

Factors That Determine a Religious Cause in an Act of Terrorism

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Biography

David Lowe is a principal lecturer at Liverpool John Moores University's Law School. Prior to becoming an academic, he was a police officer for 27 years with the UK's Merseyside Police. Most of his service was as a detective where most of his detective service was in the United Kingdom's Special Branch Counter-Terrorism Unit. His research in the area of policing, terrorism and security has been published in books and journals including his last book on terrorism, 'Examining Political Violence: Studies in Terrorism, Counterterrorism and Internal War' and he is a regular contributor to Westlaw's legal encyclopaedia, Insight, on legal issues related to terrorism. In addition to his recent publications, he is regularly used by the television, radio, and print media (particularly the BBC and LBC) in the UK and the rest of Europe for commentary in these areas.

Abstract

Using case reports and academic commentary, this article examines what factors are required to prove a terrorist act is carried out for the purpose of advancing a religious cause. Focusing mainly on the UK's Terrorism Act 2000 and Canada's Criminal Code, this article assesses why a religious cause has been added to the legal definition of actions that amount to an act of terrorism. Following on from this, the article examines how the courts have determined what evidence is required to prove a religious cause. The examination concludes in revealing that in their decisions the courts have made it clear that merely possessing or promoting religious ideology is insufficient. For the prosecution to prove the promotion of advancing a religious cause in relation terrorist activity it has be shown that a defendant's actions must go beyond merely passive behaviour and that in terrorist actions, be they preparatory or committed under a religious cause must have a significant impact of encouraging individuals to a terrorist cause and it must be related to the use of violence or armed conflict carried out in the name of a religious cause.

Key Words

Terrorism, Religious Cause, Jihadist, Armed Conflict

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Introduction

Defining what actions amount to an act of terrorism has been problematic for many scholars as there are so many categories of terrorism ranging from geo-political groups such as the Provisional IRA in Ireland, Eta in Spain and Chechen fighters in Russia, terrorism by the state to terrorist activities taken to promote a religious cause.¹ While Martin notes there is a degree of consensus in defining terrorism, there is no unanimity on the kind of violence or causes that constitutes terrorism.² This issue has existed from the earliest studies on terrorism as seen when Laqueur states:

‘There will be no agreement on whether terrorism is violence in general or some specific form of violence; on whether the stress should be put on its political character, on its methods of combat, or on the extra-normal character of its strategy...’³

Martin’s point on the lack of unanimity on causes that constitutes terrorism has to a degree been addressed in the statutory provisions many states made, especially following the 9/11 Al Qaeda attacks on the USA. For example, the UK, Canada and Australia have to some degree provided such a consensus in their respective jurisdictions’ legal definition.

In order for states to combat the threat international jihadist groups pose to national security, they have included a religious cause as being one of the purposes of a cause that underpins the threat or occurrence of terrorist actions. While one can see the rationale behind this is to enable state agencies to investigate groups like Al Qaeda and Islamic State, the courts have had a degree of difficulty in establishing what evidential factors must be present to establish a religious cause as well as establishing what differentiates a group’s activities between those being carried out under a political or a religious cause. By examining cases that have come before UK and Canadian courts, this article mainly focuses what evidence is needed to prove a religious cause.

¹ Walter Laqueur, *The Age of Terrorism* (Little, Brown and Company 1987) pp.142-145; Gus Martin, *Understanding Terrorism* (4th edn, Sage 2013) p.35

² Ibid p.35

³ Laqueur, n.1 p.143

Legal Definitions of Terrorism

UK Definition of Terrorism

Up to the introduction of the Terrorism Act 2000, the UK's legal definition of terrorism was in Prevention of Terrorism (Temporary Provisions) Act 1989 s 20 (PTA) that stated terrorism occurs when violence was used:

'...for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.'

By 1998 political events moved on within the European Union (EU) of which the UK is a Member State. In 1992 Treaty of Union (TEU) created the Justice and Home Affairs Council and Commission (JHA) to deal with criminal matters affecting the EU, along with the Common Foreign Policy Council and Commission.⁴ Since 1999 the JHA has been implementing the principle of mutual recognition in criminal matters in order to ensure effective prosecutions by balancing a defendant's rights within an EU-wide harmonisation of Member State domestic criminal procedural law.⁵ This harmonisation of procedural law included terrorism related offences.⁶

By 1999 the threat jihadist terror groups posed to the EU was recognised by its Member States, in particular France.⁷ While states such as France, Holland and Germany recognised this threat, at this time jihadist based terrorism was not the UK's main focus, due to the 1968-1998 Irish Troubles that focus was still directed at Northern Ireland.⁸ By the time the UK had become aware of the jihadist threat, due to the UK's Home Office granting asylum to jihadist supporters in the 1990's, London had become a hub for international jihadist causes where supporters were openly fundraising for their causes in the UK resulting in French intelligence giving London the nickname 'Londonistan'.⁹ Pantucci sums up the development of this danger saying:

'What appeared at the time to be marginal and irrelevant was in fact a very active effort to attract young men and women from the UK's broad base of disaffected and detached

⁴ Alina Kaczorowska, *European Union Law* (2nd edn Routledge 2013) pp.17-21

⁵ Steve Peers, *EU Justice and Home Affairs Law* (3rd edn Oxford University Press) pp.655-656

⁶ Cian Murphy, *EU Counter-Terrorism Law: Pre-Emption and the Rule of Law* (Hart Publishing 2012) pp.27-28

⁷ Gerald Joffe, 'The European Union, Democracy and Counter-Terrorism in the Maghreb' (2008) 46(1) *Journal of Common Market Studies* 147, 154

⁸ Maurice Punch, *State Violence, Collusion and the Troubles: Counter Insurgency, Government Deviance and Northern Ireland* (Pluto Press 2012)

⁹ Roberto Pantucci, 'A contest to democracy? How the UK has responded to the current terrorist threat' (2010) 17(2) *Democratisation* 251, 254

Muslim youth to quite a specific globalist Islamist cause, and in some cases to drive them to go and participate in the global jihad'.¹⁰

Following the JHA Conference in Tampere 1999 where the JHA agreed to create an area of 'citizenship, freedom, security and justice'¹¹ the UK looked to amend its terrorist related legislation starting with an Inquiry by the House of Lords judges.¹² As a result of the Inquiry the Terrorism Act 2000 was introduced where section 1 widened the legal definition of terrorism from the PTA's definition. Not only does section 1 Terrorism Act 2000 widen the activities that can amount to an act of terrorism, the definition also widened the causes the actions are taken under where those actions or threat of terrorist actions are made for the purpose of advancing a political, religious, racial or ideological cause'.¹³ Even though section 1 is wider than its predecessor, as Walker points out regarding legal definitions of terrorism that may not cover as much ground as a sociological definition, 'Law should attain a higher standard of precision and should accentuate the legitimacy of condemnation'.¹⁴

Another important aspect of the definition is in section 1(4) that incorporates the international terrorist threat by stating an act of terrorism applies to one committed or planned for the UK or in any state in the world. It was held that one reason for section 1 being reflective of the international nature of terrorism was to ensure the UK did not become or appear to be a safe haven for terrorists of any nationality.¹⁵ The UK's Court of Appeal explained that this part is intentionally comprehensive in its scope as:

'..acts by insurgents against the armed forces of a state anywhere in the world which seek to influence a government and are made for political purposes are terrorism. There is no exemption for those engaged in an armed insurrection and an armed struggle against a government.'¹⁶

¹⁰ Ibid p.253

¹¹ Council of European Communities, *Special investigation techniques in relation to serious crimes including acts of terrorism: Recommendation Rec(2005) 10 and explanatory memorandum* (Council of Europe Publishing, 2005) p.2

¹² Ronald Douglas, Must terrorist act for a cause? The motivational requirement in definitions of terrorism in the United Kingdom, Canada, New Zealand and Australia (2010) 36(2) Commonwealth Law Bulletin 295, 295

¹³ Terrorism Act 2000 s 1(c) – a racial cause was an addition to the list of causes by an amendment brought in by Counter-Terrorism Act 2008 s 75(1)

¹⁴ Clive Walker, The Legal Definition of "Terrorism" in United Kingdom Law and Beyond [2007] Public Law 331, 348

¹⁵ *R v F* [2007] EWCA Crim 243 para 16

¹⁶ *R v Mohammed Gul* [2012] EWCA Crim 280 para 16

In defining what factors amount to the meaning of a government, under s.1(4) the English Court of Appeal held a democratic government is one based on the consent of the people that is subject to the rule of law should be the 'lodestar' for modern civilised communities, and those states that adhere to the European Convention on Human Rights or adhere to a human rights convention would also amount to a government. The Court added that even where there is an infringement by states on freedoms, provided the infringements were proportionate they too would be seen under section 1 as a government but, '...it did not extend to the tyrants under whose yoke [citizens] were forced to live'.¹⁷ As Saul points out, the conception of democracy is radically contested in both theory and practice. He raises the question that if terrorism is a crime against democracy, does that mean terrorism against non-democratic states or those that trample over human rights are permissible?¹⁸ From United Nations resolutions, including human rights resolutions, no form of terrorism is permissible as all the resolutions' preamble clearly states that all forms of terrorism are criminal and unjustifiable, even against authoritarian regimes, adding that terrorism cannot be used as a means to protect human rights.¹⁹ This is an issue the courts have had to grapple with, especially in relation to assessing if the activities are made for advancing a religious cause. This point was raised by the Court of Appeal in *R v Mohammed Gul*,²⁰ which held it was common ground that international law has developed so that international terrorism can be recognised in a time of peace²¹ with international law developing to enable the crime of terrorism to be recognised in situations where there is no armed conflict.²²

Canadian Definition of Terrorism

Section 83.01(b) of the Canadian Criminal Code defines terrorism as an act or omission, in or outside Canada that is committed in whole or in part for a political, religious or ideological purpose, objective or cause.

The impact of international terror groups in formulating legal definitions of terrorism by states can be seen again as the Canadian definition includes similarities in the aim of the act (political, ideological or religious cause), who the act is targeted at and the intent of the act. However the

¹⁷ Ibid at para 23

¹⁸ Ben Saul, *Defining Terrorism in International Law* (Oxford University Press 2010) p.37

¹⁹ UNComHR preambles to 1998/47, 1999/27, 2000/30, 2001/31, 2002/35

²⁰ [2012] EWCA Crim 280

²¹ Ibid, para 32

²² Ibid, para 35

Canadian definition states it does not apply to an individual's actions that occurred during an armed conflict that was carried out in accordance with international law. What is interesting is how the Commonwealth countries such as Canada and the UK have similar phrasing in their anti-terrorism legislation²³ as seen in Australia where the Security Legislation Amendment (Terrorism) Act 2002 amended the Criminal Code 1995 as it contains the action must be for advancing a political, religious or ideological cause²⁴ with the act aimed at influencing or intimidating a government be it Australian or foreign²⁵ or intimidating the public or a section of the public.²⁶

Defining and Ascertaining Evidence that Amounts to a Religious Cause

Out of the four main categories of a 'political, religious, racial or ideological' cause that has increased the number of activities that can be defined as acts of terrorism, the most contentious and difficult for the courts has been to ascertain what factors amount to a religious cause. A religious cause has been described as terrorist action motivated by an interpretation of religion²⁷ and that motivation is driven by a belief in another worldly power which sanctions and commands behaviour.²⁸ Perhaps the most prominent religious based terrorist organisation is Al Qaeda and those affiliated to it such as Al Shabab in Somalia and the Al-Nusra Front in Syria that seeks to unite Muslims throughout the world in a holy war. In 2014 the rise of the group Islamic State in Syria and Iraq where they have occupied territory as they attempt to set up a Caliphate has become a major cause for concern by the international community on issues of national security and the instability they are causing in that region.²⁹ While these groups may appear to have some political objectives, they are distinctively religious as they make use of well-established, mainstream religious concepts.³⁰ Differentiating what amounts to a religious cause from a political, ideological or racial cause has been an issue the courts have to deliberate over with great care.

A Religious Cause in Collecting or Possessing Information that may be useful to a Terrorist

²³ Douglas n.12 p.295

²⁴ Criminal Code 1995 (Australia) s 100.1(b)

²⁵ Ibid s 100.1(c) (i)

²⁶ Ibid s 100.1(c) (ii)

²⁷ Andrew Staniforth, *Blackstone's Counter-Terrorism Handbook* (2nd edn Oxford University Press 2010) p.188

²⁸ Martin n1 p.188

²⁹ BBC News 2014 'Islamic State crisis: "3,000 European jihadists join the fight"', (26th September, 2014) retrieved from <http://www.bbc.co.uk/news/world-middle-east-29372494> [accessed 27th September 2014]

³⁰ Michael Sedgewick, *Al Qaeda and the Nature of Religious Terrorism* (2004) 16(4) *Terrorism & Political Violence* 795, 808

One preventative terrorist measure in the UK's Terrorism 2000 Act is section 58 that is concerned with the collection of information of a kind that is likely to be useful to a person committing or preparing an act of terrorism³¹ or possessing a document or record containing information of that kind.³² The word 'likely' widens the scope of what constitutes 'material' and has the potential to be subjective. In *K v R*³³ K possessed a copy of the Al Qaeda training manual on a CD rom along with a copy of a publication 'Zaad-e-Mujahid' and 'The Absent Obligation'. 'Zaad-e-Mujahid' is a text directed to the formation and organisation of jihad movements and 'The Absent Obligation' is a text arguing that a Muslim is under an obligation to work for the establishment of an Islamic state. K claimed the material was theological/propagandist material that section 58 was never intended to criminalise.³⁴

In their examination of section 58 the Court of Appeal held that the material has to be of a kind to provide practical assistance to a person committing or preparing an act of terrorism, adding that a document that simply encourages the commission of acts of terrorism does not fall within section 58.³⁵ Acknowledging section 58 was not intended to cover propaganda material, the Court dismissed K's appeal and held that where one or more documents that are capable of falling within section 58, it is important to ascertain whether or not the material actively assists a person committing or preparing a terrorist act (this included the type of materials K had in his possession in relation to a religious cause) and this should be resolved before a jury is empanelled.³⁶ In *R v G, R v J*³⁷ the House of Lords examined section 58 in relation to J who possessed on recorded digital files an Al Qaeda training manual, a copy of the 'Terrorist's Handbook', a file 'Military Training' and a document 'How Can I Train Myself for Jihad?'. The House of Lords held that a key requirement for a conviction under section 58 is the

³¹ Terrorism Act 2000 s.58(1)(a)

³² Ibid s58(1)(b)

³³ [2008] EWCA Crim 185

³⁴ *K v R* [2008] EWCA Crim 185 para 5

³⁵ Ibid para 13

³⁶ Ibid para 16

³⁷ [2009] UKHL 13

defendant must be aware of the nature of the information the material contains.³⁸ The House held that three criteria are required for a conviction under section 58:

1. The defendant has control of the record containing information that is likely to provide practical assistance to a person committing or preparing an act of terrorism;
2. The defendant knew they had the record; and
3. The defendant also knew of the information that material contained.³⁹

A Religious Cause in Distributing or Circulating Terrorist Publications

A religious cause is also considered under section 2 of the UK's Terrorism Act 2006. Among the provisions contained within the section, it applies to a person who distributes or circulates a terrorist publication, gives, sells or lends such a publication or offers such a publication for sale or loan or provides a service enabling others to obtain, read, listen or look at such a publication⁴⁰ when a person does so they commit an offence if they intend such conduct to be a direct or indirect encouragement of other inducement to the commission, preparation or instigation of acts of terrorism⁴¹ or intend that such conduct to be the provision of assistance in the commission or preparation of such acts⁴² or is reckless as to whether their conduct has such an effect.⁴³ Section 20 of the 2006 Act clearly states that an act of terrorism is anything constituting that which comes within the meaning of section 1 Terrorism Act 2000,⁴⁴ this includes where such action is for a religious cause.

In *Ahmed Raza Faraz v R*⁴⁵ the Court of Appeal deliberated on this issue in relation to Islamic publications. Along with publishing for sale books, articles, videos and DVD's that supported the case for militant Islam, Faraz was the manager of an Islamic bookshop that traded from a bookshop in a building as well as through an on-line website.⁴⁶ Included among the material submitted as evidence of a religious cause was 'Milestones –a special edition'

³⁸ *R v G, R v J* [2009] UKHL 13 para 47

³⁹ *Ibid* paragraph 50

⁴⁰ Terrorism Act 2006 s 2 (a) – (d)

⁴¹ *Ibid* section 1(a)

⁴² *Ibid* section 1(b)

⁴³ *Ibid* section 1(c)

⁴⁴ *Ibid* s 20(2)

⁴⁵ [2012] EWCA Crim 2820

⁴⁶ *Ahmed Raza Faraz v R* [2012] EWCA Crim 2820 para 6

written by Sayid Qutb, a leading member of the Muslim Brotherhood containing appendices of works by other authors that, when taken as a whole, the book was perceived as a polemic in favour of the Jihadist movement encouraging violence towards non-believers. Also submitted as evidence by the prosecution was '21st Century Crusaders', a DVD purported to be a documentary focusing upon the suffering of Muslims throughout the world that included an interview with a masked man who defended terrorist attacks by or on behalf of Al Qaeda, a number of texts that supported Bin Laden's role and texts of the other mujahidin and Islamic groups against Russia, a DVD 'Malcolm X' that included trailers and other recordings of interviews with the families of men who died fighting US forces in Afghanistan and Israeli forces in the occupied Palestinian territory, and, the book 'The Absent Obligation'. The prosecution's case centred on the fact the publications sought to encourage the followers of Islam to attack unbelievers and to seek martyrdom in the pursuit of jihad. The prosecution claimed it was achieving encouragement under section 2 by providing a theological justification of attacks on non-believers and in celebrating the achievements of militant and terrorist followers of Islam.⁴⁷ The Court of Appeal dismissed this as evidence of a religious cause in relation to terrorism. Crucial in the Court coming to this finding was the question whether the publications would be understood by a significant number of its readers as directly or indirectly encouraging terrorism. The Court could find no probative value that these publications were likely to encourage the commission of terrorist acts.

In *R v Gul*⁴⁸ Gul was found to be in possession of videos uploaded onto various sites on his computer that showed attacks by Al Qaeda and the Taliban on Coalition forces in Iraq and Afghanistan, the use of improvised explosive devices on Coalition forces and excerpts from jihadist martyrdom. The Supreme Court adopted a similar position as the Court of Appeal in *Faraz* in their findings of Gul's involvement in relation to section 2 Terrorism Act 2006. While acknowledging the need by the state to grant police and security officers wide powers to intrude on the lives of citizens in connection with preventing acts for terrorism, the Supreme Court stated what is a cause for concern is that such powers are so wide as to add to prosecutorial

⁴⁷ Ibid paragraph 17

⁴⁸ [2013] UKSC 64

powers Acts such as the 2006 Act gives rise to.⁴⁹ A point Walker makes in his case commentary on *Gul* is that ‘foolhardy souls’ that download jihadi literature, especially literature that is seen as promoting Jihadi sentiments, ‘...do so at their peril.’⁵⁰ This echoes the issue he raised in an earlier work before *Gul* regarding arguments against the scheduling in context approach regarding what was meant by terrorism when he said:

‘...the arguments against a specific definition [of terrorism] are stronger at the anticipatory stage, when policing powers are in play and when an outcome in terms of intelligence gathering ...might be the aim’.⁵¹

Consideration of article 10 European Convention on Human Rights (right to freedom of expression) is also a factor the courts will consider in relation to a religious cause. For example in *Faraz* the Court of Appeal made it clear that a jury cannot convict a defendant and offend their article 10 right to freedom of expression just because materials submitted as evidence of a religious cause simply because it expresses a religious view. In *Faraz* the Court also stated that in establishing a religious cause there has to be evidence the material would be understood by a significant number of readers as encouraging of the unlawful commission of terrorist offences.⁵² The courts appear to recognise the need for wide powers to enable police and security officers to examine and determine if the contents of materials can potentially breach terrorism related legislation. However when taking the next stage in determining if there is sufficient evidence to charge and for a prosecution to succeed, evidence related to a religious cause must be shown to have a significant impact on encouraging/influencing others to a terrorist cause, or, that any material possessed by a person will significantly assist a person committing or preparing acts of terrorism.

Armed conflict in the name of a religious cause

Under section 1(4) Terrorism Act 2000 UK anti-terrorism legislation also applies to acts of terrorism that occur outside the UK. Again consideration has to be given as to the cause

⁴⁹ *R v Gul* [2013] UKSC 64 para 63

⁵⁰ Clive Walker, *R v Gul: trial – terrorism – disseminating terrorist publications*, *Criminal Law Review* [2012] 645, 647

⁵¹ Clive Walker, *The Legal Definition of “Terrorism” in United Kingdom Law and Beyond* [2007] *Public Law* 331, 349

⁵² *Ahmed Raza Faraz v R* [2012] EWCA Crim 2820 paragraph 54

terrorist action is taken under. In *CF v SSHD*⁵³ (a judicial review on a Tpm order issued by the Home Secretary under the Terrorism Prevention and Investigation Measures Act 2011) CF was a British citizen of Somali descent. In 2008 he was prosecuted for attempting to travel to Afghanistan for the purposes of engaging in acts of terrorism, where he was acquitted after a trial and in 2009 he travelled to Somalia where he attended a terrorist training camp. Between 2009 and 2011 he became involved in the jihadist terror group Al Shabaab (which is affiliated to Al Qaeda), returning to the UK in 2011. A factor the Court found important was that in his association with a religious cause CF had more than a mere association with Al Shabaab, he had a substantial role in their cause by training and fighting with them.⁵⁴

The nature of the conflict in a country outside the UK is also an important issue for the courts to consider when assessing if the action falls under section 1(4) Terrorism Act 2000. In *R v F*,⁵⁵ F, a native of Libya, was in possession of a handwritten document detailing how a terrorist cell can be formed that was intended to be a 'blueprint' for support of groups in Libya opposed to the former Colonel Gaddafi regime that governed the country at that time. The document pointed to taking a jihadist route of action against the then Libyan government.⁵⁶ The jihadist substance of the document was not seen as sufficient to warrant a religious cause, but it was for a political cause where under section 1(4) Terrorism Act 2000 the Court of Appeal held that:

'...given the random impact of the protection of terrorist activities, the citizens of Libya should be protected from such activities by those resident in this country...'
(paragraph 26).

Commenting on how broad the definition of terrorism is under section 1 Terrorism Act 2000 the Court of Appeal expressed concern that it makes no exemption in creating a defence or exculpation from describing the act of terrorism as a just cause. This is because section 1(4) does not specify that this provision only applies to governments of particular type that the UK would regard as the desirable characteristics of a representative government. In *R v F* the Court said, '...terrorism is terrorism, whatever the motives of the perpetrators' and that appears

⁵³ [2013] EWHC 843 (Admin)

⁵⁴ *CF v SSHD* [2013] EWHC 843 (Admin) paragraph 44

⁵⁵ [2007] EWCA Crim 243

⁵⁶ *R v F* [2007] EWCA Crim 243 paragraphs 5 and 6

to include where there is a religious cause.⁵⁷ This may seem harsh where the state in question is run by a tyrannical despot. The Court in *F* recognised this point, especially where there is a call of resistance to tyranny that supports violent activities in support freedom from oppression.⁵⁸ In 2007 Lord Carlile recommended a statutory obligation requiring the exercise of discretion to use terrorism laws in relation to extra-territorial matters that took into the nature of the action, the target of the action and international legal obligations.⁵⁹ While this recommendation has not been taken up it has led to Walker saying in his case commentary on *F* that if such a recommendation was put in place it would be, ‘...an antidote to the trend that the UK Government values friendship with oil-owning despots much more highly than the political freedom exercised by refugee underdogs’.⁶⁰ Walker’s point may be a cynical response where one can sympathise with its sentiments, but it shows how delicate a balance exists for nation states with recognised constitutional democratic processes and freedoms have in dealing with other states that are perceived as less democratic. While it may be an anathema for more liberal states to have to deal with states governed by despots, it is submitted that if liberal states impose their values aggressively on despotic states it could be perceived as a form of political imperialism. This was the perception of the US and UK’s invasion of Iraq in 2003 that brought about widespread international condemnation, however in 2014 the US led coalition’s attacks on Islamic State targets in Syria and Iraq, that includes several Middle East states, has wider international approval.⁶¹

The problem in separating and defining what amounts to a religious cause from other causes given in statutory provisions is not unique to the UK, similar issues have arisen in Canada. In *Khawaja v R*⁶² the Supreme Court of Canada had to deliberate on what amounts to a religious cause. After becoming obsessed with Osama Bin Laden and his cause, Khawaja began communicating with other people committed to violence in the name of Islam (including

⁵⁷ Ibid paragraph 27

⁵⁸ Ibid, paragraph 9

⁵⁹ Lord Carlile of Berriew, *The Definition of Terrorism* (Cmd 7052, 2007, paragraph 58)

⁶⁰ Clive Walker, *Terrorism: Terrorism Act 2000*, ss. 1 and 58 – possession of terrorist documents, *Criminal Law Review* [2008] 160, 165

⁶¹ BBC News 2014 ‘US-led air strikes hit IS on Syria’s border with Turkey’ (28th September 2014) retrieved from <http://www.bbc.co.uk/news/world-middle-east-29390781> [accessed 29th September 2014]

⁶² [2012] 3 SCR 555

the leader of a terrorist cell in London).⁶³ Among the evidence found in Khawaja's possession was instructional literature on bomb making, military books and jihad related books.⁶⁴ There was also evidence that he had participated in a terrorist group by taking weapons training at a camp in northern Pakistan for the purpose of enhancing the ability of a terrorist group to facilitate or carry out a terrorist attack anywhere in the world.⁶⁵ Section 83 of the Canadian Criminal Code has a very similar definition of terrorism to that in the UK's Terrorism Act 2000, including the statutory provision to include terrorist activity carried outside Canada, which if committed inside Canada would be an act of terrorism (section 83.01(1)(a)(i) Canadian Criminal Code).

In examining what amounts to a religious cause under section 83.01(1.1), the Canadian Supreme Court made it clear terrorist activity does not include a non-violent expression of a religious thought, belief or opinion⁶⁶ adding that criminal liability should not be based on a persons' religious views and that the police should not target people as suspects nor should a justice system prosecute persons because of their views. In *Khawaja* there was strong evidence that his religious belief and motive was linked to a violent jihad and therefore amounted to a religious cause.⁶⁷

Should a religious cause be included in the statutory definition of terrorism?

In his report the former independent reviewer of the UK's terrorism legislation, Lord Carlile concluded that a religious cause should be included in section 1 Terrorism Act 2000 as it was consistent with the provisions in a number of other states⁶⁸ and international comparators and treaties thereby making it useful and broadly fit for purpose.⁶⁹ It has been reported that more than any other European country, the UK is facing its biggest threat from 'home-grown' Islamic violent extremism with more people having been arrested for terrorism-related activities

⁶³ *Khawaja v R* [2012] 3 SCR 555 para 4

⁶⁴ *Ibid* para 7

⁶⁵ *Ibid* para 12

⁶⁶ *Ibid* para 82

⁶⁷ *Ibid* para 89

⁶⁸ Lord Carlile of Berriew, *The Definition of Terrorism* (Cmd 7052, 2007) para 54

⁶⁹ *Ibid* para 86(4)

motivated by a religious cause in the UK than elsewhere in Europe.⁷⁰ The UK's current independent reviewer of terrorism legislation, David Anderson discusses the objections to having a religious cause in the section 1 Terrorism Act 2000 definition. He has taken the view that it would be premature to currently make any changes⁷¹ saying that evidence of a religious cause will emerge as a matter of course during terrorism trials. He is confident that scrupulous care is taken by all concerned in the trial process to emphasise during terrorist trials that whatever the purported justification is, it has, '...nothing to do with the peaceful practice of religion.'⁷² As highlighted in the above cases, the judiciary have made it clear that for a prosecution to succeed in a terrorist offence trial where a religious cause is claimed to be the motive behind the actions, the person's action has to go beyond non-violent, passive behaviour and must be significantly related to the use of violence in the name of religious cause.

Conclusion

When examining the legal definitions of terrorism in the respective states' jurisdictions there is no doubting that specifying actions and increasing the causes that underpin acts of terrorism has enabled state agencies to widen the categories of individuals and groups' activities that can come under the gaze of the state. As seen in the cases, where there is an armed conflict in overseas territories that is legitimate, i.e. there has been a declaration of war this does not amount to an act of terrorism. At the time of writing the civil war in Syria shows no signs of abating and Iraq is heading towards a civil war with the Sunni jihadists, Islamic State claiming a caliphate in the North West area of Iraq and the Kurds having control of the Northeast.⁷³ Under the legal definition, as clarified by the relevant cases, a person going to Syria or Iraq to fight or to support parties not part of the Syrian or Iraqi government would be deemed to be terrorists as has already occurred in the UK⁷⁴ and in France's response in banning travel to persons suspected to be terrorists to Syria and Iraq under an

⁷⁰ Francis Vermeulen, *Suspect Communities – Targeting Violent Extremism at the Local Level* (2014) 26(2) *Terrorism & Political Violence* 286, 293

⁷¹ David Anderson, *The Terrorism Acts in 2012: Report of the Independent Reviewer of the operation of the Terrorism Act 2000* (The Stationary Office 2013) para 4.9

⁷² *Ibid* para 4.13

⁷³ BBC News 2014 'Iraq rebels seize nuclear materials' retrieved from <http://www.bbc.co.uk/news/world-middle-east-28240140> [accessed 10th July 2014]

⁷⁴ BBC News 2014 'Three Arrested in Syria Terrorism Probe' retrieved from <http://www.bbc.co.uk/news/uk-england-berkshire-28227003> [accessed 10th July 2014]

'individual terrorist enterprise' offence.⁷⁵ As was discussed, in relation to a religious cause, while it is clear the mischief behind the respective states' definitions is aimed at jihadist based groups such as Al Qaeda and its affiliates such as Al Qaeda in the Maghreb, the Al-Nusra Front in Syria or Islamic State in Syria and Iraq, when the courts are deliberating as to what amounts to a religious cause has not been a simple task for them to determine. What the courts have decided is the action behind a religious cause must go beyond a non-violent, passive behaviour and must be significantly related to the use of violence carried out in the name of a religious cause.

⁷⁵ BBC News 2014 'France proposes anti-terrorist travel ban' retrieved from <http://www.bbc.co.uk/news/uk-england-berkshire-28227003> [accessed 10th July 2014]