

## **SPEECH BY ATTORNEY GENERAL AT THE COUR DE CASSATION**

**The Rt Hon The Lord Goldsmith QC**

### **Terrorism and Justice: the British Perspective from the Attorney General**

It is a great pleasure and honour to have been invited to address such a distinguished audience here at the Cour de Cassation. This is the first time that a British Attorney General has spoken at this, the highest court in France. I am privileged to have been given this honour. As some of you may know I was honoured to be made a member of the Paris Bar in 1997. I have not until now been able to exercise my right to plead as a French avocat. I do not intend to treat today as my first pleading. When I do start it will be in some much inferior court, as befits a novice lawyer.

This is the centenary of the entente cordiale, agreed between King Edward VII and President Emile Loubet. As is well known this was an attempt to put an end to Anglo-French rivalry, principally in Africa. It followed the Fashoda incident in 1898 in Sudan when Britain and France very nearly went to war. A hundred years before that our two nations were pitted against each other, fighting yet another war in a succession of wars going back the previous 900 years. In the Crimean War, 50 years before the entente cordiale, we fought on the same side but animosity was still so high in certain quarters that the First Lord of the Admiralty, Sir James Graham reportedly would not allow British and French troops to travel together on the same ship. Since the entente cordiale we have stood side by side in two world wars, as well many other conflicts. While we may not see eye to eye on all issues, it is inconceivable that today we could be enemies. Given the origins of the

entente cordiale in tensions connected with the infamous scrabble for Africa at the end of the 19<sup>th</sup> Century it is fitting that 100 years later both our nations, along with the other G8 members, are committed to a programme of assistance for Africa, in particular the development of an AIDS vaccine and the training of thousands of new peace-keepers.

It is also the bicentenary of the French civil code opened by President Chirac in March this year and celebrated by many important events, including in London on Monday this week when President Canivet delivered an important key note address. Napoleon is credited with saying, while exiled to St Helena, that what would be remembered was not his military victories but his legal system. For a code that was completed in a very short space of time its influence and longevity have been tremendous. Its influence can be seen across the modern European Union, including such new members as Poland, as well as the wider world.

The Code was encapsulated by Jean Portalis who wrote of it:

*“We have equally avoided the dangerous ambition to regulate and foresee everything...The function of law is to fix in broad outline the general maxims of justice, to establish principles rich in implications, and not to descend into the details of the questions that can arise in each subject.”*

This is beautifully and persuasively expressed, and just the sort of statement to give most English lawyers a nose-bleed.

As Attorney General I am also by tradition head of the English Bar. I was especially pleased to note therefore the close contacts between young lawyers at the English and French Bars, including “stages” organised by the l’ecole de formation du barreau for young English barristers. Such exchanges strengthen mutual understanding and enrich young lawyers’ knowledge and experience.

One of my first substantial opportunities to get to know lawyers from other countries was when, a few years ago, as chairman of the Bar of England and Wales, I would have to attend international legal meetings. As chairman of the Bar I would also have to attend legal ceremonies in other countries. In full English barrister’s uniform: court jacket, knee breeches, silk stockings, patent leather shoes with silver buckles, ruffles and a lace jabot. And a full bottomed wig. You make a lot of new friends standing in that outfit waiting for a taxi. One of my predecessors was said to have been standing outside a French hotel in that outfit when two fashionable Parisian ladies passed him. “Look” said one to the other pointing to him “Le vice anglais”.

As you know, the theme of my speech today is terrorism and justice. I hope to give you a British perspective on these issues, as well as saying something about how we can work together on them. These issues are of tremendous importance in both our countries as we try, in the words of David Blunkett the British Home Secretary, to reconcile security and liberty in a free society.

## *Role of Attorney General*

Before turning to that theme it may be helpful if I say a few words about the office of Attorney General. It is an office in which the worlds of politics and the law, of the Executive and the judiciary, intersect and, on occasion, have collided.

The history of the office can be traced back to the 13<sup>th</sup> century when my mediaeval precursors, the King's Attorney and the King's Sergeant were charged with the responsibility of upholding the King's interests in his Courts. As you will know the creation of a system of national Courts was one of the early ways in which English kings sought to impose their political will and control over the country. For over 500 years the Attorney General has also been closely involved in the lawfulness of governance as an adviser to Government and a member of Parliament. In 1461, John Herbert, also the first in the line to hold the modern title of Attorney General, received the first summons to attend Parliament. Ever since then, Attorneys General have been intimately involved in the process of legislation as advisers and members of Parliament. Both advising Government what it can and cannot do within the law and arguing the interests of Government before the Courts of the land.

That position remains the case today. The British Attorney General is the UK Government's chief legal adviser. In addition, he remains, unlike the position in some other countries, a member of Government with ministerial responsibilities – I have presently direct responsibility for what are in effect

6 distinct departments all with a legal element. These include the principal prosecuting departments in England and Wales – the Crown Prosecution Service, the Serious Fraud Office and Customs and Excise Prosecutions. The Attorney General is also a member of parliament – in my case the Upper House, the House of Lords, though traditionally law officers have sat as members of the lower House, answerable in parliament for the conduct of his office and the departments for which he is responsible as well as taking part, like other ministers in the business of the legislature, taking legislation through parliament as well as responding to questions and debates within his expertise. I still represent the Government in court, principally in public and constitutional cases before our domestic appellate courts but also in European and international courts and tribunals. This last practice had fallen to some extent in recent years into disuse. Some unkind souls have suggested that this was due to the abolition of the payment system under which the Government paid the AG a separate fee for each case and instead provided an annual salary. In truth I believe it simply reflects the increase in the other Ministerial responsibilities on the Attorney which impose a heavy burden in time. I have tended to appear in court more than my immediate predecessors, and know the pressures of both performing ministerial functions and preparing a case as an advocate are great.

### ***Terrorism and Justice***

#### ***Nature of the threat***

Neither of our countries, sadly, is a stranger to terrorism. In recent years Basque and Corsican separatism have scarred France; in the United Kingdom we have had the tragic situation in Northern Ireland – over 3,000 deaths in 30 years of violence. Let me quote from an English court’s judgment in an extradition case:

*“..the party with whom the accused is identified by the evidence, and by his own voluntary statement,...is the enemy of all Governments. Their efforts are directed primarily against the general body of citizens. They may, secondarily and incidentally, commit offences against some particular Government; but [their] offences are mainly directed against private citizens.”*<sup>1</sup>

These words have a contemporary feel to them and could well come from a case concerning an alleged Al Qaeda member. They actually come from a case in 1894 concerning the extradition from England to France of an anarchist accused of bombing the Very Café in Paris and an army barracks. That case illustrates two important points: the threat of terrorism is not new, and neither is co-operation between our two countries in the effort to bring perpetrators to justice and keep our people safe. I will return to this point later.

But while terrorism is not new I am not one of those who believe there is nothing different about the terrorist threat faced by both our countries from international terrorists linked to or associated with Al-Qaeda when compared with that we have faced before. I know France has experienced on

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<sup>1</sup> In re Meunier [1894] 2 QB 415.

its' own soil attacks by radical terrorists. You do not need to be reminded of the horror, pain and outrage at the bombing of the Paris metro in 1995. But September 11<sup>th</sup> did change the landscape of terrorism forever. I would single out the following features.

The first is the scale and nature of the operations. The number of casualties and the enormous economic damage inflicted were unprecedented for a terrorist attack; as an illustration the number of British citizens who lost their lives, at least 65, was in itself the largest single terrorist loss that my country had suffered. . There was a willingness, a desire even, to cause the maximum possible loss of life. The attacks were designed to cause enormous civilian casualties – with no attempt apparently to weigh against that the political cost to the terrorists' aims of such massive loss of innocent life.

The second feature, and one of the most pertinent to the issues facing governments, is the international nature of such terrorism. It is now clear that it is organised and executed through an international network of cells and different organisations able to call on help and assistance from many determined people in different countries. This diffuse and globalised structure presents enormous challenges to the law enforcement agencies of individual countries.

The third, and it is strongly connected with the globalisation of terror, are the challenges of modern technology. One aspect of this is the use of unconventional weapons, as demonstrated in the use of commercial airlines as flying bombs. But it is also the communications technology which means

that no longer need a conspiracy require the plotters to sit together in a darkened cellar where undercover intelligence might enable them to be overheard and apprehended. But they may plot by internet and cellphone, by satellite and by coded messages on websites.

These factors – the willingness to cause mass casualties, the diffuse globalised structure, the use of modern technology and the interest in unconventional weapons – do present new challenges to us all.

That September 11<sup>th</sup> was not an isolated incident, although of course not repeated in terms of sheer scale, is evident to us all. Since 9/11 hundreds more innocent people have been killed in al-Qaeda linked atrocities in Bali, Mombasa, in Casablanca, and in Riyadh, Saudi Arabia and of course Madrid as well as other grave incidents in Russia, Israel and India. I do not need to remind you that some of those incidents since September 11<sup>th</sup>, such as the bombings in Casablanca in May 2003 were directed at French nationals and interests.

### ***Responsibilities on national Governments***

It is against that background that we must consider the most appropriate steps to protect our citizens from the threats posed by terrorism. The primary responsibility for this in both our countries, indeed in any modern democratic State, falls on the Government. It is, in the first instance, for Governments to assess the need for action. It is their responsibility to protect the security of the people. They are in the best position to judge the

nature of the threat; they have sources of information denied to others and which cannot be shared. And Government has also, as Lord Hoffman<sup>2</sup> one of the our senior judges in the House of Lords has made clear, the democratic accountability to make these decisions which judges lack. But that does not mean that the courts should abdicate all responsibility for these areas. Whilst paying proper respect to the role of the democratically elected bodies of Government and its decisions, the Courts will act to scrutinize the lawfulness of Government action, as Lord Woolf, our Lord Chief Justice, has described it, retaining their supervisory role to protect fundamental freedoms.

Governments cannot remove completely the risk of atrocities by legislative means – it would be impossible to so. But I believe everyone would agree that we should do as much as we sensibly and lawfully can to protect our citizens. The price of failure could be exceptionally high. As Attorney General I have been one of the Ministers in the United Kingdom who has had to consider and help fashion our response to the events of 9/11. We have been grappling with how we should confront the difficult question of striking the balance between protection of our security and the protection of fundamental rights and freedoms. I know you in France have been grappling with the same issues.

The starting point is uncontroversial. The State has dual responsibilities: to protect its citizens and their property from terrorist attack and to guarantee the fundamental rights of those within its jurisdiction. But after that

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<sup>2</sup> In *Rehamn v SOS Home Department*

uncontroversial start we soon get into choppy waters. How do we balance these two objectives which will often conflict?

I do not believe this can be a simple utilitarian calculation of balancing the right to security of the many against the legal rights of the few. That would be to ignore the values on which our democratic society is built. Both the UK and France have a long tradition of commitment to the rule of law and liberty of the individual. These may be expressed in different ways in our different constitutional traditions but they are rooted in shared ideals. In the war on terrorism we are fighting for more than the safety of our citizens, though that is a huge objective for us. We are fighting for the preservation of our democratic way of life, our right to freedom of thought and expression and our commitment to the rule of law; for the liberties which have been hard won over the centuries and which we hold dear. These are the very liberties and values which the terrorists seek to destroy, not only through mass murder and destruction of property but also through the climate of fear that their actions create, and are intended to create, and which threaten those values and our way of life.

Some would not accept this. It is a bitter pill to swallow for those who have seen and experienced the devastation that results from terrorist outrages to see systems established to protect the legal rights of those they believe responsible for them. And those who are responsible, let it be admitted, do not have a single shred of concern for the legal or human rights of those they would kill, maim and terrorise. So why should we care, some would say, about theirs?

The answer to this is that the rule of law is the heart of our democratic systems. As President Barak of the Israeli Supreme Court put it:

*“..the war against terrorism is a war of a law abiding nation and law abiding citizens against law breakers. It is, therefore, not merely a war of the State against its enemies; it is also a war of the law against its enemies.”<sup>3</sup>*

There will always be measures which are not open to Governments. Certain rights – for example the right to life, the prohibition on torture, on slavery – are simply non-negotiable. There are others such as the presumption of innocence or the right to a fair trial by an independent and impartial tribunal established by law, where we cannot compromise on long-standing principles of justice and liberty, even if we may recognise that there may sometimes be a need to guarantee these principles in new or different ways.

This has consequences for the manner in which the State is required to respond to the most extreme provocation. Those suspected of being terrorists are not outside the law, nor do they forfeit their fundamental rights by virtue of that fact. The result may be to put limits on actions which would be in the interests of the many. Again to quote President Barak of the Israeli Supreme Court:

*“This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a*

*democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognition of an individual's liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and its strength and allow it to overcome its difficulties.”* <sup>4</sup>

But this does not mean that the law is an inflexible tool in Governments' responses to terrorism. Far from it.

The first point to make is that the law recognises that there is a balance to be struck between the rights of the individual and the rights of society. While the terrorist does not forfeit his fundamental rights, the law does recognise that those rights can be restricted or derogated from in particular circumstances. Rights are not only one-way. And it is not only the rights of suspected persons which are important. The rights and liberties of other citizens are important too. Let us not forget that terrorism, by its methods and aims, has the potential to render nugatory all the individual rights which we all hold so dear.

The Universal Declaration of Human Rights, the aspirational document from which so many other human rights instruments stem, itself in Article 29 expressly recognises the duties of everyone to the community and the limitation on rights in order to secure and protect respect for the rights of others. This is the position under the European Convention on Human

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<sup>3</sup> President Barak, “The Role of a Supreme Court in a Democracy and the fight against Terrorism”, delivered at the Anglo-Israeli Exchange, January 2004.

<sup>4</sup> Public Committee Against Torture in Israel v The State of Israel, *September 16, 1999*.

Rights too. As Lord Bingham, our most senior Law Lord, stated in a judgment of the Privy Council<sup>5</sup> *“Judicial recognition and assertion of human rights defined in the Convention is not a substitute for the process of democratic government but a complement to them...The [European] Court has ... recognised the need for a fair balance between the general interest of the community and the personal rights of the individual, the search for which balance has been described as inherent in the whole of the Convention.”*

This is not to suggest that striking this balance is easy or that there will always be general agreement as to the way it should be struck. It will often be a hard balance and extraordinary times will justify it being struck in different ways. Surely, for example, we should be prepared to accept more intrusion into our personal lives through more sharing of information between public agencies if that is needed to help detect and prevent more terrorist attacks or bring to justice those responsible? And, and this is the second point I would make in this regard, extraordinary events will lead to derogations from the practices we observe in times of peace and tranquility. This right is recognised, for example, by the European Convention on Human Rights, now the bedrock of human rights protection in the UK and France, which permits derogations from some fundamental rights in times of emergency.

And the third point I would make is that in order to ensure that we can effectively combat terrorism, and defend the rights of society, we need to be flexible and imaginative in our approach to legal process and recognise that

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<sup>5</sup> Procurator Fiscal v Brown.

some restriction on fundamental rights may well be required. But in saying this I want to be clear about two points. First, any restriction on fundamental rights must be imposed in accordance with the rule of law. And second, while we must be flexible and be prepared to countenance some limitation of fundamental rights if properly justified and proportionate, there are certain principles on which there can be no compromise. Fair trial is one of those – which is the reason we in the UK have been unable to accept that the US military tribunals proposed for those detained at Guantanamo Bay offer sufficient guarantees of a fair trial in accordance with international standards.

### ***National measures taken***

So that is the common backdrop to the responses by both the British and French Governments to the current terrorist threat. How then have we reacted? What measures have been taken?

While both France and the United Kingdom are not strangers to terrorism we have both felt the need to take specific national measures to address the current threat.

In France I understand that the loi du 9 mars 2004 portant de law justice aux evolutions de law criminalite has been passed which introduces a number of specific measures to address serious and organised crime, including terrorism, in particular in making provision for the use of investigative techniques and procedures.

While not a new law, article 23 of the ordonnance de 2 novembre 1945 – which allows a foreigner to be expelled from French territory if his presence constitutes a serious threat to l'ordre public has been used on a number of occasions to remove persons from France since September 11<sup>th</sup>. It has been used to expel a number of radical imams of the sort who have played such a malevolent role in both France and the UK in radicalising our Muslim youth.

In the UK we too have felt the need to make new anti-terrorism provision in legislation. This is not of course the first time the UK has had to confront these issues, and we had in the past enacted legislation, some temporary to deal with the scourge of terrorism as you in France had. But in the aftermath of September 11, and faced with a new and urgent threat, we considered it essential to pass new laws in the Anti-Terrorism, Crime and Security Act 2001. This bolsters security in the United Kingdom, for example, by providing law enforcement agencies with vital information to target and track terrorists by requiring carriers to provide information about passengers and freight, and by enabling telecom companies and internet providers to retain data – not content – that can be accessed under existing legislation for terrorist or criminal investigations; by imposing tougher penalties for people seeking to exploit the events of September 11, for

example, by perpetrating hoaxes; and by cutting off terrorists from their funds, through account monitoring, asset freezing and cash seizures as well disclosures of information from financial institutions.

We also enacted the measures relating to the detention of certain suspected international terrorists. I want to spend a few moments on these provisions both because they are controversial but also as they illustrate what I have been discussing in abstract terms about the need for flexibility and imagination while not compromising on fundamental principles.

These immigration measures relate to the treatment of certain foreign nationals, who have come voluntarily to the UK and have no immigration right to remain but who are suspected of involvement in international terrorism.

Our preference when faced with evidence of terrorist activity is to prosecute the suspects using the criminal law. However, as you will appreciate, it is not always possible to bring criminal prosecutions. This was the situation in relation to a small number of foreign nationals where there were strong grounds for suspicion but no prospect of a prosecution. This presented us with a considerable problem. Under our immigration laws we have the right to deport them due to their risk to national security because they have no right to be in the country. This has clear parallels with those who may be expelled from France under French law. However, due to our international obligations, notably under the European Convention of Human Rights, now part of our domestic law, we cannot deport them to a country where they

would face death, torture or inhuman and degrading treatment. Based on the submissions of the individual's themselves, it is our current assessment that to remove the detainees to the countries which could be required to accept them would be struck down by our courts as contrary to article 3 of the ECHR as there would be substantial grounds for believing there to be a real risk of ill-treatment there. This flows from the European Court of Human Rights; the cases of Chahal and Soering. We are content for them to go; they have no right to be here but we cannot force them to go because of concern for their own human rights. It is important to emphasise that they are entitled to leave.

So we were faced with a choice: either to leave them to roam free in the country or to detain them unless and until they voluntarily leave the country or we could remove them compatibly with our ECHR obligations. We considered the first course gave rise to an unacceptable risk, given the heightened threats since 11 September and so we legislated to provide for detention. This required a derogation from article 5 of the ECHR which provides a guarantee against arbitrary arrest and detention. The right to derogate is provided for in article 15 of the ECHR in times of "public emergency threatening the life of the nation". As you will hear, this derogation has so far been upheld by our courts.

Under these new powers, a very few people, 17 in fact, have so far been detained, two of whom, having been detained, have in fact voluntarily left the UK, one has been released on appeal and one released on bail, although subject in effect to house arrest, on medical grounds.

But in taking and using these powers, our commitment to the rule of law and to the values of our democracy remain. This has not been a step we have taken lightly. The powers themselves must be renewed annually by Parliament as well as being subject to a Parliamentary sunset-clause, as it is known, by which they will automatically lapse in 2006. And there are important safeguards under the Act, of which the most important in this context is the right of full judicial scrutiny by an independent judicial body presided over by a senior judge. We have used for this purpose a body known as the Special Immigration Appeals Commission, or SIAC – a body already used, although some adaptation was needed, in a special category of immigration appeals in relation to people posing a national security risk. This body is able to hear evidence in private if required. This enables it to consider any secret intelligence information, the disclosure of which might otherwise endanger the life of an undercover source or compromise, through the revelation of security methods, our ability to get early warning of impending threats without any security risk. The Commission is therefore able to reach a decision about an individual based on the full facts of the case against him. Although certain material cannot be disclosed to the detainee (although the gist of the case and as much material as can be, is), it does not go without being tested. A special advocate is instructed who is provided with all the material and is given the job of retesting it rigorously before the Commission, albeit in closed session, and of representing the interests of the detainee there. And the detainee's own chosen counsel is entitled to participate fully in all the open sessions. The process is so

fashioned that it meets the needs of the difficult situation whilst committing fully to our traditional views of the rule of law.

The Commission is constituted as a full court of record with a right of appeal to our highest appeal courts. It is presided over by a senior judge, a judge from our professional and permanent judiciary; one of the judges indeed who would have heard any legal challenge in the ordinary civil courts.

There is thus the fullest judicial scrutiny, adapted only where essential to do so because of our other legitimate concerns not to compromise the safety of our agents or of the British people. Our commitment to the rule of law, in which great care is taken to ensure that such powers are exercised lawfully and any question to that lawfulness can be tested effectively before the courts, is, I suggest, evident.

The exercise and existence of the new powers have already been tested in our courts. The Commission were satisfied that the UK faces a national emergency and that the provisions in the Anti-Terrorism Crime and Security Act 2001 enabling the detention of suspected terrorists were justified and lawful. They concluded that *“The United Kingdom is a prime target, second only to the USA; and the history of events both before and after September 11 2001, as well as on that fateful day, does show that if one attack were to take place, it could well occur without warning and be on such a scale as to threaten the life of the nation”*. This decision was appealed to the Court of Appeal presided over by the Lord Chief Justice which upheld this decision of

SIAC, also overturning SIAC's decision on the one point on which it had found against the Government. That point could be characterised as saying that the powers were not wide enough. But today is not the occasion to explore the detail of this argument.

In finding for the Government the Lord Chief Justice said:

*“The unfortunate fact is that the emergency which the Government believes to exist justifies the taking of action which would not otherwise be acceptable. The ECHR recognises that there can be circumstances where action of this sort is justified. It is my conclusion here, as a matter of law, and that is what we are concerned with, that action is justified. The important point is that the courts are able to protect the rule of law.”*

The judicial scrutiny of the measures is not over. The case is due to be heard in the House of Lords, before a 9 member panel, in October of this year.

And in parallel to this legal challenge to the measures themselves there are challenges by the individual detainees to the Home Secretary's decision to certify them as suspected international terrorists. Again the detainees have the same access to the courts as described above on these points. On the appeals so far heard SIAC have upheld the Home Secretary's certification in all but one case.

I emphasise that these powers are immigration powers under which the people detained remain free to leave (and some have done so); they were debated at length by our sovereign Parliament; they are temporary powers which must be reviewed annually by the public's elected representatives; the detainees have full access to their legal representatives; the detainees may appeal against their certification and, even if their appeal is dismissed, have their certification reviewed periodically by SIAC; and the powers are subject to close scrutiny by robust and independent judges and appealable up to the highest court in the land and indeed beyond, as the European Court of Human Rights in Strasbourg may be involved too in due course. There is no question of any legal "black-hole" nor of any of these detainees being beyond the protection of the rule of law.

I sincerely believe that the legislative and constitutional framework in the UK enables effective action to be taken against the terrorist threat whilst still maintaining the rule of law. The measure we have taken to deal with foreign nationals suspected of being international terrorists is a concrete example of where the UK has shown imagination and flexibility with regard to legal process in order to address a difficult issue, without compromising either our respect for the rule of law or the right to a fair trial – on which there can be no compromise.

However, while the Home Secretary has made it clear that he considers these measures are currently the best and most workable way of addressing the ongoing nature of the threat we face, we do need now to consider what measures may be required when the provisions of the Act cease to have

effect in 2006. There is no doubt that the UK, as well as France and other democratic States, are likely to continue to face a serious and ongoing threat from international terrorism. That is why the Home Secretary wants to start the debate about how we deal with these difficult issues now. He published a discussion paper addressing these issues in February of this year. He wants to generate as much discussion and consultation as possible, considering every option, and its potential effects, very carefully. A crucial parameter for this debate however remains our commitment to fundamental rights. As the Home Secretary has said<sup>6</sup>: “We need to take on these terrorists by using the strengths of our democracy.” We will want to ensure, as we have always done, that any measures are fully consistent with our legal obligations, and I will, as a Law Officer, have a key role in that regard. In that connection, for example, it is clear that we should not attempt to reduce the standard of proof in criminal trials.

In considering whether alternatives to the current Part 4 powers are open to us we will want to pay particular regard to the measures taken by countries such as France. I do not pretend that wisdom on the best way to deal with the current terrorist threat rests only in one country. We all have things to learn from each other and I know the Home Secretary is keen to explore what lessons we can learn from France and other countries facing similar challenges.

### ***International co-operation***

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<sup>6</sup> Labour Party Spring Conference 2004.

That leads me to my final theme – the need for international co-operation to address the threat posed by international terrorism. At the beginning of my remarks I set out the features which I consider mark-out the current threat from other terrorist threats. One of those was the globalised nature of the terrorist networks; another the use of modern technology. Both of these factors highlight the need for co-operation between nations to meet the challenge. This is more than a recognition of the fact that we face a common threat and common action would assist in meeting it; it is also that the nature of the threat is such that our ability to defend our citizens is dependent to an unprecedented extent on securing international co-operation.

Law enforcement remains based firmly on a national level. Law enforcement agencies have to operate within their own national systems and national laws. A terrorist may have contacts and collaborators in any number of countries. Even to obtain the evidence of people in each of those countries may present a major logistical problem for prosecutors. Our courts cannot directly order the attendance of a witness from another country to attend before it; without the assistance of foreign authorities it cannot compel the production by a foreign bank of its records of transactions in another country; nor give us the ability to order the police force of another nation to investigate a particular potential witness in that country. And of course our national jurisdiction will usually be limited to crimes committed in our own countries so that we cannot bring to justice those whose activities may have affected us but whose conduct has been abroad.

The sharing of intelligence also is a key part of fighting international terrorism. Sometimes the information available in any one country will not be sufficient to show that a crime has been committed or the full nature of the crime. Even though another agency in another country has other information which would fill in the missing gaps. Or show the full extent of the criminality involved. In short, we must respect national boundaries and frontiers whilst the terrorists treat them with contempt. I am sure that the answer to this can only be found through international cooperation.

A good deal has been done on this already in the aftermath of September 11<sup>th</sup>.

At the European level, a Special Council of European Heads of State met on 20<sup>th</sup> and 21<sup>st</sup> September 2001, to agree a Joint Action Plan to deal with terrorism, and no less than 68 concrete actions were identified and agreed, ranging from agreement on fast track extradition (we now have the European Arrest Warrant which should reduce to a minimum procedural delays in extradition) and arrest warrant procedures, to new measures for the collection and exchange of evidence and the freezing of assets.

Practical cooperation and exchange of information is also a key part of the fight against terrorism. In Europe much work has been done to strengthen the links between prosecuting and investigating authorities. One of those is Eurojust, which brings together judicial and prosecuting experts from all European countries and will, I believe have a significant effect on ensuring better and faster co-operation.

At the international level too we have seen remarkable co-operation and we are continuing to develop new standards and best practice to counter, amongst other things, terrorist financing. We have seen the historic event of the United Nations Security Council Resolution 1373, the first resolution to impose obligations on all member States to respond to the global threat of terrorism, and the subsequent Resolution, 1390. These are now the cornerstone of domestic and international action.

We need international cooperation and a common international approach precisely because of the ease with which monies can be moved across the world. Terrorism needs cash to fund its activities. For recruitment, training, travel and terrorist material and equipment. It has been estimated by the US authorities that Bin Laden paid over \$100m to the Taliban during the five years he was in Afghanistan. Not all of terrorist funding is raised in large amounts. Individual terrorist outrages may have modest costs – in the UK in 1993, the Bishopsgate bomb cost over £1 billion worth of damage in the City – but cost only £3,000 to mount. And we know that some of the funding for terrorism is built up from relatively small amounts including from credit card fraud, from counterfeiting of intellectual property. So we are faced also with the challenge of detecting relatively small sums passing through the financial system. The kinds of national provision made in relation to terrorist financing in both Britain and France is essential.

These are all tremendous initiatives and measures. But the glue that holds them all together and ultimately ensures that they work in the way intended

is good co-operation between individual States – both in the implementation of particular measures and in the challenge of tackling international terrorism more generally.

The British and the French have shown that we can work effectively together on these issues. Our legal systems do have differences. I don't intend to set them out in detail now, but they do have consequences for the ways in which we go about dealing with the terrorist threat. But these differences should not become obstacles to effective cooperation – and we are showing that they are not. Indeed, the need for close cooperation on judicial matters has never been clearer. As I mentioned earlier international terrorists do not recognise territorial borders, unless of course they can take advantage of them. Freedom of movement between France and the UK and our physical proximity mean our countries are increasingly one territorial space for the terrorist. The new symbol of our physical connection – the Channel Tunnel – must itself be a target for a terrorist attack. And let's not forget that Richard Reid, the so-called "shoe-bomber" was a British national, who tried to board a plane in France bound for the US.

Key to the success in our co-operation has been the acceptance in the EU that mutual recognition is the cornerstone of judicial co-operation in civil and criminal matters. This is crucial as it allows co-operation to take place whilst respecting the distinct legal traditions in the EU and not requiring harmonisation. In the field of mutual recognition, we have worked closely together, including bringing forward joint initiatives on such matters as the enforcement of financial penalties.

In relation to mutual legal assistance I know much good work has also been done by both the British and French. There is a Franco-British working group, established following an initiative of the Home Secretary and French Justice Minister in 2001, which brings together judges, prosecutors, police officers and other officials to discuss issues in connection with mutual legal assistance.

In relation to investigations I know that strong links have been forged between Judge Bruguiere and his colleagues and his counterparts (or as near as you can get in our system) in the police and Crown Prosecution Service.

We also now have liaison magistrates, one from the UK in Paris, and one from France in the UK who provide a vital cog in the machinery of co-operation.

As I mentioned earlier, the European Arrest Warrant will make a tremendous difference to extradition within Europe. Now that France has implemented the Framework Decision we will put in place the necessary secondary legislation to designate France for the purposes of our legislation. This should be in place by the end of next month. At that point the real benefits of the European Arrest Warrant will be seen between France and Britain.

Another step which will enhance cooperation between us is our entry into the Schengen system for judicial and police cooperation. We hope to do this before the end of the year. The UK also intends to ratify the EU Mutual Legal Assistance Convention next year which will provide another boost to cooperation, in particular by providing that when a request is made it is to be executed in the manner requested rather than in accordance with procedures in the State of whom the request is made. In fact, I understand that even before this treaty is ratified it is having a beneficial effect on mutual legal assistance between our countries.

I am convinced that we need to continue to foster such cooperation at all levels. I want to reach a situation where officials in my departments, such as the CPS, view their counterparts in France as colleagues.

### ***Conclusion***

Let me conclude.

I started by referring to the dual responsibilities on Government: to protect its citizens from terrorist attack and to uphold fundamental rights for all in its jurisdiction. Meeting these dual responsibilities presents enormous challenges to Government when confronted by the nature of modern international terrorism.

To meet these challenges our two countries need to ensure that we have in place national measures which meet our national priorities and concerns

and are sensitive to our particular constitutions and traditions. I doubt “one size fits all”. But I am clear that such national measures alone are not enough. I believe both the UK and France need to do three things:

First, to look outwards to our neighbours and friends to see what measures are being taken in order to see what lessons can be learnt. While as I say one size may not fit all, it may well be the case that there are valuable lessons to be learnt from each other.

Second, to recognise that collective action at the European and International is necessary to complement and to make truly effective action taken at the national level. Action on terrorist financing is the paradigm perhaps.

And third, build upon the cooperation and collaboration established so that the law enforcement effort of our two nations is effectively coordinated to ensure not only that the terrorist cannot take advantage of the fact that two law enforcement systems exist but that we each gain the benefit of the others’ actions.

The stakes could not be higher – loss of life, loss of liberty. The UK Government is committed to taking all necessary steps to protect its citizens – after all, Parliament and the Government have the primary responsibility for defending our democracy and its values, and for protecting its citizens from the threat of terrorist attack. I know the French Government takes these responsibilities no less seriously.

I am convinced that this can be done compatibly with upholding the fundamental rights of all, including those accused of committing terrorist acts. The goal of the terrorist is not only to kill, maim and destroy but also to undermine our societies. That aim is furthered if democratic Governments place those suspected of terrorist crimes outside the law and compromise on their fundamental principles. It is important that the terrorists do not gain such a victory.

ENDS

[ Paris, 25 June 2004 ]