

The 9/11 Effect: Comparative Anti-Terrorism Law (Cambridge University Press, 2011)[†]

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[†] Editor's note: The following is a reproduction of presentation slides that accompanied the author's talk. A narrative or prose style text of the presentation was not available for publication. The information contained in the present format is naturally somewhat limited, but it still provides a great deal of valuable information and useful context for the subject.

* Kent Roach is a Professor of Law at the University of Toronto where he holds the Prichard-Wilson Chair of Law and Public Policy. He is also an honorary conjoint professor of law at the University of New South Wales. He is a graduate of the University of Toronto and of Yale, and a former law clerk to Justice Bertha Wilson of the Supreme Court of Canada. Professor Roach has been editor-in-chief of the *Criminal Law Quarterly* since 1998. In 2002, he was elected a Fellow of the Royal Society of Canada.

Professor Roach has specialized in the last decade on security issues. He is the author of *September 11: Consequences for Canada* (McGill Queens, 2003), *The Unique Challenges of Terrorism Prosecutions: Towards a Workable Relation Between Evidence and Intelligence* (Ottawa: Supply and Services, 2010) and most recently *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011) which examines counter-terrorism in nine countries and the United Nations and was a co-recipient of the 2012 Mundell Medal for contributions to legal writing. He is also a co-editor of *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (University of Toronto Press, 2001) and of *Global Anti-Terrorism Law and Policy* (Cambridge University Press, 2005) with a new second edition published by Cambridge in 2012.

Professor Roach's articles on anti-terrorism law and policy have been published in Australia, Canada, Hong Kong, India, Israel, Singapore, South Africa, the United Kingdom, and the United States. He has taught courses on comparative counter-terrorism law and policy at the National University of Singapore, the University of New South Wales and the Centre for Transnational Legal Studies in London. He was recently appointed the general report on the topic "Counter-Terrorism Law" for the Proceedings of the XIX International Congress of Comparative Law to be held in Vienna in July, 2014.

Professor Roach served on the research advisory committee of the Maher Arar Inquiry and was research director (legal studies) of the Air India inquiry. He has also appeared before legislative committees on anti-terrorism issues in Canada, Indonesia and the United States. He was qualified as an expert witness on the distinction between intelligence and evidence in the Diab extradition proceedings. He also acted as counsel for the British Columbia Civil Liberties Association in its intervention in *R. v. Khawaja* concerning the constitutionality of Canada's definition of terrorist

The United Nations

- ⊙ Security Council Resolution 1373 under Chap VII
- ⊙ Emphasis on Terrorism Financing (latest convention and tied to listing under SC 1267)
- ⊙ Exchange of Intelligence
- ⊙ Link with Immigration/Refugee Law
- ⊙ Calls for criminal laws but no definition of terrorism
- ⊙ 90 days to report to new CTC

Listing

- SC Res 1267 and related process and lack of transparency and due process
- SC Res 1822 (2008) 1904 (2009) 1989 (2011)
- Indirect domestic challenges:
- *Kadi and Al Barakaat* 881/2002 European Ct
- *Abdelrazik* [2009] FC 580
- *Ahmed* [2010] UKSC 2

activities and has won awards for his pro bono work on behalf of civil liberties and Aboriginal groups.

Definition

- No international definition but guidance SC 1566 (2004)
- Intent to cause death or serious bodily injury or hostage taking to provoke a state of terror, intimidate population or compel government or int organization to act and no justified by politics religion etc.

Definition

- Terrorism Act, 2000 (UK) as influential in many countries
- Includes property damage and interference with electronic systems for political or religious aims
- Incorporated in many new laws v. financing, preparation and facilitation

Speech

- S.C. 1624 (2005) calls for laws prohibiting incitement to commit a terrorist acts
- Terrorism again not defined
- Terrorism Act, 2006 (U.K.) prohibits direct and indirect advocacy of terrorism

Office for High Commissioner on Human Rights

- Urges CTC to consider Human Rights
- CTC's original response that its jurisdiction was to ensure compliance with SC Res 1373
- Some response on human rights in 2006

General Assembly

- Global Counter-Terrorism Strategy (2006)
- Address conditions conducive to terrorism
- Measures to prevent and combat terrorism
- Building capacity to prevent and combat
- Ensure respect for rights of all and rule of law

Some countries remain constant

- Singapore- some terrorism financing but rely on Internal Security Act
- Egypt- rely on emergency rule and special courts
- Israel – use of administrative detention and targeted killings

United States

- Patriot Act
- Homeland Security and Intelligence Reforms
- “Extra-legalism”
- Detainee Treatment Act, 2005
- Military Commissions Act, 2006, 2009 and 2011 military detention provisions

United Kingdom

- Terrorism Act, 2000
- Anti-Terrorism Act, 2001 including Part IV derogation
- Belmarsh case 2004
- Prevention of Terrorism Act, 2005 (control orders and subsequent legal challenges)
- Terrorism Acts, 2006, 2008
- 2011 TPIMs replace control orders and pa’s reduced 28-14 days

Canada

- Anti-Terrorism Act, 2001
- Public Safety Act, 2004 and new department
- Security certificates and *Suresh* 2002 SCC 2
- Criminal prosecutions including Air India
- Maher Arar et al
- Omar and Abdullah Khadr cases

Canada

- ATA- definition, proscription
- Simplified world of listing *R. v. Thambaiturai* 2011 BCCA 137 and other LTTE cases
- Investigative hearings and preventive arrest
- S.38 and evid/intelligence challenges including stays (*Charkoui II, Ahmad*)

Canada

- Security certs- common flight away from crime and correctives such as special advocates
- Review and inquiries
- Omar Khadr and extra-territorial application
- Abdullah Khadr

Nature of A-T Law

- Transnational
- Influenced by UN
- Definite Trends such as financing and speech
- Migration of Ideas and alts to crim law
- Due Process Challenges from courts
- Preventive Paradigm and use of intelligence

Implications for law schools and library

- Need to be able to study comparative law
- Need to study big picture subjects that transcend traditional doctrinal boundaries
- Merging of domestic and international law
- Challenge of staying current and utility of Int Comm of Jurists monthly bulletins