

# *The consequences of counter-terrorism*

**Edited by Martha Crenshaw**

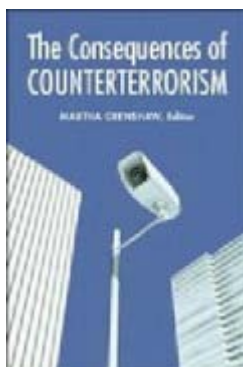
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**Book Review by Sally Ramage, Editor, *The Criminal  
Lawyer*, Bloomsbury Professional**



## **The editor**

The editor, Martha Crenshaw, is a senior fellow at the Centre for International Security and Cooperation (CISAC) at Stanford University and at the Freeman Spogli Institute for International Studies (FSI) also at Stanford University. Essentially, the editor's conclusion was that citizens of many democratic countries have forfeited much of their civil liberties for counterterrorism policies that will not protect them from danger.

## **Areas of law**

The topics studied include civil liberties law; securitisation, counterterrorism regimes and the rule of law; democratic society in the United Kingdom; and terrorism in Northern Ireland; France; Germany; America, Japan, and the Asia-Pacific. The work assessed the effects on democratic governance of the counterterrorism measures adopted by Britain, France, Germany, Spain, Israel and Japan.

## **Contributing authors**

The contributing authors are *Rogelio Alonso* of the University Rey Juan Carlos in Madrid; *Giovanni Caoocchia* of Oxford University; *Chantal De Jonge Oudraat* of the United States Institute of Peace; *John E. Finn* of Wesleyan University, (who compared post-9/11 antiterrorism legislation in the United States, Europe, Canada, and India to demonstrate the effects of hastily drawn policies on civil liberties and constitutional norms); *Dirk Haubrich* in the UK Government (who explained variation in the UK government's willingness to compromise democratic principles according to different threats); *Gallya Lahav* of the State University of New York (who showed how immigration policy has become inextricably linked to security in the EU and compared the European fear of internal threats to the American fear of *external ones*); *David Leheny* of Princeton University (who concluded with his observation of the significance of change in Japan's policies); *Jean-Luc Marret* of John Hopkins University (who with *Chantal de Jonge Oudraat*, concluded that terrorist designation lists are more widespread internationally than ever before. These two authors examined why governments and international organizations use such lists, how they work, and why they are ineffective tools); *Ami Pedahzur* of the University of Texas and *Arie Perlinger* of the Hebrew University (who with *Chantal de Jonge Oudraat*, concluded that terrorist designation lists are more widespread internationally than ever before. The authors examined why governments and international organizations use such lists, how they work, and why they are ineffective tools); *Jeremy Shapiro* of the Brookings Institution (who considered how the French response to terrorist threats has become more coercive during the last fifty years); *Rogelio Alonso* (who looked at the issue in Spain and Ireland and concluded that restricting the rights of those who perpetrate ethno-nationalist violence is acceptable in order to protect the rights of citizens who are victims of such violence) and *Giovanni Cappocia* (who explained Germany's basic norms and institutions).

### **The book's publisher**

This scholarly masterpiece has been published by the Russell Sage Foundation, one of the oldest of America's general purpose foundations, established in 1907 (Russell Sage was a railroad magnate and financier). The Russell Sage Foundation has as its objective, the development and dissemination of knowledge about the United States' political, social and economic problems. It was said of the foundation that:

*'The Russell Sage Foundation helped shape social research, policy prescription, and public debate in the waning years of the Progressive Era, forging a new national arena for the discussion of policies. In virtually every respect, the foundation, which still supports a program of social science research and publishing, was the prototypical organization for research on and the advocacy of social policies. Its goal was not knowledge for its own sake or basic social science research, but the application of research to the solution of social ills.'*

On the other hand, the foundation was criticised by Michael Barker thus:

*'This pathological self-censorship concerning the influence of psychopath-derived liberal philanthropy means that nearly all progressive scholars have ignored the power such philanthropists have wielded over historical processes.'*

(See Barker, M. (2009) 'The Russell Sage Foundation And The Manufacture Of Reform' at <http://www.swans.com/library/art15/barker37.html>).

### ***Permanent derogation of state citizens' human rights***

In many countries, antiterrorism legislation adopted after the New York's terrorism outrages of 9/11 was actually introduced as a permanent part of its public law (pg 44). The USA Patriot Act is a permanent statute. Some of the provisions in the Patriot Act which had initially been intended to be temporary until the year 2005, have now been installed on an indefinite basis, ie indefinitely contrary to the US Constitution. The United Kingdom's antiterrorism statutes of 2000 and 2001 are permanent statutes, even though the United Kingdom had temporary antiterrorism statutes in relation to Northern Ireland for *three decades* by way of the Prevention of Terrorism (Temporary Provisions) Act 1974; the Prevention of Terrorism Act 1989; and the Northern Ireland (Emergency Provisions) Act 1996. How a period of thirty years can be deemed to be a temporary period is unfathomable and is merely a blatant derogation of British citizens' human rights when all are aware that derogation is only allowed in a time of public emergency (which threatens the life of the nation) but only to the extent strictly required by the exigencies of the situation,

provided that such measures are not inconsistent with the state's other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

### **United States derogations**

News reports revealed that President Bush secretly issued an executive order in 2002 authorizing the National Security Agency to conduct warrantless surveillance of international telephone and Internet communications on American soil. 'USA Today' reported that US telephone companies turned over records on millions of American citizens to the government without any judicial oversight. In one case resulting, a federal judge ruled that the government's warrantless wiretapping program is unconstitutional. Judge Anna Diggs Taylor said the program violates the rights to free speech and privacy as well as separation of powers. Recent release of Pentagon documents shows that counterterrorism resources were used to monitor American peace groups opposed to the war in Iraq and military recruitment.

Under the guise of anti-terrorism, as complaints from many United States citizens have recorded, US police are alleged to promote hate crime by singling out Muslims. However, the US Attorney general has said that those who characterise the FBI's activities as 'entrapment' simply do not have their facts straight or do not have a full understanding of the law. Speaking to San Francisco's Muslim Advocates on 11 December 2010, Eric Holder told the group that he has heard from many Muslim and Arab Americans who feel uneasy and singled out by law enforcement but that his resolve is to prosecute hate crimes while standing behind the methods used in anti-terrorism cases.

### **Public authorities**

It must be remembered that as far as materials subject to the Terrorism Act 2000 is concerned, all terrorists and criminals in general breach other people's human rights. Indeed, the European Convention for the protection of human rights and fundamental freedoms was drafted after the Nuremberg trials to address the crimes committed by the Nazi regime. However, human rights breaches under this and the 1998 Human Rights Act only apply to public authorities. The Prevention of Terrorism Act 2005 is amended to insert new powers allowing a constable, for specified purposes, to conduct a search of a person subject to a control order and to seize and retain articles found. The Terrorism Act 2000 was the UK law against political violence. It established a permanent regime and with emphasis on combating international terrorism.

### Cyber-terrorism pretext: United Kingdom

The UK had derogated Article 15 of the Human Rights Convention since 1988 and had been detaining terrorist suspects without the full protection of legal advice. One facet of the Anti-terrorism laws passed in section 1(2) (e) of the 2001 Act, is its effect on cyber-terrorism. It had been opined by experts in the field that this part of the legislation was draconian, treating modes of political expression as illegal. The National High-Tech Crime Unit (NHTCU) gathers evidence from communications providers. So does MI15, the Security Service, and MI16, the Secret Intelligence Service. There is a Terrorist Finance Team (TFT) in the Economic Crime Unit (ECU) at the National Criminal Intelligence Service (NCIS) The Chief Police Officers (CPO's) have a National Counter-Terrorism Security Service (NaCTSO) for training police and Special Branch Police. There is a processing centre called the Joint Terrorism Analysis Centre (JTAC). S.17 amends the Terrorism Act 2000 and extends to the whole of the United Kingdom.

### There must be no derogation under Articles 6 (fair trial), 7, 8,15,16, and 18, under this provision to derogate

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 <u>discrimination</u> 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 11	Everyone charged with a penal offence has the right to be <u>presumed innocent</u> until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.  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 15	Everyone has the right to a <u>nationality</u> . No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
Article 16	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. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
Article 18	Everyone has the right to <u>freedom of thought, conscience and religion</u> ; 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.

The UK Terrorism Act 2006 removes citizens rights to freedom of speech completely with the offence in section 1 of ‘encouraging terrorism, directly or indirectly’, this offence carrying a seven year prison sentence on indictment and conviction. The United Kingdom blatantly derogates its citizens’ human rights without consultation- even though such human rights are protected by international law: the 1945 United Nations Charter; the 1948 Universal Declaration of Human Rights; and the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and

Cultural Rights; the 1950 European Convention on Human Rights and Fundamental Freedoms; the European Social Charter; the 1948 American Declaration of the Rights and Duties of Man; the 1969 American Convention on Human Rights; the 1981 African Charter on Human and People's Rights; and the domestic (UK) 1998 Human Rights Act.

### **'Freedom of expression' caselaw precedents**

Established freedom of expression' ECtHr caselaw precedents are *X v Federal Republic of Germany* (2834/66; 4038/69) CD 35, 29; *Engel v Netherlands*; *De Geillustreerde Pers N.V. v Netherlands* (5178/71) Report: DR 8,5; *Handyside v UK* (5493/72) Judgment: 1 EHRR 737; *X v Italy* (6741/74); *X, Y and Z v Belgium* (682-4/74) DR 9,13; *Arrowsmith v UK*; and *Agee v UK*.

### **Freedom of expression muzzled in the UK terrorism Act 2006**

The 'Rule of Law' is a fundamental principle of human rights law (see *The Rule of Law and Human Rights: Principles and Definitions*, (1966) International Commission of Jurists: Geneva. The application of Rule of Law is of particular importance for establishing the boundaries of the different human rights since each human right is subject to restrictions and limitations in order to accommodate the rights of others. However, restrictions must be used only to establish the proper boundaries of the protected right, and not as a pretext for eroding the core of the right itself, much less for destroying the right altogether. Therefore when there are conflicts with the derogation of a human right, it should be decided by a tribunal which is independent of all parties concerned; not subject to any external pressures; and must be competent to establish all the relevant facts with complete impartiality, and such a tribunal must be able to apply known and established legal rules consistently to the resolution of the conflict. Such are the fundamental requirements of the Rule of Law. Treaty obligations must be performed in good faith (see the Vienna Convention of the Law of Treaties, Article 31(1)).

### **Arrest and detention: wide differences among countries**

Derogation of personal liberty (arrest and detention) is found in the legislation of France (24 months arrest and detention); in Spain (95 days incommunicado); in India (12 months); in the Punjab (24 months); and in the UK (indefinitely -if the detainee is a foreign national and 28 days for domiciles); and in Israel (6 months).

### **Control Orders**

Germany and Australia's antiterrorism statutes include control orders intended to last for temporary periods of 5 years and 10 years respectively. India's Prevention of Terrorism Act 2002 was repealed in 2004. Since this book was published, the UK has passed the Crime and Security Act 2010, by which,

*persons subject to a control order* will now be subject to the retention of fingerprints and DNA profile for 2 years after the control order ceases to have effect (see new section 64ZC).

All DNA samples must be retained until profile loaded onto database, but no more than six months. No-one has the right to witness the destruction of their fingerprints or impressions of footwear. Everyone whose biometric data has been taken by the police have a right to request a certificate from the police confirming destruction of this data.

### **China's pretext to abuse Muslims' human rights**

It has been widely reported that Human rights organizations have accused China of using counterterrorism as a pretext to continue efforts to suppress Uighurs, a predominantly Muslim ethnic group that comprises the majority of the population of the Xinjiang Uighur Autonomous Region. In August, Chinese police officials announced that since 1990 they have seized 41 tons of explosives from separatists in Xinjiang, including grenades and materials to make bombs. In August 2009, China convicted a Canadian citizen of Uighur ethnicity of involvement in East Turkistan terrorist activities.

### **Conclusion**

A beautifully written book; excellent analyses; unique summaries of findings; a most important book that should be read by policy-makers; the government of the United Kingdom; lawyers and reformers everywhere.

Much appreciation is extended to this publisher for bring to us this book of enormous wealth of knowledge and analysis. This review has but scratched the surface to indicate the massive wealth of analysis in this book *The Consequences of Counter-Terrorism*.