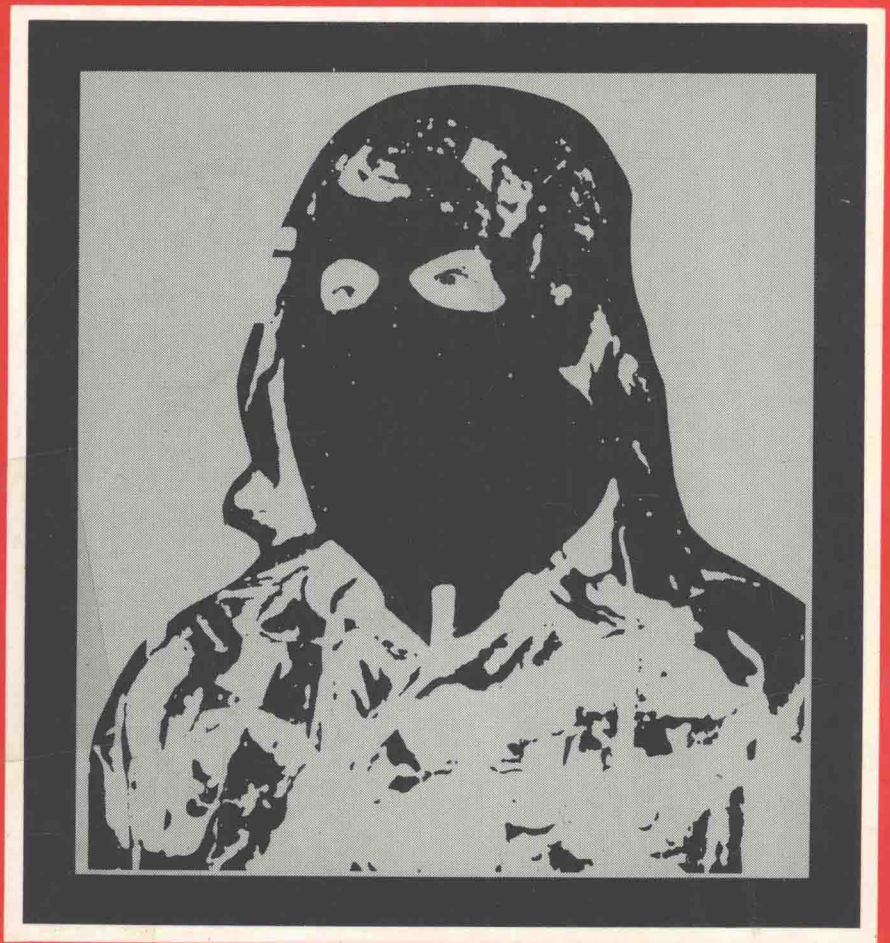
CLIVE WALKER

THE PREVENTION OF TERRORISM IN BRITISH LAW



The prevention of terrorism in British law

CLIVE WALKER

MANCHESTER UNIVERSITY PRESS

Published by Manchester University Press
Oxford Road, Manchester, M13 9PL, U.K.
51 Washington Street, Dover, N.H. 03820, U.S.A.

British Library cataloguing in publication data
Walker, Clive
The prevention of terrorism in British law.
1. Terrorism—Great Britain—Prevention
2. Law—Great Britain
I. Title
344.105'231 KD8039

Library of Congress cataloging in publication data applied for

ISBN 0-7190-1782-3 *cased*

Typeset by Williams Graphics, Abergele, North Wales

Printed in Great Britain
by The Alden Press, Oxford

Preface

United Kingdom laws on the subject of terrorism can be divided into two. By far the most numerous and important are those concerned with the recurring crises over the relationship between Ireland and Great Britain, the source of acute discord in constitutional law since the Acts of Union in 1800 and long before. What the United Kingdom Parliament has deemed to be terrorism may be viewed as but a small part of that controversy. Nevertheless, Irish terrorism has spawned a great variety and quantity of legislation, not only from Westminster but also from the Dail Eireann and the now defunct Northern Ireland Parliament. The second source of relevant laws arises out of the exploitation by terrorists of the legal difficulties created by international frontiers. Thus the spectre of foreign terrorism spilling into Britain has more recently prompted both international agreements and implementing legislation.

Unfortunately, constraints of space demand that only a proportion of these two sources of laws can be discussed, so detailed coverage will be confined to the Prevention of Terrorism (Temporary Provisions) Act, 1984. Though relatively limited in scope, this Act is selected for special analysis since it is the central response in British law to terrorism, especially of the Irish variety. To complete the picture it may be as well to describe here and now those equally interesting fields of study which must be eschewed for present purposes.

From the foregoing remarks it may be deduced that the main counter-terrorism codes in Ireland, the Northern Ireland (Emergency Provisions) Act, 1978, and the Offences against the State Acts, 1939–85,[1] will not be examined comprehensively. However, given their importance in the battle against terrorism and their intimate relationship with the Prevention of Terrorism Act, it will be misleading to ignore them altogether. Consequently they will be mentioned

extensively for comparative and critical purposes. Incidentally, the same treatment will be bestowed, though on a reduced scale, upon counter-terrorism legislation used in the past in the British Isles and on current measures elsewhere in the world.

Next, the secondary source of British counter-terrorism laws, namely international law, will not be examined in detail. This is not only because of lack of space but also because international law has had a limited impact on terrorism in general and almost none on Irish terrorism. In regard to the latter, it must be conceded that the campaign of the Provisional Irish Republican Army has its extra-territorial aspects. In particular the Republic of Ireland provides a somewhat risky refuge, while the United States of America is an important source of funds and arms.[2] However, no international countermeasure has made any substantial inroads upon these features. For example, extradition has proved to be a feeble response because of the prevalence in extradition treaties of an immunity for those whose return is sought for a 'political' offence.[3] Whilst this concept is no longer viewed by courts in the Republic as imposing a blanket ban on the extradition of terrorists from that country to the United Kingdom,[4] it has provided a brake in most cases. Attempts have been made to reduce the scope of the immunity by the Council of Europe's Convention on the Suppression of Terrorism.[5] However, though it has been ratified by the United Kingdom and implemented via the Suppression of Terrorism Act, 1978, the Republic of Ireland has refused to reciprocate. Because of such difficulties various alternatives to extradition have been mooted, but with few significant results. For example, policies of summary deportation of terrorists or hot pursuit of them across the border have both been forbidden in the Republic.[6] Even the conferral of extra-territorial jurisdiction on the respective national courts to deal with 'terrorist' offences (by the Criminal Jurisdiction Act, 1975, in Northern Ireland and the Criminal Law (Jurisdiction) Act, 1976, in the Republic[7]) has proved ineffective. The main impediment is that the cross-border interrogation of suspects is not permitted in law or in practice, so there is usually insufficient evidence to mount a prosecution.[8] Another strategy, favoured by many recent international agreements against terrorism, is to require either prosecution by the detaining State or extradition to the requesting State. However, progress has so far been confined to specific and rather esoteric forms of terrorism, including the hi-jacking of aircraft, hostage-taking and attacks on diplomats and the nuclear industry.[9]

Further inter-State co-operation against terrorism will doubtless be advocated and secured in the future.[10] However, the existing somewhat stultified code of international law will largely be ignored by this book. The only exceptions will be those areas which have been translated into municipal law and can operate purely in the domestic sphere.

The third important issue which is not considered here is whether terrorism, especially that concerned with the constitutional status of any part of Ireland, is justifiable historically, politically or morally. So vital are these questions that the vindication of one side or the other determines the very labelling of the conflict: in the oft repeated phrase 'one man's "terrorist" is another man's "freedom fighter"'. However, the concern of this book is with the positive law and its role in combating terrorism, whereas the issue of justification questions not that laws are able to combat terrorism but whether they should do so. This is evidently a question which the laws themselves cannot settle, since it is their very authority which is in doubt. It is to be hoped that this prior question will be carefully considered whenever political violence is encountered, but, for the purposes of this book, it will naively be assumed that the current reaction to terrorism in British law is acceptable.[11] Similarly, whilst recognising the moral overtones often implied by its use, the label 'terrorism' will be used to describe any action correlating to the description in chapter 1. The term is not meant to convey any perjorative implication.

Finally, the Prevention of Terrorism Act and other relevant British laws are directed against a particular species of terrorism, namely 'revolutionary' terrorism. This involves '... systematic tactics of terroristic violence with the objective of bringing about political revolution'.[12] Consequently this book will not examine 'State' or 'repressive' terrorism (terrorism employed by, rather than against, a government)[13] or 'sub-revolutionary' terrorism (terrorism not connected with constitutional upheaval, such as a robbery).

The law is stated in accordance with sources available to me on 1 June 1985, except that the Police and Criminal Evidence Act, 1984, and the Republic's Criminal Justice Act, 1984,[14] are assumed to be wholly in force.

Notes

1 No. 13 of 1939, No. 2 of 1940, No. 26 of 1972, No. 3 of 1985.

2 International aspects of terrorism in Ireland are described in Y. Alexander and A. O'Day (eds.), *Terrorism in Ireland* (1984) chs. 1, 2.

3 This is a much mulled-over phrase. For recent illumination, see: B.A. Wortley, 'Political crime in English and international law' (1971) 45 B.Y.B.I.L. 219; I.A. Shearer, *Extradition in International Law* (1971); C. Van der Wijngaert, *The Political Offence Exception to Extradition* (1981).

4 See: *McGlinchey* v. *Wren* [1982] I.R. 154; *Shannon* v. *Fanning* (1984) 8 B.N.I.L. n.43; *Quinn* v. *Wren* (1985) 3 I.L.T. 84.

5 Cmnd.7031, 1977. See also: Agreement concerning the Application of the European Convention on the Suppression of Terrorism among Member States of the European Communities (Cmnd.7823, 1979).

6 See: *State (Quinn)* v. *Ryan* [1965] I.R. 70; Dail Debs. Vol.316 col.1919 20 November 1979, Mr. Haughey.

7 See: Report of the Law Enforcement Commission (Cmnd.5627, 1974).

8 Only ten cases had been brought in the Republic up to 1 July 1982: H.C. Debs, Vol.26 col.1027.

9 See: Tokyo Convention Act 1967; Aviation Security Act 1982; International Protected Persons Act 1978; Taking of Hostages Act 1982; Nuclear Material (Offences) Act 1983.

10 See: Economic Summit Declarations (Bonn, 1978; Venice, 1980; Ottawa, 1981; London, 1984); Conference on the Defence of Democracy against Terrorism in Europe: Tasks and Problems (Strasbourg, 1981); Council of Europe Committee of Ministers Recommendation R(82)1; Debate of the Council of Europe Political Affairs Committee (Doc. 5187, 1984); Declaration of the XIVth Conference of European Ministers of Justice (1984).

11 The public and government have experienced 'legitimation crises' at times: F. Burton and P. Carter, *Official Discourse* (1979).

12 P. Wilkinson, *Political Terrorism* (1974) p.36.

13 See: M. Stohl and G.A. Lopez (eds.), *The State as Terrorist* (1984). The Prevention of Terrorism Acts have themselves been condemned as 'terrorising efforts': A. McC. Lee, *Terrorism in Northern Ireland* (1983) p.173.

14 No.22.

Postscript

1 The Government's latest pronouncement on the Baker Report (Review of the Operation of the Northern Ireland (Emergency Provisions) Act 1978, Cmnd. 9222, 1984) is that the following legislative changes are promised during the lifetime of the current Parliament (see: H.C. Debs. Vol.81 cols.1031–51 26 June 1985):

- the use of special courts will continue but on a reduced scale, since the Attorney General's discretion to certify out (to direct a transfer to the regular courts) will be widened;
- special arrest powers are to be fundamentally overhauled, especially by the abolition of section 11 of the Emergency Provisions Act, which will

leave the police principally reliant upon section 12 of the Prevention of Terrorism Act;
- section 8 of the Emergency Provisions Act will be reformulated so as to include judicial interpretations thereon;
- consideration is to be given to the establishment of a maximum overall remand period, though the interval between each remand committal is to be extended from fourteen to twenty-eight days;
- the Emergency Provisions Act is to be restructured to follow the annual review and five-year renewal limit adopted in the Prevention of Terrorism Act.

It has further been decided to retain the present position in regard to internment, the de-proscription of Provisional Sinn Fein (*ibid.* cols. 976–7) and the admissibility of uncorroborated accomplice evidence (see: H.C. Debs. Vol. 80 cols. 1009–10 13 June 1985).

2 The temporary withdrawal of the B.B.C. 'Real Lives' programme, 'At the Edge of the Union', in July 1985, following its denunciation by the Prime Minister and Home Secretary (see: *Times* 29 July 1985 p. 2, 31 July p. 1) is additional testimony to the success of indirect governmental pressure (see ch. 6). The affair also shed further light on the severe internal fetters on programmes relating to Ireland (see: *Times* 3 August 1985 p. 1, 7 August p. 10).

3 The idea of advance preparation of emergency legislation (see ch. 11) has been adopted by the Government in regard to war (see: D. Campbell – 'Secret laws for wartime Britain' (1985) *New Statesman* 6 September p. 8), but the fruits of its labours remain officially secret.

4 Restrictions on access to solicitors and others by persons detained under the Prevention of Terrorism (Temporary Provisions) Act 1984 in Scotland are now specified in section 35 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985. Refusal of access is permissible 'in the interests of the investigation or prevention of crime, or of the apprehension, prosecution or conviction of offenders'. This wording (based on the Criminal Justice (Scotland) Act 1980 s. 3(1)) is more tightly drawn than the recommendation in the Jellicoe Report (Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976, Cmnd. 8803, 1983, para. 112) and the corresponding English law (see: Police and Criminal Evidence Act 1984 ss. 56, 57), as described in ch. 7.

5 The Report of H.M. Chief Inspector of Constabulary for the year 1984 (1984–85 H.C. 469, para. 4.41) reveals that in 1984 there were 47,799 'searches' (meaning checks against Special Branch records) concerning travellers subject to port controls; 109 persons were held between April and December for examinations which were completed within one hour (see: ch. 8 n. 59).

C.W.
December 1985

Contents

CHAPTER 1

Theory of terrorism and counter-terrorism

1. The nature of terrorism

Between 1969 and 1971 there was a spate of terrorist incidents around Britain, ranging from the almost farcical destruction of an outside broadcast van covering the 'Miss World' contest to the planting of bombs directed against two of Her Majesty's Secretaries of State.[1] 'No revolution was ever won without violence,' proclaimed the Angry Brigade, the instigators of these outrages. Fortunately, such violence was short-lived, for, by the end of 1972, five of the Brigade's members had been imprisoned and its arsenal seized.[2] However, given that the Irish Republic Army, one of the most effective and enduring organisations ever to resort to terrorism, had renewed its operations in 1970, it must have seemed that an era of terrorism had dawned in the United Kingdom.

From the almost archetypal campaign of the Angry Brigade a number of general remarks concerning the nature of terrorism may be extrapolated.

(a) *Terrorism as a strategy*

Terrorism is occasionally adopted as an end in itself, for example, by anarchists (such as the Angry Brigade) who wish to overthrow the existing government without advocating any alternative. However, terrorism is more frequently undertaken as a military strategy, usually when two conditions prevail:[3] first, there is no chance of attaining the group's objectives by direct military force, and second, the group sees no point in pursuing constitutional means. In short, terrorism is said to be the weapon of the weak (and few were militarily or politically weaker than the Angry Brigade).

Assuming these conditions apply, terrorism will be employed as one strategy within a wider enterprise. For instance, in Maoist theory, terrorism is an early stage in guerrilla warfare and becomes

increasingly irrelevant as rebel forces grow.[4] Alternatively, terrorism may be a constant military tactic but is combined with guerrilla operations and political agitation. This probably describes the current operations of the Provisional Irish Republican Army.[5] Either way, the weakness of the rebels dictates their *modus operandi*. Most obvious of all, they must avoid open conflict with the government's military forces, which are overwhelmingly stronger. Hence '... the central task of the guerrilla fighter is to keep himself from being destroyed'.[6] Next, terrorists must have good intelligence in order to undertake effective operations without detection. Finally, since constitutional methods are rejected, there must be some compensating public emphasis on the motives for their attacks in order to distance themselves from criminal banditry. This is often secured through links with overt political factions.

There are two contexts in which the weak commonly resort to revolutionary terrorism. First, it may be utilised within independent States to achieve political change. The rebels envisage that terrorism will trigger a spiral of governmental repression and consequent loss of popularity and authority. Thus:[7]

> [The terrorists'] object is to shake the faith of the man in the street in the government and its local representatives, especially the police, so that in the end a desperate population will seek security, not from authorities, but from the terrorist and his political allies.

There are two substantial impediments to this theoretical blueprint. First, terrorism is unlikely to succeed in the many countries where governments have no obligation to heed public fears or desires. Second, even if terrorism does provoke a reaction, that repression may secure the military defeat of the perpetrators. As a result, outright success has rarely been achieved by this path, the only exceptions perhaps being Cuba and Rhodesia, where terrorism was only one facet of the insurgency. However, it may be counted as a partial terrorist success if governmental victory is achieved at the expense of political fragmentation or deep unpopularity, since they pave the way for renewed conflict in the future. So '... the issue is not merely survival, but the way in which society chooses to survive'.[8]

Revolutionary terrorism, is, secondly, undertaken during campaigns for decolonisation or for the separation of a distinct territory from within an independent country. Here the terrorists again seek to induce repression, which, they hope, will cause the 'parent'

population to weary of the conflict and to calculate that the costs of retaining the territory outweigh its benefits. This has been more successful than terrorism in the first situation, probably because it does not require governments to vacate their central seats of power and therefore demands less painful concessions. In the case of the United Kingdom terrorism of this kind was a precipitating factor in its withdrawal from Ireland, Palestine, Malaya and South Arabia.

In conclusion, terrorism in both contexts is designed to win acceptance for a political aim by a significant section of the population. Therefore, in liberal democracies at least, the increase or decrease in popular support may be taken to be the ultimate measure of success or failure for terrorists or governments.

(b) *Classification*

Revolutionary terrorism has sometimes been classified as a form of warfare and, more often, as a risk to the security of the State.

It is submitted that a campaign of terrorism alone does not normally amount to warfare. This is because, under the Geneva Conventions and Protocols,[9] and probably also in common parlance, 'armed conflict' and 'warfare' consist of sustained and extensive military operations. By contrast, terrorism tends by its nature to be sporadic and of low intensity.[10]

Terrorism has more frequently and accurately been categorised as a 'risk to the security of the State'. Unfortunately, this phrase has never been legally defined in Britain, but all semi-authoritative versions have invariably encompassed terrorism. For example, the very restrictive definition advanced by Lord Denning in his report on the Profumo affair was that the activity must affect 'the Defence of the Realm' or be 'subversive, that is ... contemplate the overthrow of the Government by unlawful means'.[11] Under this test, terrorism, armed rebellions and espionage all qualify as security risks, whereas groups dedicated to revolution by constitutional means do not. A more expansive definition was proffered by the Home Office in 1984. The legitimate concerns of police Special Branches now include threats to public order, espionage and sabotage, extremists, terrorist groups and the actions of subversive persons and organisations,[12] 'subversion' being in turn defined as 'activities ... which threaten the safety or well-being of the State, and which are intended to undermine or overthrow parliamentary democracy by political,

industrial or violent means'.[13] According to these guidelines, terrorism is undoubtedly a threat to the State, but so are many other activities, including the advocacy of revolutionary doctrine.

A number of Commonwealth jurisdictions have defined security targets more closely but have invariably included terrorists. For example, risks to security are listed in section 4 of the Australian Security Intelligence Organisation Act, 1979, as espionage, sabotage, subversion, active measures of foreign intervention and terrorism.[14] In New Zealand terrorism was specifically added to the concerns of the Security Intelligence Service by an amending Act of 1977[15] and therefore now ranks alongside espionage, sabotage and subversion. Thirdly, the Canadian Security Intelligence Services Act, 1984,[16] empowers that nation's security services to gather information about threats from espionage, sabotage, clandestine or threatening foreign influenced activities, covert unlawful acts or activities intended to result in the overthrow of constitutional government by violence and the threat or use of serious violence to achieve a political objective.

In summary, terrorism is widely recognised in liberal democracies as a prime threat to State security. It follows that it is seen as legitimate to pass laws against such activities and to direct the attention of the police and security services against it.

2. Definitions of terrorism

This discussion about the nature of revolutionary terrorism has proceeded as if that term had an incontrovertible meaning. In reality this is far from true, and one might ask, for example, whether the Angry Brigade was properly characterised as terroristic. The following definition is contained in section 14(1) of the Prevention of Terrorism (Temporary Provisions) Act, 1984:[17]

> ... 'terrorism' means 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.

In the light of the foregoing delineation of terrorism as a strategy, this is a rather unilluminating and limited description of the phenomenon. However, its two main elements, 'violence' and 'political ends', are worthy of further examination.

(a) *Violence*

'Violence' seems to imply some unlawful act and, more precisely, offences which involve a threat to, or endangerment of, personal safety. In fact relevant legislation containing lists of terrorist offences is not always so limited, though its context should be recognised in that such laws quite properly react not only to acts of political violence themselves but also to their background logistical and organisational support. For example, the Criminal Jurisdiction Act, 1975, empowers the Northern Ireland courts to try certain 'terrorist' offences committed in the Republic of Ireland. However, the offences specified in Schedule 1 include not only violence to the person but also certain forms of damage to property, robbery and burglary. A similarly indiscriminate list is contained in Schedule 4 of the Northern Ireland (Emergency Provisions) Act, 1978, which defines those offences to be treated as relating to terrorism for criminal procedure purposes. Only the Suppression of Terrorism Act, 1978, which is concerned with extra-territorial jurisdiction and extradition in connection with countries which have ratified the Council of Europe's Convention on the Suppression of Terrorism,[18] confines its attention to offences relating to personal attacks or endangerment. Nevertheless, it should be accepted that offences of that kind do comprise the core of terrorism, since less directly threatening crimes are unlikely to terrorise. It follows that the incorporation of 'violence' into a definition of terrorism is desirable, though it may be more accurate to specify 'violence to the person' as its essence.

(b) *Political ends*

Mention of 'political ends' in section 14 emphasises that terroristic violence is a symbolic means to ulterior objectives. In order to achieve this effect, the violence must be both well publicised and sparing, since its impact will be dulled by overuse. Thus the common perception that terrorism is indiscriminate violence represents the intended induced reaction rather than the true situation.

The express inclusion of political motives is also significant, since it enables the formula in section 14 to distinguish between 'ordinary' criminals and terrorists. On the other hand, reference simply to 'political ends' does not differentiate between 'revolutionary' and

'State' terrorism.[19] Consequently, the definition in section 14 is again somewhat imprecise.

(c) *Comment*

According to the government, section 14 'has not given rise to any difficulties ...'[20] and is not, therefore, in need of amendment. In reality, however, the provision entails various problems (and would continue to do so even if modified in the ways indicated). First, such a formula would still encompass some offenders not normally viewed as terrorists, such as persons involved in a bout of fisticuffs at demonstrations against government policy.[21] A more intractable problem is that the emphasis upon the political motives of terrorist offenders could cause problems in regard to extradition[22] and certainly has added weight to claims for an amnesty or for special prison treatment for convicted terrorists.[23]

A third possible difficulty arises from the interpretation of section 31 of the Northern Ireland (Emergency Provisions) Act, which defines a 'terrorist' as:

> ... a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism ...

In *McKee* v. *Chief Constable of Northern Ireland*[24] the Northern Ireland Court of Appeal decided that section 31 requires 'active' rather than 'passive' involvement in terrorism. Consequently, those guilty merely of membership of, or soliciting support for, a terrorist organisation are not 'terrorists'. It remains to be seen whether a similar view will be taken of 'terrorism' under section 14 of the Prevention of Terrorism Act, but various reasons suggest it will not.[25] One is that the restrictive interpretation of 'terrorist' may itself be faulty. Not only does it strain the natural meaning of being 'concerned in' an enterprise, but it also ignores that even 'passive' involvement, such as membership, must in the absence of a confession be evidenced by activities just as much as 'active' terrorism.[26] A second factor likely to discourage the spread of the Court of Appeal's view is that, on appeal, the House of Lords hinted *obiter* that the definition in section 31 should be seen as 'wide' rather than 'narrow'.[27] Finally, relevant measures in the Prevention of Terrorism Act almost invariably refer to a person's concern not only in

the 'commission' of acts of terrorism but also, unlike the Emergency Powers Act, in their 'preparation or instigation', implying that the involvement may be remote from the violence.

Because of these various problems, the first two of which appear insoluble, no definition of terrorism will be attempted here, nor will any proposal be made in which the term is required.[28] The preferred method will be the 'scheduled offence' approach in which counter-terrorism provisions are designed by reference to the offences involved, making irrelevant the motives of the offender and underlining his criminal wrongdoing. However, whilst this policy of criminalisation is appropriate in regard to the direct legal response to terroristic violence, it does not mean that motivation should be ignored altogether, since social, economic and political reactions must also be considered.[29]

3. Counter-strategy

(a) *Methods in general*

Many military observers have stressed the primary importance of intelligence-gathering facilities in combating terrorism[30] for a number of reasons. First, governments desire, rather than wish to avoid, military confrontation, as their forces are usually overwhelming. In addition, good intelligence will allow terrorists to be prosecuted by normal procedures. This is important since:[31]

> Imprisonment after conviction by a criminal court is politically the most persuasive way of disposing of the accused, and the least likely way to provoke internal or international criticism.

An abundance of information also allows a government to criticise rebels and to gauge the strength of the political opposition it faces.

Whilst good intelligence is important, it should be recalled that, in a liberal democracy at least, the ultimate test of the success or failure of terrorism or counter-terrorism is the winning of public support. From a government's point of view, this should trigger various considerations. First, there should be some attempt to demonstrate the legitimacy and value of the existing regime, reinforced by a willingness to meet legitimate demands for reform. The converse is to avoid policies which alienate the public. For example, it is generally preferable to deploy the police rather than the army, since

the latter is ill-fitted to exercising minimal force or to dealing with civilians and lacks structures to ensure community accountability or to investigate individual complaints. More obviously, measures of repression with substantial repercussions on the public should be avoided; not only will they be deeply unpopular but also:[32]

> Few things would provide a more gratifying victory to the terrorist than for this country to undermine its traditional freedoms, in the very process of countering the enemies of those freedoms.

This last consideration, of avoiding loss of support, makes it wise to abide by a number of limiting principles. For example, in the international sphere, attention should be paid to those agreements protecting human rights, especially the European Convention on Human Rights and Fundamental Freedoms.[33] Nationally, it is important to observe the traditions of the legal system, since 'special' measures may be seen as unfair and so will fail to stigmatise terrorists as legitimately convicted criminals. There are also relevant pragmatic principles for limiting derogations from existing laws. Special measures, it has been suggested,[34] should be brought into operation only so far as necessary in the exigencies of the situation, and this should be judged factually. Second, anti-terrorist laws should derogate as little as factually necessary from 'normal' measures in extent. Third, special measures should be clear and precise, and safeguards should be provided to prevent their improper introduction or exercise, including parliamentary scrutiny. Further, their application in an individual case should be considered necessary by an objective and impartial arbiter and should be accompanied by special remedies against unreasonable use. Finally, special laws should be distinct from ordinary powers, since the assimilation of the two may damage confidence in the existing law.

(b) *Prevention*

In view of the serious threat posed by terrorism to the public and constitutional order, it is preferable to prevent terrorism than to combat attacks which have already occurred. However, two strategic considerations suggest that it is not possible to devise a simple Act to achieve this, despite the contrary implication of the Prevention of Terrorism Act.

The first problem is that, if the terrorist campaign has any