

AMNESTY INTERNATIONAL (SHREWSBURY) GROUP

NOTES ON TALK GIVEN BY LORD CARLILE (INDEPENDENT REVIEWER ON GOVERNMENT TERROR LEGISLATION) AT THE GATEWAY, SHREWSBURY ON TUESDAY 3rd APRIL 2007

Peter Pack introduced Lord Carlile and remarked on the many issues raised in society and the law since the September 11th attacks.

Lord Carlile began his talk by saying that he speaks at various places around the country, talking to the public and to organisations such as our own, on Terror legislation.

In reply to some of the introductory remarks made by Peter Pack, Lord Carlile stressed that:

- evidence obtained from torture was not admissible in UK courts and not used in any tribunal
- extraordinary rendition is illegal and due process was needed for extradition from the UK.

Lord Carlile spoke briefly of past approaches to terrorism:

- that, in Northern Ireland, there had been independent reviewers looking at internment without charge or trial and vestigial due process
- that terrorists had not been allowed to appear on TV or radio

He remarked how former terrorists in NI now held respected positions in government and that here there had been an 'evolution of terrorists'.

MAIN POINTS

- After 9/11, the ATCAS – Anti-Terrorist Crime and Security Act - had revived detention without charge (Belmarsh Provisions) and had been legislation made in haste, repented at leisure.
- There are aspects of information and evidence that cannot be used as evidence or exposed in court (examples given later)

Control Orders

Control Orders (2005): 20 males subject to control at present. The CO's are not limited to violent Jihadists but all are, at present. Derogating from the European Human Rights Convention and detaining people in what would in effect be house arrest, he felt, would be a bad idea. All orders made so far have been non-derogating and a number of these have been quashed because the grounds amounted to deprivation of liberty contravening the European Convention on Human Rights. The rest were held to be lawful in subsequent judgements. Control Orders are subject to review by the CORG (Control Orders Review Group) and each CO is decided on separately and regularly. The review process goes to a judge in the High Court. Because of national security concerns, the controlee is not allowed to be present in the process, or

his lawyers, as it would be impossible for security matters to be discussed amongst controlees' lawyers. For this reason, a Special Advocate has been imposed – cleared by the Secretary of State as an independent lawyer, given full vetting (chosen from amongst barristers or Human Rights lawyers) the Advocate is given access to **everything** and can question government witnesses.

Concerning the alternative – prosecuting under criminal law - LC gave a hypothetical but plausible example: supposing a young Muslim male, a British subject studying at a British university, falls under the influence of a radical Imam preaching the heretical doctrines of Islam, decides to give up his course to learn about Jihad and to become an insurgent in Jihad, abroad. His mother becomes concerned and tells the police, asking for their help. This cannot be made public, nor can the contributions made by informants working in Mosques, such information is too dangerous for publicity. Nor should the information gained by technology (intercepts), or information about the capabilities and limitations of electronic surveillance technologies be made public.

What would be the alternative to Control Orders?

LC felt that both the police and the Crown Prosecution Service (CPS) needed to be more rigorous with regard to the 20 detainees. The CPS is short of security cleared lawyers and an enquiry is to take place to see if some can be tried as criminal cases. He thought that about 3-5 of the cases could be brought to court.

The definition of 'terrorism' needs to be changed, to raise the bar of 'terror'. Additional sentencing provision should be made eg for credit card fraud (as the majority of terror acts are funded this way), if a judge is satisfied in court that the crime is linked to terror activities, the sentencing power could be loaded by, say an extra five years. If this were to happen, two or three of the current detainees would be convicted of ordinary criminal offences.

What about the rest?

LC suggested a Criminal Tribunal, non-jury, headed by, say three professional judges with Special Advocates, held in camera without the defendant present, to try the charge of terrorism.

He acknowledged the concerns of organisations such as Liberty and Amnesty but felt the alternative could lead us back to the Belmarsh situation. If we went for jury trial he felt we would be going down a very dangerous road. A non-jury Criminal Tribunal was an option but it would be worse than the CO system because it was harder to rescind and gave the defendants a worse deal. (?)

The reaction of other nations to the terror threat

Lord Carlile went on to compare the UK's Terror legislation to that of other countries:

- America's legislation, he felt, was shocking. Guantanamo is unacceptable.

- In France, he had spoken to a Special Prosecutor in Terrorist Law and been told that terrorist suspects could be arrested for criminal offences, held for up to four days after arrest, three of those without access to a lawyer or his family being told. After the fourth day, a lawyer may become involved. When LC asked if interviews were tape recorded, the Special Prosecutor replied 'Technical problems!' Many suspects have been held in custody and released but having spent a year in custody.
- In Spain, referring to the Madrid case (which took three and a half years to come to trial) the suspects were tried in a Special Criminal Court, having been in custody for more than three years which is about twice as long as it would normally take to bring such a case to court in the UK.

Lord Carlile felt that we did not need to take many lessons from comparable countries.

The Threat

When a Control Order is made, LC is informed and follows precisely the same exercise as the Home Secretary. He sees all the files and summaries of all the intelligence material and weighs the case for a Control Order and the case against.

LC receives all the raw material concerning the 20 current detainees. Three of these were considered to be 'low' in the order and were waiting to go to Iraq. For the rest, there was very clear evidence of terrorist involvement and if tried in a special court, could expect long sentences. LC is satisfied that the Control Orders were made correctly and on proper grounds. (He also reviews security arrangements in Northern Ireland).

Lord Carlile is convinced of the threat and that it could be anywhere at any time. The threat is extremely hard to detect and such acts are planned on a body count mentality, involving the death of Muslims too.

Glorification 'Offence'

Referring to the Terrorism Act of 2006 following the 7th July bombings of 2005, LC felt that it would be a bad idea to have an offence relating to glorification. He stressed that there is currently no such offence, that it appears as an **element** in a specific intent. The misunderstanding in the public has been largely the result of lazy reporting by the press who have hyped it out of proportion.

28 days

Holding of suspects up to 28 days was made after 2005. Three people were held for more than 27 days; of these, one was released without charge and the other two were charged. (?)

LC felt that in some cases, 28 days may be inadequate but no such case has arisen yet. He advises the government to leave this well alone and thinks it will remain.

As a Civil Libertarian himself, LC recognised that there are issues requiring special measures and a need for a balance between two different groups of rights. Each individual must take into account national security yet balance it with a system that ensures arbitrary action is avoided. He felt that sometimes Amnesty had not offered solutions that were realistic but had a right to campaign on these issues and to speak openly. He, and others like himself, must ensure that people are protected against arbitrary action and that the government and police are kept on their toes and maintain a critical balance.

A Question and Answer Session then followed.