Decennium 7/7

The United Kingdom terrorist attacks on July 7, 2005, and the evolution of anti-terrorism policies, laws, and practices

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I. Introduction

The tenth anniversary (the Decennium) of the 7 July 2005, London transport bombings provides a poignant but appropriate juncture at which to reflect upon the lessons learned from those coordinated and severe terrorist attacks.[1] The killing of 52 civilians by four 'home-grown' extremists, who had been inspired by the violent ideology of Al Qa'ida, marked the worst terrorist atrocity in the United Kingdom since the Lockerbie air disaster of 1988.[2] The seminal importance of 7/7 resides in both the nature of the attack and the official response, both marking a transition to a new, but not wholly distinct, stage of United Kingdom terrorism and counter-terrorism.

As for the nature of the terrorism, the characteristics of jihadi terrorism,[3] with its vaulting ambitions, strident ideology and disregard for civilian casualties signified new challenges for the state authorities and public alike. Though it remains debatable whether it is a 'new' terrorism,[4] the nature and scale of the threat had to be re-evaluated in 2005. Above all, there was the recognition that individuals living in Muslim-heritage communities in Britain (and also elsewhere in Europe, especially France and Germany) would henceforth pose the major danger of terrorism. Though there remain threats emanating from external plots or from the incitements of resident extremist émigrés and external jihadi websites, what might be termed 'neighbour terrorism'[5] has taken centre-stage rather than terrorism from alien sources.[6]

The human and material wreckage of 7/7 was also the catalyst for signalling major changes in the long history of United Kingdom counter-terrorism policy and laws. A comprehensive strategy, entitled CONTEST, which had been prepared in secret by 2003,[7] was finally unveiled to the public in 2006.[8] The strategy includes the traditional approaches of 'Pursuit' (policing and criminal justice tactics). Protective security (dubbed 'Prepare' and 'Protect') is also highlighted, and this element builds on the Promethean and expensive duties of planning and resilience established in the Civil Contingencies Act 2004.[9] However, CONTEST also addresses the more pioneering and problematic agenda of 'Prevent' – 'tackling disadvantage and supporting reform […] deterring those who facilitate terrorism and those who encourage others to become terrorists […] engaging in the battle of ideas'.[10] Other major changes have included the reorganization of counter-terrorism agencies, especially within the police service. There has also occurred the passage of further and often controversial counter-terrorism laws, adding to the extensive catalogue already in place. The overall trend in law has been an increasing attention to criminal law, with greater emphasis on two trends – precursor crimes and crimes of expression and information. However, these trends in criminal law are not exclusive, and further developments in summary executive (Ministerial) powers have also continued to be manifest.

This paper will consist of four substantive parts. First, having now outlined some of the claimed evolutions after 7/7, the paper will offer a sense of what went before in the period from September 11, 2001, until July 7, 2005. In this way, a clearer understanding of the dynamism in terrorism and counter-terrorism can be acquired. Second, the paper will detail and analyze the changes after July 7, 2005. Third, since

[1] For details, see *Home Office*, Report of the Official Account of the Bombings in London on the 7th July 2005, 2005-06 HC 1087, 2006; *Home Office*, Addressing Lessons from the Emergency Response to the 7 July 2005 London Bombings, 2006; *Intelligence and Security Committee*, Inquiry into Intelligence, Report into the London Terrorist Attacks on 7 July 2005, Cm 6785, 2005, and Government Reply, Cm 6786, 2006.

[2] High Court of Justiciary, of 2002 – JC 99, and 2008 – HCJAC 58 (HM Advocate v Al-Megrahi); High Court of Justiciary, of 2015 – HCJAC 76 (SCCRC v Swire and Mosley). See *Klip/Mackarel*, Revue Internationale de Droit Pénal 1999, 777; *Black*, Edinburgh Law Review 1999, 85; *Aust*, International and Comparative Law Quarterly 2000, 278; *Wallis*, Lockerbie, 2001; *Grant*, The Lockerbie Trial, 2004; *Ashton*, Megrahi, You Are My Jury, The Lockerbie Evidence, 2012.

[3] See *Lentini*, Neojihadism, 2013, p. 197.

[4] See *Gray*, Al Qaeda and What It Means to Be Modern, 2003; *Neumann*, Old and New Terrorism, 2009; *Duyvesteyn*, Studies in Conflict and Terrorism 2004, 439; *Kurtulus*, Studies in Conflict and Terrorism 2011, 476; *Spencer*, Critical Studies on Terrorism 2011, 459.

[5] See *Walker*, Journal of National Security Law & Policy 2009, 121.

[6] Their suppression has included much stricter border and citizenship controls which was also reinforced after 7/7: *Walker*, Modern Law Review 2007, 427.

[7] *Omand*, Securing the State, 2010, p. 64.

[8] *Home Office*, Countering International Terrorism, Cm 6888, 2006, as revised by Cm 7547, 2009, Cm 7833, 2010, Cm 8123, 2011, Cm 8583, 2013, Cm.8848, 2014, Cm 9048, 2015. See *Walker*, The Anti-Terrorism Legislation, 3rd ed. 2014, ch. 1.

[9] See *Walker/Broderick*, The Civil Contingencies Act 2004, Risk, Resilience and the Law in the United Kingdom, 2006.

[10] *Walker/Broderick*, The Civil Contingencies Act 2004, Risk, Resilience and the Law in the United Kingdom, para. 6. The tactic is again not entirely novel but had been used in British counter-insurgency campaigns, especially in Malaya: *Dixon*, Journal of Strategic Studies 2009, 353.

history did not end on 7/7, the paper will reflect upon the more contemporary policy re-evaluations which are being pushed by the phenomenon of the foreign terrorist fighter ('FTF')[11] and the emergence of the Islamic State in Iraq and the Levant (ISIL). Finally, some observations about the future will be offered.

II. The day before: 9/11 to 7/7

The relationship between terrorism based in the United Kingdom and state anti-terrorism policy, law, and practices has been much more unremitting than implied by the signal dates of 9/11 or even 7/7. The United Kingdom can assuredly claim to have encountered more configurations and episodes of political violence than any other polity.[12] This claim is founded upon two elements. The first is historical and relates to the bygone era of the British Empire, where campaigns of political violence were experienced in Palestine, Kenya, Malaysia, Cyprus and Aden. That cumulative experience has shaped British anti-terrorist policy-making in areas such as special powers, interrogation techniques and police/military relations. The second element of experience arises from the campaigns in Ireland over a period of more than three centuries. Coming back to the present, the Terrorism Act 2000 marked an important new phase in the laws against political violence within the United Kingdom. That Act established a more unified and permanent regime and brought about important modifications, with a greater emphasis upon international terrorism. But it was not unprecedented, and 9/11 did not inflict as much of a shock on the United Kingdom's system as on many other countries. Nevertheless, the attacks of September 11, 2001, which resulted in 67 deaths of British citizens in New York, did evince a further response in the shape of the Anti-terrorism, Crime and Security Act 2001. Later legal evolutions have continued.

The legislation put in place from 2000 to 2005 can be explained by four motivations. The first is the growing awareness that the threat of terrorism is changing from modernist variants which are typically based on organisations which champion nationality based on narrow ethnicity to late modern internationalist networks, characterized by a multifaceted threat, unbounded by instrument, organization or location, and motivated by religious and cultural ideals rather than rooted in nationalist or political ideology. As discussed earlier, it remains debatable whether the resultant terrorism is wholly 'new', especially as it was realized in the United Kingdom well before 11 September 2001 that evolutions in the terrorism threat were not merely theoretical. Thus, an inquiry by *Lord Lloyd* highlighted the need to adapt legislation to international terrorism,[13] and, once the Terrorism Act 2000 was put in place, Al Qa'ida was legally proscribed (banned) right away in February 2001.[14] Any doubts about necessity or proportionality were settled by the rhetoric of Al Qa'ida, which singled out for retribution the allies of the US,[15] and also the fact that out of the nineteen 9/11 hijackers, eleven had links with the United Kingdom.[16]

The second motivation for action was a more generalized concern to increase security and to reassure the public, reflecting a more fundamental switch away from reactive policing of incidents to proactive and pre-emptive policing and management of the risk from people and to places.[17] The changes in favour of risk management are perhaps best explained by the development of a 'risk society', to use the idiom of *Ulrich Beck*,[18] in which the inherent destabilization involved in the process of 'reflexive modernization'[19] heightens the demand for security. This trend of proactivity exerts influence well beyond just counter-terrorism legislation which has derived shape from, and has influenced in turn, other areas of legal activity, including those relating to public order, drugs control, and organized crime.[20]

A third policy strand adverts to the desire to deliver counter-terrorism in a way which is entirely consistent with the protection of rights to liberty, privacy and expression. This issue had already been highlighted by official reviewers such as *Lord Lloyd* in 1996 and then by Lord Carlile in periodic reviews from 2001 onwards.[21] However, the issue was given even more prominence and authority by the coming into force in 2000 of the Human Rights Act 1998. The regard for human rights has become an abiding concern for all branches of the state ever since the coming into force of the Terrorism Act 2000. But the demand to take rights seriously is an easy mantra to express but more complicated to execute in this context.[22] For instance, this third policy strand did not rule

[11] They are defined in recital 8 of UNSCR 2178 of 24.9.2014 as 'individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict'.

[12] See further *Walker*, Criminal Law Review 2004, 311.

[13] *Lloyd/Kerr*, Inquiry into Legislation against Terrorism, Cm. 3420, 1996, ch. 1. See further *Home Office*, Counter-Terrorism Powers, Cm. 6147, 2004, Part 1, para. 5, 7.

[14] Terrorism Act 2000 (Proscribed Organisations), (Amendment) Order 2001, SI 2001/1261.

[15] See *Hansard*, House of Commons, vol. 375, col. 146, 19 November 2001, Beverley Hughes.

[16] See *McGrory/Kennedy*, The Times of 26.9.2001, p. 1.

[17] See *Ericson/Haggerty*, Policing the Risk Society, 1997.

[18] *Beck*, Ecological Enlightenment, 1995, p. 2.

[19] *Beck*, Risk Society, 1992, p. 87.

[20] See *Zedner*, Theoretical Criminology 2007, 261; *Schuilenburg*, Social Justice 2012, 73; *Ashworth/Zedner*, Prevention and the Limits of the Criminal Law, 2013.

[21] He was appointed as Independent Reviewer of Terrorism Legislation, a post which became statutory under the Terrorism Act 2006, sec. 36. See *Anderson*, New Journal of European Criminal Law 2014, 432.

[22] See *Marks*, Columbia Human Rights Law Review 2006, 559; *Gearty*, Government and Opposition 2007, 340; *Sottioux*, Terrorism and the Limitation of Rights, 2008; *Walker*, in: Breen-Smyth (ed.), Ashgate Companion to Political Violence, 2012, pp.443-463.

out the resort to derogation under Article 15 which was lodged on 18 December 2001 to allow for detention without trial under Part IV of the Anti-Terrorism, Crime and Security Act 2001. However, it has placed parameters on the indefinite reliance on extreme measures which would require derogation notices and has ruled out the recourse to a 'war on terror' approach which would involve explicit breaches of human rights beyond even the indulgence of a derogation at least as a matter of domestic policy[23] and to some extent even abroad.[24] However, the standards of international humanitarian law and not international human right law alone govern activities abroad in areas where there is no effective exertion of state authority, including the use of drones in 2015 to kill two British citizens in Syria who were allegedly plotting attacks in the UK on behalf of Islamic State.[25]

The fourth policy strand has involved a determination to justify and adopt distinct anti-terrorist laws as a permanent code, represented by the Terrorism Act 2000. That legislation contrasts with its predecessors, as indicated by the words 'Temporary Provisions' in their titles and by sunset clauses which required periodic affirmation and renewal.[26] The switch to a permanent code can be justified by at least three reasons: the need to signal the determination of the state through express powers and duties, including to defend life and democracy; the illegitimacy of terrorism as a mode of political expression; and the need to respond to terrorism as a specialized form of criminality that presents peculiar difficulties in terms of policing and criminal process because of atypical methods and targets, as well as the sophistication of their organization and training and the transnational scale of their activities in some cases. Thus, no categorical or constitutional principle blocks special anti-terrorism laws, though parameters should be observed in terms of the values of legitimacy, efficacy, and efficiency.[27]

Although the Terrorism Act 2000 represented a new phase in counter-terrorism, it was by no means a revolutionary legal statement. Whilst its permanent format was a significant departure, its substantive contents were still largely shaped by predecessor codes and can be divided into three broad themes.[28] The first, and arguably most important, is the empowerment of police investigators, with wider than normal powers to arrest, detain (the limit being currently set at 14 days after arrest),[29] question, search, and forensically test. The second involves additional criminal offences to ensure that suitable charges could apply at an early stage of terrorist plots. The significant offences here relate to the possession of materials or information (in the Terrorism Act 2000, sec. 57, 58). Third, Ministerial powers of intervention have remained prominent. The proscription (banning) of groups had long been used, but for the first time in Britain, detention without trial was introduced in late 2001. These powers became untenable in late 2004 because of the House of Lords' 'Belmarsh' decision.[30] Yet, the determination to hang onto this executive strand of powers is demonstrated by their replacement with control orders under the Prevention of Terrorism Act 2005 and then the Terrorism Prevention and Investigation Measures Act 2011 ('TPIMs'). Ministerial powers also remain available to freeze terrorist assets.[31]

III. 7/7 and beyond

Given this long history of United Kingdom engagement with terrorism and anti-terrorism, one should not talk in terms of 7/7 in the same way that US Vice President Dick Cheney claimed, '9/11 changed everything for us.'[32] Nevertheless, Prime Minister Tony Blair issued a stark warning on 5 August 2005 of future amendments: 'Let no one be in any doubt, the rules of the game are changing.'[33] The measures announced at the same time included the promise of new anti-terror legislation, including the offence of condoning or glorifying terrorism, a power to divest citizenship from those who act in a way that is contrary to national interests, the use of control orders and imprisonment for foreigners who cannot be deported, widening grounds for proscription of organizations, introducing a compulsory citizenship test, and to 'consult on a new power to order closure of a place of worship which is used as a centre for fomenting extremism, and consult with Muslim leaders in respect of those clerics who are

[23] For example, reliance upon torture is excluded: House of Lords, of 2005 – UKHL 71 (A v. Secretary of State for the Home Department).

[24] Foreign activities are constrained by human rights norms if within a sufficiently controlled occupied area: see House of Lords, of 2007 – UKHL 26 (R [Al-Skeini and Others] v. Secretary of State for Defence); European Court of Human Rights, of 7.7.2011 – App no. 55721/07 (Al-Skeini v. United Kingdom).

[25] Reyaad Khan and Ruhul Amin were killed in a strike carried out on 21 August 2015 by a Royal Air Force remotely piloted aircraft while travelling near Raqqah in Syria: *Hansard*, House of Commons, vol. 599, col. 25, 7 September 2015, David Cameron.

[26] See Northern Ireland (Emergency Provisions) Acts 1973-98; Prevention of Terrorism (Temporary Provisions) Acts 1974-89.

[27] See *Fabbrini*, *Dickson*, and *Legrand/Bronitt/Stewart*, in: Lennon/Walker (eds.), Routledge Handbook of Law and Terrorism, 2015, ch. 6, 7, 8, and 20.

[28] See for details *Walker*, Terrorism and the Law, 2011.

[29] See Protection of Freedoms Act 2012, sec. 57.

[30] See House of Lords, of 2004 – UKHL 56 (A v. Secretary of State for the Home Department); European Court of Human Rights, of 19.2.2009 – App no. 3455/05 (A v. United Kingdom). 'Belmarsh' refers to the prison in which detainees were held.

[31] See Anti-Terrorism, Crime & Security Act 2011, Part 2; Counter-Terrorism Act 2008, Part 5; Terrorist Asset-Freezing etc. Act 2010; Afghanistan (Asset-Freezing) Regulations 2011, SI 2011/1893; Al-Qaida (Asset-Freezing) Regulations 2011, SI 2011/2742.

[32] Remarks at McChord Air Force Base, Tacoma, Washington, 22.12.2003, online available at: http://georgewbush-whitehouse.archives.gov/news/releases/2003/12/20031223-1.html (19.10.2015).

[33] *Bennett/Ford*, The Times of 6.8.2005, p. 1.

not British citizens to draw up a list of those not suitable to preach and who will be excluded from our country in future'.[34] The implementation of these proposals signalled a considerable retreat from human rights principles and became a serious source of friction within the Blair government and the two Houses of Parliament. It was initially indicated that Parliament would be recalled in September 2005 to transact the legislative measures.[35] In the event, the legislative programme followed a much more leisurely pace. After all, already forearmed with most conceivable varieties of powers under the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001 and the Prevention of Terrorism Act 2005, an increasingly 'militant democracy'[36] had already been installed with few manifest legal gaps. Nevertheless, the ensuing months witnessed the delivery of some startling assaults on individual rights, especially through the Terrorism Act 2006, for which the European Convention on the Prevention of Terrorism 2005 was cited as providing added legitimacy.[37] As a result, policy, practice, and laws were changed in significant ways, as now outlined.

1. Policy

As for policy, the most important development was the elaboration and publication of the United Kingdom's CONTEST strategy in 2006, as already outlined. Most blocks in the strategy were very familiar before 7/7. But the 'Prevent' element is a radical addition. The programme contains elements of challenging extremism, disruption, supporting those at risk, increasing community resilience, and addressing social grievances.[38] Thereafter, 'Prevent' became an unprecedented and high priority element within United Kingdom anti-terrorism policy which was addressed at many levels.[39]

The most important element of 'Prevent' concerns its emphasis on aiding and involving local communities, as defined by geography and ethnic or religious clustering. The aim is to reduce extremism by making community engagement a cornerstone of counter-terrorism strategy.[40] The proposition that community involvement might prevent terrorism assumes that terrorism has resonance with communities where there is a high concentration of Muslim traditions and therefore that community-based partners can strive to reduce that appeal, can identify sources of disaffection, can aid those at risk, and can bolster police legitimacy. These assumptions incorporate the contested views that Muslim-heritage communities can be identified, can utilize innate resilience against extremism, can exercise social control over wayward factions, and can be motivated and encouraged to do so. Yet, many of these assumptions are of uncertain accuracy. British Muslims are not monolithic either in religious tenets or in ethnicity. Furthermore, the attempt to distil attractive rallying points for the potentially disaffected, which has involved an emphasis that 'Britishness' is attractive and no enemy of Islam, has encountered the problem that British identity remains highly contested and even divisive.[41] Thus, it has proven very problematic to promulgate a cohesive 'good' social identity as a rallying point against 'bad' jihadi stances.

Localities with predominant Muslim-tradition populations are not the only type of 'community' to become the focus of 'Prevent' work. Attention has also been given to prison and educational communities. Engagement has also been extended into foreign policy on the basis that problems affecting diaspora within the United Kingdom may be aggravated by malign influences elsewhere. It was claimed in 2009 that 75 % of terrorist plots in Britain link to Pakistan.[42] The Foreign and Commonwealth Office therefore engages in 'Prevent', especially by aid grants to Pakistan.

Why 'Prevent' and why after 7/7? What seemed so remarkable about those London bombings was that they were perpetrated by British citizens – 'neighbour terrorists'. They were Yorkshiremen, whose mundane backgrounds set at nought several of the tactics of the security forces which assumed cells of foreigners, though they were not all entirely divorced from foreign links and support. The same profile has been true of most major terrorist conspiracies since that time. In the light of this information, no longer can it be claimed that the enemy in war, as stated by *Carl Schmitt*, is 'in a particularly intense way, existentially something different and alien' and 'the negation of our existence, the destruction of our way of life'.[43] The main terrorist threat is no longer from archetypal outsider embodied by the convenient devil of Osama bin Laden – depicted as an alien, uncivilised cave-dweller who imports terrorism from foreign lands. The fight against foreigners remains, often now taking the form of

[34] Prime Minister's Press Conference, 5.8.2005, online available at: http://webarchive.nationalarchives.gov.uk/20130109092234/ http://www.number10.gov.uk/Page8041 (19.10.2015).

[35] For the tendency towards 'panic' legislation, see *Posner/ Vermeule*, Virginia Law Review 2006, 1091.

[36] See Sajó (ed.), Militant Democracy, 2004; *Gross/ní Aoláin*, Law in Times of Crisis, 2006; Thiel (ed.), The 'Militant Democracy' Principle in Modern Democracies, 2009; *Walker*, Mississippi Law Journal 2011, 1395; *Kirshner*, A Theory of Militant Democracy, The Ethics of Combatting Political Extremism, 2014; *Tyulkina*, Militant Democracy, Undemocratic Political Parties and Beyond, 2015.

[37] CETS No.196. See *Hunt*, European Public Law 2006, 603.

[38] See *Omand* (fn. 7), p. 101.

[39] See *Walker/Rehman*, in: Ramraj et al. (eds.), Global Anti-Terrorism Law and Policy, 2nd ed. 2012; Razak/Rehman/ Skoczylis, in: Lennon/ Walker (fn. 27), ch. 25, 26.

[40] *Briggs/Fieschi/Lownsbrough*, Bringing It Home, Community-Based Approach to Counter-Terrorism, 2006.

[41] 'British values' are defined as encompassing 'democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.' (*Home Office*, Prevent Strategy, Cm. 8092, 2011, Annex A).

[42] Compare *Richards*, Journal of Policing, Intelligence and Counter-Terrorism 2007, 7; *Herrington*, International Affairs 2015, 17.

[43] *Schmitt*, The Concept of the Political, 1976, p. 26.

marathon battles over deportation or extradition.[44] However, the embedded nature of the terrorist risk seems to demand more attention to one's neighbour as potentially friend and foe because the 2005 attacks confirmed the increasingly intimate, local and indigenous nature of terrorism. One consequence is mounting attention to the causes of extremism amongst some British Muslims, so as to manage and reduce the risk of terrorism.

While the policy development of 'Prevent' is in principle sound, its delivery since 2006 has proven highly problematic. Challenging aspects include uncertain and confused policy boundaries with community integration agendas, weak analysis and rationales in terms of alleged causal links between radicalization and terrorism and therefore programmes of 'treatment',[45] the perception of net-widening and spying on minority communities,[46] the state employment of former extremists with highly disreputable records, and inadequate audit.[47]

As a result of these criticisms, the 'Prevent' policy was subjected by the Home Office to a major review in 2011,[48] as a result of which the policy became more security-oriented, with aspects of community cohesion being left to other policies. One impact has been a reinforcement of counselling of individuals at risk through the 'Channel Programme',[49] the encouragement of self-policing by educational establishments,[50] and the greater monitoring of charities (including mosques).[51]

Conspicuously absent from the formulation of 'Prevent', even after 2011, was any legal basis. Given that critics were not noticeably assuaged by the 2011 reforms and that the advent of the FTF phenomenon after 2011 reinforced official determination to address 'indoctrination' and 'de-indoctrination', despite some local resistance,[52] further reforms have followed in 2015. Part 5 of the Counter-Terrorism and Security Act 2015, entitled the 'Risk of Being Drawn into Terrorism Etc', puts 'Prevent' (including the flagship Channel Programme) on a statutory footing, but the legislation does so in a selective way by which an unembellished framework approach is adopted. Still, it is to be hoped that this belated legal intervention will engender greater standardization and transparency through the checking of outputs and their quality, though the initial iteration more modestly underpins existing arrangements rather than strikes out in new directions.

The general 'Prevent' duties are set out in Chapter 1 of Part 5. Sec. 26 (1) imposes on specified authorities the general 'Prevent' duty that they must have due regard to the need to prevent people from being drawn into terrorism, subject to the exception of judicial (or quasi-judicial) functions in sec. 26 (4). Schedule 6 lists the specified authorities as local authorities, prison and probation authorities, education bodies, health and social care bodies, and the police. Back-up enforcement Ministerial powers are set out in sec. 29 and 30. The broad and undifferentiated duty under sec. 26 is moderated in the cases of higher and further education which forlornly sought total immunity because of the greater im-

[44] See European Court of Human Rights, of 18.1.2011 – App. no. 31411/07 (Mustafa Kamal Mustafa [Abu Hamza] v. United Kingdom); European Court of Human Rights, of 17.1.2012 – App. no. 8139/09 (Othman [Abu Qatada] v. United Kingdom); European Court of Human Rights, of 10.4.2012 – App. no. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09 (Babar Ahmad v. United Kingdom); European Court of Human Rights, of 16.4.2013 – App. no. 17299/12 (Aswat v United Kingdom).

[45] *Horgan*, Walking Away from Terrorism, 2009; *Bartlett/ Birdwell/King*, The Edge of Violence, 2010; *Ali/Stuart*, Refuting Jihadism, 2014.

[46] See *Home Affairs Committee*, Terrorism and Community Relations, 2004-05 HC 165, para. 225; *Pantazis/Pemberton*, British Journal of Criminology 2009, 646; *Greer*, British Journal of Criminology 2010, 1171; *Pantazis/Pemberton*, British Journal of Criminology 2011, 1054; *Anderson*, Report on the Operation in 2011 of the Terrorism Act 2000 and Part I of the Terrorism Act 2006, Home Office, 2012, para. 4.42 ff., 11.17; Spalek (ed.), Counter-Terrorism, Community-Based Approaches to Preventing Terror Crime, 2013, ch. 2.

[47] See *Kundnani*, Spooked, How Not To Prevent Violent Extremism, 2009; *Communities and Local Government Select Committee*, Preventing Violent Extremism, 2009-10 HC 65; *Home Affairs Select Committee*, Roots of Violent Radicalization, 2010-12 HC 1446; *Bouhana/Wilkström*, Al Qa'ida Influenced Radicalisation, Occasional Paper 97, Home Office, 2011; *Munton et al.*, Understanding vulnerability and resilience in individuals to the influence of Al Qa'ida violent extremism, Occasional Paper 98, Home Office, 2011; *Bartlett/ Miller*, Terrorism & Political Violence 2012, 1; *Thomas*, Responding to the Threat of Violent Extremism, Failing to Prevent, 2012; *Huq*, Cornell Law Review 2013, 637.

[48] *Home Office*, Prevent Strategy, Cm. 8092, 2011; *Carlile*, Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy, Home Office, 2011.

[49] *Home Office*, Channel, Protecting vulnerable people from being drawn into terrorism, A guide for local partnerships, 2012.

[50] See *Department for Innovation*, Universities and Skills, Promoting Good Campus Relations, Fostering Shared Values and Preventing Violent Extremism in Universities and Higher Education Colleges, 2008; *Universities UK*, Freedom of speech on campus, rights and responsibilities in UK universities, 2011, and External speakers in higher education institutions, 2013.

[51] See *Walker*, in: King/Walker (eds.), Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets, 2014, ch.11.

[52] *O'Toole et al.*, Sociology 2015, doi: 10.1177/ 0038038514564437.

portance and fragility of academic freedom [53] but did manage to secure some special attention.[54] Thus, by sec. 31 (2),[55] the proprietor or governing body of a higher and further education institution must have 'particular regard' to the duty to secure freedom of speech, as specified by sec. 43 (1) of the Education (No. 2) Act 1986,[56] and to the importance of academic freedom, as described in sec. 202 (2) (a) of the Education Reform Act 1988. Sec. 31 (3) places corresponding duties on the Secretary of State to have particular regard to those values when issuing guidance or directions in this sector. The other concession to academic sensibilities is in sec. 32. Relevant higher and further education bodies can be monitored by authorities already in that sector rather than by the Secretary of State, subject to an order of delegation.[57] However, the Secretary of State retains under sec. 32 the power to give directions.

The details of the new duties remain relatively sketchy. There is general 'Prevent' duty Guidance,[58] with special guides for higher and further education.[59]

Chapter 2 of Part 5 deals with 'Support etc for people vulnerable to being drawn into terrorism' which essentially is a reference to what in England and Wales is called the 'Channel Programme'. Under sec. 36, the Programme becomes a statutory obligation for local authorities to maintain. Chapter 2 is another welcome step towards legality, but is the Channel enterprise worthwhile? The official assertions that the Channel Programme has been successful[60] are not sustained by published evidence.[61] Performance measures in terms of referral rates, costs, and outcomes are not specified. Furthermore, the definitions of 'extremism', 'radicalization', and 'Britishness' remain imprecise and lacking legal certainty.

2. Practice

The changes in security practices since 7/7 can be stated more succinctly. What has occurred has involved a considerable reinforcement of trends rather than wholly new trends. Those trends might be termed 'Amplification' and 'Melding'.[62] Amplification provides added resources and capability, and one aspect of that added resource has been expended on melding which has involved the crossing of functional and structural boundaries between two types of organisation: police forces and intelligence agencies.

In consequence, both of these key counter-terrorism institutions have been 'amplified' (expanded). This trend is especially noticeable with the domestic Security Service (MI5). It now has a staff of around 4,000 (representing a three-fold increase since 2001). As well as the headquarters in London, since 2005, eight regional offices have been established in Britain, additional to an existing headquarters in Northern Ireland. The 'Single Intelligence Account' for all agencies in 2014/15 was 1.9 billion GBP[63] which represents a three-fold increase on levels at 9/11. There are no signs of any trimming of budgets despite the years of economic austerity in the United Kingdom since 2010, which have been applied to almost all public agencies (including the police but not the counter-terrorism police).[64]

As for melding, this trend is evidenced by co-location of staff on common projects and also the overlap of functions. In this way, the police have deepened their involvement in intelligence work. After 2005, four regional police Counter-Terrorism Units and a further five regional Counter-Terrorism Intelligence Units were established; all have close links to security agents and to prosecutors.[65] This post-7/7 melding builds on the liaison work of the Joint Terrorism Analysis Centre ('JTAC'), formed in 2003 within the Security Service and dealing with intelligence of threats and processing its assessments of them.[66] A major function of JTAC

[53] See *Joint Committee on Human Rights*, Legislative Scrutiny, Counter-Terrorism and Security Bill, 2014-15 HL 86/HC 859, para. 6.11; *Hansard*, House of Lords, vol. 759 col. 224, 28 January 2015. See further *Barendt*, Academic Freedom and the Law, 2010, ch. 2.

[54] See *Hubble*, Freedom of speech and preventing extremism in UK higher education institutions, CBP 7199, 2015.

[55] See further Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism), (Amendment and Guidance) Regulations 2015, SI 2015/928, Part. 3 r. 5.

[56] See High Court, of 1991 – 1 QB 124 (R v. University of Liverpool ex p Caesar-Gordon); High Court, of 1995 – ELR 2013 (R v. University College London ex parte Riniker).

[57] A distinct monitoring framework will be devised for England and Wales but not in Scotland: *House of Lords Secondary Legislation Scrutiny Committee*, 7th Report of Session, 2015-16 HL 28, para. 6.

[58] *HM Government*, Revised Prevent Duty Guidance, 2015.

[59] *HM Government*, Prevent Duty Guidance, for further education institutions in England and Wales, and Prevent Duty Guidance, for higher education institutions in England and Wales, 2015.

[60] *National Policing Lead for Counter-Terrorism*, Assistant Commissioner Mark Rowley, House of Commons Home Affairs Committee, Counter Radicalisation, 2014-15 HC 311, p. 11.

[61] The Home Office, Factsheet– The Counter-Terrorism and Security Bill – Part 5 Ch. 2 – Channel (London: 2014), reveals only that: 'Since its national rollout in April 2012, over 2000 people have been referred to Channel and hundreds have been offered support. Between April 2012 and end-March 2014 National Counter-Terrorism Policing reported a 58 % increase in Channel referrals.'

[62] See *Walker/Staniforth*, in: Masferrer/Walker (eds.), Counter-Terrorism, Human Rights and the Rule of Law, Crossing Legal Boundaries in Defence of the State, 2013.

[63] *HM Treasury*, Spending Round 2013, Cm. 8639, 2013, p. 54.

[64] *HM Inspector of Constabulary*, Adapting to Austerity, 2011.

[65] See *Home Office*, Pursue, Prevent, Protect, Prepare, Cm. 7547, 2009, para 8.10; *Staniforth*, Blackstone's Counter-Terrorism Handbook, 2009, ch. 3.

[66] See *Intelligence and Security Committee*, Annual Report 2002-03, Cm. 5837, 2003, para. 62, and Annual Report 2003-04, Cm. 6240, 2004, para. 92.

is to overcome the tensions and rivalries which have existed for decades within security agencies and between security agencies and the police.

The disposition of amplification and melding within the counter-terrorism agencies builds on the engagement of wider communities in local government, education and elsewhere, all reflecting the perception of 'neighbour terrorism' and the need to be closer to Muslim communities. The Home Office believes that it has created de facto an 'integrated national structure' for terrorism.[67] This development has essentially comprised a bureaucratic restructuring which has been secured through a relatively open process. Therefore, the United Kingdom government has avoided the more fluid reliance on 'entrepreneurial actors', such as investigating magistrates in France and Spain, which arise from the creation of uncertain and sometimes unplanned overlapping mandates.[68] But the delivery of a refurbished counter-terrorism structure has not solved all problems and has created some new ones. Sustainability is threatened by the national economic situation. Above all, commitment to democracy and rights should be strengthened in counter-terrorism responses,[69] but they are still far from secured in this new disposition of counter-terrorism policing and security which has not involved any new forms of oversight for counter-terrorism agencies, especially in the substantially revised policing sector.

3. Laws

Legal developments after 7/7 have also been evolutionary. The mixed picture of high profile executive powers – detention without trial, control orders, and TPIMs – alongside criminal prosecution has altered but not disappeared. Now, the emphasis is upon the primacy of criminal prosecution. Thus, the then-Home Officer Minister Tony McNulty announced in 2008 that 'prosecution is – first, second and third – the government's preferred approach when dealing with suspected terrorists'[70]. One might contrast the assertion of President George W. Bush 2001 that 'it is not enough to serve our enemies with legal papers'[71], a policy stance reflected in continuing detentions in Guantanamo, drone attacks, and a 'war on terror' without end.[72] The United Kingdom policy of criminal prosecution has been implemented in at least five ways by legal reformulations since 7/7.

The first is that police investigation powers have been further expanded in an effort to find viable evidence against suspects. There are several such examples in Part 1 of the Counter-Terrorism Act 2008, whereby the police gained powers to remove documents for examination, to take fingerprints and bodily samples, and to share information with other agencies. More controversial is Part 2 which allows for post-charge questioning and only came into force, after many second thoughts and doubts about the propriety of the reform in an adversarial setting, in July 2012.[73] However, this expansive trend has also been subjected to the selective application of liberalization, with two noteworthy results. One has been the reduction of post-arrest police detention powers in terrorism cases from 28 to 14 days maximum, albeit with a reserve power to restore 28 days in an emergency.[74] Even more drastic (since it has potentially affected tens of thousands of people and not just hundreds) has been the reform of suspicionless stop and search counter-terrorism powers, involving stricter criteria for invocation, application and review.[75] These reforms have brought about the effective termination of the use of area searches for terrorism purposes in Britain, though other powers remain vibrant at ports/airports and in Northern Ireland.[76]

The second way in which criminalization has been reinforced is by additions to the catalogue of precursor crimes which are formulated to allow early intervention. These had existed in the United Kingdom since the Terrorism Act 2000, whereby sec. 57 and 58 allow for conviction on the basis of materials or information which might be useful to terrorism. A high proportion of terrorism prosecutions were for these offences.[77] But the possibility of prosecution for precursor crimes was significantly augmented by the Terrorism Act 2006 which added three offences: engaging in conduct in preparation of terrorism contrary to sec. 5, and training offences contrary to sec. 6 and 8 (which add to training in weaponry under sec. 54 of the 2000 Act). All have been frequently invoked, especially sec. 5 which attracts a penalty up to life imprisonment.[78]

[67] *Home Office*, From the Neighbourhood to the National, Cm. 7448, 2008, para. 6.12.
[68] See *Foley*, Security Studies 2009, 435.
[69] *Abrams*, Security Studies 2007, 223.
[70] *Hansard*, House of Commons, vol. 472, col.561, 21 February 2008.
[71] Online available at: http://georgewbush-whitehouse.archives.gov/news/releases/2004/01/20040120-7.html (19.10.2015).
[72] See *Duffy*, The 'War on Terror' and the Framework of International Law, 2nd ed. 2015.
[73] See Counter-Terrorism Act 2008 (Commencement no 5) Order 2012 SI 2012/1121; Counter-Terrorism Act 2008 (Commencement no 6) Order 2012, SI 2012/1724; Counter-Terrorism Act 2008 (Commencement No.7) Order 2012 SI 2012/1966. See *Walker*, Post-charge questioning in UK terrorism cases, Straining the adversarial process, International Journal of Human Rights (forthcoming).
[74] See Protection of Freedoms Act 2012, sec. 57, 58.
[75] See Protection of Freedoms Act 2012, sec. 59 ff.
[76] See Terrorism Act 2000, Sched 7; Justice and Security (Northern Ireland) Act 2007, sec. 21, 24.
[77] See *Corniford*, Law & Philosophy 2013, 485; *Walker* (fn. 8), ch. 6.
[78] See for example Court of Appeal, R v. Farooqi, Newton, and Malik, 2013, EWCA Crim 1649; Court of Appeal, R v. Khan, 2013, EWCA Crim 468; Court of Appeal, Dart v R, 2014, EWCA Crim 2158.

A third aspect, and reinforcing policies both of precursor crimes and 'Prevent', are the extra offences set out in the Terrorism Act 2006, sec. 1 and 2, of direct and indirect incitement to terrorism.[79] These are complex offences which demand a little more than an 'apology of terrorism' because they contain a requirement of the likelihood of emulation in present circumstances of terrorism activity. Few prosecutions have ensued, and so the main impact has been the symbolic denunciation of extremist speech and also the issuance of a standing threat designed to chill extremist speech. The main site of contestation is the internet. There have been some prosecutions,[80] but much more important has been the establishment of administrative modes of engagement between police and communications service providers in which requests for the take-down of extremist materials are readily actioned.[81] Despite bad publicity for Facebook in the light of the Woolwich killing in 2013,[82] when they were accused of failure to act proactively, the service providers do take action of their own accord and never go against police demands, so that formal action has never been invoked.

A fourth aspect of criminal justice net-widening is that the Terrorism Act 2006, sec. 17, extends jurisdiction for offences in the Terrorism Act 2006, sec. 1, 6 (in part), and 8 to 11, and in the Terrorism Act 2000, sec. 11 (1) and 54. Sec. 17 gives effect to Art. 14 of the Council of Europe Convention on the Prevention of Terrorism in regard to the offences in sec. 1 and 6. Sec. 8 is included since it is notorious that much terrorist training occurs abroad. Art. 9 of the International Convention for the Suppression of Acts of Nuclear Terrorism 2005[83] is the basis for the extension to sec. 9 to 11. The extensions did not include sec. 57 or 58 of the Terrorism Act 2000 or sect. 5 and 6 (in part) of the Terrorism Act 2006. In view of the growing activities of FTFs, these 'loopholes' in regard to the Terrorism Act 2006 offences only were closed by the Serious Crime Act 2015, sec. 81, though evidence-gathering from Iraq and Syria will often be reliant upon internet communications provided by the boastful FTFs themselves.

The fifth aspect of boosting criminal prosecution involves the provision of harsher penalties. The English judges have needed little direction to be tough on terrorists, whether before 7/7 or afterwards, and their sentencing pronouncements have emphasised punishment, retribution, and deterrence, without much weight for rehabilitation.[84] This trend culminated in a whole life sentence for Michael Adebolajo, one of the killers who attempted to decapitate a soldier, Lee Rigby, in Woolwich in 2013.[85] Nevertheless, harsh sentencing has also been endorsed by Parliament after 7/7. Thus, the Counter-Terrorism Act 2008, Part 3, ensures that terrorism is treated as an aggravating factor in sentencing. Furthermore, Part 4 sets up a system of notification. Persons convicted of terrorist offences can remain subject to restrictive conditions for decades after release from prison. Next, Part 1 of the Criminal Justice and Courts Act 2015 increases the maximum penalty on indictment for three terrorism-related offences (including weapons training for terrorism under sec. 54 of the Terrorism Act 2000 and training for terrorism under sec. 6 of the Terrorism Act 2006). It also adds some terrorism offences to the enhanced dangerous offenders sentencing scheme and creates a new custodial sentence for certain terrorism-related offenders in order to rule out automatic release half way through their sentence and requires Parole Board approval after a risk assessment as well as adding a mandatory year of release under supervision for those who serve out their whole custodial terms.

Has this policy of criminalization worked? It has in the sense that there is a steady stream of arrests leading to convictions, with a high conviction rate, and also far fewer recent allegations of police maltreatment or miscarriages of justice compared to the era of Irish terrorism.[86] Around 120 terrorist convicts are held in prison at any one time.[87] Amongst the drawbacks are the financial costs of trial and imprisonment, the need for high levels of proof, and the dangers of proof in open court to the viability of investigative techniques and informants. Despite the latter drawbacks, the criminal courts have largely remained open [88] with one exception during the prosecution of Incedal and Bouhadjar.[89] However, civil litigation can be subjected to Closed Material Procedures under the Justice and Security Act 2013 in order to protect national security interests.[90]

[79] See *Walker* (fn. 8), ch. 2.

[80] See for example Court of Appeal, of 2012 – EWCA Crim 2820 (R v. Faraz); Court of Appeal, of 2015 – EWCA Crim 1341 (R v. Runa Khan).

[81] The police receive public alerts through the Counter-Terrorism Internet Referral Unit (CTIRU) which was set up in 2010 and can issue formal take-down notices under the Terrorism Act 2006, sec. 3. On this model, a Europol Internet Referral Unit was established in 2015.

[82] See *Intelligence and Security Committee*, Report on the intelligence relating to the murder of Fusilier Lee Rigby, 2014-15 HC 795.

[83] UNTS vol. 2445, p. 89.

[84] See *Lennon/Walker*, in: Lennon/Walker (fn. 27), ch. 30.

[85] See Court of Appeal, of 2014 – EWCA Crim 2779 (R v. Adebolajo and Adebowale).

[86] See *Walker*, in: Walker/Starmer (ed.), Miscarriages of Justice, 1999, ch. 2

[87] See *Home Office*, Operation of police powers under the Terrorism Act 2000 and subsequent legislation, Arrests, outcomes and stops and searches, quarterly update to 31 December 2014, 2015, Fig.4.1; 124 prisoners were held on 31 December 2014.

[88] See further *Walker*, in: Gross/ni Aoláin (ed.), Guantanamo and Beyond, 2013; *Nagesh*, Justice of the Peace 2015, 215.

[89] Court of Appeal, of 2014 – EWCA Crim 1861 (Guardian News v. Incedal and Bouhadjar).

[90] See *Tomkins*, Israel Law Review 2014, 305; *Walker*, in: Martin/Bray/Kumar (eds.), Secrecy, Law and Society, 2015.

An important proviso to this emphasis on criminalization is that one should not discount the executive measures against terrorism. While detention without trial ended in 2005, first there were replacement control orders and now TPIMs which have both allowed severe intrusions into the lives of designated suspects. Furthermore, the slightly more relaxed regime of TPIMs compared to control order[91] has now in part been reversed by the reintroduction in 2015 of a power of relocation (or what critics call 'internal exile').[92] In addition, executive powers remain to proscribe organizations and to impose financial sanctions. But, to put these measures into perspective, prosecutions for membership of a proscribed organization are very rare, and most of the 67 foreign proscribed groups have no activities in the United Kingdom.[93] Equally, the numbers of persons affected by TPIMs and financial sanctions are also very modest; indeed, there were no TPIMs in force in the first half of 2014.

IV. 'Horrific and barbaric crime' and the FTF phenomenon

The quotation in the heading of this part of the paper is taken from comments by the Court of Appeal in the killing of Lee Rigby by Michael Adebolajo and Michael Adebowale.[94] That crime is instructive. It first tells us that the phenomenon of FTFs existed before the advent of the Islamic State and other extreme groupings in Syria and Iraq. Thus, Adebolajo himself had been intercepted in Kenya in 2010 before he could join up with Al-Shabaab in Somalia and was then returned to the United Kingdom after some physical abuse. But for every such instance of interception, a greater number of would-be jihadis manage to evade the checks. For those who are detected, the British authorities will question them on return under special port control powers under Schedule 7 of the Terrorism Act 2000. Some are then subjected to the Channel Programme, some are just kept under surveillance to a greater or lesser extent (Adebolajo being one of the less successful cases), and some have been prosecuted (under the Terrorism Act 2006, sec. 5, for example).[95]

A debate has ensued throughout Europe as to whether FTFs represent a greater terrorism threat than what existed before. Studies by *Hegghammer* and by the RAND Corporation suggest that only a minority engage in attacks at home, but those who do resume militant operations are more effective exponents than non-veterans.[96] One recent US-based paper was unfortunately entitled, 'Be Afraid. Be A Little Afraid' and rather played down the dangers.[97] After the events of Paris and Verviers, it might be sensible to be a little bit more than 'a little afraid'. Certainly, UN Security Council Resolution 2178 ('UNSCR 2178') represents a far less sanguine view on the part of the international collective. The UNSCR 2178 requires states to address the FTF threat by preventing suspects from entering or transiting their territories and by passing legislation to prosecute FTFs (art. 1-10). There is also mention of 'Countering Violent Extremism in Order to Prevent Terrorism' (art. 15-16). While UNSCR 2178 reaffirms the need to observe all obligations under international human rights law, international refugee law, and international humanitarian law,[98] it omits any definition of 'terrorism' and so is vulnerable to misinterpretation or even abuse by self-serving national regimes.[99] Nevertheless, the international demand for action has also been answered by the Council of Europe's Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism 2015, which demands the criminalization of participating in an association or group for the purpose of terrorism (creating for the first time an international power of proscription or even of association de malfaiteurs as in art. 450-1 French Penal Code), receiving training for terrorism, and travelling abroad for the purpose of terrorism.

The two abiding concerns of UNSCR 2178, foreign terrorist fighters ('FTFs') activities and Countering Violent Extremism responses, became the principal pillars of the United Kingdom's Counter-Terrorism and Security Act 2015. Having dealt already with the implementation of 'Prevent', attention here is given to measures against FTFs. Though previous measures have been taken to ensure the exclusion or

[91] See *Home Office*, Review of Counter-Terrorism and Security Powers, Cm. 8004, 2011; *Macdonald*, Review of Counter-Terrorism and Security Powers, Cm. 8003, 2011.

[92] Counter-Terrorism and Security Act 2015, sec. 16.

[93] For the list as at 27.3.2015 (including also 14 Northern Ireland based groups), see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417888/Proscription-20150327.pdf (19.10.2015).

[94] Court of Appeal, of 2014 – EWCA Crim 2779 (R v. Adebolajo and Adebowale), para. 45 per Lord Chief Justice Thomas.

[95] See for instance Crown Court, of 20.5.2014 (R v. Mashudur Choudhury), online available at: https://www.cps.gov.uk/publications/prosecution/ctd_2014.html (19.10.2015);
Crown Court, of 6.2.2015 (R v. Imran Khawaja), online available at: http://www.cps.gov.uk/news/latest_news/briton_jailed_for_terrorist_activity_in_syria/index.html;
Court of Appeal, of 2015 – EWCA Crim 764 (R v. Bhatti). Around 100 persons have been charged with offences on return from Syria: http://www.bbc.co.uk/news/uk-32735484 (19.10.2015).

[96] *Hegghammer*, American Political Science Review 2013, 1; *Jones*, The Extremist Threat to the U.S. Homeland, 2014. See also *Skidmore*, Foreign fighter involvement in Syria, 2014; Al Qaeda Sanctions Committee, Analysis and Recommendations with regard to the Global Threat from Foreign Terrorist Fighters, S/2015/358, 2015; *Hegghammer/Nesser*, Perspectives on Terrorism 2015, 13.

[97] *Byman/Shapiro*, Be Afraid, Be a Little Afraid, Brookings Policy Paper 34, 2014.

[98] Recital, para. 7.

[99] See *Saul*, Defining Terrorism in International Law, 2006.

removal of suspected terrorists from the United Kingdom,[100] a new terrorism threat was felt to arise from the fact that around 500 FTFs had travelled from the United Kingdom, out of a total of 2,600 Western Europeans and around 16,000 in total (with 11,000 from the Middle East).[101] Therefore, Part 1 of the 2015 Act seeks to interdict FTFs by 'preventing suspects from travelling; and dealing decisively with those already here who pose a risk'.[102]

For outgoing FTFs, sec. 1 provides that when a constable has reasonable grounds to suspect that a person is attempting to leave the United Kingdom for the purposes of involvement in terrorism-related activity abroad, powers to require production of, search for, inspection of, and retention of, that person's travel documents (meaning a passport and tickets) may be applied.[103] In order to retain any travel document, the constable must seek authorization from a senior police officer (at least of the rank of superintendent) as soon as possible, and authorization may be granted on the same reasonable grounds for suspicion.[104] If authorization is granted, the travel document may be retained for up to 14 days.[105] Extension of the 14-day period is considered by a judicial authority and must be granted (for up to 30 days in total) if satisfied that the investigation is being conducted diligently and expeditiously and without regard to the merits of the case.[106] After 30 days, and in the absence of other independent legal proceedings, the travel documents must be returned.

Alongside powers to interdict suspected outgoing FTFs, the legislation equally seeks to interdict incoming FTFs with a system of Temporary Exclusion Orders ('TEO's) in sec. 2 to 15 and Schedules 2 to 4. By sec. 2 (2), the Secretary of State may impose a TEO provided five conditions (A to E) in subsections (3) to (7) have been satisfied: the Secretary of State must reasonably suspect that the individual is, or has been, involved in terrorist related activity[107] outside the United Kingdom, must reasonably consider that it is necessary to impose a TEO to protect the public in the United Kingdom from a risk of terrorism, must reasonably consider that the individual is outside the United Kingdom when the order is imposed, and the individual must have the right of abode in the United Kingdom. In addition, the TEO may be imposed only after a court has given prior permission or, if the case is urgent, with subsequent referral and permission. The prime purpose of TEOs is not actually exclusion but managed return. Therefore, sec. 5 to 8 deal with arrangements for return. By sec. 5, a person subject to a TEO will be given a permit to return to the United Kingdom which will specify conditions, including the period of time for return and the travel arrangements. The management of the returnee does not end at the border. Instead, by sec. 9, obligations can be imposed after return. The obligations amount to a kind of TPIM-lite regime and can include obligations to report to a police station, to notify the police of residence details, and attendance for appointments (such as for de-radicalization programmes, as well as more welfare-oriented discussions about education or housing). The main policy objection to TEOs is that they represent a disincentive to return and thereby encourage the adoption of terrorism as a way of life. The result is to some extent a reversal of the official policy not to 'export risk' to third countries, especially as affected foreign authorities probably will have less information and capability to deal with the risk than the United Kingdom.[108]

V. Conclusion

The official assessment is that 'the UK faces a serious and sustained threat from terrorism'.[109] As a result, the security threat level was increased to 'severe' on 29 August 2014, signifying that an attack is highly likely. Within this heightened sense of public vulnerability, a holistic counter-terrorism strategy, such as represented by CONTEST, seems appropriate. It is hoped that the United Kingdom will continue to emphasise the need to respond to 'neighbour' terrorism primarily through prosecution, backed by the further management of anticipatory risk through tactics of Prevent, Prepare and Protect. But with risk-based responses comes uncertainty, giving rise to the inevitability that innocent persons and communities will be unevenly affected and that the discomfort of state intervention will not easily be confined to exceptional situations bounded by temporal, spatial or communal divisions.

Even after paying the price of the existing discomforts of counter-terrorism policies, laws, and practices, one can be certain that not every catastrophe will be averted. The cultural induction of immigrant communities into Western values and lifestyles will prove very difficult owing to the perceived shallowness of those lifestyles and the hypocrisy in the adherence to proclaimed ideals. It is also difficult to compete in the market place of ideas against the narratives of jihadism which speak in simplistic, hedonistic, and graphic language

[100] See *Walker*, Modern Law Review 2007, 427; *Gower*, Deprivation of British Citizenship and Withdrawal of Passport Facilities, SN/HA/6820, 2015.

[101] See *Saltman/Winter*, Islamic State, The Changing Face of Modern Jihadism, Quilliam, 2014, p. 45. See also EU Counter-Terrorism Coordinator in consultation with the Commission services and the EEAS, Foreign Fighters and returnees (Brussels: 16002/14, 2014).

[102] *Hansard*, House of Commons, vol. 585, col.25, 1 September 2014.

[103] See further CTS Act 2015, Sched 1, para. 2, 15; Counter-Terrorism and Security Act 2015 (Code of Practice for Officers exercising functions under Schedule 1) Regulations 2015, SI 2015/217; *Home Office*, Code of Practice for Officers exercising functions under Schedule 1 of the Counter-Terrorism and Security Act 2015 in connection with seizing and retaining travel documents, 2015 ('Code of Practice – Travel').

[104] CTS Act 2015, Sched 1, para. 4.

[105] CTS Act 2015, Sched 1, para. 5.

[106] CTS Act 2015, Sched 1, para. 8.

[107] See sec. 14 (4), (5).

[108] House of Commons Standing Committee E, col. 271, 25 October 2005, Tony McNulty.

[109] *Cabinet Office*, National Risk Register of Civil Emergencies 2010 edition, 2010, para. 2.77.

not available to official spokespersons. As a result, the dismal prospect is that, no matter how much the state strives to counter international terrorism, current emanations of violent extremism will take generations to assuage and will demand more than the efforts of a transitory government in one corner of Europe. It is also predictable that the United Kingdom state will in the meantime continue to generate new proposals for suppression of activities, some of which will be sensible and some alarming.[110]

[110] In the latter category are the ideas about 'counter extremism' which are to be the subject of legislation in late 2015: *Cabinet Office and Prime Minister's Office*, Queen's Speech 2015, pp. 62-63.