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Photo: Tributes after terrorist attack. Steve Parsons/PA Wire/PA Images

Countering Terrorism and Violent Extremism in the United Kingdom

Briefing Paper, June 2021

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About Us

The Bulan Institute for Peace Innovations is a research institute and non-governmental organization that aims to promote peacebuilding and human rights-based dialogue on security in Eurasia, Central Asia, and South Asia. Its headquarters are located in Geneva, Switzerland, with an additional regional office in Bishkek, Kyrgyzstan. The Institute works to promote human rights through field-centered research on preventing terrorism and violent extremism, the repatriation of former foreign fighters and associated rehabilitation and reintegration programs. Through collaboration with national and international civil society actors, the Bulan Institute aims to engage in international peacebuilding efforts. Since 2018, the Bulan Institute has been observing state policies regarding returning foreign fighters, with a special focus on women and children.

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Table of abbreviations

CBRN terrorism	Chemical, biological, radiological and nuclear terrorism
CONTEST	United Kingdom's counterterrorism strategy
CVE programme	Countering Violent Extremism Programme
DDP	Desistance and Disengagement Programme
EC	European Council
IRA	Provisional Irish Republican Army
ISC	Intelligence and Security Committee
ISIS/ISIL	Islamic State of Iraq and Syria/the Levant
JTAC	Joint Terrorism Analysis Centre and the Security Service
MI5	Security Service, Military Intelligence, Section 5
NSS	National Security Strategy
OIR	Operational Improvement Review
TEO	Temporary Exclusion Orders
TPIMs	Terrorism Prevention and Investigation Measures
UK	United Kingdom
UNSC	United Nations Security Council

1. Introduction: Fighting Extremism and Terrorist Threats in the United Kingdom

The way states understand and handle terrorist threats has drastically changed with the 2001 attacks against New York and Washington. In the United Kingdom (UK), although the government had already strengthened its counterterrorism capacity before those attacks, including through legislation such as the Terrorism Act 2000,¹ its focus on countering all forms of domestic and international terrorism substantially increased in 2001. To gain insight into the United Kingdom's approach towards terrorism and violent extremism, this briefing paper seeks to present the evolution of the country's objectives, legal framework, strategies and practices regarding those phenomena. For this purpose, this paper starts with a short review of the historical context and the main challenges faced by the UK (Section 1), followed by a presentation of some of the most important legal provisions and national strategies introduced by the government in order to tackle terrorist threats targeting its population and interests (Section 2). Lastly, it discusses the process of implementation of these laws and policies and their practical application. To that aim, some of the country's key terrorism-related cases and prosecutions are analyzed and the evolution of the non-criminal tools and options used by the authorities to counter different terrorist threats is assessed.

1.1 Historical Context and Evolution of the Level of Threat

In the late 20th century, the UK (as well as its interests overseas) was repeatedly targeted by various terrorist organizations and agents, following a broad range of motives, imperatives and values. For instance, between 1969 and 1998, approximately 3500 persons lost their lives on account of Irish-related terrorism.² Owing to the tensions and conflicts in the Middle East, the late 70s and early 80s witnessed the emergence of militant groups with staunch religious agendas, as well as individuals supporting violent extremist organizations settling in London. In the 90s, Al-Qaeda emerged as one of the most significant threats to the country, as illustrated by the Security Service Annual Report for 1997–1998.³ The 21st century marked the development of the Islamic State of Iraq and the Levant (ISIL/ISIS) and the proclamation of its “Caliphate” in 2014, as well as the rise of the phenomenon of foreign fighters. Transformation within the UK's policies are closely linked to changes in the level and nature of threats targeting the country's population and interests and are arguably connected to the emergence or fall of new actors, the intensification of armed conflicts, or the development of emerging weapons or technologies. With regards to terrorist attacks, the country has faced different levels of threats, increasing with incidents such as the 2005 London attacks.⁴ Although the number of deaths related to terrorist incidents has decreased within the last decade, the threat to the country is considered to remain substantial.

The British Secretary of State, presenting its national counterterrorism strategy (CONTEST) in June 2018, identified ISIS' growing influence and the formation of its “Caliphate”, together with the persistent threat presented by Al-Qaeda, as the main terrorism-related risk for the country's national security.⁵ ISIS' capacity to “direct, enable and inspire” attacks using the internet and other technological

¹ HM Government, Terrorism Act 2000, Available at <https://www.legislation.gov.uk/ukpga/2000/11/contents>

² Home Office, *The United Kingdom's strategy for countering international terrorism*, March 24, 2009. Available at <https://www.gov.uk/government/publications/the-united-kingdoms-strategy-for-countering-international-terrorism>

³ Security Service MI5, Christopher Andrew, *The Rise of Islamist Terrorist Threat*, Available at <https://www.mi5.gov.uk/the-rise-of-the-islamist-terrorist-threat>

⁴ Esme Kirk-Wade and Grahame Allen, “Terrorism in Great Britain: The Statistics,” December 3, 2021. Available at <https://commonslibrary.parliament.uk/research-briefings/cbp-7613/> pp. 5.

⁵ HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism* (hereinafter *CONTEST 2018*), 2018, London: The Stationery Office Limited, 7 Available at

advances is considered particularly dangerous, as it reinforces the risk for British nationals or residents to plan or take part in local attacks. Although the level of threat to the UK was considered to be “severe” in December 2020, it was lowered to “substantial” as of March 2021, based on the assessment of the Joint Terrorism Analysis Centre and the Security Service (JTAC) of the MI5, which relies on available intelligence to determine the current degree of likelihood for terrorist attacks.⁶

1.2 Main Challenges Faced by the United Kingdom

As reaffirmed in CONTEST (2018), ISIS and Al-Qaeda represent a large part of the terrorist threat targeting the United Kingdom.⁷ Relying upon the ideological foundations of Salafi-Jihadism accompanied by the rejection of democratic values and a contempt for Western societies, these groups have directed large-scale mass-casualty attacks in Europe, including in the UK.⁸ The increased use of simple tools and weapons, reliance on easily accessible materials (including homemade bombs, cold weapons or vehicles), as well as the prospective use of weapons relying on leading-edge technologies and scientific discoveries,⁹ have diversified the way terrorist attacks were conducted. The possible scope, frequency and severity of attacks are therefore greater than ever. The United Kingdom plays a key role in the global efforts to curtail ISIS’ military and indoctrination capacities around the globe.¹⁰ The armed group’s influence over its “Caliphate” has been largely eroded by the opposition of international and state-led coalitions aiming to defeat ISIS, whose territories were regained in 2017.¹¹ Nevertheless, the groups’ control over individuals all around the world and its ability to proliferate its extremist ideology and values without controlling physical territories (e.g., by inspiring lone actors or recruiting affiliates) is considered to pose a severe risk to countries’ national security.

The issue of Islamic radicalization and homegrown threats represents an additional worrying threat for the government. Although radicalized individuals do not necessarily turn to violent extremism or terrorism, there is a significant probability that those who take an active part in the execution or planning of terrorist attacks have undergone a process of radicalization, thus explaining the UK’s efforts to understand radicalization processes. There is no single process of radicalization but a series of interconnected reasons that may result in the rise of domestic and international radical organizations. These factors can be broadly organized into three distinct categories: international geopolitics and events including armed conflicts (e.g. conflicts in Algeria or Kashmir, 9/11 and the war on terror, the UK’s intervening role in Afghanistan, Syria and Iraq); long-term domestic factors and systemic inequalities (such as poverty, unemployment, Islamophobia); or personal experiences (such as loss of a relative, migration, criminal activity or imprisonment).¹² Specific settings and environments, including universities, are believed to have facilitated radicalization, since peer pressure or group bonding can accelerate such a process. This burgeoning quandary of radicalization, emerging in an international

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf

⁶ Security Service MI5, Available at <https://www.mi5.gov.uk/threat-levels>

⁷ See *CONTEST 2018*, 7

⁸ *Ibid.*

⁹ E.g. chemical or biological weapons. Although the risk of attacks relying on chemical or biological weapons on the UK’s territory is considered limited, preventive action has been developed by the government; see

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf, p. 48

¹⁰ HM Government, *UK action to combat Daesh*, Available at <https://www.gov.uk/government/topical-events/daesh/about>

¹¹ E.g. see U.S Department of State, *The Global Coalition to Defeat ISIS*, Available at

<https://www.state.gov/bureaus-offices/secretary-of-state/the-global-coalition-to-defeat-isis/>

¹² Anna Wojtowicz, “Islamic Radicalization in the UK: Index of Radicalization,” *International Institute for Counter-Terrorism*, 2012, 132, pp.50-53.

context, has favored the emergence of the large-scale phenomenon of foreign fighters in the UK and several other countries.¹³

Another important threat to the country lies in the rise of extremist right-wing groups (e.g., groups such as the National Action, the Scottish Dawn, or the National Socialist Anti-Capitalist Action), all proscribed by the Parliament based on the Terrorism Act 2000.¹⁴ Ideologically, extreme right-wing groups “share the racist view that minority communities are harming the interests of a native population”.¹⁵ The rise of National Action increased the risk of community disturbances and violence. Actors and organizations inspired by anti-immigration, white supremacist and anti-globalization ideals pose a serious threat to national security. Additionally, the vestiges of the historical Northern Ireland conflict still pose a significant impediment to the security of the UK, although most Northern Irish groups agreed to sign a ceasefire in 1998.¹⁶ Between 2011 to 2017, 127 national security attacks related to Northern Ireland terrorism were recorded, despite progress in political relations with the region.¹⁷

1.3 Addressing the Phenomenon of Foreign Fighters

As of early 2021, the authorities still consider Islamic extremist networks and groups as one of the most significant and continuous threats faced by the country, particularly given the resurgence of ISIS in Iraq and Syria.¹⁸ According to the UK mission to the United Nations, despite ISIS’ territorial losses and decline in the region since 2017, its remaining capacity “to inflict deadly harm in Syria and Iraq” and its large network of influence worldwide should not be underestimated.¹⁹

ISIS’ state-building narrative and the prospect of the creation of a Caliphate convinced thousands of individuals from all over the world to travel to Syria and Iraq. The UK Home Office estimates that between 2014 and 2019, around 900 individuals left the country to join the ISIS-led forces in Iraq or Syria.²⁰ Out of these, about 20% have reportedly been killed overseas, while 40% have returned to the UK.²¹ The majority of these returnees arrived in the earlier stages of the conflict and were investigated upon return. Some of these individuals, whose presence on the territory is considered to put the public good and safety at risk, are prevented from returning, based on the government’s use of its “nationality and immigration powers”, including through tools such as deprivation of citizenship or Temporary Exclusion Orders (TEOs).²² Although the UK government has devised a series of measures to deal with returning foreign fighters, these policies do pose a certain number of problems and have been subject to criticism, as discussed below in section 3.2 of this paper.

¹³<https://www.canada.ca/en/security-intelligence-service/corporate/publications/the-foreign-fighters-phenomenon-and-related-security-trends-in-the-middle-east.html>; https://www.nato.int/cps/en/natohq/topics_168043.htm?

¹⁴ HM Government, Home Office and The Rt Hon Amber Rudd, Further extreme right-wing groups banned in the UK, September 28, 2017, Available at <https://www.gov.uk/government/news/further-extreme-right-wing-groups-banned-in-the-uk>

¹⁵ UK Parliament, House of Commons Library, Research Briefing, Joanna Dawson, *Returning terrorist fighters*, Available at <https://commonslibrary.parliament.uk/research-briefings/cbp-8519/>

¹⁶ University of Notre Dame, Kroc Institute for International Peace Studies, *Northern Ireland Good Friday Agreement*, Available at <https://peaceaccords.nd.edu/accord/northern-ireland-good-friday-agreement>

¹⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf, p. 21

¹⁸ ‘Islamic State remains ‘most significant’ threat to UK’, BBC News, July 22, 2020, Available at <https://www.bbc.com/news/uk-53507552>

¹⁹ HM Government, Speech, Ambassador Jonathan Alley, *Addressing the global threat of Daesh*, Available at, <https://www.gov.uk/government/speeches/addressing-the-global-threat-of-daesh>

²⁰ Ibid.

²¹ HM Government, UK Nationals returning from Syria, Volume 654: debated on Monday 18 February 2019, Available at <https://hansard.parliament.uk/commons/2019-02-18/debates/69E286BB-03A2-4467-AB65-B3059436CD53/UKNationalsReturningFromSyria>

²² *Returning terrorist fighters*, Joanna Dawson, p. 5 and 7

2. National Counter-Terrorism Legislations and Strategies

2.1 Counter-Terrorism and National Legislation: Applicable Law

The United Kingdom has one of the broadest definitions of terrorism,²³ as its main source of counter-terrorism legislation has undergone many amendments in response to new security risks. Thus, while the general definition of what constitutes terrorism is similar to what is accepted by many other countries, i.e., the “The use or threat of a specified action where the use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause”,²⁴ other legislations and amendments have enlisted many other as an act of terrorism. For this purpose, this section provides a brief review of acts criminalized under relevant laws with their backgrounds prompting their adoption. In this regard, it is important to add those terms such as “foreign fighter”, as mentioned in the government’s strategies,²⁵ are not strictly defined by national legislation.

The Terrorism Act 2000 is the main source of counter-terrorism legislation in the UK. It was adopted in July 2000 following recommendations made by Lord Lloyd of Berwick, “who led an inquiry for the Conservative government in 1996 into the need for permanent terrorist legislation” to replace existing provisions following a ceasefire with the Provisional Irish Republican Army (IRA).²⁶ Although the definition of terrorism in the UK, like in many other jurisdictions, employs elements of means, intent, and motivation to identify acts of terrorism, specific acts and further amendments in the law omitted or changed the need for proving the specific intent. For example, where the use or threat of action involves firearms or explosives it will be considered terrorism whether or not it is designed to influence a government or an international governmental organization, or to intimidate the public.²⁷ The Terrorism Act 2000 creates several terrorism-related offences, including providing or receiving instruction or training in the making or use of firearms, explosives, radioactive materials or inviting another person to receive such training, inside or outside the UK,²⁸ directing the activities of an organization concerned with the commission of acts of terrorism,²⁹ possession of an article for purposes connected with the commission, preparation or instigation of acts of terrorism,³⁰ and incitement of another person to commit an act of terrorism wholly or partly outside the UK.³¹ The Terrorism Act 2000 also enhances police powers to counter and investigate terrorism, including provisions for police cordons, and powers to stop and search pedestrians and vehicles³² and to restrict parking.³³ Moreover, under this Act, a power was created to proscribe groups that the Secretary of State believed to be “concerned in terrorism” with

²³ For detailed discussion on this law see James C. Simeon, ‘The Evolving Common Law Jurisprudence Combatting the Threat of Terrorism in the United Kingdom, United States, and Canada’, *Laws* 8, no. 1 (March 2019): 5,

²⁴ Section 1 of the Terrorism Act 2000.

²⁵ Contest, the United Kingdom’s strategy for countering terrorism: annual report for 2014 (web version) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415708/contest_annual_report_for_2014.pdf

²⁶ Guardian Staff, ‘A-Z of Legislation: Terrorism Act 2000’, the Guardian, 19 January 2009, <http://www.theguardian.com/commentisfree/libertycentral/2009/jan/19/terrorism-act>.

²⁷ Terrorism Act 2000, Section 1.

²⁸ *Ibid.*, Section 54.

²⁹ *Ibid.*, Section 56.

³⁰ *Ibid.*, Section 57.

³¹ *Ibid.*, Section 59.

³² *Ibid.*, Section 44(1) and (2).

³³ *Ibid.*, Section 48.

associated criminal offences such as membership of a proscribed organization,³⁴ and support for a proscribed organization.³⁵

The London bombings in July 2005 led the government to extend prior counterterrorism laws, notably by enacting the Terrorism Act 2006, which was described by the Home Secretary Charles Clarke as “an attempt to “close the gaps in Britain's counter-terror legislation,” by prosecuting those “preparing or training to commit terrorism and to tackle extremist bookshops disseminating radical material”.³⁶ The 2006 Act includes offences concerned with the preparation of terrorist acts such as providing training for terrorism or receiving the training; attending any place, whether in the UK or elsewhere, where terrorism training is being conducted; encouraging terrorism, including publishing statements that encourage and glorify terrorist acts.³⁷

The Terrorist Asset Freezing etc. Act 2010 was adopted in response to the United Nations Security Council (UNSC) Resolution 1373(2001) relating to terrorism, as well as Resolution 1452(2002) relating to humanitarian exemptions. It also provides for enforcement of Regulation (EC) 2580/2001 on specific measures directed at certain persons and entities to combat terrorism (“the EC Regulation”).³⁸ For this purpose, it criminalizes activities such as making funds, financial services or economic resources available to or for the benefit of a designated person; dealing with funds or economic resources owned, held or controlled by a designated person.³⁹

One year after ISIS officially declared the creation of its caliphate, it was estimated that nearly 600 people from the UK have travelled to Syria and other countries in the region since the beginning of the conflict.⁴⁰ The Counter-Terrorism and Security Act 2015 was adopted specifically “to stop people travelling overseas to fight for terrorist organisations or engage in terrorism-related activity and subsequently returning to the UK, and to deal with those already in the UK who pose a risk to the public”.⁴¹ Among others, the Act places the Prevent program (see section 2.2.2.) on a statutory footing, by providing that every local authority “when exercising its functions have due regard to the need to prevent people from being drawn into terrorism”.⁴² The Act also strengthens powers to place temporary restrictions on travel while enhancing existing measures to monitor and control the actions of individuals in the UK who pose a threat.⁴³ It amends the Terrorism Act 2000, making it an offence for an insurer to make payments made in response to demands for terrorism purposes where the insurer knows or suspects this to be the case.

Following the terrorist attacks in London and Manchester in 2017, the government, relying on its updated counter-terrorism strategy⁴⁴ adopted the “Counter-Terrorism and Border Security Act 2019”, which came into force in April 2019. This legislation, amending the relevant part of 2000 Terrorist Act, criminalized reckless and express support for,⁴⁵ as well as the publication of images or seizure of articles

³⁴ Ibid., Section 11.

³⁵ Ibid., Section 12.

³⁶ Guardian Staff, ‘A-Z of Legislation: Terrorism Act 2006’, the Guardian, 19 January 2009, <http://www.theguardian.com/commentisfree/libertycentral/2009/jan/19/terrorism-act-2006> .

³⁷ Terrorism Act 2006, Part 1, Offences, available on:

<https://www.legislationline.org/download/id/1301/file/cba2fd9a3ff5adc965c12283d7a5.pdf>

³⁸ H. M. Treasury, ‘Explanatory Notes to Terrorist Asset-Freezing Etc. Act 2010’ (Queen’s Printer of Acts of Parliament), accessed 1 March 2021, Available at

<https://www.legislation.gov.uk/ukpga/2010/38/notes/division/2>, para 3.

³⁹ Terrorist Asset-Freezing etc. Act 2010, Part 1, Ch. 2, Prohibitions, ‘Terrorist Asset-Freezing Etc. Act 2010’, Text, accessed 3 April 2021, Available at <https://www.legislation.gov.uk/ukpga/2010/38/contents>

⁴⁰ Home Office, ‘Explanatory Notes to Counter-Terrorism and Security Act 2015’, accessed 3 April 2021,

<https://www.legislation.gov.uk/ukpga/2015/6/notes/division/2>.

⁴¹ *ibid.* para 4.

⁴² Counter-Terrorism and Security Act 2015, Part 5, Ch.1, 26. available at:

https://www.legislationline.org/download/id/7974/file/UK_Counter_terrorism_act_2015_as_of_2017_en.pdf

⁴³ Office, ‘Explanatory Notes to Counter-Terrorism and Security Act 2015’. para 6.

⁴⁴ Counter-terrorism strategy (CONTEST) 2018.

⁴⁵ ‘Counter-Terrorism and Border Security Act 2019’, 20, accessed 3 April 2021,

<https://www.legislation.gov.uk/ukpga/2019/3/contents/enacted>., Ch.1. 1

of a proscribed organization (such as flags, emblems or clothing) “as to arouse reasonable suspicion that the person is a member or supporter of [said] proscribed organization”.⁴⁶ Similarly, obtaining or even viewing material digitally, entering or remaining in a designated area,⁴⁷ and encouraging terrorism and dissemination of terrorist publications, are punishable.⁴⁸ The Counter-Terrorism and Border Security Act 2019 also increases maximum sentences for terrorism offences, thus, individuals convicted of dissemination of terrorist publications can face up to 15 years of imprisonment.⁴⁹ The offence cannot be applied retroactively to those who have already travelled overseas to fight and returned to the UK.

The London Bridge Attack of November 2019, and the Streatham Attack of February 2020, both perpetrated by individuals previously convicted of terrorism-related offences⁵⁰ who had been released at the halfway point of their sentence (in accordance with the provisions of the Criminal Justice Act 2003),⁵¹ encouraged the government to introduce the Terrorist Offenders (Restriction of Early Release) Act in 2020 as an emergency bill.⁵² The Act aims to stop individuals sentenced and imprisoned for terrorism-related offenses from being automatically released prior to the end of their sentence. Such offenders continue to remain eligible for early release but must apply to the Parole Board for conditional release two-thirds of the way through their sentence. The Parole Board must then examine the case and has the discretion to release the offender on license if it is satisfied, after conducting a risk assessment, that the offender’s incarceration is no longer necessary to protect the public.⁵³

In addition to the above-mentioned legislations, which were directly adopted in relation to terrorism, deprivation of citizenship in the UK is used as a measure to combat terrorism and is currently regulated under Sections 40, 40A and 40B of the British Nationality Act 1981.⁵⁴ The Secretary of State may deprive an individual of its citizenship if satisfied that such action is “conducive to the public good”.⁵⁵ The UK government considers deprivation conducive to the public good when the individual has been involved in activities involving certain serious crimes, as well as acts of terrorism and “unacceptable behaviour” such as the glorification of terrorism.⁵⁶ By means of the Immigration Act 2014, the Government introduced a power whereby in a small subset of “conducive” cases – where the individual has been naturalized as a British citizen and acted in a manner seriously prejudicial to the vital interests of the UK – the Secretary of State may deprive that person of their British citizenship, even if doing so would leave them stateless.⁵⁷ In practice, this power means the Secretary of State may deprive and leave a person stateless (if the vital interest test is met and they are British due to naturalizing as such) if that person can acquire (or reacquire) the citizenship of another country and can avoid remaining stateless. Figures for conducive deprivation orders have been published as part of the Government Transparency Report. Four reports have been published to date in 2015, 2017, 2018 and 2020. According to the *HM Government Transparency Report: Disruptive Powers 2018/19* published in March 2020, there have

⁴⁶ Ibid. Ch.1. 2

⁴⁷ Ibid. Ch.1. 3

⁴⁸ Ibid. Ch.1. 4

⁴⁹ Ibid. Ch.2. 7 (7)

⁵⁰ See respectively, ‘London Bridge: What We Know about the Attack’, *BBC News*, 3 December 2019, sec. London, <https://www.bbc.com/news/uk-50594810> . and ‘Streatham Attack: Terrorist Threat “Not Diminishing”, Says Anti-Terror Police Chief - BBC News’, accessed 1 March 2021, <https://www.bbc.com/news/uk-51389884> .

⁵¹ ‘Criminal Justice Act 2003’, available at: <https://www.legislation.gov.uk/ukpga/2003/44/contents>., Ch. 6.

⁵² Terrorist Offenders (Restriction of Early Release) Act 2020,

<https://www.legislation.gov.uk/ukpga/2020/3/contents/enacted/data.htm>

⁵³ For further discussion on this law see Elin Hofverberg, ‘England Enacts Law Prohibiting the Early Release of Terrorists | In Custodia Legis: Law Librarians of Congress’, webpage, 24 April 2020, //blogs.loc.gov/law/2020/04/england-enacts-law-prohibiting-the-early-release-of-terrorists/.

⁵⁴ British Nationality Act 1981, <http://www.legislation.gov.uk/ukpga/1981/61>

⁵⁵ Ibid., Section 40.

⁵⁶ E.g., UK Home Office, *HM Government Transparency Report 2018: Disruptive and Investigatory Powers*, London: Home Office, p. 26. in Maarten P. Bolhuis and Joris van Wijk, ‘Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism’, *European Journal of Migration and Law* 22, no. 3 (7 October 2020): 338–65, <https://doi.org/10.1163/15718166-12340079>.

⁵⁷ Immigration Act 2014, c. 22, § 66 (UK) (amending the British Nationality Act 1981, c. 61, § 40(4A)(b)).

been no individuals deprived of British citizenship through the use of this power.⁵⁸ Between 1 January 2018 and 31 December 2018, 21 people were deprived of British citizenship on the basis that to do so was “conducive to the public good”.⁵⁹

2.2 UK’s Strategic Approach to Terrorism and Violent Extremism: Evolution of National Policies

This subsection aims to provide an overview of the UK’s strategic approach towards terrorism and violent extremism. Following a brief presentation of the country’s broad National Security Strategies, it will assess the evolution of its counter-terrorism strategic policies since the 2000s. Indeed, the intensification of the global terrorist threat in the 21st century required the government to quickly adapt to new risks and constantly review its strategies. Understanding this evolution is crucial, as it introduces key elements and helps grasp the subtleties of the country’s current strategic views on terrorism. It also helps understanding how the UK adjusted its national policies to the rising threat represented by the ISIS foreign fighters.

2.2.1. National Security Strategies: Guiding the Country’s Global Approach Towards Security Threats

The UK National Security Strategy (NSS), representing the country’s general approach towards national security, aims to identify threats targeting its population and interests and combine the “objectives and plans of all departments, agencies and forces involved in protecting...national security”.⁶⁰ The first NSS, published in 2008, acknowledged the unpredictability of the international security landscape, resulting in the apparition of “a diverse but interconnected set of threats and risks” (e.g. global terrorism, armed conflicts or cross-border crimes).⁶¹ Based on this observation, it reaffirms the need to extend the government’s traditional focus on issues threatening the state itself, to incorporate threats targeting “individual citizens and [the country’s] way of life”.⁶² As recommended by the NSS, the UK favored a preventive, multilateral, integrated and overarching approach, tackling the underlying drivers of terrorism and support conflict resolution overseas to guarantee a “more secure, stable, just and prosperous world” for its population.⁶³ Subsequent NSS have continuously identified terrorism as a major threat to the country’s security, and have been committed to review and reform strategies countering terrorism or violent extremism through their guidance.⁶⁴

⁵⁸ HM Government, *Transparency Report: Disruptive Powers 2018/19*, March 2020, 22, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919625/CCS0320317274-001_HM_Government_Transparency_Report_Web_Accessible.pdf

⁵⁹ *Ibid.*, 22

⁶⁰ Cabinet Office of the United Kingdom, *The National Security Strategy of the United Kingdom: Security in an interdependent world*, 2008, London: The Stationery Office Limited, on behalf of the Controller of Her Majesty’s Stationery Office, 4, Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228539/7291.pdf

⁶¹ Cabinet Office of the United Kingdom, *The National Security Strategy of the United Kingdom: Security in an interdependent world*, 3

⁶² *Ibid.*, 3

⁶³ *Ibid.*, 60

⁶⁴ See HM Government, *National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom*, 2015, 37, Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf

2.2.2. Evolution of CONTEST strategy: Adjusting to New and Emergent Threats

Terrorism and violent extremism are not a new phenomenon in the UK, as illustrated by the significant number of attacks against the country in the 20th century discussed above. However, the UK's first "coordinated, pan-government anti-terrorism strategy" only dates back to 2003, with the introduction of the CONTEST strategy, which was aimed to oversee the country's "response to the emerging terrorist threat in the aftermath of the attacks on New York and Washington, DC, in September 2001".⁶⁵ CONTEST is composed of four main strands: PREVENT, PURSUE, PROTECT and PREPARE. The diversification and intensification of the terrorist threats targeting the country have led the UK to continuously review and update these four strands. Although subject to substantive changes since 2003, their primary objectives remain unchanged, and is, respectively to tackle radicalization of individuals, to stop and disrupt terrorist attacks, to strengthen the country's capacity to protect itself against attacks, and to minimize the impact of attacks if they cannot be stopped.⁶⁶

a. CONTEST (2006)

The first revision of CONTEST in 2006⁶⁷ highlights the new characteristic features of international terrorism, with threats coming from very different types of groups or individuals, possibly taking the form of suicide-attacks, often "driven by particular violent and extremist beliefs" and aiming to cause indiscriminate and massive casualties.⁶⁸ The 7 July 2005 London attacks, during which four explosive devices targeting the London underground trains and bus structure were detonated and killed fifty-two people (including the four bombers), significantly influenced the 2006 review of CONTEST. The Intelligence and Security Committee (ISC) carefully analyzed the "intelligence and security matters relevant to the attacks", to identify flaws in the government's counterterrorism policies and suggest ways to resolve them.⁶⁹ Recognizing that better investigative decisions from intelligence and security agencies may have increased their ability to prevent these attacks, the ISC notes that their decision-making capacity is largely restricted by their limited resources and lack of cooperation, as well as by the overwhelming amount of intelligence brought to their attention.⁷⁰ Moreover, the ISC observes that while the risk of suicide-attack targeting the transport network executed by British citizens had been recognized before the London attacks, agencies had not taken those threats with sufficient consideration.⁷¹

These observations were notably integrated into the new revised version of CONTEST (2006). For instance, the PREVENT strand was updated to integrate the necessity to address "structural problems in the UK and elsewhere that may contribute to radicalisation", by reducing social and economic inequalities or offering equal opportunities for all communities regardless of their faith, race or origin, but also to change "the environment in which the extremists...can operate", by criminalizing activities

⁶⁵ House of Commons, House Affairs Committee, *Project CONTEST: The Government's Counter-Terrorism Strategy - Ninth Report of Session 2008-2009*, 2009, London: The Stationery Office Limited, 4, Available at <https://publications.parliament.uk/pa/cm200809/cmselect/cmhaff/212/212.pdf>

⁶⁶ HM Government, *Pursue, Prevent, Protect, Prepare: The United Kingdom's Strategy for Countering International Terrorism*, 13

⁶⁷ The first partly publicly available version of CONTEST was published in 2006.

⁶⁸ HM Government, *Countering International Terrorism: The United Kingdom's Strategy* (hereinafter *CONTEST 2006*), 2006, London: The Stationery Office Limited, on behalf of the Controller of Her Majesty's Stationery Office, 1,6,7, Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272320/6888.pdf

⁶⁹ HM Government's Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005*, 2006, London: The Stationery Office Limited, on behalf of the Controller of Her Majesty's Stationery Office, iii, 4, Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/224690/isc_terrorist_attacks_7july_report.pdf,

⁷⁰ HM Government's Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005*, 39

⁷¹ *Ibid.*, 25-27

that promote or facilitate terrorism.⁷² The PURSUE strand was also revised to highlight the importance of implementing a “coordinated, multi-agency, and international approach to the disruption of terrorist activity”, capable of collectively assessing and prioritizing intelligence, to adequately respond to the most serious or urgent threats and facilitate joint operations.⁷³ Prosecution and financial sanctions were similarly emphasized as key elements of disruption,⁷⁴ as reflected in the 2006 Terrorist Act.⁷⁵ The PROTECT strand was reviewed to include new programs adopted to secure agencies’ capacity to “jointly identify and manage risks”, including through strengthened border security.⁷⁶ Finally, the PREPARE strand was updated to highlight the need to enhance the various stakeholders’ capacity to respond “to the direct harm caused by a terrorist attack”.⁷⁷

b. CONTEST (2009)

The 2009 revision of CONTEST primarily differs from the 2006 version as it provides a significantly longer and more in-depth “explanatory material” regarding its four strands.⁷⁸ This approach can be explained by the government’s willingness to secure trust and partnerships around its strategies.⁷⁹ Another important difference arising in the 2009 CONTEST version is its detailed presentation of the nature of terrorist threats faced by the UK, demonstrating that significant resources have been allocated to understand the development of such threats.⁸⁰ It also highlights the challenges associated with the increasing risk of chemical, biological, radiological and nuclear (CBRN) terrorism, as an issue common to the four strands of CONTEST.⁸¹ This version focuses on a “new form of terrorism...fundamentally different in scale and kind” from situations experienced by the country before, relying on emerging technologies to diffuse its radical ideas and objectives, as illustrated by the methods used by Al-Qaeda and other affiliated groups.⁸² As part of the PURSUE objective, the government extended the number of terrorism-related offences, but also of strict non-prosecution alternatives (including controls, revocation of citizenship or deportation).⁸³ The PREVENT strand, which is increasingly prioritized, is reinforced by the introduction of new programs, including the “Channel programme”, a comprehensive and “community-based initiative which uses existing partnerships between the police, local authority and the local community to identify those at risk from violent extremism and to support them”.⁸⁴

c. CONTEST and PREVENT (2011)

The 2011 revision of CONTEST breaks grounds, as it introduces a new largely revised version of the PREVENT workstream. The new government, considering that PREVENT so far “failed to confront

⁷² *CONTEST 2006*, 9-16

⁷³ HM Government’s Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005*, 17

⁷⁴ *CONTEST (2006)*, 16-20

⁷⁵ This Act aims to review and broaden the scope of previous counterterrorism laws, including those linked to police or agencies’ investigatory capacity, to create new terrorism-related offences, including the offences of encouragement of terrorism, dissemination of terrorist publications, preparation or training of terrorist acts. It also extends the detention time limit for suspicion of terrorism-related offences up to 28 days. See *Memorandum to the Home Affairs Committee, Post-Legislative Scrutiny of the Terrorism Act 2006*, 2011, London: The Stationery Office Limited, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238141/8186.pdf

⁷⁶ *CONTEST 2006*, 24

⁷⁷ *Ibid.*, 25-27

⁷⁸ Frank Gregory, “An evaluation of revisions to the UK counter-terrorism strategy with a special focus on the CBRNE threat (ARI)”, *Elcano Royal Institute*, 2009, 2,

http://www.realinstitutoelcano.org/wps/wcm/connect/2af097804f928f0b91d0b56c295fd59b/ARI130-2009_Gregory_CONTEST2009_UK_Counter-Terrorism_Strategy.pdf?MOD=AJPERES&CACHEID=2af097804f928f0b91d0b56c295fd59b

⁷⁹ Frank Gregory, “An evaluation of revisions to the UK counter-terrorism strategy with a special focus on the CBRNE threat”, 2

⁸⁰ *Ibid.*, 5

⁸¹ HM Government, *Pursue, Prevent, Protect, Prepare: The United Kingdom’s Strategy for Countering International Terrorism*, 17

⁸² *Ibid.*, 18

⁸³ *Ibid.*, 13-14

⁸⁴ *Ibid.*, 15

the extremist ideology at the heart of the threat”, wished to focus more on individuals “at risk of radicalisation”.⁸⁵ Indeed, this specific strand of CONTEST was subject to intense criticism, mainly based on its focus and therefore stigmatizing effect on Muslim communities.⁸⁶ This 2011 review is considered as “a major turning point” for PREVENT, as it extended its focus on “all forms of terrorism”, shifted its “concern from ‘violent extremism’ to a broader ‘extremism’” and presented a new set of ‘fundamental British values’”.⁸⁷ This new list of “common ground and shared values” is dedicated to facilitating the government’s increasing focus on integration as part of the PREVENT process.⁸⁸ However, the scope of this strand is narrowed, excluding its initial “funding for integration projects which have a purpose and value far wider than security and counter-terrorism”, and merely focusing on responding to the “ideological challenge of terrorism”, preventing individuals from turning to extremism and cooperating with sectors associated with heavy radicalisation risks.⁸⁹ Additionally, this new version spells the end of the community-based approach of PREVENT and community or local cohesion activities.⁹⁰ Instead, the role of the “Channel anti-radicalisation mentoring and counselling system” is increased.⁹¹ Those intended to collaborate with local institutions to identify and to “provide support at an early stage to people who are identified as being vulnerable to being drawn into terrorism”.⁹²

d. CONTEST (2018)

The 2017 terrorist attacks in London and Manchester,⁹³ which “highlighted both the challenge of detecting individuals who may be inspired to commit terrorist acts in the UK and the pace at which plots can move to acts of violence”, encouraged the authorities to fully review and strengthen their approach to counterterrorism.⁹⁴ These tragic events were carefully reviewed by the MI5 and the police through an Operational Improvement Review (OIR). Observations drawn from the OIR clearly pointed out the need to adapt to the shifts in terrorist threat against the UK, in light of the rapid and unexpected rise of ISIS, the “growing scale in Islamist terrorism” and the diversification and evolution of attackers’ *modus operandi*, which increasingly involved “lone actors or small groups” using simple methods and readily available tools, such as bladed weapons, vehicles or explosives.⁹⁵ Based on these observations and particularly detailed post-attack reviews, more than 120 recommendations identifying “operational changes that should improve the future performance” of the relevant authorities, including “commitments to better data exploitation, to wider sharing of information derived from MI5 intelligence (including with neighborhood policing) and to the consistent assessment and investigation of all terrorist threats, regardless of ideology” were presented.⁹⁶ These recommendations were further incorporated in

⁸⁵ HM Government, *Prevent Strategy*, 2011, London: The Stationery Office Limited, 1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf

⁸⁶ Paul Thomas, “Britain’s Prevent Strategy: Always Changing, Always the Same?” In *The Prevent Duty in Education*, Joel Busher and Lee Jerome (eds.), 2020, Palgrave Macmillan, Cham, 13-14,

⁸⁷ *Ibid.*, 17

⁸⁸ HM Government, *CONTEST: The United Kingdom’s Strategy for Countering Terrorism* (hereinafter *CONTEST 2011*), 2011, London: The Stationery Office Limited, 10

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97994/contest-summary.pdf

⁸⁹ *CONTEST 2011*, 10

⁹⁰ Paul Thomas, “Britain’s Prevent Strategy: Always Changing, Always the Same?”, 18

⁹¹ *Ibid.*, 18-19

⁹² HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, London: The Stationery Office Limited, 7, Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964567/6.6271_HO_HMG_Channel_Duty_Guidance_v14_Web.pdf

⁹³ David Anderson, *Attacks in London and Manchester (March-June 2017): Independent Assessment of MI5 and Policy Internal Reviews*, 2017, HM Home Office, Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/664682/Attacks_in_London_and_Manchester_Open_Report.pdf

⁹⁴ *CONTEST 2018*, 10

⁹⁵ David Anderson, *Attacks in London and Manchester (March-June 2017): Independent Assessment of MI5 and Policy Internal Reviews*, 5

⁹⁶ *Ibid.*, 6

CONTEST (2018). Particular focus was put on the rising threat represented by ISIS members (including foreign fighters). CONTEST (2018) reaffirmed that “the full range of capabilities available to disrupt and manage the return of individuals from the conflict zone” would be deployed, including deprivation of nationality, travel restrictions or TEOs.⁹⁷

This new revision incorporates new key elements and priorities in the CONTEST strategy. First, the need to address and disrupt threats at an earlier stage, but also on a more local level, is acknowledged. Indeed, considering the “speed at which plots are now developing”, this new approach ensures that relevant entities, including the police and the Crown Prosecution Service, have a wide investigation and prosecution capacity.⁹⁸ Second, this new approach aims to enhance cooperation and information sharing between agencies and local partners to ensure timely and effective responses. Additionally, collaboration with the private sector is considered key to “protect [the country’s] economic infrastructure”.⁹⁹ Third, the role of new digital technologies in gathering intelligence and data to assess the international or local threats is reaffirmed by the country’s partnership with communication service providers.¹⁰⁰ This is largely linked to the growing use of social media and digital platforms by terrorist actors to recruit new members. Finally, ensuring greater resilience for local communities and encouraging capacity-building projects overseas are crucial elements that shall be granted sufficient resources.¹⁰¹

These new key elements feature in each strand of CONTEST (2018). For instance, the PREVENT strand highlights the role of the “Desistance and Disengagement Programme” (DDP), notably aiming to disengage and reintegrate individuals already involved in terrorism-related activities, including those subject to “court-approved conditions”, including TEOs or Terrorism Prevention and Investigation Measures (TPIMs).¹⁰² This program, illustrating the growing cooperation between the PREVENT and PURSUE tracks, uses various tools to intervene and provide support (e.g. through “mentoring, psychological support, theological and ideological advice”) to radicalized individuals and thus tackle the “drivers of radicalisation around universal needs to identity, self-esteem, meaning and purpose”.¹⁰³ This initiative acknowledges that policies aimed at “changing the behaviour of offenders” can only be effectively pursued if taking into account programs incorporating “social support, material incentives and other inducements”.¹⁰⁴ Alongside the expansion of the DDP, PREVENT highlights the need to focus on online terrorist activities and create “multi-agency pilots to trial methods to improve our understanding of those at risk of involvement in terrorism”.¹⁰⁵

On another note, the PURSUE strand, recognizing the threat posed by foreign fighters, highlights the need for returning individuals to face investigations and to determine if they have been taking part in criminal activities. Criminal proceedings shall be initiated “in compliance with the due legal process if there is evidence that crimes have been committed”.¹⁰⁶

⁹⁷ CONTEST 2018, 50

⁹⁸ Ibid., 27

⁹⁹ Ibid., 9

¹⁰⁰ Ibid., 28

¹⁰¹ Ibid., 28

¹⁰² Mohammed Elshimi, “New UK Counterterrorism Strategy: Critical Questions for the ‘Prevent’ Strand”, 2018, *Royal United Services Institute*, <https://rusi.org/commentary/The-New-UK-Counterterrorism-Strategy>

¹⁰³ CONTEST 2018, 40

¹⁰⁴ Mohammed Elshimi, “New UK Counterterrorism Strategy: Critical Questions for the ‘Prevent’ Strand”

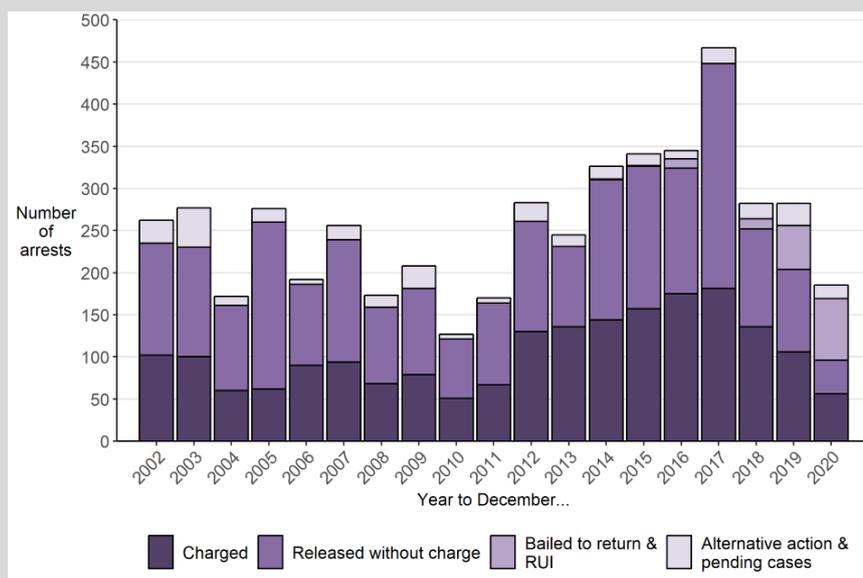
¹⁰⁵ CONTEST 2018, 40

¹⁰⁶ Ibid., 12

3. Overview of National Implementation in the United Kingdom

3.1 Judicial Response in the Fight Against Terrorism

According to official data released by the government, the highest numbers of criminal responses (including arrest, prosecution and conviction) occurred in 2017 as shown in the latest Home office report (see table below).¹⁰⁷



By the end of March 2018, there was a 3% increase in the number of people tried for terrorism-related offences, out of which 89% were convicted.¹⁰⁸ In total, 40% of those arrested for terrorism-related offences since 11 September 2001 have been charged, and of these 66% were charged under terrorism-related offences.¹⁰⁹ Of those convicted in 2019, the most common offence - in 11 cases out of 56 - was membership to a banned organization, followed by “preparation for terrorist acts” (nine convictions).¹¹⁰ The majority of those convicted were associated or linked to Islamist extremism.¹¹¹ Among those, one can refer to the case of Mustafa Abdullah, a Muslim convert, who was found guilty of 13 offences, including possession of documents likely to be useful to a person preparing a terrorist act.¹¹²

¹⁰⁷ Home Office, “National Statistics, Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search Great Britain, year ending December 2020”, 4 March 2021, Available at: <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2020/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-arrests-outcomes-and-stop-and-search-great-britain-year-ending>

¹⁰⁸ Home Office, “National Statistics, Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search Great Britain, financial year ending March 2018”, 14 June 2018, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716000/police-powers-terrorism-mar2018-hosb0918.pdf, 4

¹⁰⁹ Terrorism in Great Britain: the statistics Research Brief, 2020, 18, Available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-7613/ing>

¹¹⁰ ‘How Many People Are in Prison for Terror Offences?’, *BBC News*, 6 February 2020, sec. UK, <https://www.bbc.com/news/uk-50823532>.

¹¹¹ Terrorism in Great Britain, supra note 114, 21.

¹¹² ‘London Jihadi Found Guilty of Possessing Terror Training Videos’, the Guardian, 15 December 2015, <http://www.theguardian.com/uk-news/2015/dec/15/london-jihadi-guilty-terror-training-videos-mustafa-abdullah>. For a review of the cases concluded since 2016 see the Counter-Terrorism Division of the Crown Prosecution Service case review,

These convictions, however, are not as challenging as the courts' decisions in appeal or in case of withdrawal of an individual's citizenship. As discussed above, denying someone's citizenship is a governmental act and can be challenged in appeal before a competent court. The highly publicized case of Shamima Begum will be analyzed here, as a great depiction of this judicial process, and as it directly addresses the issue of reparation for ex-members of terrorist groups. *Shamima Begum's* citizenship was revoked by the Home Office on security grounds after she was found in a refugee camp in 2019. In July 2020, the Court of Appeal held that she had been denied a fair hearing because she could not make her case from the Syrian camp. Thus, she should be allowed to return to the UK to fight the decision to remove her British citizenship, the Court of Appeal ruled. The Home Office subsequently appealed to the Supreme Court to reconsider the Court of Appeal's judgment, arguing that allowing her to return to the UK "would create significant national security risks".¹¹³ The Supreme Court in a unanimous ruling issued on 26 Feb 2021 held that her rights were not breached when she was refused permission to return.¹¹⁴ The Supreme Court, surprisingly, held that the requirements of fair trial cannot always prevail as, in the Court's opinion, "the right to a fair hearing does not trump all other considerations, such as the safety of the public. If a vital public interest makes it impossible for a case to be fairly heard, then the courts cannot ordinarily hear it".¹¹⁵

The European Court of Human Rights, on several occasions, had the opportunity to review the legality of the acts of states in relation to deprivation of citizenship. In the case of *K2 v., the United Kingdom* (dec.)¹¹⁶ the Court dealt for the first time with the issue of deprivation of nationality in the context of terrorism and its risks for national security. The applicant, in this case, was a naturalized British citizen, who had left the UK in breach of his bail conditions. He had been deprived of his British citizenship by order of the Secretary of State for the Home Department while he was abroad, and was excluded by the national authorities on the ground that he had been "involved in terrorism-related activities" and had "links to a number of Islamic extremists".¹¹⁷ Before the Court, the applicant had complained about the measures taken against him, which he considered to be a violation of his right to respect for his family and private life under Article 8 of the European Convention of Human Rights.¹¹⁸ He also submitted that there had been no adequate procedural safeguards to ensure effective respect for his rights under article 8, given that, in his view, there had been very limited disclosure of the national security case against him and he had been unable to participate effectively in the legal proceedings because of his exclusion from the national territory.¹¹⁹

The Court considered the case in the light of the principles established in its judgment in its jurisprudence such as the case of *Ramadan v. Malta*.¹²⁰ It sought to ascertain whether the decision taken against the applicant had been arbitrary and whether the consequences of that decision had amounted to a violation of Article 8. In that regard, it noted that to establish whether the deprivation of nationality had been arbitrary, it had to have regard to whether the latter had been in accordance with the law, whether it had been accompanied by the necessary procedural safeguards, and whether the authorities had acted diligently and swiftly.¹²¹ It had further noted that the standard of "arbitrariness" was a stricter standard than that of proportionality.¹²²

Available at: <https://www.cps.gov.uk/crime-info/terrorism/counter-terrorism-division-crown-prosecution-service-cps-successful-prosecutions-2016>

¹¹³ 'Shamima Begum: Return to UK "a Security Risk"', *BBC News*, 23 November 2020, sec. UK, Available at <https://www.bbc.com/news/uk-55046030m>.

¹¹⁴ *Begum (Respondent) v Secretary of State for the Home Department (Appellant)* [2021] UKSC 7 On appeal from: [2020] EWCA Civ 918, Available at: <https://www.supremecourt.uk/press-summary/uksc-2020-0158.html>

¹¹⁵ *Ibid.* For comment see 'In Begum Case, UK Supreme Court Dismisses Rights and Overlooks Potential Victimhood', *Just Security*, 26 February 2021, Available at <https://www.justsecurity.org/75016/in-shamima-begum-case-uk-supreme-court-dismisses-rights-and-overlooks-potential-victimhood/>.

¹¹⁶ Application no. 42387/13, *K2 against the United Kingdom*, ECHR, 1st Section Decision, 2017.

¹¹⁷ *Ibid.* para. 7.

¹¹⁸ *Ibid.* para 46.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.* para 49.

¹²¹ *Ibid.* para 50.

¹²² *Ibid.* para 61.

In this case, the Court considered that the deprivation of the applicant's nationality had not been arbitrary. As regards the applicant's complaint that he had not benefited from procedural safeguards in the framework of the domestic proceedings since he had not had access to some of the evidence in the case file and that his exclusion from the territory had prevented him from effectively participating in the appeal proceedings, the Court observed that the domestic proceedings had been conducted in a manner compatible with the requirements of Article 8 and that it was not its function to challenge the conclusions of the domestic courts.¹²³ It is worth noting that one of the reasons for the Court to reach this conclusion was the fact that "the reason why the applicant had to conduct his appeal from outside the United Kingdom was not the Secretary of State's decision to exclude him, but rather his decision to flee the country before he was required to surrender to his bail".¹²⁴ This aspect makes this case fundamentally different from that of Begum who has denied entry on the basis of the safety of the public. Moreover, the case of Begum directly touches the very nature of the right to a fair trial, protected under Article 6 of the European Convention on Human Rights, which may call for the weighing and balancing of fundamental individual rights versus collective rights if it is ever brought to the consideration of the European Court of Human Rights.

3.2 Implementation of Strategies on Terrorism and Foreign Fighters

3.2.1. Evaluating the UK Counter-Terrorism Strategies and Tools

From its inception in 2003, the PREVENT strand has drawn a wide range of criticism from civil society, as certain communities perceive that it encourages constant surveillance and monitoring of their members, merely due to their origin, ethnicity or religion.¹²⁵ This policy aims to educate communities and help them understand the risks of radicalization, as well as to intervene when individuals are considered "at-risk". A lack of standardization transparency in the way PREVENT is implemented in practice may create suspicion within the population, as individuals belonging to certain communities may be automatically considered by such policies as "suspicious" and of security concern. PREVENT has been criticized due to its discriminatory character, and many consider that it encourages islamophobia and alienates Muslim communities by blurring the distinction between Islamism, terrorism and extremism. Needless to say, the provision of reporting suspicious actions or "tip-offs" increases the polarization between communities.

UK's counter-terrorism strategies have led not only to the stigmatization of Islamic religious practices but also pose a risk of human rights violations. Data retention, mass surveillance, deportation and trial without jury pose a serious threat to individual freedoms, the rule of law and democracy. Adopting a mode of governance treating certain individuals with "exceptional" provisions and rules compared to those incorporated in the "ordinary" criminal justice system may generate some problematic patterns. One cannot undermine the impact of counter-terrorism interventions or interrogations on individuals – affecting their sense of belonging, community engagement and trust in the state, among others.¹²⁶ This kind of extreme proactivity in intervening can also have adverse effects on children's lives, mental health and well-being. For instance, between 2016 and 2019, 624 children under six years of age and 1405 children in the age group of six and nine were referred to PREVENT.¹²⁷

¹²³ Ibid. para 52.

¹²⁴ Ibid. para 60.

¹²⁵ University of Birmingham, Research Quest, Counter-terrorism: How do we ensure the state is accountable?, Available at <https://www.birmingham.ac.uk/research/quest/towards-a-better-society/counter-terrorism-state.aspx>

¹²⁶ Ibid.

¹²⁷ 'Muslim boy, 4, was referred to Prevent over game of Fortnite', *The Guardian*, January 31, 2021, Available at, <https://www.theguardian.com/uk-news/2021/jan/31/muslim-boy-4-was-referred-to-prevent-over-game-of-fortnite>

The British government's focus on security has additionally been criticized, as it has led to a lack of consideration for the diversity of needs and values of all the communities in the country.¹²⁸ It is also considered to be lacking engagement with educational institutions such as schools and colleges, as a way to create a safer environment for children and youth, who may need help resisting peer pressure or the influence of radicalized adults while feeling free to voice their concerns. The Government should build partnerships with local organizations and women's organizations to interact more deeply with communities and to ease the populations' engagement and cooperation with the government.¹²⁹ Overall, the success of any deradicalization or prevention of terrorism measure requires trust and cooperation on the part of both, the Government and the citizens, as secrecy and directing actions towards specific people and communities creates a pushback effect which is detrimental to the Countering Terrorism and Violent Extremism (CVE) Programme.¹³⁰

3.2.2. Evaluating the Government Response to the Threat of Foreign Fighters

The UK Government insists on prosecuting returning foreign fighters, as they may pose serious risks to the country's national security. They are seen as potential recruiters who could indoctrinate new members into prospective terrorist attacks. Aside from prosecution, other governmental strategies to deal with foreign fighters include deprivation of citizenship, TEOs, TPIMs, Reintegration and Rehabilitation which will be discussed below. As detailed before, the Secretary of State may deprive a person if they are satisfied that deprivation is conducive to the public good. However, in keeping with the two main international conventions that seek to avoid incidents of statelessness - the 1961 UN Convention of the Reduction of Statelessness and the Council of Europe's 1997 European Convention on Nationality - the government maintains that a person can only be deprived of British citizenship if it does not amount to statelessness.¹³¹

Another method adopted to deal with foreign fighters is the introduction of TEOs in the Counterterrorism and Security Act 2015. A TEO is defined as a "statutory order which temporarily disrupts the return to the UK of [a] British citizen suspected of involvement in terrorist-related activity abroad" by invalidating their passport and preventing them from returning "without engagement with the UK authorities" (including by reporting to police stations and applying for permits).¹³² To facilitate the reintegration of the returnees, a TEO can also require their participation in deradicalization programs. TPIMs, introduced under the Terrorism Prevention and Investigation Measures Act 2011, are also considered by the government as important tools to deal with foreign fighters. A TPIM notice imposes restrictions on an individual ranging from travel, movement, financial services to reporting oneself and even constant monitoring using GPS tags.¹³³ As another medium of reintegration and rehabilitation of the returning foreign fighters, the Desistance and Disengagement Programme (DDP) was launched in October 2016 to provide intensive and tailored interventions and practical support including monitoring, psychological support, theological and ideological advice to counter

¹²⁸ Tanya Silverman, "UK Foreign Fighters to Syria and Iraq: The Need for a Real Community Engagement Approach," *Studies in Conflict & Terrorism* 40, no. 12 (2017): 1091–1107.

¹²⁹ Ibid.

¹³⁰ For details on CVE, see HM Government, Transparency Data, Countering Terrorism and Violent Extremism: Objectives 2018 to 2019, September 20, 2018, Available at

<https://www.gov.uk/government/publications/official-development-assistance-oda-fco-departmental-programme-spend-objectives-2018-to-2019/countering-terrorism-and-violent-extremism-objectives-2018-to-2019>

¹³¹ HM Government, Research Briefing, Returning Terrorist fighters, Available at

<https://commonslibrary.parliament.uk/research-briefings/cbp-8519/>

¹³² HM Government, Counterterrorism and Security Bill : Temporary Exclusion Orders Factsheet, 2,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/540541/CTS_Bill_-_Factsheet_3_-_TEO.pdf

¹³³ Ibid.

radicalization, as well as organizing partnerships with other parties to ensure an effective rehabilitation of those returnees.¹³⁴

The British government seeks to take measures as extreme as depriving the citizenship of a foreign fighter on security grounds while on the other hand, they look to integrate returning families of fighters who have not engaged in terrorist activity through their Desistance and Disengagement Programme. However, it must be stressed that a large number of prospective returnees, particularly if remaining in Northern Syrian camps (e.g., Shamima Begum), are provided with very limited legal assistance to present their cases. The UK insists that it will only take away the citizenship of individuals who are also citizens of other states, thus not rendering them stateless. However, there is always the risk of not being accepted by the other country as well and they are left in a foreign and dangerous environment for years together. It is also to be considered that leaving fighters, extremists or their families in such severe conditions poses the risk of regrouping.

Hesitant though about the prospect of repatriating adult men and women who willingly travelled to Iraq and Syria to support ISIS, the United Kingdom has shown consideration for the repatriation of orphaned children, whose situations are to be assessed on a case-to-case basis.¹³⁵ For instance, the successful repatriation of an orphaned British child in September 2020 was praised by Foreign Secretary Dominic Raab.¹³⁶ However, a lot remains to be done by the government to repatriate women and children who remain in Iraq and Syria under disastrous living conditions, being deprived of some of their most fundamental rights. Children are particularly vulnerable to such situations, considering they face high risks of being subjected to violence, indoctrination, intimidation, mistreatment, malnutrition, as well as physical, psychological and sexual abuses.¹³⁷

The case of women and children remaining in Iraq and Syria, living in overcrowded camps and subject to serious human rights violations, requires special attention from the government. Many of these women have renounced ties with ISIS but live in a fear of fanatical female morality police.¹³⁸ Children who are living in a constant state of trauma must be protected. Humanitarian organizations and aid agencies continuously highlight the urgent need to repatriate women and children, ensure their return to safer living conditions and ensure that they can get out of these vicious cycles of violence, indoctrination and terrorism, likely to be perpetuated in such an environment.

In the case of foreign fighters who return to the UK, the government insists that they should be prosecuted and tried on relevant terrorist offenses. However, it becomes difficult to secure evidence regarding their conduct in a place that lacks a criminal justice system and only 10% of those that have returned were prosecuted until March 2019.¹³⁹ In case of lack of evidence, the Government imposes TEOs and TPIMs to enable people who are returning to the UK to attend a deradicalization program and other appointments to facilitate their reintegration into mainstream society. These measures also create the issues of intrusion of privacy and constant surveillance which could hamper a positive engagement with society. However, the larger question of allowing the return of women and children who are stuck in brutal conditions in the camps remains of utmost importance. This is followed by their sound reintegration into society in a way that ensures the well-being of these individuals and the society at large.

¹³⁴ Home Office, Fact Sheet: Desistance and Disengagement Programme, Available at,

<https://homeofficemedia.blog.gov.uk/2019/11/05/fact-sheet-desistance-and-disengagement-programme/>

¹³⁵ 'UK repatriates child orphaned in Syria after ISIS collapse', The Guardian, September 16, 2020, Available at

<https://www.theguardian.com/world/2020/sep/16/uk-repatriates-child-orphaned-in-syria-after-isis-collapse>

¹³⁶ Ibid.

¹³⁷ 'Western State Policies regarding returning foreign fighters in Syria and Iraq', Bulan Institute for Peace Innovations, Report, July 2020, Available at <https://bulaninstitute.org/wp-content/uploads/2021/01/Report-on-State-Policies.pdf>

¹³⁸ 'IS prisoner issue a ticking time bomb for the West', BBC news, July 24, 2020, Available at

<https://www.bbc.com/news/world-middle-east-53428928>

¹³⁹ *Returning terrorist fighters*, Joanna Dawson, p. 14.

4. Conclusions

The United Nation's (UN) General Assembly, in its resolution 72/180, reaffirmed that states must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law,¹⁴⁰ and urged states, while countering terrorism, to fully comply with their obligations under international law.¹⁴¹ As emphasized by the UN Secretary-General in his 2019 report to the General Assembly, “[v]ague laws, broadening the definition of ‘terrorist acts’ beyond what is included in Security Council resolutions and other applicable international law have led to serious concerns.”¹⁴² The Secretary-General further raises concerns that in some cases, “the extended lists of offences included acts whose gravity falls below the threshold of ‘most serious crimes’”.¹⁴³ In this regard, the Human Rights Committee has emphasized that the term “most serious crimes” must be read restrictively and appertains only to crimes of extreme gravity, involving intentional killing.¹⁴⁴

More specifically, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, though praising “the meaningful incorporation of human rights as a key reference point into the plans of the United Kingdom of Great Britain and Northern Ireland”,¹⁴⁵ raises her particular concerns by the so-called “whole of society” approach envisaged under Counter-Terrorism and Security Act 2015, in which responsibilities to detect “signs of radicalization” fall upon various actors in society, including teachers, social workers, medical staff and other health-care professionals, prison staff, neighbors and family members, community leaders and members of faith-based groups.¹⁴⁶

The evolution of the UK's national counterterrorism strategy has largely been impacted by the lessons learned from attacks that hit the country's interests and population, whether domestically or overseas. The 2005 London bombings, as well as the 2017 London and Manchester attacks, are prime examples of tragic incidents that encouraged the state to set up new initiatives, such as the “Channel” or the “Desistance and Disengagement Programme”, but also to integrate and strengthen existing elements, such as cooperation between governmental agencies and entities, intelligence sharing, development of partnerships, collaboration with the private sector and local communities, adoption of comprehensive and preventive risk-based approaches, as well as close monitoring of terrorist threats and risk assessment. The development of the CONTEST strategy throughout the years paved the way for the adoption of new legislation and tools aimed to tackle new threats. The PREVENT strand is by far the most criticized part of CONTEST, largely due to its reinforcement of Islamophobia and its disproportionate targeting of certain communities. Although the government announced in early 2019 that PREVENT would be reviewed, important delays and boycotts (following the nomination of William Shawcross, a man whose views on Islam are largely controversial, to lead the review)¹⁴⁷ have undermined update prospects.¹⁴⁸

¹⁴⁰ General Assembly Resolution, A/RES/72/180, 30 January 2018, para 1.

¹⁴¹ Ibid. para 5 (a).

¹⁴² Report of the Secretary General, “Protecting human rights and fundamental freedoms while countering terrorism”, A/74/270, 2 August 2019, para 33.

¹⁴³ Ibid.

¹⁴⁴ Human Rights Committee, General Comment No. 36 (2018) on the right to life, CCPR/C/GC/36, para. 35.

¹⁴⁵ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Human rights impact of policies and practices aimed at preventing and countering violent extremism”, A/HRC/43/46, 21 February 2020, para 18.

¹⁴⁶ Ibid. para 32.

¹⁴⁷ ‘Why is the government trying to undermine its anti-terror programme?’ The Guardian, March 1, 2021, Available at <https://www.theguardian.com/commentisfree/2021/mar/01/government-anti-terror-prevent-review>

¹⁴⁸ ‘Human rights to boycott government’s Prevent review’, *The Guardian*, February 16, 2021, Available at <https://www.theguardian.com/uk-news/2021/feb/16/human-rights-groups-to-boycott-government-prevent-review>

This paper has highlighted the various laws and strategies in addressing the various levels of terrorist threats. However, countries such as the UK face the pressing problem of dealing with foreign fighters who are stranded in camps abroad. This is a grave issue that the country will continue to face unless the government establishes a clear, well-structured and comprehensive repatriation program, as illustrated by its work in countering terrorism. The UK is taking small, measured and cautious steps in handling this issue, but more proactivity in international cooperation and pioneering constructive strategies could secure the future of many of these British citizens. Of course, prosecution remains a priority in the case of fighters who were involved in terrorist activity, but equal attention should be paid to women and children who are innocent or passive accomplices and have the potential to reintegrate if given a chance. In absence of measures for their return, the families of foreign fighters remain at the risk of radicalization which in turn is a challenge for global peace. Similarly, women and children who are able to return to the UK should be rendered a positive and safe environment to reintegrate into society in a way that will ensure their physical and mental well-being.

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