The Prevent Strategy: The human rights implications of the United Kingdom's counter-radicalisation policy

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1. *Introduction*

The Government of the United Kingdom (UK) has stressed that preventing the spread of extremist ideology and stopping acts of terrorism are two of the most pressing and interrelated issues of the 21st century. The former British Prime Minister, David Cameron, has repeatedly asserted that challenging 'poisonous extremist' ideology represents a 'generational struggle'.[1] One of the principal means by which the UK Government has responded to this challenge is with the Prevent Strategy which has the stated aim to 'stop people becoming terrorists or supporting terrorism'.[2] The Strategy was first introduced by the Home Office in 2003 as part of the wider counter-terrorism strategy known as CONTEST,[3] but was not published until 2006, in the aftermath of the

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[1] D Cameron, HC Deb 26 September 2014, vol 585, col 1266. See also C. Hope, 'Our generational struggle against a poisonous ideology' *The Daily Telegraph* (16 August 2014); BBC News, 'UK in "generational struggle" against terror, says PM' (21 January 2013) <www.bbc.co.uk/news/uk-politics-21130484>.

[2] HM Government, 'Prevent Strategy' (Cm 8092, June 2011) para 6.1 <www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf>.

[3] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (Cm 8123, July 2011) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/97995/strategy-contest.pdf>.

7/7 London terrorist attacks.[4] Almost a decade later, the Counter-Terrorism and Security (CTS) Act 2015 gave the Prevent Strategy a statutory basis by placing a duty upon certain authorities to include the prevention of terrorism in their functions.[5] The Strategy has faced fierce criticism from many on several bases, and a recent poll suggested that only 4% of the general public believe the Prevent Strategy is working.[6] On the one hand, the Strategy has been criticised as divisive, discriminatory and potentially counter-productive, particularly following a number of high profile incidents involving innocent individuals, some as young as four.[7] There are also widespread reports of a generally held belief amongst Muslim communities that they are being stigmatised.[8] On the other hand, the Strategy has been attacked as being ineffective after individuals who were known to authorities and placed on counter-radicalisation programmes went on to commit terrorist offences.[9] This

[4] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (Cm 6888, July 2006) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/272320/6888.pdf>.

[5] Part 5 Chapter 1 of the CTS Act 2015. These provisions came into force on 1 July 2015.

[6] J Watts, 'Only 4% of people think David Cameron's anti-extremist policy works' *The Evening Standard* (1 April 2016).

[7] In March 2015, a Muslim postgraduate student at Staffordshire University was questioned by security guards after a university employee observed the student reading a book on Terrorism Studies. See R Ramesh, J Halliday, 'Student accused of being a terrorist for reading book on terrorism' *The Guardian* (24 September 2015). In May 2015, a Muslim schoolboy was questioned after discussing eco-terrorism in a French language lesson. See V Dodd, 'School questioned Muslim pupil about Isis after discussion on eco-activism' *The Guardian* (22 September 2015). In March 2016, a four year old nursery student was allegedly threatened with referral to the Channel programme after staff mistook a drawing of a cucumber and the child's explanation for a 'cooker bomb'. See D Barrett, 'Four-year-old who "mispronounced the word cucumber" threatened with counter-terrorism measures' *The Daily Telegraph* (11 March 2016).

[8] Muslim Council of Britain, Parliamentary Briefing on introducing 'Prevent' as a statutory duty for all public bodies (18 January 2015) <www.mcb.org.uk/wp-content/uploads/2015/01/MCB-Briefing-on-introducingPrevent-as-a-statutory-duty-for-all-public-bodies.pdf>; Muslim Council of Britain, 'The Impact of Prevent on Muslim Communities: A Briefing to the Labour Party on how British Muslim Communities are Affected by Counter-Extremism Policies' (February 2016).

[9] In February 2015, 19 year old Brusthom Ziamani was found guilty of plotting to behead a soldier, after refusing to engage with Prevent officers. See T Whitehead, 'Channel Project under fire after conviction of Britain youngest terrorist' *The Telegraph* (23 July 2015). Additionally, in July 2015 a 15 year old boy pleaded guilty to charges of plotting a terrorist attack on Anzac Day in Australia after being placed on the Channel

article addresses some of the implications and concerns emanating from the Strategy from a human rights law perspective.

Following this introduction, Section 2 presents the background to the current statutory framework, briefly reflecting upon the development of the Strategy and how the duty upon public authorities came into being. Section 3 analyses how the Prevent duty may interfere with human rights and fundamental freedoms, and whether such an interference can be regarded as lawful under international human rights law. Moreover, it discusses the legal arguments that could be raised when challenging the statutory duty, and the wider implications of the Strategy with a particular focus upon the education sector. Section 4 concludes and looks to the future by briefly considering the Government's current counter-extremism proposals which threaten to consolidate and extend many of the concerns with the Prevent Strategy.

2. *The Prevent Strategy and the Counter-Terrorism and Security Act 2015*

The Prevent Strategy formed one of the four pillars of the UK's original CONTEST Strategy in 2003, which aims to 'reduce the risk to the UK and its interests overseas from terrorism, so that people can go about their lives freely and with confidence'.[10] Following a substantial review in 2011, which was overseen by the then Independent Reviewer of Terrorism Legislation, Lord Carlile,[11] the Prevent Strategy was amended to include a number of core objectives. These are to 'respond to the ideological challenge of terrorism', to 'work with sectors where there are risks of radicalisation occurring', and most importantly to 'prevent people being drawn into terrorism' and ensure they have ap-

programme when he was 13 years old. See J Halliday, 'Counter-extremism workers knew boy who plotted Australian Isis attack' *The Guardian* (23 July 2015).

[10] In addition to Prevent, the wider CONTEST Strategy also includes Pursue (to stop terrorist attacks), Protect (to strengthen our protection against terrorist attacks), and Prepare (where an attack cannot be stopped, to mitigate its impact). See HM Government, 'CONTEST' (n 3) 6 and para 1.12.

[11] See A Carlile, 'Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy' (May 2011) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/97977/lord-carlile-report.pdf>.

propriate support.[12] The 2011 version of the Strategy also retracts from the notion that the Strategy was targeted exclusively at Muslim extremism, by considering all forms of extremism to come within its scope. It also de-emphasises one of the core concepts of the 2006 Strategy which concerned community integration projects.[13]

Until the enactment of the CTS Act 2015, the Prevent Strategy was confined to government policy and had no statutory basis. Nevertheless, even as a policy, the Prevent Strategy had a far-reaching impact and generated much controversy. For example, the Institute of Race Relations revealed in 2009 that the amount of funding distributed to local authorities by the Government for Prevent-related work correlated strongly with the population of Muslim communities in towns and cities.[14] Clearly, such findings did not help to stem suggestions from the outset that the Prevent Strategy was specifically targeted towards Muslim communities.

However, the Prevent Strategy entered new territory when the CTS Act 2015 placed a statutory duty upon specific authorities in the exercise of their functions to have due regard to the need to prevent people being drawn into terrorism.[15] The specified authorities span almost all sectors of public life and include local government, criminal justice, education and child care, health and social care, and the police.[16] The Secretary of State has the power to issue guidance to an authority about the exercise of its duty, and that authority must have regard to such guidance in carrying out its duty.[17]

[12] 'Prevent Strategy' (n 2) para 3.21.

[13] The 2011 Strategy states 'The Prevent programme we inherited from the last Government was flawed. It confused the delivery of Government policy to promote integration with Government policy to prevent terrorism. It failed to confront the extremist ideology at the heart of the threat we face; and in trying to reach those at risk of radicalisation, funding sometimes even reached the very extremist organisations that Prevent should have been confronting'. ibid at 1.

[14] A Kundnani, 'Spooked! How not to prevent violent extremism' (Institute of Race Relations 2009) 12-17 <www.irr.org.uk/pdf2/spooked.pdf>.

[15] CTS Act 2015 s 26.

[16] Sch 6 to the CTS Act 2015.

[17] CTS Act 2015 ss 29(1)-(2). Section 29(3) allows the Secretary of State to issue separate guidance in relation to different matters, and to issue guidance to all specified authorities, to particular specified authorities or to specified authorities of a particular description.

Where concerns arise about an authority's compliance with its statutory duty, the Prevent duty guidance, originally issued by the Government in March 2015 and recently revised for a second time, states that the Secretary of State has a number of options.[18] If the concern lies with a local authority, the Secretary may consider using existing mechanisms under the Local Government Act 1999 which allows the appointment of an inspector to assess an authority's compliance with its statutory duty,[19] or, in the case of a local council, the appointment of a Commissioner and to transfer some of the council's functions to them.[20] If the concern lies with a local authority with a function relating to education, childcare or children's social care, the Secretary may use her powers under the Education Act 1996 or Children Act 2004 to take whatever action is deemed expedient to achieve necessary improvement.[21] Ultimately, if the Secretary of State is satisfied that an authority has failed to discharge its duty, she may give directions to the authority for the purpose of enforcing the performance of that duty, which can be enforced by a mandatory order upon application.[22]

Universities occupy a unique position in the implementation of the Prevent statutory duty, as pre-existing legislation and the CTS Act itself recognises that university administrations must have particular regard to the duty to ensure freedom of speech and respect academic freedom.[23] The CTS Act specifies that, when issuing guidance or directions to a university, the Secretary of State must have particular regard to the

[18] See HM Government, 'Revised Prevent Duty Guidance: For England and Wales' (March 2016) paras 52-56 <www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance__England_Wales_V2-Interactive.pdf>.

[19] Local Government Act 1999 s 10.

[20] Local Government Act 1999 s 15.

[21] Education Act 1996 s 497A; Children Act 2004 ss 15(3) and 50(1).

[22] CTS Act 2015 ss 30(1)-(2). A mandatory order is a binding instruction issued by a court requiring a public authority to carry out a particular action.

[23] CTS Act 2015 s 31(2). See also HM Government, 'Prevent Duty Guidance: for higher education institutions in England and Wales' (March 2015) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/445916/Prevent_Duty_Guidance_For_Higher_Education__England__Wales_.pdf>. The freedom of speech is also protected by the Education (No 2) Act 1986 s 43(1) which places a duty on universities and colleges to take 'steps as are reasonably practicable' to ensure that freedom of speech is upheld.

same issues.[24] As a number of incidents at universities in recent years have shown, the safeguarding of free speech in environments traditionally open to debate and diversity remains a particularly toxic issue. For example, a number of events involving Islamic speakers have allegedly been cancelled following internal and external pressure.[25] Additionally, several speakers deemed to hold 'extreme' views, have been banned or pressured to withdraw following criticism by student unions.[26]

The Strategy faced very little meaningful and thorough oversight in the earliest years of its existence. However, the House of Commons Communities and Local Government Committee produced a valuable report on the issue in 2010,[27] before Lord Carlile conducted the more substantial independent review in 2011 which was instrumental to the reformation of the Strategy into its current form. Moreover, the Home Affairs Select Committee and the Joint Committee on Human Rights (JCHR) are both currently holding valuable inquiries into related issues of counter-extremism.[28]

Much criticism has been made of the Prevent Oversight Board which is charged with monitoring the effectiveness of the Strategy. The modest, yet potentially far-reaching, influence of the Board is reflected by the fact that it may recommend that the Secretary of State use the power of direction under section 30 of the CTS Act 2015.[29] However, as

[24] CTS Act 2015 ss 31(3)-(4).

[25] Claystone, 'Access Denied: Exploratory Study Investigating the Cancellation of Student Islamic Society Events Across London Universities' (February 2014) <www.claystone.org.uk/wp-content/uploads/2014/02/ClaystoneReport_AccessDenied.pdf>.

[26] See for example R Pells, 'NUS "no platform" policy goes "too far" and threatens free speech, Peter Tatchell warns' *The Independent* (25 April 2016); A Anthony, 'Is free speech in British universities under threat?' *The Observer* (24 January 2016); M Deacon, 'Just look who the university Thought Police have banned now…' *The Telegraph* (6 November 2015).

[27] House of Commons Communities and Local Government Committee, 'Preventing Violent Extremism' (2009-10, HC 65) <www.publications.parliament.uk/pa/cm200910/cmselect/cmcomloc/65/65.pdf>.

[28] The Home Affairs Committee began a wide-ranging inquiry into extremism in August 2015. See <www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/countering-extremism/>. The Joint Committee on Human Rights began conducting pre-legislative scrutiny of the Extremism Bill in February 2016. See <www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2015/prevent-counter-extremism-evidence-15-16/>.

[29] 'Revised Prevent Duty Guidance' (n 18) para 26.

the Board is chaired by the Minister for Immigration and Security and comprised of Government officials, serious questions can be raised as to its institutional and functional independence.[30] In this regard, in March 2016, the current and former Independent Reviewers of Terrorism Legislation gave testimony before the JCHR, in which both alluded to some of the concerns generated by the Prevent Strategy. Lord Carlile suggested that the Prevent Oversight Board had not achieved what he had anticipated and met very rarely.[31] On this point, the current reviewer, David Anderson QC, had previously criticised the Board for lacking the institutional independence needed to restore public confidence.[32] Moreover, during the JCHR hearing, Anderson repeated his earlier suggestions that the Strategy would benefit from some form of independent review, whilst Lord Carlile added that that the Strategy needed to be reviewed.[33]

3. *Prevent in practice: Human rights and broader implications*

The implementation by a public authority of its statutory duty carries the potential to engage a number of human rights issues. Perhaps most obviously – particularly in education settings where a significant amount of referrals are made and where most of the controversial inci-

[30] ibid para 25. See also Joint Committee on Human Rights, 'Legislative Scrutiny: Extremism Bill', Oral evidence presented by David Anderson QC and Lord Carlile (9 March 2016) at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/legislative-scrutiny-counterextremism-bill/oral/30366.html> and Supplementary written evidence submitted by David Anderson QC (Independent Reviewer of Terrorism Legislation) to the Home Affairs Select Committee (2 February 2016) para 12 at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/ home-affairs-committee/countering-extremism/written/27920.pdf>.

[31] 'Legislative Scrutiny: Extremism Bill' (9 March 2016) (n 30) Q.6.

[32] See Supplementary written evidence submitted by David Anderson QC (n 30) and D Batty, 'Prevent strategy "Sowing mistrust and fear in Muslim communities"' *The Guardian* (3 February 2016).

[33] 'Legislative Scrutiny: Extremism Bill' (9 March 2016) (n 30) Q.6. The Committee on the Rights of the Child has recommended a similar move. See Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland UN doc CRC/C/GBR/CO/5 (3 June 2016) para 21(b).

dents have occurred – freedom of expression is challenged.[34] This has been discussed widely, but was notably identified as a problem by David Anderson when recently questioned by the JCHR. He suggested that, as a result of the new duty, teachers are hesitant to discuss sensitive topics in the classroom and parents are similarly cautious when discussing contentious issues at home in case children repeated things at school which may trigger action being taken by authorities.[35] Moreover, Anderson warned that controversial topics or potentially hostile views were no longer being challenged in an open and controlled environment.[36] This view is also held by many in the teaching profession, with the National Union of Teachers recently passing a motion calling upon the Government to withdraw the Prevent Strategy in schools.[37] In this context, the effective curtailing of an individual's freedom of expression engages Article 10 of the European Convention on Human Rights (ECHR);[38] but a chilling effect that spills into home life, with families reluctant to discuss matters at home, may also infringe upon the right to respect for private and family life under Article 8.[39] Additionally, Anderson indicated that any proposals to monitor the online activities of schoolchildren would also have clear implications for their right to privacy.[40]

Depending on the particular context of an interference, related concerns may equally arise in respect of the other relevant qualified rights, i.e. Articles 9 and 11 of the ECHR which protect the right to manifest one's religious beliefs and the freedom of association respectively.[41] As with all qualified rights, these rights may only be restricted if the interference is prescribed by law, pursues a legitimate aim, and is necessary

[34] Between January 2012 and December 2015, 1839 children aged 15 and under were referred to authorities over concerns that they were at risk of radicalisation. Although the figures include action taken prior to the implementation of the CTS Act 2015, most referrals were made in November 2015, after the Prevent statutory duty came into force. See S Kotecha, 'More than 400 children under 10 referred for "deradicalisation"' BBC News (21 January 2016) at <www.bbc.co.uk/news/uk-35360375>.

[35] 'Legislative Scrutiny: Extremism Bill' (9 March 2016) (n 30) Q.2.

[36] ibid.

[37] R Adams, 'Teachers back motion calling for Prevent strategy to be scrapped' *The Guardian* (28 March 2016).

[38] See also art 13 of the Convention on the Rights of the Child (the 'CRC').

[39] See also art 16 of the CRC.

[40] 'Legislative Scrutiny: Extremism Bill' (9 March 2016) (n 30) Q.2.

[41] See also arts 14 and 15 of the CRC.

in a democratic society.[42] In the following sections, it will be shown that serious questions arise as to whether the legal and policy framework placing the Prevent duty upon certain public authorities fulfils these basic requirements.

3.1. *An interference under the Prevent statutory duty must be prescribed by law*

The first requirement strikes at the heart of the rule of law, which demands that laws must reach a level of certainty, clarity and predictability. According to the European Court of Human Rights (ECtHR), in addition to there being a specific law which authorises an interference with a human right, the law must be adequately accessible, and it must be sufficiently precise to enable the individual to predict its applicability.[43] In that regard, some of the most important terminology underpinning the Prevent statutory duty raises a number of immediate concerns and would appear to contradict this requirement.

Firstly, the word 'terrorism' under the Prevent statutory duty is to be given the same interpretation as the definition under section 1 of the Terrorism Act 2000.[44] The UK is well noted for having one of the broadest definitions of terrorism in the world, which has presented an

[42] See the second clauses of arts 8-11 of the ECHR. For case law see for example *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) para 45; *Malone v United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) para 65; *Silver and others v United Kingdom* App nos 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (ECtHR, 25 March 1983) para 84; *Hasan and Chaush v Bulgaria* App no 30985/96 (ECtHR [GC], 26 October 2000) para 83; *Hashman and Harrup v United Kingdom* App no 25594/94 (ECtHR [GC], 25 November 1999) para 26; *Rotaru v Romania* App no 28341/95 (ECtHR [GC], 4 May 2000) para 48.

[43] *The Sunday Times v United Kingdom* (n 42) para 49; *Malone v United Kingdom* (n 42) para 66; *Silver and others v United Kingdom* (n 42) paras.85-88; *Hasan and Chaush v Bulgaria* (n 42) para 84; *Hashman and Harrup v United Kingdom* (n 42) para 31; *Rotaru v Romania* (n 42) para 52.

[44] CTS Act 2015 s 35(3). The definition of terrorism contained within section 1 of the Terrorism Act 2000 involves three cumulative elements: (a) the actions or threats of actions e.g. serious violence against a person; (b) the target of those actions i.e. to influence a government or international organisation, or to intimidate the public; (c) the motive of those actions i.e. advancing a political, religious, racial or ideological cause. See D. Anderson, 'The Terrorism Acts in 2013: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006' (July 2014) para 10.6.

unprecedented level of definition 'creep' since the turn of the millennium.[45]

Secondly, the need for public authorities to have 'due regard to the need to prevent' people being drawn into terrorism begs the question of how far public authorities must go to satisfy this requirement. The six-week consultation stage prior to the enactment of the CTS Act 2015 attracted a significant number of submissions, some of which drew attention to this particular phrasing and suggested that it must have more clarity.[46] The Prevent duty guidance issued by the Home Office states that the term 'due regard' means that public authorities should place the 'appropriate amount of weight on the need to prevent people being drawn into terrorism when they consider all the other factors relevant to how they carry out their usual functions'.[47] What amounts to the 'appropriate weight' in any given situation is clearly problematic as the notion is unhelpful and rather vague in itself. Moreover, the notion appears to require authorities to assert individual judgment and discretion, which can help to create inconsistent practices amongst different authorities. The ECtHR has remarked that laws which confer discretion upon a public authority 'must indicate the scope of that discretion, although the degree of precision required will depend upon the particular subject matter'.[48] At present, it would seem that the scope of discretion given to public authorities by Government to execute the Prevent statutory duty is exceptionally broad.

However, perhaps the most significant issue arising out of the Prevent statutory duty relates to the notion of challenging 'extremism' which underpins the need for the statutory duty in the first place. There is an obvious difficulty in the legal definition of extremism, set out in Prevent Strategy as 'vocal or active opposition to fundamental British

[45] D Anderson 'The Terrorism Acts in 2013' (n 44) 1. In *R v Gul*, the UK Supreme Court suggested that a reform of the UK's definition of terrorism was needed. The case concerned the prosecution of an individual for disseminating terrorist publications. The Supreme Court acknowledged the possibility that prosecutorial discretion mitigated the width of the definition of terrorism, but held that it was not 'an appropriate reason for giving "terrorism" a wide meaning'. See *R v Gul* [2013] UKSC 64 para 40.

[46] HM Government, 'Prevent Duty Guidance: Summary of Responses to the Consultation' (March 2015) para 17 at <www.gov.uk/government/uploads/system/uploads/attachment_data/file/409886/Prevent_Duty_Guidance_-_Summary_of_responses.pdf>.

[47] 'Revised Prevent Duty Guidance' (n 18) para 4 and 21.

[48] *Herczegfalvy v Austria* App no 10533/83 (ECtHR, 24 September 1992) para 89.

values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs', which also includes 'calls for the death of members of our armed forces, whether in this country or overseas'.[49] At the same time, 'non-violent extremism' is defined as extremism (in those same terms) 'which is not accompanied by violence'.[50] Responses to the consultation prior to the issuing of the Prevent duty guidance stressed the need for a comprehensive definition of 'extremism' and also suggested that the concept of 'British values' was vague and required more clarity.[51]

Moreover, if an authority acts upon its statutory duty and an individual is subsequently referred to the Channel programme, a panel will sit and conduct a 'vulnerability assessment', based on a framework in which 22 'indicators' of extremism are considered.[52] These are spread across three elements: 'engagement with a group, cause or ideology'; 'intent to cause harm'; and 'capability to cause harm'.[53] Listed within the first category are vague and innocuous notions such as 'a need for identity, meaning and belonging' and 'a desire for excitement and adventure'.[54]

As is all too often shown in matters of national security, laws which carry broad definitions, or otherwise grant an inherently broad discretion to those tasked with implementation, risk being applied arbitrarily or in a discriminatory manner.[55] The seemingly disproportionate use of certain police powers in the context of national security and public order against ethnic minorities can be easily identified in the UK. For example, black and Asian people continue to

[49] 'Prevent Strategy' (n 2) Annex A: Glossary of Terms; 107.

[50] 'Revised Prevent Duty Guidance' (n 18) 21.

[51] 'Prevent Duty Guidance: Summary of Responses' (n 46) para 17.

[52] HM Government, 'Channel: Vulnerability Assessment Framework' (October 2012) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/118187/vul-assessment.pdf>.

[53] ibid 2-3.

[54] ibid. See also Joint Committee on Human Rights, 'Legislative Scrutiny: Extremism Bill', Written evidence submitted by the Institute of Race Relations (9 March 2016) <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/legislative-scrutiny-counterextremism-bill/written/29864.html>.

[55] See generally International Commission of Jurists: Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 'Assessing Damage, Urging Action' (Geneva, 2009).

be disproportionately subjected to stop and police search powers,[56] despite campaigns by civil society to highlight and tackle this phenomenon and some government measures to address it.[57] The effect is almost identical with regard to the even broader power to stop, search and temporarily detain individuals at international terminals for the purpose of determining if that person appears to be connected to terrorism; a power which does not even require the examining officer to have suspicion.[58] The extremely low number of arrests following the use of such powers is a further cause for concern and only serves to indicate their potentially arbitrary nature.

[56] Recent statistics revealed that in 36 of the 39 English and Welsh police forces, black people were more likely to be subject to stop and search powers than white people. At its most extreme, between December 2014 and April 2015, a black person in Dorset was 17.5 times more likely to be stopped than a white person. See N Morris, 'Black people still far more likely to be stopped and searched by police than other ethnic groups' *The Independent* (6 August 2015).

[57] In spring 2014 the former Home Secretary, Theresa May, suggested that a package of reforms to stop and search powers would include a revised code of practice to give greater clarity to what 'reasonable suspicion' constitutes, to ensure all police authorities maintain transparent public records, and to review police training. See T May, 'Stop and search: Comprehensive package of reform for police stop and search powers', Oral statement to Parliament (30 April 2014) <www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>.

[58] Recent Home Office statistics for the year ending September 2015 revealed that a total of 29,052 people were examined whilst passing through international terminals in the UK under Schedule 7 to the Terrorism Act 2000. Moreover, 30% of all stops were against 'Asian or Asian British' people, 23% were against 'Chinese or other' people, and 33% were against 'White' people. See Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, quarterly update to September 2015' (10 December 2015) <www.gov.uk/government/publications/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-september-2015/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-arrests-outcomes-and-stop-and-search-great-britain-quarterly-u> Figure 6.2. According to the coalition 'Stop Watch', for the 2013-14 period, despite comprising roughly 14% of the population, ethnic minorities accounted for 87% of those stopped for over an hour under Schedule 7. See Stop Watch, 'Schedule 7 stops under the Terrorism Act 2000', Factsheet (2013-14) at <www.stop-watch.org/uploads/documents/Schedule7-201314.pdf>.

3.2. *An interference under the Prevent statutory duty must pursue a legitimate aim*

The second requirement in order to lawfully restrict the enjoyment of a right is that the interference must pursue a legitimate aim.[59] In other words, the measures taken must advance and work towards the objective being pursued. Although Articles 8-11 of the ECHR slightly differ in the expressly stated aims which may allow for a restriction upon the right in question, the point of allowing an individual's right to be restricted in order to protect the needs of the wider community is fundamentally the same. Common to each of the four qualified rights, an interference may be permissible if the measure giving rise to it is adopted in the interests of 'public safety'.[60] An interference with Articles 8, 10 and 11 may also be permissible in the interests of 'national security', or for the 'prevention of disorder or crime'.[61] Furthermore, an interference with Articles 8, 9 and 11 may be permissible under the broader notion of the 'protection of the rights and freedoms of others'.[62] Bearing in mind the underlying purpose of the Prevent statutory duty, an authority might be in a strong position to argue that any action it undertakes which interferes with the rights of an individual is in the interest of one or more of these expressly stated aims. The prevention of people being drawn into terrorism is, after all, a wholly legitimate and desirable underlying objective.

However, the so-called 'conveyor-belt' theory of an individual's journey towards terrorism via extremism which underpins Prevent has been much criticised.[63] A large body of opinion suggests that the causes are less linear and much more complex,[64] and a leaked Government pa-

[59] The ECtHR first espoused this requirement in *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 49.

[60] Arts 8(2)-11(2) of the ECHR.

[61] ibid.

[62] ibid.

[63] For example, the Preface of the Prevent Strategy states that 'it is clear that for many who have committed terrorist acts extremism is the foundation, the driver for terrorism'. See 'Prevent Strategy' (n 2) 3.

[64] A Kundnani, 'A Decade Lost: Rethinking Radicalisation and Extremism' (January 2015) <www.claystone.org.uk/wp-content/uploads/2015/01/Claystone-rethinking-radicalisation.pdf>; J Githens-Mazer, R Lambert, 'Why Conventional Wisdom on Radicalization Fails: The Persistence of a Failed Discourse' (2010) 86 Intl Affairs 889.

per in 2010 also pays testament to this.[65] The somewhat simplistic rationale of the Strategy which emphasises that 'preventing terrorism will mean challenging extremist (and non-violent) ideas that are also part of a terrorist ideology' and that 'Prevent will also mean intervening to stop people moving from extremist groups or from extremism into terrorist-related activity' seems under-developed as the basis of Prevent and the statutory duty under the CTS Act 2015.[66]

Moreover, the domestic courts and the ECtHR have been mostly deferential to governments on this requirement. In matters of national security in particular, the judiciary has long faced criticism for being overly acquiescent to the will of the executive. The record of judges in common law countries in scrutinising the executive on matters of national security has been described by some as 'decidedly patchy',[67] and elsewhere as 'at worst dismal, at best ambiguous'.[68] For example, in *Secretary of State for the Home Department v. Rehman*, Lord Hoffmann noted in the post-9/11 postscript to his judgment that 'in matters of national security, the cost of failure can be high'.[69] Therefore, when considering the Prevent statutory duty, it would initially appear that the requirement for an interference with a human right to pursue a legitimate aim is a relatively straightforward hurdle.

However, when confronted with claims that the Strategy is ineffective, divisive and even counter-productive, arguments that the statutory

[65] In 2010, a Government paper stated 'It is sometimes argued that violent extremists have progressed to terrorism by way of a passing commitment to non-violent Islamist extremism, for example of a kind associated with al-Muhajiroun or Hizb ut Tahrir ... We do not believe that it is accurate to regard radicalisation in this country as a linear 'conveyor belt' moving from grievance, through radicalisation, to violence … This thesis seems to both misread the radicalisation process and to give undue weight to ideological factors'. See A Gilligan, 'Hizb ut Tahrir is not a gateway to terrorism, claims Whitehall report' *The Telegraph* (25 July 2010).

[66] 'Prevent Strategy' (n 2) para 3.10.

[67] H Fenwick, G Phillipson, 'Covert Derogations and Judicial Deference: Redefining Liberty and Due Process Rights in Counterterrorism Law and Beyond' (2011) 56 McGill L J 863, 915.

[68] D Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (CUP 2006) 17.

[69] *Secretary of State for the Home Department v Rehman (AP)* [2001] UKHL 47; [2003] 1 AC 153 para 195.

duty pursues a legitimate aim become harder to maintain.[70] In that regard, the UN Special Rapporteur on the right to freedom of assembly recently waded into the debate, echoing many of the concerns already addressed. Most disturbingly, the Rapporteur suggested that 'by dividing, stigmatising and alienating segments of the population, Prevent could end up promoting extremism, rather than countering it'.[71] Indeed, if objective evidence indicates that the phenomenon which any measure seeks to prevent or obstruct is not reduced, or perhaps even increased, then the interference with fundamental rights deriving from such measure could not be seen as pursuing a legitimate aim. In other words, if the Prevent statutory duty is not stopping people being drawn into terrorism, but rather contributing to the alienation and radicalisation of some individuals, then the statutory duty cannot be said to pursue a legitimate aim.

Clearly, given the inherently pre-emptive nature of the Prevent statutory duty, there is no straightforward means of assessing if the duty, or the Prevent Strategy in general, is in fact counter-productive. This is partly because, as the former Chief Constable of Greater Manchester Police and national police lead for the Prevent programme recently testified before the JCHR, 'it is very difficult to assess a prevention strategy, whether it is a strategy on the prevention of illegal drugs, gang activity or, in this case, violent extremism, when essentially your criterion of success is that nothing has happened and there have been no attacks'.[72]

[70] For example, see Committee on the Rights of the Child, Concluding Observations (n 33) paras 20(b) and 21(b); 'Legislative Scrutiny: Extremism Bill' (9 March 2016) (n 30) Q.3; Home Affairs Committee, 'Inquiry on Countering Extremism' Oral evidence presented by Harun Rashid Khan, Miqdaad Versi & Ameena Blake (Muslim Council of Britain) (27 October 2015); and the written evidence submitted to the Inquiry by the East London Mosque (23 February 2016) and CAGE Advocacy Ltd (13 October 2015).

[71] Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom (21 April 2016) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E>.

[72] Joint Committee on Human Rights, 'Legislative Scrutiny: Extremism Bill', Oral evidence presented by Sir Peter Fahy, Barath Ganesh, Sara Khan & Prof Julian Rivers (16 March 2016) Q.16 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/countering-extremism/oral/30764.pdf>.

3.3. *An interference under the Prevent statutory duty must be 'necessary in a democratic society'*

Perhaps the most difficult of the three requirements which must be satisfied in order to lawfully restrict the enjoyment of a right is that the interference must be 'necessary in a democratic society'. When ascertaining whether a restriction is necessary, the ECtHR has insisted that the interference must correspond to a 'pressing social need'.[73] Going further, when evaluating the pressing social need at stake, the Court has asserted that the interference must be proportionate to the legitimate aim being pursued.[74] The ECtHR has also insisted that interferences may be proportionate to the aim being pursued if such an interference is restricted in its application and effect, and that adequate safeguards are in place to protect against arbitrary treatment.[75]

It is clearly not enough that the question of proportionality is met by a simple balancing of the gravity of the relative harms relating to the execution of the Prevent statutory duty, as may seem attractive in this case. Rather, as alluded to above, a proper examination of proportionality must involve proper scrutiny of the real harms generated by the Prevent Strategy in relation to its reach, its efficacy, the possibility of it being counter-productive as some allege, and whether it meets the exigen-

[73] *Handyside v United Kingdom* (n 59) para 48; *The Sunday Times v United Kingdom* (n 42) para 59; *Silver and Others v. United Kingdom* (n 42) para 97. In *Dudgeon v United Kingdom* the Court suggested that '"necessary" in this context does not have the flexibility of such expressions as "useful", "reasonable", or "desirable", but implies the existence of a 'pressing social need' for the interference in question'. See *Dudgeon v. United Kingdom* App no 7525/76 (ECtHR [GC], 22 October 1981) para 51.

[74] The UN Human Rights Committee has noted that 'the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect'. See UNHRC, *Rafael Marques de Morais v Angola* Com no 1128/2002 (18 April 2005) UN Doc CCPR/C/83/D/1128/2002, para 6.8. Alex Conte has argued that there are two common factors to consider when evaluating the proportionality of a restriction: 'the negative impact of the limiting measure upon the enjoyment of the right', and secondly, the 'ameliorating effects of the limiting measure'. See A Conte, R Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (2nd ed, Ashgate Publishing 2009) 49.

[75] *M.S. v Sweden* App no 20837/92 (ECtHR, 27 August 1997) paras 41-43; *Z. v Finland* App no 22009/93 (ECtHR, 25 February 1997) paras 95, 103 and 107.

cies of equality before the law.[76] Moreover, this exercise must be undertaken with regard not only to the letter of statute and the policy, but also with regard to how it is implemented and whether there are sufficient safeguards to ensure that poor implementation and arbitrariness is challenged and rectified.

In light of the numerous incidents of innocent individuals being subjected to action in schools and universities in particular, serious questions can be raised as to whether the Prevent statutory duty, in its current form, has the capability of avoiding arbitrariness. Admittedly, some consideration must be shown to the fact that the Prevent statutory duty has only been in place for a little over a year, in which time public authorities have had little time to build up adequate safeguards in the absence of convincing guidance from the Government. Until robust guidance comes from the Government, it is questionable if authorities will be in a position to build up adequate safeguarding measures. Furthermore, in light of the lack of independence and the infrequency in which the Prevent Oversight Board meets, it is doubtful whether the Board as it currently functions has the capability to help lessen the risk of arbitrariness. In this regard, it may be wholly unreasonable to expect public authorities to be able to put in place adequate safeguards if the Government's own review structure is itself inadequate.

3.4. *The wider implications of the Prevent statutory duty in educational settings*

Of all the authorities impacted by the CTS Act 2015, requiring institutions within the education sector to implement the Prevent statutory duty is perhaps the most contentious development. Institutions of learning, particularly universities, are widely treasured for the ability to foster open and constructive dialogue and debate on

[76] When presenting oral evidence to the JCHR in May 2016, the Vice Chancellor of Oxford University, Professor Louise Richardson, warned that the Prevent Strategy was not taking account of its unknown effects in society, and that alienated communities may be less willing to cooperate with counter-radicalisation initiatives. See Joint Committee on Human Rights, 'Legislative Scrutiny: Extremism Bill' Oral evidence presented by Prof Louise Richardson, Dr Jessie Blackbourn, Karon McCarthy & Christine Abbott (4 May 2016) at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/countering-extremism/oral/33052.pdf>.

controversial issues. The UN Special Rapporteur on Terrorism and Human Rights has been particularly critical of any measures which impede this, suggesting that 'educators should not be required to act as watchdogs or intelligence officers, nor should they be obliged to act in ways that might impinge the right to education, academic freedom or freedom of expression, thought, religion or belief'.[77] Although this article has addressed some of the most significant concerns with the Prevent statutory duty from a broader legal and human rights perspective, the willingness to place teachers on the frontline in the struggle against terrorism represents uncharted territory and begs several fundamental questions. Most worryingly, if students and teachers become unwilling to debate controversial issues out of fear of being reported, the risks of a chilling effect upon free speech are obvious.

With respect to the obligation on teachers to identify those vulnerable to being exposed to or espousing views that could lead to terrorist acts, serious questions can be raised as to whether the transformation of what is clearly a pre-existing professional, deontological responsibility of educators into a specific *legal* duty was necessary in the first place. Firstly, in all public sector education environments, but particularly in schools, teachers owe a general duty of care to students insofar as the health, safety and welfare of a student is of paramount concern and steps should be taken if a student is vulnerable to harm. This derives from the common law and the notion of *in loco parentis*,[78] meaning responsibility 'in the place of a parent', but also from pre-existing domestic legislation and the UK's international obligations in relation to the safety of children.

For example, the Children Act (CA) 1989 provides that a person who does not have parental responsibility for a child but has care for the child may 'do what is reasonable in all the circumstances of the case

[77] 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' UN Doc A/HRC/31/65 (22 February 2016) para 45.

[78] See for example *Hudson v The Governors of Rotherham School* [1937] LCT 303; *Jeffrey v London County Council* (1954) 52 LGR 521; *Lyes v Middlesex County Council* [1963] 61 LGR 443.

for the purpose of safeguarding or promoting the child's welfare'.[79] Moreover, under the CA 1989, local education authorities must work with social services to take steps to protect children who are at risk of harm or abuse.[80] Finally, under the Convention on the Rights of the Child, States must regard the 'best interests of the child' as a 'primary consideration' in all actions concerning children, 'whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.[81]

Clearly, in university environments where students are mostly of an adult age and legally responsible for themselves, the teacher-student relationship is different to that in school or college settings, but this does not mean that the duty of care ceases to exist.[82] Regardless of the type of education environment in question, if a student espouses views of concern, teachers should be able to act upon this in a manner that they deem appropriate in the circumstances, taking account of their professional duties. In the event that what is said amounts to hate speech or incitement to terrorism, there is an extensive range of criminal offences under UK criminal law to deal with this.[83]

Unfortunately, it seems likely that the troubling incidents witnessed over the past few years, particularly in the education sector, will continue for some time. Through a combination of nervousness, and a lack of experience or knowledge about what the statutory duty entails and what might constitute 'extremism', there is a general sense that it is

[79] Children Act 1989 s 3(5). Furthermore, ss 175(1)-(3) of the Education Act 2002 provide that local education authorities, governing bodies of maintained schools, and governing bodies of further education institutions shall make arrangements for ensuring that the functions conferred on them in their capacity 'are exercised with a view to safeguarding and promoting the welfare' of children.

[80] Sch 2 to the Children Act 1989.

[81] Art 3(1) of the CRC.

[82] Speaking before the JCHR in May 2016, the University Secretary of Birmingham City University, Christine Abbott, suggested that universities owe a duty of care to students and already oversee student welfare. See 'Legislative Scrutiny: Extremism Bill' (4 May 2016) (n 76) Q.30.

[83] In particular, see the Public Order Act 1986, as amended by the Criminal Justice and Public Order Act 1994 and the Racial and Religious Hatred Act 2006, which includes a number of offences dealing with hate speech and incitement.

better for teachers to err on the side of the caution rather than risk getting it wrong.[84]

Assessing the deeper implications of the Prevent statutory duty for free speech in universities and the broader ability of students in all education settings to develop critical thinking skills will remain a serious and difficult task. Such an undertaking is confounded even further by the numerous examples of unprompted restrictions on free speech by student unions, owing to the 'no-platforming' of alleged extreme speakers and cancellation of events.[85] In that sense, free speech and academic debate in universities are under attack from two angles which, despite the legitimate intentions of both, can each have a chilling effect upon the free discussion of ideas. In other words, the monitoring of students by universities pursuant to the Prevent Strategy, and the no-platforming of 'extreme' speakers by student unions, represent opposite sides of the same coin, as both trends potentially infringe upon free expression and academic debate. As various stakeholders have suggested, it may be better to address controversial topics and confront hostile views in open and controlled environments, rather than to drive them underground into settings where views or discussions cannot be easily monitored, countered or acted upon if necessary.[86]

Assessing the implications for free speech in university environments may thus prove even more difficult than the already complex task of assessing the productivity (or counter-productivity) of the Prevent Strategy more broadly. If, as may indeed be the case, university environments are becoming less accommodating to teaching and debating issues which may be perceived as 'extreme' by some, it would be no exaggeration to say that free speech and academic freedom in universities are facing serious existential challenges.

[84] Speaking before the JCHR in May 2016, Christine Abbott and Karon McCarthy, Prevent Officer and Assistant Principal at Chobham Academy, both alluded to these points. See 'Legislative Scrutiny: Extremism Bill' (4 May 2016) (n 76).

[85] See above (n 26).

[86] When presenting evidence to the JCHR, David Anderson QC (Q.2), Sir Peter Fahy (Q.21), Professor Julian Rivers (Q.26), and Christine Abbott (Q.35) each alluded to this point. See the respective oral evidence sessions before the Joint Committee on Human Rights, 'Legislative Scrutiny: Extremism Bill'.

4. *Conclusion*

The Prevent Strategy, aspects of which are now codified under the CTS Act 2015, represents a unique tool in the arsenal of counter-terrorism and counter-extremism powers available to the British Government. Clearly, when the specified authorities act pursuant to the Prevent statutory duty in a manner which affects the human rights of individuals, each of the three requirements addressed above present obstacles for the British Government.

As to the first, the vague language underpinning the Strategy and the statutory duty regrettably undermines its purpose and seems to continue the trend of much British counter-terrorism law and policy. Experience with stop and search police powers indicates that the vague definitions and broad discretion attached to the Prevent statutory duty may lend themselves to be applied in a disproportionate and arbitrary manner.

Secondly, the need for an interference to be pursuant to a legitimate aim remains somewhat more difficult in the face of criticism against the overall Strategy. The overarching aim to stop terrorism and to ensure the safety of the general public, entirely legitimate as it is, does not give States carte-blanche to undermine civil liberties. If the Prevent statutory duty is ineffectual and perhaps even counter-productive, then clinging to the assumption that the duty pursues a legitimate aim is somewhat more dubious.

Finally, the lack of any serious examination into the effects of the statutory duty in wider society leaves many question marks over the requirement that any interference with a right is necessary in a democratic society. The troubling incidents widely reported in the news concerning Prevent, particularly in education settings, illustrate that much greater knowledge, training and competence is needed if employees of public authorities are to be placed on the frontline in combatting extremism.

Indicating what might come in the future in the UK following the Conservative victory in the May 2015 General Election, the former Prime Minister stated at the first meeting of the new National Security Council that:

For too long, we have been a passively tolerant society, saying to our citizens: as long as you obey the law, we will leave you alone. It's often

meant we have stood neutral between different values. And that's helped foster a narrative of extremism and grievance.[87]

Soon after, new counter-extremism proposals were revealed during the State Opening of Parliament in May 2015.[88] The outlined Counter-Extremism Bill would include new powers such as Banning Orders, Extremism Disruption Orders and Closure Orders, all of which would carry the purported aim of disrupting extremists.[89] Subsequently, on 13 October 2015 the Government published a new Counter-Extremism Strategy which in many ways marks a continuation and extension of the Prevent Strategy.[90] Ultimately, the counter-extremism proposals did not materialise during the 2015-2016 parliamentary calendar, but were revamped in the subsequent State Opening of Parliament on 18 May 2016 with much vaguer proposals for a Counter-Extremism and Safeguarding Bill.[91] Dispensing with the various 'Orders' outlined in 2015, the new proposals include a 'new civil order regime to restrict extremist activity'.[92]

[87] Prime Minister's Office, 'Counter-Extremism Bill – National Security Council meeting', Press Release (13 May 2015) <www.gov.uk/government/news/counter-extremism-bill-national-security-council-meeting>. See also BBC News, 'New laws to target radicalisation' (13 May 2015) <www.bbc.co.uk/news/uk-politics-32714802>; P Wintour, 'David Cameron to unveil new limits on extremists' activities in Queen's speech' *The Guardian* (13 May 2015); C. Lucas, 'There is a threat to British values – the British government' *NewStatesman* (14 May 2015).

[88] The Queen's Speech 2015, Briefing Notes (27 May 2015) 62-63 <www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf>; A Asthana, 'New anti-extremism powers to be included in Queen's speech' *The Guardian* (3 May 2016).

[89] According to the Briefing Notes, 'Banning Orders' would be 'a new power for the Home Secretary to ban extremist groups'; 'Extremism Disruption Orders' would be 'a new power for law enforcement to stop individuals engaging in extremist behaviour'; and 'Closure Orders' would be 'a new power for law enforcement and local authorities to close down premises used to support extremism'.

[90] HM Government, Counter-Extremism Strategy (Cm 9148, October 2015) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/51859_Cm9148_Accessible.pdf>.

[91] According to the Briefing Notes of the Speech, the legislation will 'prevent radicalisation, tackle extremism in all its forms, and promote community integration'. See Prime Minister's Office, The Queen's Speech 2016 (18 May 2016) 49-50 <www.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf>.

[92] ibid.

The signs indicate that the British Government is reinforcing its desire to intervene even earlier in the lives of individuals, in order to prevent the possibility of people being drawn into terrorism, or being exposed to the risk of radicalisation. However, the new proposals would appear to go one stage further and risk the appearance of proscribing 'thought crime'.[93] Whether these far-reaching proposals will survive serious legislative and public scrutiny remains to be seen. Moreover, the risk of these proposals influencing developments in other European States and beyond remains an enduring concern.

Stepping back from the particular experience of the UK, the concerns discussed in this article should not be viewed in isolation or without acknowledging the implications of the Prevent Strategy more globally. Since 9/11 and 7/7, successive British Governments have been particularly vocal about the need for a concerted global effort to tackle radicalisation.[94] As is widely known, British counter-terrorism law and policy have influenced many States which face similar challenges.[95] There are already indications that several States are contemplating similar counter-radicalisation measures, not least of all France which is considering the establishment of counter-radicalisation centres following the major terrorist attacks suffered there in 2015 and 2016.[96]

[93] R Gleave, R McNamara, 'Non-violent Extremism: Some Questions about Laws and Limits', *UK Human Rights Blog* (22 May 2015) <http://ukhumanrightsblog.com/2015/05/22/non-violent-extremism-some-questions-about-laws-and-limits-robert-gleave-and-lawrence-mcnamara/>.

[94] For example, on 14 September 2005 former Prime Minister Tony Blair pressed the United Nations Security Council to criminalise Islamist ideological messages. See UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624; A Kundnani, *The Muslims Are Coming* (Verso 2015) 78.

[95] The British definition of terrorism contained within section 1 of the Terrorism Act 2000 has proven influential in Australia and New Zealand which did not have specific terrorist legislation prior to 9/11. See K. Roach, 'Sources and Trends in Post-9/11 Anti-terrorism Laws' in BJ Goold, L Lazarus (eds), *Security and Human Rights* (Hart Publishing 2007); K Roach, 'The Migration and Derivation of Counter-terrorism' in G Lennon, C Walker (eds) *Routledge Handbook of Law and Terrorism* (Routledge 2015).

[96] Currently in France there are proposals for regional 'Reinsertion and Citizenship Centres' to identify and engage with potential extremists, mostly young people who are drawn to jihadist groups. See K Willsher, 'France to set up a dozen deradicalisation centres' *The Guardian* (9 May 2016). See also more broadly European Union Agency for Fundamental Rights, 'Reactions to the Paris attacks in the EU: fundamental rights considerations' (FRA Paper, January 2015) <http://fra.europa.eu/sites/default/files/fra-

In this regard, it is noteworthy that the Secretary General of the United Nations recently published the 'Plan of Action to Prevent Violent Extremism', which calls upon States to 'consider developing a national plan of action to prevent violent extremism'.[97] At the same time, the Secretary General also urges that all action taken 'must be firmly grounded in the respect for human rights and the rule of law'.[98]

2015-paper-01-2015-post-paris-attacks-fundamental-rights-considerations-0_en.pdf>; Centre for European Policy Studies, 'The EU and its Counter-Terrorism Policies after the Paris Attacks' (November 2015) <www.sciencespo.fr/ceri/sites/sciencespo.fr.ceri/files/no84_0.pdf>.

[97] UN General Assembly, 'Plan of Action to Prevent Violent Extremism: Report of the Secretary General' (24 December 2015) A/70/674 para 44.

[98] ibid para 40.