. Indeed, when it appears that a representative of the most powerful state on earth requires the intervention of an Emir to restrict freedom of information, it is a matter of concern. Colin Powell, the American Secretary of State, asking Qatar’s ruler to moderate Al Jazeera’s broadcasting, and seen throughout the Arab world, turned reality upside down. Al Jazeera, a new-born form of media, was a hope for the populations of the Middle East and North Africa. It was not under direct state control, as was the rule in the rest of the Arab world. Yet, American officials, in the Bush Administration, saw Al Jazeera as a hostile channel and categorised it as an adversary in its declared campaign on the ‘war on terror’, labelling it as the “media of the terrorist”.

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Such incidents would have been innocuous if there were not so much legislation enacted by international bodies and most states to prevent future terrorist attacks against civilian populations. Although there were genuine and understandable apprehensions in the aftermath of the September 11 2001 events, the responses and measures, taken either internationally or domestically, provoked, over time, rising concern about the effect of the legislation.

In the UK, the narrow application of the European Convention on Human Rights (ECHR), might be due to the British perception of the concept of sovereignty. The British believe that, in liberal democracies, the legislation, enacted by a sovereign parliament, represents the will of the people. Therefore, British laws should be dealt with in British courts yielding to other legal principles deemed superior. Yet, the British perspective, as regards parliamentary sovereignty, is weakened in view of the international developments which call into question the conventional interpretation of sovereignty. In the contemporary world, the universality of human rights and the establishment of a European Court of Human Rights, induced European States, in particular, to renounce some of their powers to the ECtHR.

The only alternative, for a British citizen, who considers that his rights have been violated in British courts, is to make an appeal to the European Court of Human Rights. In Strasbourg, the relatively high percentage of cases, from the UK, might be due to the lack of internal instruments ensuring the respect for human rights. The UK was one of the first nations to enact anti-terrorism legislation after the September 11 2001 events. The newly introduced Anti-terrorism, Crime and Security Act 2001 included the adoption of measures such as allowing military police, even for non-terrorist cases, to intervene outside military bases which had been judged inappropriate to be included in the Terrorism 2000 Act,. It enabled the indefinite detention of foreigners as terrorist suspects. The next piece of legislation, the Criminal Justice Act 2003, extended to 14 days the period of a suspect's detention for

questioning. This was followed by the Prevention of Terrorism Act 2005 which introduced “control orders”, a form of house arrest.

The Terrorism Act 2006, passed after the London bombings, created the offence of “glorifying” terrorism, and extended the period of detention, of suspects without charge, to 28 days. The Act provoked tough criticism from human rights organisations and civil liberties groups. Indeed, it was planned to increase the detention period, for suspects without charge, from 14 days to 90 days. This motion was rejected, finally, since Parliamentarians were unconvinced by the UK Government’s arguments. However, as seen above, the period was doubled. More recently, the Counter-Terrorism Act 2008 made significant changes by allowing the police to interrogate suspects after they were charged, and obliged convicted people to inform the police about their whereabouts.

The freedom of expression and the right to seek; receive; and convey information is one of the most fundamental human rights, enshrined in Article 19 of the United Nations Universal Declaration of Human Rights. Nonetheless, this right is not unlimited. Consequently, for example, the authorities might be able to limit freedom of expression for the sake of ‘morality, public order and general welfare’. Accordingly, the implementation of Article 19 must be contextualised to reach equilibrium between the concerns of media professionals and those of the state.

Human rights organisations argued that, due to the anti-terrorism laws, the right to the freedom of expression faced significant challenges. They mentioned the emergence of new crimes relating to speech which was seen to encourage, either explicitly or implicitly, terrorist activities. Prohibitions were expanded from mere incitement to broader and more vaguely defined concepts such as glorifying terrorism or making an apology of it. Internet-

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based speech has been, also, under scrutiny and various websites, which were judged to be controversial, were blocked or removed.

Nevertheless, at a European level, Davis insisted, in 2008, that no matter the circumstances, the ECHR and its related case law were still the norms to which to have regard in relation to the right to freedom of expression and information, and in particular in times of crisis. The Council of Europe standards and guidelines, on protecting freedom of expression and information in times of crisis, advised Member States to be clear and explicit when imposing restrictions on freedom of expression and information. Despite the fact that the ECHR provided strong protections on freedom of expression under Article 10, in various domestic legislation cases, there was proved to be evident violation of the requirements of the ECHR. Often, national security and the struggle against terrorist groups are used as justifications for repressing freedom of speech.

Generally, the motives, of human rights organisations, are different from those of the media. The former blame the media for not giving sufficient and accurate coverage to human rights issues. Consequently, human rights bodies have profited, also, from the digital age, and developed their own media services through the Internet. Instead of relying on the media, they have conducted their own research and developed their data collecting and analysis capacities in order to communicate information to larger and more diverse audiences.

Due to their competing interests, the media and authorities are wary of each other. On one hand, the media's role is to report accurate and reliable information to the people, its 'rightful owners'. Yet, politicians and the whole government machine have a different view of how to deal with information. For them, information is a key element of politics and, accordingly, it should be under government control. It is used; manipulated; organised; and spread according to the government's strategic interests. Therefore, the politicians' perspective of

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is quite peculiar as regards what constitutes the public interest. This explains the clash with the views of independent media. As natural reflexes, States exert censorship and control of information. Yet the legislation, which they enact, is meant to strengthen and maintain the rule of law and to protect their constituents' civil liberties of. Journalists' first mission is to inform the people whilst maintaining their independence from any form of pressure.

Continuous struggle occurs as regards access to information and both media and authorities are suspicious of each other. In the UK, media freedom of movement and information was challenged seriously by the enactment of anti-terrorism laws and their enforcement on the ground since the September 11 2001 events. Most media professionals are unhappy with the implementation of those laws which are seen as a flagrant infringement of their fundamental rights and a challenge to their independence. The governments' demands that the media showed unconditional and blind allegiance to their policies in the 'war on terror' provoked unease because it suggested a reduction of media freedom and civil liberties.

The independent media cannot abdicate to the dictate of executive powers. The anti-terrorism legislations, enacted since 2000 in the UK, represent an enormous challenge for journalists; reporters; cameramen; photographers; and all media professionals. Despite the numerous changes and amendments, made to the provisions of various laws, the UK's efforts the UK remain inadequate and insufficient. For the media; civil liberties groups; and Human Rights organisations at the forefront; the norm should be to challenge the Government; the legislators; and the the police and other security services' interpretation of the laws norm with the media,. Criticism of anti-terrorism laws is a sane reaction; and, as prescribed by their ethical code, the media must defend their rights to fulfil their mission and to preserve the principles of one of the oldest democracies in Europe.

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## Appendix

### Annex: 1

#### Chronology of the Enactment of Laws and Resolutions

- Terrorism Act 2000 (UK voted on the 28<sup>th</sup> September, entered into force in December 2001)
- UN Resolution 1368 (12th September 2001)
- UN Resolution 1373 (28th September 2001)
- Article 5 NATO (12th September 2001)
- USA Patriot Act ( October 2001)
- The NSA Surveillance program
- Council of Europe (CoE)
- European Union (EU)
- The Anti-terrorism, Crime and Security Act 2001 (UK)
- The Prevention of Terrorism Act 2005 (UK)
- The Terrorism Act 2006 (UK)
- The Counter-terrorism Bill 2008 (UK)

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**Annex: 2****UNIVERSAL  
DECLARATION OF HUMAN RIGHTS  
UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS****Universal Declaration of Human Rights****Preamble**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge.

Now, therefore, The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article I**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2**

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Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3**

Everyone has the right to life, liberty and security of person.

**Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**

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No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

**Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

1. Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**Source: United Nations Department of Public Information**

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**Annex: 3****Resolution 1368 of the 12<sup>th</sup> September 2001****UNITED  
NATIONS****S****Security Council** Distr. GENERALS/RES/1368 (2001)  
12 September 2001

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**UN Security Council Resolution 1368 (2001)**  
**Adopted by the Security Council on 12<sup>th</sup> September 2001**

The Security Council,

Reaffirming the principles and purposes of the Charter of the United Nations,

Determined to combat by all means threats to international peace and security caused by terrorist acts,

Recognizing the inherent right of individual or collective self-defence in accordance with the Charter,

1. Unequivocally condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington (D.C.) and Pennsylvania and regards such acts, like any act of international terrorism, as a threat to international peace and security;

2. Expresses its deepest sympathy and condolences to the victims and their families and to the People and Government of the United States of America;

3. Calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable;

4. Calls also on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 of 19 October 1999;

5. Expresses its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations;

6. Decides to remain seized of the matter.

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**Annex: 4****Resolution 1373 of the 28<sup>th</sup> September 2001****UNITED  
NATIONS****S****Security Council** Distr.GENERALS/RES/1373 (2001)  
28 September 2001

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**Resolution 1373 (2001)****Adopted by the Security Council at its 4385th meeting,  
on 28 September 2001**

*The Security Council,*

*Reaffirming* its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

*Reaffirming also* its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

*Reaffirming further* that such acts, like any act of international terrorism, constitute a threat to international peace and security,

*Reaffirming* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

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

*Calling* on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

*Recognizing* the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

*Reaffirming* the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* that all States shall:

- (a) Prevent and suppress the financing of terrorist acts;
- (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

- (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists ;
- (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls* upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional,

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regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.

**Annex: 5****Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14**

Rome, 4.XI.1950

Text of the Convention as amended by its Protocol No. 14 (CETS No. 194) as from the date of its entry into force on 1 June 2010.

The text of the Convention had been previously amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) had lost its purpose.

**Article 10 – Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## Annex: 6

### Article 5 of the Washington Treaty

**The decision:** On 12 September, NATO decided that, if it is determined that the attack against the United States was directed from abroad, it shall be regarded as an action covered by Article 5 of the Washington Treaty. This is the first time in the Alliance's history that Article 5 has been invoked.

#### Article 5 of the Washington Treaty:

*The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.*

NATO's Strategic Concept recognises the risks to the Alliance posed by terrorism.

#### What does Article 5 mean?

Article 5 is at the basis of a fundamental principle of the North Atlantic Treaty Organisation. It provides that if a NATO Ally is the victim of an armed attack, each and every other member of the Alliance will consider this act of violence as an armed attack against all members and will take the actions it deems necessary to assist the Ally attacked. This is the principle of collective defence.

#### Article 5 and the case of the terrorist attacks against the United States:

The United States has been the object of brutal terrorist attacks. It immediately consulted with the other members of the Alliance. The Alliance determined that the US had been the object of an armed attack. The Alliance therefore agreed that if it was determined that this attack was directed from abroad, it would be regarded as covered by Article 5. NATO Secretary General, Lord Robertson, subsequently informed the Secretary-General of the United Nations of the Alliance's decision.

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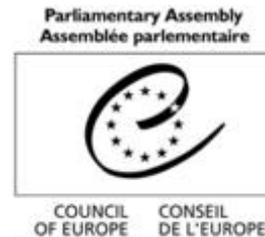
Article 5 has thus been invoked, but no determination has yet been made whether the attack against the United States was directed from abroad. If such a determination is made, each Ally will then consider what assistance it should provide. In practice, there will be consultations among the Allies. Any collective action by NATO will be decided by the North Atlantic Council. The United States can also carry out independent actions, consistent with its rights and obligations under the UN Charter.

Allies can provide any form of assistance they deem necessary to respond to the situation. This assistance is not necessarily military and depends on the material resources of each country. Each individual member determines how it will contribute and will consult with the other members, bearing in mind that the ultimate aim is to *"to restore and maintain the security of the North Atlantic area"*.

By invoking Article 5, NATO members have shown their solidarity toward the United States and condemned, in the strongest possible way, the terrorist attacks against the United States on 11 September. If the conditions are met for the application of Article 5, NATO Allies will decide how to assist the United States. (Many Allies have clearly offered emergency assistance). Each Ally is obliged to assist the United States by taking forward, individually and in concert with other Allies, such action as it deems necessary. This is an individual obligation on each Ally and each Ally is responsible for determining what it deems necessary in these particular circumstances. No collective action will be taken by NATO until further consultations are held and further decisions are made by the the North Atlantic Council.

## Annex:7

**Parliamentary Assembly**  
**Assemblée parlementaire**



**Recommendation 1534 (2001)<sup>[1]</sup>**  
**Democracies facing terrorism**

1. The Parliamentary Assembly refers to its Resolution 1258 (2001) on democracies facing terrorism.
2. It strongly condemns all forms of terrorism as a violation of the most fundamental human right: the right to life.
3. It takes note of the declaration by the Committee of Ministers of 12 September 2001 and welcomes its decision of 21 September 2001 to include the fight against terrorism in the agenda for the 109th Session of the Committee of Ministers (7 and 8 November 2001).
4. The Assembly regards the new International Criminal Court as the appropriate institution to consider international acts of terrorism.
5. The Assembly urges the Committee of Ministers to:
  - i. ask those member states who have not yet done so to sign and ratify the existing relevant anti-terrorist conventions, especially the International Convention for the Suppression of the Financing of Terrorism;
  - ii. invite member states to lift their reservations to anti-terrorist conventions, which hinder international co-operation;
  - iii. ensure the full implementation of all existing Council of Europe conventions in the penal field;
  - iv. request those member and Observer states that have not done so to sign and ratify, as rapidly as possible, the Treaty of Rome, which provides for the establishment of the International Criminal Court;
  - v. make it possible for Observer and non-member states to accede to the European Convention on the Suppression of Terrorism at its 109th Ministerial Session, and invite them, as well as those member states who have not yet signed and/or ratified this convention, to do so at this session;
  - vi. establish immediate, concrete and formal co-operation with the European Union, the OSCE and the Commonwealth of Independent States (CIS) on the basis of the Council of Europe's values and legal instruments, in order to guarantee coherence and efficiency in Europe's action against terrorism;
  - vii. ask member states to review their education programmes in order to enhance the role of democratic values, as children and the younger generation are often used by the terrorists to achieve their aims;
  - viii. reconsider the basis of international co-operation in criminal matters in Europe, in order to find new and more effective means of co-operation which take account of present-day realities and needs;

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- ix. extend the terms of reference of the Committee of Experts on the Criminalisation of Acts of a Racist or Xenophobic Nature Committed Through Computer Networks (PC-RX) to terrorist messages and the decoding thereof;
  - x. as regards the European Convention on the Suppression of Terrorism, remove as a matter of urgency Article 13, which grants contracting states the right to make reservations which can defeat the purpose of the convention by enabling the states to refuse extradition for offences otherwise extraditable;
  - xi. give urgent consideration to amending and widening the Rome Statute to allow the remit of the International Criminal Court to include acts of international terrorism;
  - xii. review the relevant existing conventions in the light of the recent events and declare terrorism and all forms of support for it to be crimes against humanity.
6. The Assembly recommends that the Committee of Ministers examine, in co-operation with the European Union bodies, the modalities for extending the European Union arrest warrant to all Council of Europe member states in the field of the fight against terrorism.
  7. It reiterates its [Recommendation 1426](#) (1999) on European democracies facing up to terrorism and calls on the Committee of Ministers to provide a more substantial reply to it as a matter of urgency.

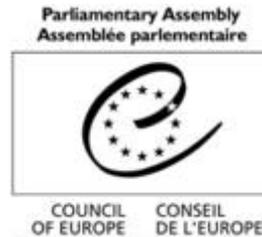
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[1] Assembly debate on 25 and 26 September 2001 (27th and 28th Sittings) (see [Doc. 9228](#), report of the Political Affairs Committee, rapporteur: Mr Davis; and [Doc. 9232](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jansson).

Text adopted by the Assembly on 26 September 2001 (28th Sitting).

## Annex: 8

Parliamentary **Assembly**  
**Assemblée** parlementaire



### Recommendation 1584 (2002)<sup>[1]</sup>

#### **Need for intensified international co-operation to neutralise funds for terrorist purposes**

1. The terrorist attacks against the United States of America on 11 September 2001 demonstrated in the most dramatic and tragic fashion the vulnerability of civilisation vis-à-vis those seeking to destroy it, and the resulting need to take every measure to prevent terrorist acts and apprehend the perpetrators, organisers and sponsors, along the principles set out in Parliamentary Assembly Recommendation 1534 (2001) on democracies facing terrorism.

2. The Assembly, referring in particular to its Recommendation 1550 (2002) on combating terrorism and respect for human rights, underlines the importance in this struggle of identifying and neutralising funds destined for terrorist purposes – an undertaking which is possible only if the world community, and notably Europe, reach a new degree of co-operation at the normative, operative and implementation levels. While such an effort may not ensure the prevention of all terrorist acts, it can contribute significantly to weakening terrorist infrastructure. This is so especially if measures can neutralise terrorism's legal sources of financing, which in certain cases operate under the cover of humanitarian, non-profit or even charitable organisations. It is also necessary to prevent general criminal activities that often serve to finance terrorism, such as trafficking in human beings, drugs and weapons. The systems and measures developed over the last few years to prevent the laundering of proceeds from crime can, if conscientiously applied, play a significant role in the detection, freezing and confiscation of terrorist funds.

3. The Assembly, with the above in mind, recommends strongly that the Committee of Ministers of the Council of Europe undertake the following measures:

*At the normative level*

i. to work in favour of theratification, by all Council of Europe member states and others, of the totality of international legal instruments concerned with the fight against terrorism and its financing, and in particular the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism; ii. to reach immediately an agreement on a definition of terrorism, preferably based on that adopted in December 2001 by the European Council of the European Union in a common position;

iii. to render any financial activity in support of terrorism thus defined a criminal offence;

iv. further to strengthen domestic legislation and any international convention in need thereof, by adapting them to new technological and other developments as well as to the growing sophistication of terrorists, for the purpose of successfully tracing the origin – whether legal or illegal – as well as the routing of funds intended for terrorist ends, with a view to their seizure or confiscation. The Assembly in this connection welcomes the Committee of Ministers' decision taken in May 2002 that an additional protocol should be drawn up to the 1997 European Convention on the Suppression of Terrorism (ETS No. 90), and asks the Committee of Ministers also to envisage the possibility of adapting the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), for instance through an additional protocol;

*At the operative level*

v. to intensify co-operation between national administration, police forces, courts, financial institutions, regulatory and other authorities in order to uncover suspicious international transactions and thereby reach the organisations and individuals behind them. The Assembly in this context welcomes the creation in 2001 of EuroJust and supports decisions taken to widen the mandates of the Financial Action Task Force (FATF) and the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), to include also the detection of terrorism financing and welcomes in addition the establishment within Europol of an international terrorism task force dealing also with its financial aspects;

*At the level of monitoring implementation*

vi. to ensure that international conventions and other agreements against terrorism financing are effectively implemented in Council of Europe member states and other participating states – notably by strengthening the mandates and increasing the resources of the FATF and other competent bodies such as the PC-R-EV, and by rendering public any national shortcoming so as to increase pressure for remedial action;

vii. finally, the Assembly reiterates its belief, as expressed notably in its Resolution [1271](#) (2002) on combating terrorism and respect for human rights, that the fight against terrorism must never be allowed to harm the Council of Europe's fundamental values of democracy, the rule of law and human rights – including the provisions of the European Convention on Human Rights and the prohibition of the death penalty it upholds.

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[1]. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 November 2002 (see Doc. 9520, report of the Committee on Economic Affairs and Development, rapporteur: Mr Marty).

## Annex: 9



### IFJ 'Journalism in the shadows of terror laws'

Journalists need to claim back their role in the discourse about terrorism and refuse to remain side-lined by the rhetoric of national security which has been used to stifle scrutiny of governments' policies following the 9/11 attacks in the US. The call was made at the opening of the Anti-Terror laws Conference organised by the International Federation of Journalists (IFJ) and its European group, the Federation of European Journalists (EFJ). Leading journalists and human rights advocates told the conference that legislation enacted in the aftermath of the attacks as part of the war on terror has had a chilling effect on journalism in many countries, allowing governments to evade public scrutiny.

"The role of media as democracy watchdog has been chipped away even in advanced democracies," said IFJ President, Jim Boumelha in his opening remarks. "Restrictions of press freedom have been introduced under the cloak of national security." The conference was told that anti-terror laws have empowered governments' law enforcement agencies to conduct surveillance on journalists, some of whom have been compelled to reveal their sources, produced records and faced charges for publishing information alleged prejudicial to national security. This new media environment has limited journalists' ability to report independently on issues related to terrorism. "There has been unwillingness to report on the governments' policies out of fear of being on the wrong side," said Arne König, EFJ President.

John Nichols, American journalist and author, said that journalism in the US after the attacks was reduced to row information complemented by political commentary from 'talking heads' with vested political interests. Human rights experts urge governments to address the challenge to fight terrorism while remaining true to the core values of respect for rule of law and fundamental human rights. "The language of war on terror has made easier for governments to introduce measures which repress media freedom and fundamental rights," said Mary Robinson, former President of Ireland and former UN High Commissioner for Human Rights. "The anti-terror legislation after 9/11 has undermined journalistic integrity and discouraged critical voices."

The war on terror has also increased the risks to journalists who face arrests and kidnappings while covering conflicts in Afghanistan and Iraq. Hervé Ghesquière, the French

reporter for France 3 TV and former hostage in Afghanistan said that the work of journalists who cover wars waged against terror has become very difficult, including for those who are embedded with combat troops as their independence is compromised. "There can be no press freedom without a secure environment," added Dunja Mijatovic, OSCE High Representative for Media Freedom. "There is a risk of the rule of law being replaced by the rule of fear."

## Annex: 10

### Declaration Adopted by IFJ/EFJ Conference on 'Journalism In the Shadow of Terror Laws'

The international conference organised by the International Federation (IFJ) and the European Federation of Journalists (EFJ) on 'Journalism in the Shadow of Anti-Terror Laws' has concluded today in Brussels by calling for a review of anti-terror legislation which undermines journalists' independence.

The following is the Declaration which was adopted after two days of debates on the impact of anti-terror legislation on journalism following the 9/11 attacks in America:

**We**, the participants at the IFJ/EFJ Conference "10 years after 9/11, Journalism in the Shadow of Terror Laws", held in Brussels on 10<sup>th</sup>-11<sup>th</sup> September,

**Noting** that since the September 11<sup>th</sup> terrorist attacks on the United States, the response by governments to the threat of terrorism had been massively disproportionate, resulting in

Fundamental rights being routinely violated and undermined,

- A raft of mass surveillance measures targeting journalists and media organisations being introduced,
- Laws and regulations that undermine almost half of the minimum standards set out in the 1948 UN Universal Declaration on Human Rights being enacted by governments, often in the absence of scrutiny and debate, and
- Media and independent journalism suffering in a "pervasive atmosphere of paranoia" which is leading to dangerous levels of self-censorship,

**Recognising** that these laws, when adopted in democratic states, are used by authoritarian regimes to reinforce their oppressive systems, and in most instances have served to restrict dissent inside and outside media and to curtail free speech,

**Believing** that all forms of indiscriminate violence and terrorism are unacceptable and threaten journalism and press freedom,

**Concerned** that the majority of counter-terrorism measures adopted by states over the past decade have helped usher in a 'surveillance society' with new high-tech forms of 'dataveillance' been used to monitor journalists' activities, with spies and undercover agents been active in newsrooms, and with phones and computers been tapped and movements recorded,

**Rejecting** the message that fundamental rights can be sacrificed to fight terrorism and further **concerned** that 'national security' interest continues to enable governments to

withhold information or override the constitutional and legal protections that should be afforded to citizens, journalists and whistleblowers alike,

## **DECLARE**

1. That governments must not sacrifice civil liberties under the pretext of security;
2. That all counter-terrorism and national security laws, among them those hastily enacted immediately after September 11, should be reviewed to ensure compliance with international human rights and freedom of expression norms and prevent the misuse of anti-terror laws against journalists;
3. That mandatory data retention regimes must be repealed, and that restrictions and controls on the use of surveillance powers and new security technologies, as well as robust new mechanisms to protect personal privacy be established;
4. That journalists and editors must maintain editorial independence and guard against self-censorship, and that media need more than ever to be active in the scrutiny of the actions of government;
5. That independent journalism's vital role in investigating and exposing the impact of changes in national and global security policy on society at large is crucial to the future of democratic society;
6. That independent organisation of journalists in unions and associations is an essential safeguard for press freedom, self-regulation and editorial independence;
7. That all forms of violence against media and targeting of media workers are completely unacceptable;
8. That all restrictions on journalists' freedom of movement, pressure on them to reveal sources of information, and manipulation of media by political leaders on security issues are unacceptable,
9. That the IFJ/EFJ should
  - a) Strengthen their campaign among journalists' unions everywhere to raise awareness of security policies and their impact on the right to report,
  - b) Reiterate IFJ policy on the importance of pluralism, diversity, press freedom and open government at national and international level, and the need for tolerance in journalism, as adopted at the Bilbao international conference in 1997, and reiterated in 2005,
  - c) Build the wider coalition with other trades unions, human rights campaigners, employers, whenever appropriate, other media organisations and relevant civil society groups against further attacks on civil liberties and democratic rights,
  - d) Advocate for the introduction of freedom of information laws that guarantee citizens the right of access to public information and restrict the application of national secrecy provisions and for the elimination of all laws that criminalise journalism, or restrict the protection of sources,
  - e) Promote debates at national and international level on the need for professional vigilance, ethical conduct and improvement of journalists' capacity to work and investigate without undue pressure from whatever source, and the need for tolerance in journalism.

Adopted in Brussels on 11 September 2011

Annex: 11

Comparison between the Control Orders (2005) and the TPIM (2011)

<b>CONTROL ORDER 2005</b>	<b>TPIM 2011</b>
Annual Renewal	Permanent
Instigated by the <b>Home Secretary</b> with the permission of High Court except in urgent cases	Instigated by the <b>Home Secretary</b> with the permission of High Court except in urgent cases
Made on the basis of <b>reasonable suspicion</b> of involvement in terrorism	Made on the basis of <b>reasonable belief</b> of involvement in terrorism.
<b>Control orders are indefinite:</b> renewable every 12 months on unlimited occasions.	<b>Initially for 2 years</b> , but can be re-imposed (on unlimited occasions) on new 'evidence'.
<b>High Court</b> reviews an order after it is made; it can <b>quash or revoke</b> the order or a condition of the order on the basis the Home Secretary's decision was flawed.	<b>High Court</b> reviews each TPIM after it is made; it can <b>quash or revoke</b> ; and may direct that restrictions be replaced.
<b>Closed proceedings</b> and <b>Special Advocates</b> to examine <b>secret evidence</b> forming the basis of the Order, a hearing from which the 'controlee' and their lawyer are excluded.	<b>Closed proceedings</b> and <b>Special Advocates</b> to examine <b>secret evidence</b> forming the basis of the Order, a hearing from which the 'TPIM subject' and their lawyer are excluded
<b>Made "with a view to prosecution":</b> <ul style="list-style-type: none"> <li>• Home Secretary asks chief officer of police if there is evidence for prosecution before making the order.</li> <li>• Chief Officer under a duty to secure investigation of 'controlee' in order to prosecute.</li> </ul>	<b>Made "with a view to prosecution":</b> <ul style="list-style-type: none"> <li>• Home Secretary asks chief officer of police if there is evidence for prosecution before making the order.</li> <li>• Chief Officer under a duty to secure investigation of 'TPIM subject' in order to prosecute and report back.</li> </ul>
<b>Breach</b> of CO without reasonable excuse is a <b>crime: max 5 years' imprisonment.</b>	<b>Breach</b> of a TPIM without reasonable excuse is a <b>crime: max 5 years' imprisonment.</b>
<b>Curfew</b> (averaging 11.9 hours in 2010); <b>electronic tagging</b>	<b>Overnight residence</b> requirement; <b>electronic tagging.</b>
Restrictions on <b>communication</b> and <b>association.</b>	Restrictions on <b>communication</b> and <b>association</b>

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<b>Prohibited and vetted visitors</b> , banning from particular <b>places</b> , no <b>overseas travel</b> ; restriction on <b>bank accounts</b> and more.	<b>Exclusion</b> from particular <b>places</b> ; overseas <b>travel bans</b> ; restrictions on <b>bank accounts</b> and more.
Forced <b>relocation</b> .	<b>No longer available</b> – ruled unlawful by the courts.

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