

A decorative graphic consisting of a grid of grey dots of varying sizes, with several dots highlighted in red. The dots are arranged in a pattern that roughly follows the shape of a map of Europe.

Democracy and Terrorism – Experiences in Coping with Terror Attacks

Case Studies from Belgium, France, Israel and Norway

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- Terrorism poses unique challenges to democracies and democratic leaders alike. The question is: How should democratic societies respond to terrorist attacks? Is there such a thing as a uniquely *democratic* response to a terrorist incident?
- In their efforts to be seen to respond visibly and forcefully, all the countries surveyed have introduced changes, often far-reaching: expanding the powers of law enforcement and the executive, passing new laws, even imposing a prolonged state of emergency – with questionable outcomes.
- Even if very far-reaching measures largely meet with majority approval, concern to create a rapid and assertive response can easily eclipse the question of proportionality of means. Regular stocktaking and cost/benefit analyses are imperative to maximise security without abandoning the principles of rule of law or unnecessarily curtailing civil rights and liberties.



Contents

Foreword	3
<i>Anna Maria Kellner</i>	
The Brussels Bombings – Striking a Balance Between Law Enforcement and Risk Management	5
<i>Paul Ponsaers & Elke Devroe</i>	
Democracy and Terrorism – Experience in Coping with Terror Attacks in France	15
<i>Jean-Pierre Maulny</i>	
New Terror – The Israel Case	31
<i>Amir Fuchs</i>	
Norway: A Lack Of Reckoning?	37
<i>Sindre Bangstad</i>	
About the Authors	47

Foreword

Terrorism poses unique challenges to democracies and democratic leaders alike. Preventing such attacks by combating terrorist networks, confronting their ideologies and addressing root causes of terrorism is a priority for democratic governments. The question is: How should democratic societies respond to terrorist attacks? Is there such a thing as a uniquely *democratic* response to a terrorist incident? What political strategies allow for the control of direct and indirect consequences of an attack? What kind of public responses are conducive to maintaining order and security, while at the same time protecting democratic principles and core values?

The Friedrich-Ebert-Stiftung has commissioned four case studies on countries that have experienced severe terror attacks in recent years: Belgium, France, Norway and Israel. These case studies analyse how democratic governments and societies have responded to terrorist attacks – be it by external aggressors or homegrown perpetrators. The objective has been a stock-taking of lessons learnt and an exploration of the question of what constitutes a democratic response to these challenges. A particular focus has been directed at political (risk) communication and public opinion. What best practices exist? Which strategies have worked and which have failed? What are the dos and don'ts of political communication following a terrorist attack and what political measures are constructive or possibly counter-productive?


For all the differences identified in the individual case studies – and in the nature of terrorist threats more widely – they have a great deal in common at the broader level. All the studies address the challenges of lone actor terrorism and early radicalisation. In their efforts to be seen to respond visibly and forcefully, all the countries surveyed have introduced changes, often far-reaching: expanding the powers of law enforcement and the executive, passing new laws, even imposing a prolonged state of emergency. In all the case studies these largely reactive measures – often set in motion directly after a terrorist attack without any meaningful process of reflection and consultation – largely overshadowed the role of social and youth prevention policies.

With the exception of Norway, responses to the dissemination of extremist content in social media play a major role. Israel has created a legal basis for removing terrorist and violent messaging from venues such as Facebook rapidly and thoroughly. Belgium and France are also seeking appropriate ways of dealing with returnees and recruiters. The democratic rule of law really foresees no place for preventive prosecution. New legislation to that effect attracts growing criticism as it often places deep constraints on civil rights, judicial review and the principle of innocence until proven guilty: supporters and recruiters are often not guilty of any specific crime.

In their efforts to minimise potential terrorist dangers – and the understandable wish to allay the subjective security concerns of an unsettled population – democratic states find themselves in a dilemma. The case studies of France, Belgium and Israel describe attempts to create maximum security through policing clampdowns and restrictions on civil rights and liberties, with questionable outcomes. Jean-Pierre Maulny (France) concludes that drastic measures under a state of emergency achieve positive results as long as they are able to exploit a certain surprise effect. The longer the state of emergency endures, the better perpetrators and their supporters adapt to the new situation. The effect of the measures begins to dissipate, while the restrictions on civil rights and liberties persist.

A different problem arises in connection with the Norwegian case of Anders Breivik, one that is also conceivable elsewhere. Sindre Bangstad describes the immediate official and media responses after the attacks in Oslo and Utøya. Long before the details of the attack emerged, the public had largely concluded that this was an Islamist attack, which official instances were slow to contradict – for political reasons, Sindre Bangstad believes. He argues that this played a significant role in a subsequent deterioration in attitudes towards Muslims and social minorities in Norway following the attacks.

All the contributions – including Norway in a rather different form – point to the risks of responding too quickly. Even if very far-reaching measures – as in France – largely



meet with majority approval, concern to create a rapid and assertive response can easily eclipse the question of proportionality of means. Regular stocktaking and cost/benefit analyses are imperative to maximise security without abandoning the principles of rule of law or unnecessarily curtailing civil rights and liberties. This also includes always conceiving counter-terrorism in conjunction with targeted terrorism prevention – and not treating the latter as secondary.

Anna Maria Kellner, Friedrich-Ebert-Stiftung

The Brussels Bombings – Striking a Balance Between Law Enforcement and Risk Management

Paul Ponsaers & Elke Devroe

Abstract

Already before the Brussels bombings on 22 March 2016 the Belgian federal government had developed an ambitious counterterrorist programme in the wake of the events in Paris. Implementation of this programme was hindered by the federal structure of the country and the complex structure of the Brussels Capital Region. During the initial period, the federal government insisted on broadening the scope of criminal laws and enforcement of these laws in reaction to attacks by supporting the public prosecutor and applying sanctions to offences against this law. In the second phase the government expanded its framework for reaction to provide for a more proactive frame of reference in terms of risk management oriented towards persons known or suspected by the authorities of embarking upon terrorist careers. This was to the detriment of a broader social policy and preventive approach favoured by the government of the Brussels region, but lacking the financial resources for the implementation of such (Edwards, Devroe & Ponsaers, 2017).

This proactive choice was subjected to severe criticism by human rights organisations. Nonetheless, international criticisms focusing on Belgium's allegedly weak security policies and complex institutional structure, even depicting the country as a 'failed state', overlook major efforts and progress made in a short period of time. But new problems are being faced. The most important challenge in the future will be posed by »returnees«, previous foreign fighters in the Syria and Iraq region who want to return to the country. Again, this problem will necessitate a holistic approach in which law enforcement as well as risk management and solid social policy will have to be combined.

The Brussels' Bombings

The terrorist bombings that took place in Brussels on 22 March 2016 were not isolated events. They were part of a chain of events in a terrorist campaign carried out

by a French-Belgian network of Jihadi terrorists that developed along the Paris-Brussels axis. This explains why the Belgian government, largely coordinated with the French authorities, began reacting to this campaign earlier than in March 2016.

Previous Events

Belgium escaped Jihadi terrorism in its territory for a long time. There were acts of terrorism, but most of them were carried out in the 1980s by an extreme left-wing group (CCC, Combating Communist Cells) (Vander Velpen, 1986) in the slipstream of the Rote Armee Fraktion in Germany and Action Directe in France; or by a criminal gang that was suspected of having connections to extreme right-wing groups (Gang of Nivelles) (Ponsaers & Dupont, 1988). Apart from these cases, there were isolated (anti-Semitic) attacks. Nevertheless, Brussels did have a long history of active Jihadi recruiters (Ponsaers & Devroe, 2016a).

The Jihadi campaign in Belgium started with the assault on the Jewish museum in Brussels on 24 May 2014. Four people were killed on that occasion. Later, investigation of this event would reveal that the French-Algerian gunman Mehdi Nemmouche was suspected of being a »returnee« from the Syrian civil war. He had recorded a video featuring the flag of *Islamic State in Iraq and Syria* (ISIS). In fact, he was the first European volunteer in the Syrian war to commit attacks upon returning to Europe (Bartunek, 2014).

Only one week after the massacre at the offices of the French satirical magazine *Charlie Hebdo* in Paris on 7 January 2015, Belgian police carried out an anti-terrorist raid on a Jihadist cell in Verviers on 15 January 2015. Two suspects died in the raid. Additional operations were carried out in Brussels. The Belgian public prosecutor's office stated that the raids were part of an operation against a Jihadist terrorist cell reportedly having links to ISIS and believed to be on the verge of

committing a terrorist attack. The cell was led by Abdelhamid Abaaoud¹, a Belgian-Moroccan Islamic terrorist from Molenbeek (Brussels), who had also spent time in Syria.

He was the ringleader in a series of coordinated terrorist attacks in Paris that were carried out on 13 November 2015². Seven perpetrators died in these attacks. The surviving two terrorists were killed five days later during a police raid in Saint Denis. One of them was Abdelhamid Abaaoud. One terrorist escaped and fled to Brussels, namely Salah Abdeslam, a Belgium-born French national of Moroccan descent and a childhood friend of Abdelhamid Abaaoud. ISIS claimed responsibility for the attacks (de la Hamaide, 2015).

Immediately on 13 November Belgium moved to tighten security along its border with France and increased security checks for people arriving from France. The Belgian government imposed a security lockdown on Brussels, including ordering closure of shops, schools and public transportation due to information about potential terrorist attacks in the wake of the series of coordinated attacks in Paris (Tutt & Pramuk, 2015). After being on the run for four months, Salah Abdeslam was apprehended during a police raid in Molenbeek on 19 March 2016 (Rubin, 2016a).

1. Analysis of a telephone call made by Abdelhamid Abaaoud established that he was in contact with Mehdi Nemmouche in January 2014 (Seelow, 2015).

2. For a more detailed account of these events, see the chapter on France in this volume.

The Brussels Bombings

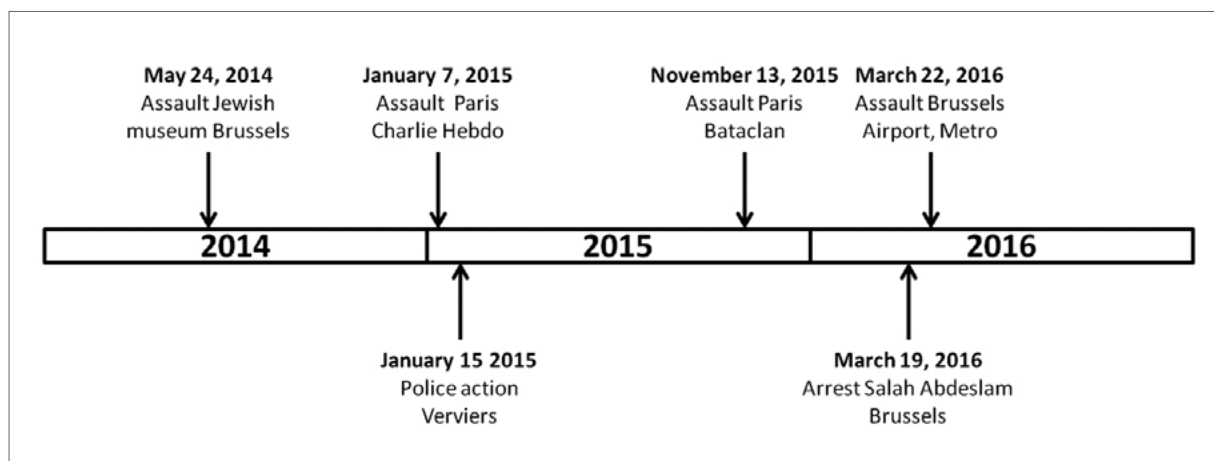
Only a few days later, on the morning of 22 March 2016, two coordinated suicide attacks took place in Brussels. The first attack was at the national airport (Zaventem), where two nail bombs exploded in the departure hall, the first at 7:58 a.m.; the second nine seconds later. A third unexploded bomb was found later on by the police and disarmed. The second attack occurred an hour later at Maalbeek metro station, located near the European Commission headquarters in the centre of Brussels (Lasoen, 2017).

In sum a total of 35 persons were killed (32 civilians and 3 suicide bombers, Najim Laachraoui (Rubin, 2016b), Ibrahim El Bakraoui and Khalid El Bakraoui (Holehouse, 2016) in the two assaults, while over 300 civilians were injured, 62 critically. The bombings were the deadliest act of terrorism in Belgian history. ISIS claimed responsibility for the Brussels attacks, citing the fact that Belgium was targeted as »a country participating in the international coalition against the Islamic State« (Hjelmgaard, Reuter & Bacon, 2016). The Brussels bombings were committed by two commandos.

The members of the first commando, which carried out the attack at the national airport, were:

- Najim Laachraoui (born in Morocco in 1991, who lived in Schaarbeek [Brussels] and had dual Moroccan and Belgian nationality). In February 2013, Laachraoui left Belgium for Syria to fight for IS. On

Figure 1: Time-line of related events 2014–2016



9 September 2015 he returned to Belgium. He was collected by car in Budapest by Salah Abdeslam. Laachraoui is held to have produced the suicide vests used in Paris as well as in Brussels³. He died when his suicide bomb exploded at Brussels airport on 22 March 2016.

- Ibrahim El Bakraoui (born in Laeken [Brussels] in 1986, Belgian national of Moroccan origin. He was involved in several crimes and was a childhood friend of Salah Abdeslam. In June 2015 he was arrested in Turkey, near the Syrian border. He was considered by Turkish authorities to be a »suspected terrorist«. Ibrahim El Bakraoui was deported to the Netherlands on 14 July 2015 by Turkey. The Dutch police released him after arrival, failing to link him to any terrorist activities⁴. He also died when his suicide bomb exploded at Brussels airport on 22 March 2016.
- Mohamed Abrini (born in 1984, Moroccan Belgian, living in Molenbeek [Brussels]) is also a boyhood friend of Salah Abdeslam. He had a history of involvement in petty crime. Abrini left for Syria for a short period in June 2015. He moved confidently across borders, returning from Syria via Britain to pick up cash to finance the terrorist plans (Barnes et al., 2016). He drove Salah Abdeslam from Brussels to Paris before the attacks of 13 November 2015. Their car was also used in the Paris attacks. Abrini failed to detonate his bomb during the Brussels airport assault. He survived and was arrested on 8 April 2016.

The members of the second commando, which carried out the assault on the Maalbeek metro station, were:

- Khalid El Bakraoui, the younger brother of Ibrahim El Bakraoui (born in 1989). He was involved in several crimes committed in October 2009. He had rented a flat in Charleroi (Belgium), which was used by the group of terrorists that committed the 13 November 2015 assaults in Paris. He was also suspected of having rented a flat that was used by Salah Abdeslam as

safe-house after he fled from Paris to Brussels. The El Bakraoui brothers were held to have delivered weapons and ammunition to the Paris and Brussels attackers. Khalid El Bakraoui died when his suicide vest exploded at Maalbeek metro station on 22 March 2016.

- Osama Krayem (born in 1992 to Syrian parents, a resident of Malmö, Sweden) radicalised when he was in his early twenties. He left Sweden to join ISIS in Syria in 2014. He later returned to Europe using a false passport. In October 2015, he met Salah Abdeslam at a refugee-centre in Ulm (Germany). Krayem's DNA was found in apartments used by the Paris terrorists that staged the November 2015 attacks. In the Brussels bombing of the Maalbeek metro station, Krayem was wearing a suicide vest, but failed to detonate it (Alexander, 2016). He was arrested on 8 April 2016.

Damage from the Bombings

The Brussels bombings resulted in compensation being paid to the victims up to EUR 322 million, according to the Belgian government. During several hearings of victims conducted in January 2017 organised by the federal Parliamentary Enquiry Commission on the Brussels attacks, victims stated that they felt abandoned by the Belgian authorities. Care and financial support came too late, and was usually hindered by red tape and multiple bureaucratic obstacles and a lack of care (Vancutsem, 2016).

EUR 2.3 billion had to be invested in reconstruction and repairs of buildings. These costs accounted for only a part of the total costs, however, as additional losses were incurred as a result of temporary discontinuation of services such as transport and closure of businesses, causing temporary unemployment. Total economic damage as a consequence of the attacks was estimated EUR 4.47 billion (Andersen, 2016).

The Political Situation in Federal Belgium at the Time when the Attack Occurred

Belgium is a federal country with three regions, Flanders (Dutch-speaking), Wallonia (French-speaking) and the Brussels Capital region (bilingual). Among other things,

3. In the investigation the police found traces of TAPT in different safe-houses (Triacetone Triperoxide – TATP, is a homemade explosive, commonly used by the Palestinians in their terror campaign against Israel).

4. The Belgian Parliament appointed a Parliamentary Enquiry Commission to look into these events, and in particular the role and the responsibility of the Belgian liaison officer in Ankara. The Commission has yet to state its conclusions.

the federal government is responsible for Security and Home Affairs and for Justice. The federal government in power is a coalition of Liberals, Christian Democrats and the Flemish Nationalists, the biggest party. The governing federal coalition reflects a rupture with the past. Before, the federal government was dominated during 25 years by the presence of the (French) Social Democrats. The Minister of Security and Home Affairs is Jan Jambon. The Minister of Justice is Koen Geens (Devroe & Ponsaers, 2017).

Aside from the federal level, each region has its own government. Flanders' government has the same coalition as the federal government. In other words, there is a symmetry between the federal and Flemish governments. In the French-speaking part the situation is different. Here the Social Democrats retain the dominant political position. In other words, there is an asymmetry between the federal and regional levels. The most complicated political situation can be observed in the Brussels region (Ponsaers & Devroe, 2016b). This regional government is led by a Social Democrat, who is responsible for urban policy and security. The coalition essentially includes Social Democrats, Christian Democrats, Liberals and a French-speaking-language party. Again, there is asymmetry with the federal government.

Moreover, the Brussels region is composed of 19 municipalities, each with its own mayor. These mayors have all kinds of different political affiliations. There is a sharp rivalry between French-speaking Liberals and Social Democrats.

In sum, the federal structure of the country and the multitude of decision-making layers easily leads to political paralysis, both between different linguistic parties as well as between ideological factions (Ponsaers & Devroe, 2016c). Especially in Brussels, these tensions lead to harsh debate (Ponsaers, 2016a). At the federal level and in Flanders, counterterrorism is dominated by repressive law-enforcement and risk-management strategies, while in Wallonia and Brussels the tendency is to focus on social policy and prevention (Renard, 2016a).

The Assessment of Terrorist Threats

In response to the 9/11 massacre, a new initiative in 2006 placed all relevant counterterrorist actors together

in a Coordination Unit for Threat Assessment (CUTA) (Vercauteren, 2013). Today this is the Belgian public authority that coordinates the police and intelligence services and that assesses to what extent Belgium is a target of terrorist and extremist threats. CUTA was installed by virtue of the act of 10 July 2006. CUTA receives information from: the federal and local police, the Belgian civil and military secret services, the customs and immigration service, the administration for mobility and transport, and the administration in charge of foreign affairs.

The law defines 4 levels of threat (Dallison, 2016):

- not under threat: level 1 or Low;
- low probability: level 2 or Medium;
- possible and probable: level 3 or Serious;
- serious and imminent: level 4 or Very Serious.

In the recent past, the threat level was raised from 3 to 4 for the Brussels region in the wake of the assault on the Jewish museum in Brussels staged on 24 May 2014. In March 2015 CUTA lowered the threat level from 3 to 2 after the counterterror operation in Verviers. After the Paris attacks of November 2015, the threat level was increased from 2 to 3. Salah Abdeslam was not captured and the minister of Home Affairs announced that level 3 had to be maintained until his arrest. During the period from 21 to 26 November 2015 the threat level was increased to 4 for the Brussels region. After this period, the level was again lowered to 3 for the Brussels region until 22 March 2016. Shortly after the Brussels attacks, the threat level was increased to level 4 for the entire country during the period 22–24 March 2016. The level has been lowered to 3 for the whole country from 25 March 2016 until the present (March 2017).

The Response to the Events

Communication

Immediately after the events, the mobile phone network was heavily overloaded due to the enormous number of calls. Victims were calling for help and people trying to reach family-members to warn or reassure them. Flights were cancelled and the national airport closed. The traffic inside Brussels was completely jammed up, while public transport, subways and trains

were stopped. The population in the city was asked to stay inside their houses and public buildings (e.g. schools and museums) were closed. Public events were cancelled.

The government announced three days of national mourning. At a press conference, the Prime Minister stressed that first priority was being assigned to medical treatment and evacuation of the victims. He made an appeal for national unity and solidarity. Political leaders asked the population to stay calm. In response to this, crowds gathered in Brussels to support the victims. The government's federal crisis centre (Levy, 2007) assumed its coordinating role instantly, advising the population to consult social media via internet or text message on their cell phones. People who had questions were advised that they could always contact the crisis centre using a special number, including at night (G.N. & J.N.S., 2016). The federal public prosecutor's office actively issued communications on the consequences and investigation. Active collaboration with French police services developed. In the aftermath of the events, the media focused on progress made in the criminal investigations, providing long biopics on the dead terrorists and surviving suspects. The King launched an appeal for resolve, tranquillity and dignity.

On the same 22 March 2016, ISIS claimed responsibility for the Brussels bombings on the *Amaq* website, which is affiliated with ISIS. The claim contained a clear reference to the participation of Belgium in the international coalition against Islamic State. Three days after the bombings, on 25 March 2016 a French-language propaganda video was made available in the dark net. Terrorists originating from Verviers (Belgium) were speaking to an audience in the video. A day later two videos were released showing Belgian ISIS fighters joking about the bombings and telling the Belgian population to demand the Belgian government withdraw from the Middle East. Belgian media covered the news about the claims in a concise manner (Knecht, 2016).

After the bombings, Belgium found itself subjected to a barrage of international criticism focusing on its allegedly weak security policies and complex institutional structure. Belgium-bashers labelled the country a 'failed state' (King, 2015) and a 'jihadi rear base' (Papirblat, 2015), while its intelligence services were accused of 'shitty tradecraft' (Weiss, Youssef & De Visser, 2016).

These accusations were largely overblown (Renard, 2016b). They were also rebuffed by more discriminating studies as well as by many testimonies before the parliamentary enquiry commission set up after the Brussels attacks (Renard, 2016a).

Governmental Measures

Everyone agrees today that more needs to be done and done more efficiently to cope with the challenges posed by terrorism and radicalisation. Nevertheless, a lot has been accomplished since the Brussels attacks. Of the 30 measures announced by the government in 2015, 26 have been either implemented or implementation is ongoing (Seron & André, 2016). The legal framework for counterterrorism has been broadened, while the financial and human resources available to security services have been bolstered. Above and beyond law enforcement measures, local risk management has been strengthened.

The Response to the Charlie Hebdo Attacks

As a consequence of the *Charlie Hebdo* terrorist attacks and joint police operations involving Belgian and French forces and the Verviers raid, the federal government adopted a package of 12 counterterrorism measures, which it announced in January 2015 (Blyth, 2015).

A number of these measures concern the *enforcement of criminal law*. It is worth noting that three new terrorism-related offences had already been added to the criminal code in 2013 concerning recruitment, provision and acquisition of terrorist training and public incitement to commit terrorist offences. The *new* legal measures involved:

- Insertion of a new terrorist offence in criminal law relating to travel abroad for terrorist purposes⁵;
- The same law also broadened the scope of particular investigative methods – wiretapping, for example – to include all terrorism offences classified as crimes under Belgian law;

5. Act of 20 July 2015 with the aim of strengthening the struggle against terrorism.

- It has also enlarged the range of cases in which Belgian citizenship can be revoked for individuals having dual citizenship. This legal basis found a kind of corollary in the law⁶ modifying the consular code to allow the refusal, withdrawal or invalidation of passports of individuals perceived as posing a threat to national security;
- Temporary withdrawal of the identity card, refusal to issue and withdrawal of passports. This law permits authorities to refuse to issue an identity card to Belgians and withdraw or to declare identity cards invalid⁷;

Other measures are directed more at the *organisation* of counterterrorism:

- The establishment of a National Security Council⁸ to determine general policy concerning intelligence and security, coordinate policy and set priorities for intelligence and security services. The council is chaired by the federal Prime Minister;
- This council is also in charge of coordination of activities seeking to dry up financing of terrorism and the proliferation of weapons of mass destruction. The mechanisms established by law for identifying persons involved in financing of terrorism have been put into practice and assets frozen⁹;
- A new circular note was issued¹⁰ concerning follow-up investigations of ›foreign fighters‹ living in Belgium, especially by municipal administrations. Mayors were requested to establish Local Cells for Integral Security (LCIS)¹¹;
- The exchange of information between the authorities and the administrative and judicial services has been optimised. A so-called ›Dynamic (permanently

updated) Foreign Fighters Database‹ has become operational, which should permit these persons and their actions to be monitored¹²;

- A National Taskforce has prepared a new confidential plan against radicalisation laying down which administrative and judicial measures can be taken at preventive, proactive and reactive levels¹³;
- The fight against radicalism in prisons by the Minister of Justice¹⁴;
- Calling out the Belgian army for specific monitoring missions¹⁵;
- Strengthening of the capacity of the State Security Service and transfer of VIP protection to the federal police.

The Response to the Bataclan Attacks

A second set of 18 measures was announced later on, in the days following the coordinated terrorist attacks that took place in Paris on 13 November 2015. The measures included:

- An increase in the security budget. € 400 million was earmarked for security and the fight against terrorism;
- Reinforcement of police controls at the borders;
- Deployment of 520 soldiers to reinforce security. This decision has been sequentially extended by the Council of Ministers;
- Introduction of new technologies for the intelligence services (voice recognition, expansion of wiretapping including arms trafficking)¹⁶;

6. Law on Belgian Nationality. Art. 23/2, §3, introduced in the Act of 20 July 2015.

7. Identity card: Act of 10 August 2015; passports: Consular Code – art. 65.

8. Royal Decree, 28 January 2015.

9. Royal Decree of 28 December 2006 concerning specific restrictions on certain persons in the struggle against the financing of terrorism.

10. Circular note from 21 August 2015.

11. The LCISs regularly gather together all key local stakeholders such as the mayor, the head of local police, prevention officers and social workers. Regional platforms and ›mobile teams‹ have also been created to facilitate the exchange of good practice between municipalities, while multidisciplinary support centres have been launched to help citizens confronted with radicalisation.

12. Second Law on Terrorism from 27 April 2016. Royal Decree from 21 July 2016.

13. Established on 29 May 2015.

14. Parliamentary query of 10 August 2015 to the Prime Minister.

15. The use of the military for security tasks has been in practice since January 2015. This was demonstrated in the ›Brussels lockdown‹ 21–25 November 2015 and stepped up after the Brussels terrorist bombings in March 2016.

16. These measures imply a revision of criminal law. The Council of Ministers prepared a proposal, which has been discussed for the first time in Parliament. A second lecture was recently requested by the Green Party because of ›the absence of sufficient control mechanisms‹.

- The government is seeking to extend the duration of administrative detention¹⁷ from 24 hours to 72 hours in terrorism-related cases¹⁸;
- House searches 24 hours a day for terrorist offences. Before it was forbidden to perform searches between 21:00 (9 p. m.) and 5:00 (5 a. m.)¹⁹;
- With regard to the measure ›returnees‹; in the case of ›returnees‹ the Belgian government has declared it wants to systematically deprive these persons of liberty upon their return to Belgium²⁰. At present, the decision to deprive someone of their liberty is at the discretion of a judge, and is not an administrative measure, nor does it involve systematic practice. It is up to a judge to decide that a terrorist or war-related crime is involved, which can lead to a conviction under Belgian law. Furthermore, the question has been raised whether prison is the best place to reintegrate²¹;
- Regarding those persons who are more generally registered as posing ›threats‹ to national security and who have not necessarily been involved in ›Foreign Fighting‹, the government wants to place these persons under electronic surveillance²². This measure has ultimately not been implemented as a systematic (administrative, preventative) measure because there

are too many judicial obstacles. The use of electronic surveillance can only be ordered by a judge as a sanction when a crime has been committed;

- Anticipating the establishment at the European level for a Passenger Name Record (PNR), a decision has been made to already establish such a record at the national Belgian level²³;
- Screening of all hate preachers in order to place them under house arrest, deprive them of their liberty or expel them. In practice, in individual cases at present, it is once again up to the judge to decide whether or not detention can be ordered in accordance with criminal law. Forms of so-called ›house arrest‹ may also be ordered at the discretion of the judge. In these cases, Belgian policy does not go as far as e.g. that of France or the Netherlands²⁴;
- Closure of unrecognised places of worship which propagate Jihadism;
- End of anonymity for pre-paid cards;
- Execution of the ›Molenbeek Plan‹ (renamed later ›Canal Plan‹), conceived by the Belgian Ministry of Home Affairs, which focuses on eight municipalities in Brussels and their surrounding areas, intended to monitor those localities perceived as vulnerable to radicalisation;
- Stepping up of screening before persons obtain access to ›sensitive jobs‹;
- Extension of the network of cameras capable of recognising license plates;
- Closing down websites preaching hate;
- Evaluation in order to adapt legislation linked to a ›state of emergency‹ (the possibility for temporary and extraordinary measures to ensure public safety). The ›state of emergency‹ (like in the case of France

17. The so-called ›garde à vue‹ within the framework of maintenance of public order by the police, and not for offenders who are indicted for specific crimes by the magistrate.

18. This measure implies revision of the Constitution and would consequently require a 2/3rd majority in Parliament. This proposal has led to discussion between governmental parties and the opposition, which fear that this extension would also be applied to other types of crime. For a critique of this proposal, see Human Rights Watch (2016).

19. Act from 27 April 2016 concerning additional measures against terrorism (art. 3).

20. The specific question as to the relationship between prison and radicalisation is also on the radar in Belgium. Authorities have opened prison sections specifically dedicated to housing radicalised detainees to keep them from spreading their ideas to others.

21. There has been a discussion in Parliament concerning the creation of a *Centre for the Systematic Control of Returnees*, a centre that is to evaluate each returnee in terms of his degree of risk and implement reintegration programmes. Even under this proposal by an opposition party, which has not yet been decided upon, the decision to detain a returnee remains at the discretion of the judge.

A Belgian judge convicted a returnee from Antwerp in February 2017 for the first time. The judgement was based on evidence gathered by tapping phone calls with his girlfriend in which the suspect discussed an ›execution‹ he had performed. Additional material evidence, even regarding the identity of the victim, was lacking.

22. A ›Foreign Fighters‹ task force and a ›Returnees Platform‹ have also been set up.

23. This database is used to collect data initially for passengers using flights at a central point, and at a later stage will include high-speed trains and boats in order to identify potential ›red flags‹.

24. Hate preachers with another nationality can be expelled to the country of their nationality even if they were born in Belgium and have not been sentenced for a crime. This is a new administrative measure which can be taken within the framework of migration and asylum laws.

or the Netherlands) cannot be declared at present in Belgium because a clear legal framework is lacking²⁵;

- Participation in the international fight against ISIS.

The Response by Civil Society

A number of organisations have reacted to the governmental measures taken. One of them was *Amnesty International (AI) Flanders* (2015), which requests MPs to show restraint in their initiatives, warning that measures should not threaten or restrict civil rights. AI advises the government to first of all assess existing instruments against terrorism before implementing new ones. New offenses, it argues, should be tested by applying the principles of legality and proportionality. Specific attention is devoted to the risk of penalising intentions without any actual criminal behaviour occurring. Furthermore, AI warns against discriminatory or arbitrary measures, while insisting on a strict policy against illegal trade in weapons. AI reacts to the international political situation in Europe in a subsequent report (Amnesty International, 2017).

Human Rights Watch observes that at least six of the government's newly adopted laws and regulations threaten fundamental rights. A law allowing the stripping of Belgian citizenship from persons having dual citizenship could create the perception of »second-class« citizens based on their ethnicity and religion. An amendment to the penal code that criminalises the act of leaving Belgium »with terrorist intent« contains vague language that could restrict the travel of people without any evidence that they intend to commit or support extremist armed acts abroad (Human Rights Watch, 2016).

The *League for Human Rights* also expresses misgivings concerning the new measures. The organisation refers to these as »or already existing, or completely pointless, or not applicable«. According to the organisation, detention of »Foreign Fighters« is possible as long as this decision is issued by a judge, while it issues a strong plea

against administrative detention. The use of electronic bracelets against radicalised persons is not possible. Only an independent judge can take this decision if no crime has been committed. Nor is the League in favour of a prolongation of administrative arrest. The gathering of additional information is criticised. »Most of the people involved in the Paris attacks were known by the security services. More focused controls should be introduced instead of regarding a priori the whole civil population as suspect« (Belga, 2015).

Lessons Learnt

Too Much Law Enforcement

At this stage, it may be too early to draw peremptory conclusions. This being said, it is possible to conduct a preliminary analysis of the expected efficacy of these measures. We witnessed for a period a solid reactive law-enforcement strategy, while a preventive strategy was largely neglected. A much more active preventive role on the part of the administrative local authority, more specifically of the mayors, has been lacking. In essence, the judiciary had monopolised the problem and the administrative and preventive approach was considered less urgent.

This is the corollary of the policy concept politicians have of the real nature of police work, namely »tackling crime«, a concept that seems attractive in times of austerity. But we know that the police has a very limited influence on crime. That is essentially because the causes of crime are beyond the sphere of influence of the police and these causes can only be countered by means of a mature and concrete concept within the framework of a Local Integral Security Policy. As Peter Manning explained as far back as in 1977, the mandate of police is fragile and vulnerable, and police personnel should be aware that they personify a promise they can never keep (Ponsaers, 2016b).

As a consequence of all this, certain aspects relating to the centrality of the law enforcement approach need to be reconsidered. In Belgium, as opposed to several neighbouring countries, most terrorist files are transmitted very rapidly to the judicial authorities, which has practical consequences for the manner in which investigations are conducted as well as on the type of informa-

25. A state of emergency is declared for a certain period of time. During this period specific measures can be taken to counter imminent problems. After this period, these measures are lifted and government returns to »normality«. Some parties of the majority are pleading for this. For a critique, see Amnesty International (2017).

tion collected. It is argued that local actors should play a more active role in the prevention of terrorism with priority over the transmission of files to the judiciary authorities (Devroe, Edwards & Ponsaers, 2017).

The Challenge for the Future

Despite all the efforts, however, Belgium remains vulnerable to the problem of »returnees«. ISIS attracted 419 goers leaving Belgium for Syria and Iraq, who were registered as »Foreign Terrorist Fighters« between April 2012 and November 2015. Most of them came from Brussels (44 %). 84 percent were men. From April 2013 we can observe a decreasing tendency to go to the war region (Federal Police, 2016).

According to the head of CUTA, the »Dynamic Foreign Fighters Database« includes 640 Belgian names. 270 went to Syria and Iraq. 160 of them are still alive (Van Tigchelt, 2017). According to the head of the Belgian Intelligence Agency, 20 of them have the intention of returning to Belgium (Raes, 2017). Moreover, 120 have already returned to Belgium since 2012. Belgian authorities are extremely concerned about this development.

The problem of »returnees« raises key questions about the security services and authorities. It seems unlikely that every returnee will come back planning to carry out attacks in Belgium, and some may even truly seek some sort of rehabilitation in society. Yet experience from previous Jihadi conflicts suggests that a hard core of fighters will seek to engage in violent activities in Belgium. Other »returnees« could also engage in propaganda, training or recruitment activities, capitalising on their fighting experience (Nesser et al., 2016). So far, the Belgian response has been a tailored one, with a specific risk evaluation being performed for each foreign fighter, with personalised measures being adopted by a special task force composed of intelligence services, police and judicial authorities (Renard, 2017). If more Jihadis return, this may become difficult for services that are already under-resourced and overburdened (Henrard, 2017).

Belgium is still undecided which model of de-radicalisation and disengagement to pursue. A recent report by the intelligence services highlights the growing influence of Salafism in Belgium (L'Express, 2017). Furthermore,

radicalisation is taking place among young people in certain neighbourhoods, who are adopting the tenets of radical Islam as a form of identity rather than as a belief. Unlike important recent counter-radicalisation efforts undertaken by Belgian authorities, the current development suggests that a much greater effort is needed at the preventative level (Noppe et al., 2010).

ISIS may be losing territory in Syria and Iraq at present, but the idea of a successful Jihadi project, attracting fighters from across the world, is expected to survive the fall of the physical caliphate. The propaganda and recruitment machinery of ISIS remains strong and risks being used to build a powerful new narrative. The danger is that such a tool could serve to further radicalise individuals. This means that countries such as Belgium also need to focus their attention on cyberspace.

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Democracy and Terrorism – Experience in Coping with Terror Attacks in France

Jean-Pierre Maulny

Abstract

The Most Important Lessons Learnt

The French people's way of life has changed since the wave of attacks in 2015 and 2016. A considerable number of events were cancelled in the wake of the Nice massacre that took place on 14 July 2016. The feeling was that the success of the UEFA European Cup in terms of security had been to no avail. Authorities, local or national, did not want to take the risk of organising events if they could not effectively ensure people's safety. The grand fireworks display planned for the Saint-Jean Baptiste Celebration on August 15th was cancelled. The *Grande Braderie* of Lille, an event staged for the first time in 1146, which attracts 2.5 million people, was cancelled. The number of tourists visiting France has declined by almost 10 percent. Thus, damage has not only been wrought in terms of image - the economy has also suffered. Defence policy itself has been completely shaken up. The defence budget was increased after the Charlie attack in January 2015 and the winding down of army manpower has been halted. A national guard has been created using army and police reserves. As for the arsenal of laws and regulations adopted to fight terrorism, these have been developed on a continuous basis to a point where probably all legislative means have now been exhausted. Considering all this, as former anti-terrorist judge Marc Trévidic reflects, there is much to suggest that France may have to live with this constant threat for at least 10 years, while more reflection is needed on successful prevention of radicalisation (especially with regard to home-grown terrorism) and the resilience of society.

Introduction

Brief Account of the Attack

- 7 January 2015: Chérif and Saïd Kouachi entered the Charlie Hebdo offices, killing 12 people in sum

total, including leading members of the satirical newspaper's editorial staff. The two brothers were killed two days later by the Groupe d'intervention de la Gendarmerie nationale (GIGN), the French Special Weapons and Tactics (SWAT) unit. The attack was claimed by Al-Qaida on the Arabian Peninsula in retaliation for the satirical newspaper publishing caricatures of Mahomet created by Jyllands Posten in 2006.

- 8 and 9 January 2015, »Hyper Cacher« supermarket in Montrouge: Amédy Coulibaly shot and killed a local police officer. The day after this he entered a kosher grocery store at Porte de Vincennes, killing 4 people and taking the others hostage. The BRI (Research and Intervention Brigade) and RAID (Search, Assistance, Intervention, Deterrence unit) launched an assault and killed the fanatic. He claimed to be a member of ISIS, and the organisation applauded the attack without claiming it.

It was revealed in the following days that the Kouachi brothers were in contact with Amédy Coulibaly and had met in prison ten years earlier. The number of people suspected to have aided Amédy Coulibaly does not exceed ten. The instructions might have come from abroad.

- 13 November 2015, Bataclan, Stade de France, targeting bars in Paris: on the evening of 13 November 2015, three suicide bombers blew themselves up near the Stade de France during a France-Germany football match. A few minutes later, four other terrorists targeted several bars located in the 10th and 11th districts. Finally, three terrorists simultaneously entered the Bataclan venue during a concert and killed 89 people before blowing themselves up during the BRI police operation. Altogether, 130 people died that night. The attack was claimed by the Islamic State. On 19 November, a police operation in Saint Denis led to the neutralisation of the organiser of these attacks, Abdelhamid Abaaoud. The only

surviving terrorist, Salah Abdeslam, was arrested in Belgium on 18 March 2016 and then extradited to France.

- 13 June 2016, Larossi Abballa stabbed a police officer couple to death. The terrorist was shot dead by the BRI. ISIS claimed the attack. In 2013, Larossi Abballa had been sentenced to three years in prison, six months of which were suspended, for criminal conspiracy with intent to prepare terrorists acts, and was set free after three years.
- 14 July 2016, Nice: following fireworks celebrating the national holiday, a truck was used as a weapon by Mohamed Lahouaiej-Bouhlel, who drove through the crowd for about half an hour on the Promenade des Anglais, killing 85 people. The terrorist was then shot dead by the police. It appears that Mohamed Lahouaiej-Bouhlel acted alone.
- 4 September 2016, Paris, near Notre Dame Cathedral: an abandoned car was found with five gas cylinders in the trunk. Five women, aged 19–39, were arrested in the following days. Inès Madani, 19, the leader of the group, had pledged her allegiance to Daesh. According to investigators, the plot was being remotely guided by ISIS members in Syria.
- 20 November 2016, Strasbourg and Marseille: five men were taken into custody in Strasbourg and two in Marseille because of their involvement in a long-planned terrorist attack. These seven men (five French nationals, one Moroccan, one Afghan) were possibly targeting police stations. They claimed to be members of ISIS, but no actual affiliation could be confirmed.
- 3 February 2017, Paris, Louvre Museum: Abdallah El-Hamahmy, a 29-year-old Egyptian living in the United Arab Emirates and holding a tourist visa, attacked a military patrol with machetes. The soldiers were there as part of the «Sentinelle» operation aiming to protect sensitive areas. One of the targeted soldiers was slightly injured with a minor scalp laceration. The attacker was seriously wounded by multiple gunshots from the soldiers. The day before he had published on Twitter a number of tweets, several of them making reference to ISIS.
- 10 February 2017, Hérault: four individuals, three men aged 20 to 33 and a 16-year-old minor, were taken into custody as they were planning an attack in the Montpellier area. Unfinished explosive devices were found, suggesting an imminent attack. The minor had pledged allegiance to ISIS on February 8 in a video shared on encrypted messaging Telegram. One of the suspects has been released, while the others have been charged with criminal conspiracy to carry out a terrorist attack. Two of them are also being prosecuted for manufacture and detention of explosive devices by an organised group.
- 14 February 2017: an 18-year-old student was taken and held in custody in a suburb of Lille. He allegedly admitted to having planned a terrorist attack targeting police officers, soldiers, and even civilians. Nonetheless, no specific target has been identified. This arrest was part of a preliminary investigation launched on 30 December 2016 by the Public Prosecutor of Paris regarding a criminal conspiracy to carry out a terrorist attack. The student arrested was allegedly in contact with a man in Syria, and claimed to be part of a radical movement (his name has not been released).

At the end of 2016, the Minister of the Interior, Bernard Cazeneuve, stated that 440 individuals had been arrested in 2016 and 17 planned attacks thwarted that same year.

Brief Account of the Political and Social Environment in Which the Attacks Have Taken Place

France had experienced two waves of terrorist attacks before those of 2015 and 2016.

From February 1985 to September 1986, thirteen terrorist attacks shook the country. The last of them occurred in a *Tati* store in rue de Rennes in Paris. Overall, these attacks claimed the lives of 13 people and injured around 300. They were committed by a terrorist network called «Comité de solidarité avec les prisonniers politiques arabes et du Proche-Orient» (CSPPA, solidarity committee with the Arab and Middle Eastern political prisoners), an organisation linked to Hezbollah. These attacks were perpetrated with the support of the Iranian government in retaliation for France's support for Iraq during

the Iran-Iraq war, and to exert pressure in connection with the Eurodif dispute resolution, a European uranium enrichment programme for which Iran had granted a billion dollar loan to France in 1974.

In 1995, France was the victim of 8 bomb attacks within three months, culminating in the Saint-Michel Réseau Express Régional (RER) station attack, which killed 8 people and injured 117. These attacks were attributed to the GIA (Armed Islamic Group). This series of attacks was intended as retaliation against France to make the country pay for its support for the regime during the Algerian civil war. In September 1995, the terrorist Khaled Kelkal was shot dead in the Monts du Lyonnais in the wake of other attacks. On 3 December 1996 the following year, a similar attack perpetrated at the Port-Royal RER station took the lives of 8 people and injured 151. The perpetrators were not identified.

However, France had not experienced any other terrorist attacks in the wake of 11 September 2001.

Modern terrorism, which found its inception in the Charlie Hebdo attack on 7 January 2015, had its early beginnings with Mohamed Mehra in March 2012. In a week, Mehra killed three soldiers in Toulouse and three children and their father in a Jewish school before being identified and shot dead. In the days following these murders, it was discovered that Mohamed Mehra had resided in Pakistan the year before, where he received combat training from the Taliban.

Analysis of the Response to the Attack

A distinction needs to be made with regard to different responses to the attacks, as the mounting revulsion and operating methods led the authorities to change their rhetoric.

The President of the Republic, François Hollande, gave a speech on the very day of the first attack, the Charlie Hebdo attack, accentuating the brutality of it. In his speech, he stated that there had been an attack on the Republic and freedom, with freedom of the press being at stake in the Charlie Hebdo attack.

Political responses went in two different directions. On one hand, it was about showing that action was

being taken to actively protect French citizens: 10,000 soldiers were deployed in the country to protect sensitive locations during the week that followed the Charlie Hebdo attack. The Vigipirate alert¹ threshold was raised to its maximum »attack alert« level, which meant that media organisations, department stores, places of worship and transportation were given special, enhanced protection.

Secondly, it was about showing a very strong solidarity with the victims, symbolised by a march in Paris attended by 86 heads of state on 11 January 2015. After this first attack, the political majority and the opposition were united, with respect towards the victims trumping political considerations.

There was considerable mobilisation of civilian society and the Jewish community in the following days. Charlie Hebdo is a satirical newspaper that began circulating in May 1968 and very popular with youth. Spontaneous gatherings at Place de la République took place in the days following the terrorist attack. It has been estimated that around 4 million French people marched in support of the victims on 10 and 11 January 2015. The »Je suis Charlie« slogan, an expression of solidarity with the journalists assassinated on 7 January, has become famous. However, it cannot be denied that a minority of the population, generally living in poor suburbs and of Islamic faith, exhibited a certain scepticism, remaining receptive to the narrative that publication of Jyllands Posten's caricatures by Charlie Hebdo in 2006 was an insult to the Muslim religion. The fact that the hostage crisis took place in a kosher supermarket also widened the divide between communities, even though no salient incident involving Muslim and Jewish communities took place. Nevertheless, there were some instances of individuals refusing to participate in the minute of silence that was held in schools after the attack, particularly in sensitive neighbourhoods.

The Bataclan massacre on 13 November 2015 changed the situation more radically than one would have imagined.

1. Vigipirate was created after the attacks carried out by Groupe Islamique Armée (GIA) in 1995. When Vigipirate is activated, critical infrastructures and sensitive locations are assigned continuous protection and measures are taken to prevent terrorists attacks, like searches for possible bombs in bags in public place. Since 2014, there are two levels of activation of Vigipirate, the lower level is called »Vigilance« and the higher one »alert attempts«.

First, Paris was the victim of five simultaneous and co-ordinated attacks at the same time, in Stade de France, the *Carillon* café, the *La Bonne Bière* café, the *La Belle Équipe* restaurant and the Bataclan concert venue. The President was attending the France – Germany football match in the Stade de France when a terrorist detonated an explosive belt outside the stadium. The President had to be evacuated at half-time. The number of casualties at the »Le Bataclan« concert venue was very high – 84 fatalities. The French people experienced a mini-»9/11« on that day, with this comparison reflecting how many French nationals felt on this weekend eve, trapped as they were in Parisian bars or restaurants.

The significance of these events led President François Hollande to issue a televised public communique during the night of 13 to 14 November, referring to the attacks as »c'est une horreur« (it is an absolute horror). A meeting of both parliamentary assemblies – the *Assemblée Nationale* and the Senate – took place in Congress the following Monday, where a speech was delivered by the President of the Republic, a very rare procedure under the Fifth Republic, emphasising the gravity of the event. Standing before the Parliament, the President used the term of »act of war« to characterise the attacks.

The communique was thus delivered at the highest state level in both cases. It did not attempt to belie the gravity of the situation. On the contrary, it was meant to mobilise the general public against the threat in order to strengthen the population's resilience.

Looking at the general public, however, it would appear that the November 2015 attacks tended to reunite communities. It was mainly young people and the French way of life that were targeted on 13 November 2015, but all communities were indiscriminately affected by these attacks.

The 2016 attacks led to a more nuanced communication. First of all, the attacks had been carried out in sequence with varying levels of severity. The reoccurrence of terrorist acts before this had prompted authorities to try to trivialise the events. In the wake of the assassination of a police officer couple in June 2016, followed by the slaying of a priest in July 2016, no specific communique was issued by the President of the Republic, although he did pay tribute to the police officer couple. After this, communication was essentially steered by Prime Minister

Manuel Valls and Minister of the Interior Bernard Caseneuve. The Nice massacre on 14 July, in which 85 people died after being run over by a truck driven by Mohamed Lahouaiej Bouhlel, prompted the President to address the nation once more on the very night of the attack. Communication of public authorities' capacity to protect the population evolved over time. The Prime Minister, as well as the Minister of the Interior, Bernard Caseneuve, began to convey a message to the effect that a zero risk level did not exist.

Cohesion within the political class unravelled following the 2016 attacks. There was criticism from the opposition about the lack of efficacy of the measures taken to protect the population. In particular, failures of the intelligence services, inadequacy of the measures relating to the declaration of a state of emergency to counter the terrorist threat, the need to reinforce the arsenal of laws and regulations to neutralise terrorists were subjected to criticism by the opposition. The Nice attack generated a wave of criticism, with the opposition contending that appropriate measures had failed to be implemented to protect the people attending the fireworks display on the Promenade des Anglais in Nice.

Doubts as to the ability of the French administration to protect the population were voiced ever louder among the general public. Prime Minister Manuel Valls was booed during the tribute paid to the Nice victims on 18 July 2016. The risk of a rift within the national community has been growing, and anti-Muslim sentiment is mounting in France, in particular since the Nice massacre. A poll conducted in April 2016 showed that 63 percent of the French consider the influence of Islam and its visibility to be too prominent in France. The DGSI (General Directorate for Internal Security) alluded to the risk of civil war during a hearing conducted by a parliamentary commission of enquiry set up following the 13 November 2015 attacks². In his opinion, the main risk is that ultra-right movements may potentially spark clashes between communities if more attacks occur.

The Berlin attack brought political disputes to the surface. The Schengen Area as well as policies favouring the reception of migrants bore the brunt of strong

2. Hearing of May 24, 2016, Report on behalf of the commission of enquiry on the means employed to counter terrorism since 7 January 2015, President Georges Fenech, Rapporteur Sébastien Piétrasanta, Volume 2, *Assemblée Nationale*, 5 July 2016.

criticism by the Front National Party as a result of the terrorist fleeing to Italy after passing through French territory.

The Louvre Museum attacks and the attempted attacks in Lille and Montpellier received less media coverage, overshadowed as there were by surprising revelations in the French electoral campaign, the left wing's primaries and the scandal relating to the sham employment of Republican candidate François Fillon's wife. It should be noted that the latest attempted attacks occurred concurrently with the U.S. President's executive order prohibiting nationals from several Muslim countries from entering American territory, prompting representatives of the Front National Party (Marion Maréchal le Pen) to forward the possibility of a »Muslim ban«.

The main challenge facing the press, and in particular broadcast media, is coverage of live events. News channels have remained mobilised for hours to cover the events. However, this media coverage, sometimes reaching extreme levels, has brought on a debate over the role of the media, both in terms of publicity afforded to terrorists and the risk of informing them of on-going police operations to neutralise them.

It is well known, for instance, that BFMTV, a 24-hour news channel, had direct telephone contact with Chérif Kouachi and Amédy Coulybaly, the perpetrators of the Charlie Hebdo and Cacher supermarket attacks, at the time of the events that took place on 9 January 2015. These telephone conversations were broadcasted immediately after the terrorists were killed by the police. Worth noting is that Chérif Kouachi stated that he had been sent by Al-Qaida in Yemen, while Amédy Coulybaly claimed he was a part of ISIS. BFMTV was criticised for giving this type of media coverage to the perpetrators of the attacks.

For its part, the newspaper *L'Obs* was accused of forcing the Belgian police to hasten their assault to arrest Salah Abdeslam, the mastermind behind the 13 November 2015 attacks in Paris, by revealing that his fingerprints had been identified during a search in an apartment in Forest.

France 2, a public TV channel, was criticised for broadcasting slow-motion images of the truck driving into the crowd in Nice immediately after the event.

Journalists themselves have pondered over the risk of giving publicity to terrorists while covering attacks. The daily newspaper *Le Monde* and broadcast media organisations BFM TV, Europe 1 and France Medias Monde (RFI, France 24 and Monte Carlo Doualiya) subsequently announced on 27 July 2016 that they would no longer publish images of terrorists³.

However, it must be noted that several newspapers published the biography and photos of victims of the 13 November 2015 attacks. A national tribute was paid to the victims at les Invalides on 20 November 2015.

Since the end of 2016, media coverage of these events has become less salient. First of all, attacks have been thwarted (Notre Dame, Strasbourg/Marseille) or have failed (Louvre Museum). Secondly, the various twists of the French presidential campaign have tended to overshadow all other events.

In contrast to this media coverage, so effusive for so long, Al Qaida and ISIS seem almost discreet. In general, they merely claimed the attacks in the form of brief, isolated statements. As witnessed in the January attacks, the perpetrators and media coverage largely suffice to propagate the event.

Finally, international solidarity, symbolised by 86 heads of state marching on 11 January 2015 and the illumination of foreign monuments in France's national colours, has offered significant support to the French people.

Counter-Terrorism Strategies: Executive and Legislative Responses

There are three types of responses in the fight against terrorism. First of all, responses aiming at strengthening legal means of fighting terrorism. Secondly, responses intended to reinforce human and material resources in the fight against terrorism.

Finally, France has conducted a number of international counter-terrorism operations.

3. Médias: faut-il divulger l'identité et la photo des terroristes, *Le Monde*, 27 July 2016.

Strengthening Legal Means of Fighting Terrorism

It must be noted that before the 2015 and 2016 attacks France had begun to reinforce its range of instruments to counter terrorism. A law aiming at strengthening counterterrorism laws and regulations had just been adopted on 4 November 2014⁴.

This law notably allowed government authorities to:

- Impose an administrative ban on leaving the country for people who may have been radicalised abroad.
- Penalise individual terrorist activities.
- Impose more stringent punishment for glorifying terrorism and inciting persons to commit acts of terrorism. It allows administrative blockage of websites glorifying or inciting terrorism.
- Adapt to new data storage techniques. Investigators can now search »clouds«. They can also intercept conversations on Internet telephone software.

This law was supplemented by another law relating to intelligence that went in force on 24 July 2015. This law had long been awaited since France did not have any legal foundations for monitoring intelligence activities. Public authorities also included provisions allowing use of new technical resources by intelligence services in counterterrorism operations in the law.

The newly authorised intelligence techniques include use of surveillance vehicles as well as wiretapping and video recording of private premises (employing microphones), computer data capture and access to telecommunications operators' networks to track individuals that have been identified as a terrorist threat. These data-collection techniques used to only be authorised through court orders. Methods used by the prison administration to monitor inmate communication have also been augmented. Intelligence services can access Internet hosts' metadata; this collection technique is, however, only allowed in connection with counterterrorism activities. It is also allowed for »IMSI catchers« to be used, allowing

individually designated and accredited agents to intercept conversations within stipulated parameters.

The 13 November 2015 attacks have served to enhance the legal arsenal of counterterrorism tools through the implementation of an option to resort to exceptional measures. A state of emergency was declared throughout the territory on 14 November 2015. A state of emergency is an extraordinary measure laid down in the law of 3 April 1955. In the event of a serious threat to public order, it especially allows prefects to decree curfews in areas wherever they deem such to be necessary; and it expands search possibilities, day and night.

In any and all departments, prefects can:

- Restrict freedom of movement by ordering special protection or security areas, or by prohibiting movement or imposing curfews in some areas;
- Prohibit any individual who will potentially create a disturbance to public order from staying in certain parts of the territory;
- Requisition private persons or resources.

In the Ile-de-France region, prefects can:

- Prohibit some public meetings or temporarily close some meeting locations;
- Authorise administrative searches in the presence of a police officer;
- Place any individual whose activity proves to be dangerous to security and public order under house arrest.

This mechanism was used during the Algerian war at the end of 50's, beginning 60's and the 2005 riots, although in the case of the latter the scope of the measure was limited to the Ile-de-France region. The state of emergency must be adopted by a vote of Parliament after a period of 12 days, which was done at the end of November 2015. The state of emergency was mainly used to place people under house arrest and conduct administrative searches in the days following the 13 November attacks. 3,427 searches were conducted between 14 November and 25 February 2016, with 588 firearms being seized in the

4. Law No. 2014-1353 from 13 November 2014 reinforcing provisions relating to counterterrorism; <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029754374&dateTexte=&categorieLien=id>.

same period⁵. 69 people were placed under house arrest, 56 people were held in custody, often for infringement of firearms laws. One place of worship was closed down. The state of emergency has been extended three times, in February 2016, May 2016 and, in July 2016, for a period of six months after the Nice massacre, even though the President had announced on the morning of 14 July 2016 that the state of emergency would not be extended after the European Cup football competition that had just ended.

A six-month extension of Law No. 55-385 of 3 April 1955 relating to the state of emergency and introducing measures reinforcing counterterrorism was enacted on 21 July 2016 and provided for measures other than the extension of the state of emergency⁶. Thus, it lays down harsher sentences being imposed on offenders for criminal conspiracies in connection with terrorist actions, and excludes people condemned for acts of terrorism from receiving any reductions in sentences. It allows places of worship in which remarks constituting incitement to hate or violence are made to be closed down. Processions, marches and gatherings of people on public roads may be prohibited if the administrative authority in charge indicates that it is not able to ensure people's safety with the resources available. Other provisions relate to administrative searches, video surveillance in prisons, administrative wiretapping, and media coverage of terrorist acts.

A new law extending the state of emergency until 15 July 2017 was adopted on 20 December 2016. In the wake of the presidential election, the new elected President de la République, Emmanuel Macron, announced his intention to extend the state of emergency again until November 2017. A few days after this, the newspaper »Le Monde« revealed plans on the part of the new government to pass a bill in parliament in order to be able to use the tools of the state of emergency on a permanent basis⁷.

This law spells out the conditions warranting house arrest in detail. It will thus be necessary to request that these house arrests be renewed when the state of emergency comes to an end. Furthermore, house ar-

rests can no longer exceed three months except when there are serious indications that the individual remains a threat to public security, in which case a request for a three-month extension can be submitted to a judge in an injunctive proceeding. This means that scrutiny over judicial power is now provided for in connection with long-term administrative house arrests.

In the wake of November 2015, the President announced in his address to Congress a constitutional reform providing for the constitutionalisation of the state-of-emergency procedure, which is at present only subject to a law, and deprivation of nationality for crimes or offences constituting a serious violation of national life.

This measure has been a subject of controversy between the opposition and majority, and even within the majority. Two major criticisms have been levied against this measure. The first one involved the lack of efficacy of the measure itself. The second was about its unconstitutional nature. If it was only applied to individuals with dual citizenship, it would create inequality before the law. But to extend the threat to deprive nationality to all individuals would pose another risk - creating stateless individuals - thus violating the 1961 Convention on the Reduction of Statelessness. Finally, because it is impossible to achieve a two-thirds majority in both assemblies for a joint draft bill, the President ended up abandoning this effort at constitutional reform on 30 March 2016.

On 14 November 2015, it was decided to re-establish identity checks at European Union borders. Initially, this measure was meant to only apply during the International Climate Conference Cop 21, held from 29 November to 11 December 2015. The re-establishment of border controls has been extended for three months three times, in February 2016, May 2016, and finally, for 6 months, in July 2016. The decision to extend identity checks at borders coincided with the adoption of the laws extending the state of emergency.

Simultaneously, on 3 June 2016, a law reinforcing the fight against organised crime, terrorism and their funding, and improving the efficacy and guaranties of criminal procedures was enacted⁸.

5. État d'urgence, quel est le dernier bilan, *Le Figaro*, 19 May 2016.

6. Law No. 2016-987 from 21 July 2016 extending the application of law No. 55-385 from 3 April 1955 relating to the state of emergency and introducing measures reinforcing counterterrorism (1); <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032921910&categorieLien=cid>.

7. Antiterrorisme, le gouvernement veut mettre l'état d'urgence dans le droit commun, *Le Monde* 7 June 2017.

8. Law No. 2016-731 from 3 June 2016 strengthening the fight against organised crime, terrorism and their funding, and improving the efficacy and guaranties in criminal procedures (1); <https://www.legifrance.gouv.fr/eli/loi/2016/6/3/JUSD1532276Ljo/texte>.

The law intends to improve efficacy in the fight against organised crime and terrorism by providing judges and prosecutors with new means of investigation: authorised night searches in homes in terrorism-related investigations and life-threatening circumstances, use of proximity technical devices to directly intercept connection data necessary for the identification of terminal devices or the subscription number of the user (IMS catcher), use of wiretapping, image-fixing and computer data capture in the context of investigations conducted by the public prosecutor. Moreover, computer data capture is no longer limited to data displayed on a screen or received and sent through audio-visual devices, and has now been expanded to include data stored on computer systems.

In locations planned for major events (sporting events such as the UEFA 2016 European Cup), stricter controls on access to venues have been instituted (prior authorisation system, administrative investigation to check the behaviour of people who have access to the venues).

The law lays down a legal framework for visual inspection and bag searches to be carried out by police officers (in French, OPJ: »Officier de police judiciaire«) in connection with identity checks (in the past, a bag search had the same status as a raid).

A new hypothesis on custody has been established based on the identity check model to examine the administrative situation of individuals seriously suspected of posing a threat to the safety of society or persons suspected of being in direct and non-incidental contact with such individuals. This custody, whether on the spot or in a police station, must not exceed four hours.

In addition to cases of self-defence, police officers and gendarmes have been granted the power to neutralise any armed individual who has just committed several murders or attempted murders and is suspected of preparing further ones. They can therefore take action without having to wait for renewed action to take place.

This law thus rounds off and toughens the law enacted in 2014.

A new law on public security was enacted on 16 February 2017. It seeks to align the conditions allowing use of firearms by police officers with the conditions applying

to gendarmes. The draft law provides for police officers, like gendarmes, to be allowed to open fire in four specific situations following the issue of warnings:

- to defend their life or someone else's life in the case of a direct attack or an imminent threat;
- to defend a position or people placed under their protection;
- to prevent an individual under custody from escaping or stopping a vehicle or other transport;
- to prevent the reoccurrence within a short period of time of a murder or attempted murder that was just committed.

This law is admittedly meant to address discontentment among police officers in the face of the attacks they are confronted with, in particular in the *banlieue*. However, in addition to police officers and gendarmes, customs officers and soldiers who are deployed in national territory now benefit from the same rules regarding the opening of fire, in the context of requisitions for domestic security operations (»Sentinelle« operation) or to protect military facilities. Furthermore, this law has created a new offense: »habitual« consultation of jihadist websites.

In general, these laws have been rather well accepted by French citizens, even though they restrict public freedom.

A poll unveiled on 17 November 2015 indicated that⁹:

- 84 % of French people were ready to accept stricter controls and certain restrictions on their freedoms.
- 87 % trusted law enforcement institutions in facing and countering terrorism.
- 50 % trusted President Hollande and his government to lead this fight.
- 85 % were favourably inclined to military participation by France and international intervention in Syria against Daesh and jihadists.

9. Les Français prêts à restreindre leurs libertés pour plus de sécurité. Le Figaro, 17 November 2015; Le Figaro poll, RTL, IFOP.

The Strengthening of Police and Military Manpower

The 2015 and 2016 terrorist attacks led French authorities to reinforce security forces – civilian and military.

As for civilian forces, it was decided in January 2015 to create 1,100 jobs in internal security forces. After the 13 November 2015 attacks, 5,000 police and gendarme positions were created.

With regard to the military forces, 10,000 soldiers have been deployed for the protection of sensitive locations since the 7 January 2015 attacks as part of the *Sentinelle* operation. This is the maximum number of military forces that can be deployed for internal security purposes according to the 2013 White Paper on defence and national security. This number was reduced to 7,000 in April 2015, but was raised to 10,000 after the 13 November 2015 attacks. Because of this new mission assigned to military forces, it was decided to suspend the reduction of military staff that had been started 10 years earlier. The 2014–2019 Military Planning Law, which was revised in July 2015, provides for the shedding of only 6,600 jobs during the 2015–2019 period compared to the 24,000 job losses initially planned. Parallel to this, the apportionment of funds to defence has also been raised by an addition EUR 3.8 billion for the 2015–2019 period¹⁰.

The 2015 and 2016 attacks triggered a debate on the advisability of deploying soldiers for internal security purposes in the fight against terrorism. This debate is not so much about the legitimacy of such a deployment as it is about the advisability of using soldiers for the protection of sensitive locations. Indeed, the preparation and training of these forces predisposes them to engage in high-intensity operations like in Mali or Syria. This is the position put forward by a section of the opposition in the UMP¹¹ (Republican Party). Within the political majority, the debate is more focused on the size of the military force assigned to the *Sentinelle* operation, which requires updating of the army format to adapt it to this new mission. The concept of a national guard

was developed for this reason. The President mentioned the creation of this national guard for the first time before Parliament assembled in Congress on 16 November 2015. A parliamentary report outlined what this national guard could look like¹². The goal is to form it out of the military reserve by modernising and territorialising it, and by using young people in order to limit the use of active military forces for these protective missions.

The National Guard was officially created by a decree signed on 12 October 2016. It is not an independent entity, but rather made up of volunteers fully integrated in the internal security forces and army. It comprises all reservists who can carry a weapon, i. e. operational reserve forces in the army and the gendarmerie as well as in the national police force.

The National Guard contributes to the nation's defence and the security of both the population and the territory, if need be by force of arms. It contributes to missions of the armed forces and all attached formations under the control of the Ministry of Defence, the national gendarmerie or police under the control of the Ministry of the Interior.

The goal is to have 72,000 men in 2017 and 85,000 by 2018, whereas by comparison there are only 63,000 reservists today. 9,250 men would be deployed every day under the direction of the Ministry of Defence and the Ministry of the Interior. Those 85,000 would be subdivided as follows: 40,000 assigned to defence, 40,000 to the gendarmerie and 5,000 to the national police.

In order to recruit volunteers, and since France is currently struggling to enlist reservists, an attractive policy needs to be implemented. Thus, the State has offered to contribute up to 1,000 euros to 25-year-olds to defray the costs of obtaining their driver's licences if they sign a 5-year contract and complete at least 50 days of reserve duty per year. The State will also grant a monthly bonus of 100 euros for 37 days of reserve duty per year, with a tax credit for employers.

The budget allocates EUR 311 million for this measure in 2017, which is EUR 100 million more than initially planned.

10. Law No. 2015-917 of 28 July 2015 updating military planning for the years 2015 to 2019 and introducing various provisions relating to defence; <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEX000030943133&categorieLien=id>.

11. Terrorisme, la droite attaque l'opération Sentinelle, *Le Monde*, 16 March 2016.

12. Jean-Marie Bockel, Gisèle Jourda, *Garde nationale: une réserve militaire forte et territorialisée pour faire face aux crises*. Information report No. 793 (2015–2016), Senate, 13 July 2016.

The External Response in the Fight Against Terrorism

What sets France apart is that it engaged in international operations as part of the fight against terrorism very early on. This is how the military operation in Mali was justified in January 2013, with the objective being to counter the Aqmi, Mujao and Ansar Dine groups, labelled as terrorist organisations, which had just captured the city of Konna and were planning to take over the capital of Mali, Bamako. France then sent 4,000 soldiers as part of the *Serval* operation. This operation was extended to the whole Sahelian strip and was redubbed operation *Barkhane* in August 2014, while the number of soldiers committed to the operation was reduced to 3,000. In Iraq, the *Chammal* operation started up in September 2014 to ensure air support for Iraqi armed forces in their fight against the terrorist group Daesh¹³. This operation therefore predates the January and November 2015 attacks. Nonetheless, the latter did trigger specific retaliation from France on each occasion. Previously limited to Iraq, French airstrikes were expanded to Syria in September 2015 and were intensified following the 13 November 2015 attacks. France raided Daesh's command centre in Rakka, Syria, on 16 November 2015.

Furthermore, 40 Jihadists considered as threats to France were targeted and executed by Special Forces or by the operational wing of the foreign intelligence service (DGSE), according to journalist Vincent Nouzille, author of *Erreurs Fatales*, a book devoted to this topic¹⁴. This had already been mentioned in a book by Gérard Davet et Fabrice Lhomme, *Un Président Ne Devrait Pas Dire Ça* («A president should not say that»), written on the basis of interviews with President François Hollande¹⁵. Nouzille's book examines the issue in terms of the number of persons executed and also the fact that »strategic targets« were not necessarily killed in war zones, thus potentially violating the rules of war.

Considering that France was attacked on 13 November 2015, the President of the Republic invoked the mutual

assistance clause provided under article 42-7 of the Treaty of Lisbon for the first time in his speech before Parliament assembled in Congress on 16 November 2015¹⁶. However, the dialogue over assistance to France took place within a bilateral framework with several countries of the European Union rather than within CSDP institutions¹⁷. European Union countries mainly responded by making additional contributions to the Mali operations. Only Germany announced a commitment in the Syrian-Iraqi theatre¹⁸.

For their part, Americans allegedly killed Rachid Kassim, a French jihadist regarded as the inspiration behind several attacks in France, in a drone strike on 10 February 2017.

It should be noted that the new President of the United States used the failed attack by an Egyptian at the Louvre Museum to justify his »anti-immigrant« executive order.

Lessons Learnt

France has now been facing a terrorist threat for two years. This threat is permanent, and hardly a week goes by without an announcement being made that an attack has been thwarted. In terms of counterterrorism, the assessment of the French response must be analysed in light of several criteria. The first is public opinion and civil society, the second is the efficacy of the measures implemented, and the third is future prospects.

As noted above, public opinion as indicated by polls attaches priority to security over respect of freedoms. Following the massive rallies in support of the victims and against terrorism, there was mounting anger in the wake of the Nice massacre in July 2016, with public authorities being accused of failing to protect the location where the truck drove into the crowd. As a matter of fact, after

13. Opération *Chammal*, Ministry of defence's website; <http://www.defense.gouv.fr/operations/irak-syrie/dossier-de-presentation-de-l-operation-chammal/operation-chammal>.

14. Vincent Nouzille, *Erreurs fatales*. Fayard, January 2017.

15. Gérard Davet, Fabrice Lhomme, «Un président ne devrait pas dire ça...» les secrets d'un quinquennat, stock 2016.

16. «J'ai demandé au ministre de la Défense de saisir dès demain ses homologues européens au titre de l'article 42-7 du traité de l'Union qui prévoit que lorsqu'un Etat est agressé, tous les Etats membres doivent lui apporter solidarité face à cette agression car l'ennemi n'est pas un ennemi de la France, c'est un ennemi de l'Europe.»; <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/europe/actions-et-positions-de-la-france-dans-l-elaboration-de-l-action-exterieure-de-defense-europeenne/article/attentats-du-13-novembre-le-point-sur-l-article-42-7-du-traité-de-l-union>.

17. La demande française de solidarité un semi-flop, Bruxelles 2, 4 February 2016.

18. La clause de défense mutuelle activée, Qui se mobilise? Comment? Bruxelles 2 pro, 15 December 2015.

Nice, a number of public events were cancelled because of the impossibility of ensuring the safety of French citizens, even though the UEFA European Cup competition was carried out without any major incident linked to terrorism taking place¹⁹.

Nevertheless, this does not mean that civil society and NGOs are not concerned over the measures that have been implemented in connection with counterterrorism. Concerns include especially potential violations of privacy due to measures implemented as part of the law on intelligence²⁰. The law on the state of emergency has also been criticised for two reasons. On one hand, it is under fire because the exceptional provision implemented in November 2015 is to last at least until July 2017, thereby rendering the notion of »exceptional« meaningless. The second criticism is that the state of emergency allows the freedom of movement to be restricted, with house arrests that can be imposed by police authorities even though these measures can be brought before a judge²¹. The President has not succeeded in establishing the state of emergency in the constitution in order to remove the perception of exceptional law allowing arbitrary arrests. The constitutional reform project that was meant to align the state of emergency with constitutional requirements was removed because both assemblies were unable to approve it in the same terms.

It should be noted that the latest extension of the state of emergency, voted in December 2016, provided an opportunity to clarify once again a law originally passed in 1955, and to allow the judge in injunctive procedures to spell out the prerequisites for long-term house arrests. It is as if the government were seeking to perpetuate a measure that was originally to apply to extraordinary circumstances.

Finally, the project to deprive people of their citizenship, which was not brought to a conclusion, was widely criticised, for it contributed to a reopening of the debate on

19. De Charlie à Nice l'exaspération et la colère ont remplacé l'unité nationale, Huffington Post, 18 July 2016.

20. Observations sur la loi relative au renseignement, 10 July 2015, Amnesty international France, Cecil, Ligue des droits de l'homme, syndicat de la magistrature, Creis terminal, syndicats des avocats de France; <http://www.ldh-france.org/wp-content/uploads/2015/07/Observations-sur-la-loi-relative-au-renseignement.pdf>.

21. Philippe Cossalter, Le contrôle par le juge des référés de l'assignation à résidence dans le cadre de l'état d'urgence, Revue générale de droit, 14 December 2015.

national identity in France, which had very little to do with terrorism and risked stigmatising the Muslim community.

Taking into account the efficacy of the measures implemented, a distinction must be made between the mechanisms put in place.

Regarding intelligence, criticism has revolved around the weakness of domestic intelligence associated with the discontinuation of the Central Directorate of General Intelligence (*Renseignements Généraux*, RG) when the General Directorate for Internal Intelligence (*Direction Centrale du Renseignement Intérieur*, DCRI) was created in 2008, later becoming the General Directorate for Internal Security (*Direction Centrale de la Sécurité Intérieure*, DGSI) in 2014. General Intelligence had a dual mission: analysing societal issues and monitoring anything that could disrupt state or society's security, which critics considered a political police operation. But the idea of creating a new service equivalent to General Intelligence re-emerged because of the terrorist attacks. To this end, the commission of enquiry's report on means deployed to counter terrorism since 7 January 2015 recommends merging the DGSI's Central Department of Territorial Intelligence (Service central du renseignement territorial, SCRT) with the gendarmerie's Directorate for Operational Anticipation (Sous-direction de l'anticipation opérationnelle, SDAO) in order to revive what used to be General Intelligence. But it could lead to a break-up of the General Directorate for Internal Security and take away one of the gendarmerie's departments: in the opinion of Ministry of the Interior Bernard Cazeneuve in march 2016, it would be tantamount to blinding the gendarmerie²².

The protection offered by military forces as part of the *Sentinelle* operation is also questionable. This measure is meant to reassure the population, but its efficacy has been called into question due to the cost of deploying soldiers. Beyond the debate on the creation of a national guard, which would serve as a partial substitute for soldiers guarding sensitive locations, at issue is the power granted to military authorities. Today, this is limited to self-defence when it comes to the use of firearms. Another issue is the coordination of military and police

22. Bernard Cazeneuve, Debates on domestic intelligence's resources, Senate, 23 March 2016.

forces, which seems insufficient today in terms of internal security^{23,24}, as demonstrated by the inadequacies that became evident in the Bataclan attack.

Finally, as discussed above, measures implemented within the context of the state of emergency were efficacious for the most part during the first few months after the state of emergency was declared, and not always with regard to events relating to terrorism. It appears that in the first three months that the law was in force, between November 2015 and February 2016, that most potential jihadists were placed under house arrest or held in custody. After this period, the number of people arrested diminished because the efficacy of state of emergency relied on the surprise effect, which cannot be the same one year after implementation²⁵. There is thus a risk public liberty will be curtailed without any real positive effect.

One response to this dilemma could be the development of intelligence capabilities with wider measures aimed at reducing radicalisation. The development of technical means by intelligence services would appear necessary, but would have to be reinforced with judicial power and protection of privacy by means of technical tools. With regard to the latter, a European regulation standardising privacy on the basis of smart technologies could prove useful.

Future Prospects

At the end of 2016, France entered an election campaign period, which led to a radicalisation of the debate. This debate involved the security / national identity / Islam's place in the French triptych. Indeed, while not all Muslims are radical jihadists, terrorists claim to be Muslim. Since the Nice massacre the French right wing's rhetoric has become increasingly radicalised. Some, such as the president of the commission of enquiry on means deployed to counter terrorism since 7

January 2015, Georges Fenech, advocated the creation of a »French-style Guantanamo« for jihadists coming back from the Syrian-Iraqi campaign²⁶. Nicolas Sarkozy, a candidate in the right-wing primary, proposed that all individuals registered as »S«, i.e. all individuals identified as having endorsed jihadi theories and considered to be potentially dangerous, be placed under house arrest and made to wear an electronic bracelet. Alain Juppé, another candidate in the right-wing primary, is called for administrative detention of any French citizen coming back from Syria²⁷. Others, such as Thierry Mariani, a representative in the *Assemblée Nationale*, have proposed the principle of *ius sole* governing the right to nationality be abandoned, advocating *ius sanguinis* instead.

In the face of these attempts to outbid each other, the President was able to pose as the main advocate of the rule of law in a speech devoted to terrorism²⁸ by opposing all initiatives aimed at restricting public freedoms even more, concluding his speech with the question: Did the adoption of the Patriot Act or the Guantanamo camp protect the United States from the threat? No.

Conclusion

The 2015 and 2016 attacks have radically changed the French people's perception of the threats facing them. During his speech delivered to Parliament convened in Congress on 16 November 2015, President François Hollande used the term »France at war« (»France en guerre«) to describe the situation. This term was no doubt chosen for several reasons.

The first one was to permit complete mobilisation of those institutions directly involved in the fight against terrorism, the police force and the army, but also the entire population in order to inspire vigilance and an attitude of defiance in the French population. It was also a way to avoid division in French society.

23. Jean-Dominique Merchet, Opération Sentinelle ce que dit le rapport confidentiel remis à Manuel Valls, *L'Opinion*, 21 March 2016.

24. Bataclan, pourquoi la police et l'armée n'ont pas pu intervenir ensemble, *L'Obs*, 9 May 2016.

25. L'Etat d'urgence a une faible efficacité après les premiers jours déclare Georges Fenech; http://www.francetvinfo.fr/faits-divers/terrorisme/attaques-du-13-novembre-a-paris/etat-d-urgence-en-france/l-etat-d-urgence-a-une-faible-efficacite-apres-les-premiers-jours-declare-georges-fenech-1r_1555303.html.

26. Fench prone un Guantanamo à la française, *Le Figaro*, 20 July 2016.

27. Terrorisme, ce que propose les prétendants à la primaire à droite, *Le Figaro*, 1 August 2016.

28. Speech at the Democracy against terrorism (La démocratie face au terrorisme) seminar, 8 September 2016; <http://www.elysee.fr/declarations/article/discours-au-colloque-la-democratie-face-au-terrorisme-2/>. «Est-ce que l'adoption du Patriot Act ou le camp de Guantanamo ont préservé les Etats-Unis de la menace? Non.»

The term has also had an international impact, as on 16 November François Hollande invoked the mutual assistance clause in article 42-7 of the Treaty of Lisbon due to an attack on French territory.

Finally it was simply and without a doubt related to the revulsion felt towards the attack on the Bataclan club.

This assessment was shared by 70 percent of the population in surveys conducted in March 2016 and 50 percent in July 2016²⁹. We can assume that this change in sentiment reflects that the revulsion of the population, even over the number of victims, begins to subside after a one-year period.

All the measures implemented since then – increased military expenditures, suspension of the reduction in the amount of military manpower, an increase in the number of police officers and gendarmes, a build-up in manpower at intelligence agencies, harsher sentences for terrorists, augmentation of police forces' and magistrates' investigative powers, exceptional measures of custody associated with the state of emergency – attest to this state of war. One of the difficulties the country must face is that the threat does not necessarily emanate from organised groups directed from abroad, but rather sometimes isolated individuals who become radicalised primarily because of propaganda broadcasted via the Internet by the Islamic State. This was indeed the case in the Nice massacre. This type of individual is difficult, or even impossible, to identify and neutralise. France has probably carried out the maximum in terms of what can be done to strengthen its arsenal of laws and regulations to combat terrorism. Three anti-terrorist laws have been adopted and another one regarding intelligence, all of them restricting public freedoms. Even though the state of emergency is ordinarily supposed to be of a temporary nature, it has become semi-permanent and there is a risk of public authorities ratcheting up anti-terrorist legislation every time there is an attack in response to the French people's security expectations without tougher laws actually translating into enhanced security, while at the same time restricting public freedoms even more.

Some people are speaking out and demanding that the public authorities tackle the terrorism issue directly

29. Le Figaro 17 juillet 2016; <http://www.lefigaro.fr/politique/2016/07/17/01002-20160717ARTFIG00144-sondage-les-francais-ne-font-pas-confiance-au-gouvernement-pour-lutter-contre-le-terrorisme.php>.

at its source and not just employ means of repression. That means dealing with the radicalisation of a section of youth³⁰. Thus, it is argued, »de-radicalisation« centres staffed by psychologists and social workers should open in various regions³¹. The multiplication of private initiatives along these lines is being met with mistrust, however, as the project appears to be fraught with difficulties, while any assessment of results faces complications³². Two delegates in the *Assemblée Nationale*, Esther Benbassa and Catherine Troendlé, are to issue a report on this subject in the near future.

At present, there is a tendency towards the view that »one attack is always one too many«, while an estimated 9,000 people in France have been radicalised. 9,000 is at once both very few in a country with more than 60 million inhabitants, and a lot considering the diffuse and individualised threat that they pose to the country as a whole.

30. Olivier Roy, Le djihadisme est une révolte générationnelle, *Le Monde*, 24 November 2015.

31. Déradicalisation, un centre de réinsertions par région, première ouverture en Indre et Loire, *PublicSénat*, 9 May 2016.

32. Déradicalisation, Dounia Bouzar rompt soudainement son contrat avec l'Etat, *Le Figaro*, 12 February 2016.

Annex

Name and Reference	Content
<p>Law No. 55-385 from 3 April 1955 pertaining to the state of emergency</p> <p><i>Consolidated version from 8 September 2016</i></p>	<p>The state of emergency is an extraordinary provision provided for in the law from 3 April 1955 allowing administrative authorities (prefects) in the event of a serious disruption in public order to take stronger measures to protect public order and prevent new terrorist attacks.</p> <p>In all departments, prefects can:</p> <ul style="list-style-type: none"> ■ Restrict freedom of movement by ordering special protection or security zones, or by prohibiting movement or gatherings in some areas (curfew) ■ Prohibit any individual who may potentially pose a threat to public order from staying in certain parts of the territory ■ Order requisition of private people or resources. ■ Prohibit certain public meetings or temporarily close some meeting locations ■ Authorise administrative searches in the presence of a police officer <p>Furthermore, the Ministry of the Interior can place any individual whose activities poses a threat to security and public order under house arrest.</p>
<p>Law No. 2014-1353 from 13 November 2014 strengthening provisions relating to counterterrorism</p>	<ul style="list-style-type: none"> ■ Administrative ban on leaving the territory (6 months maximum and renewable) ■ Invalidation of the passport and identity card of the individual concerned ■ Administrative ban on entering French territory for any foreigner if his presence constitutes a serious threat to public order ■ Criminalisation of individual terrorist acts (targeting »lone wolves«) ■ More severe punishment for glorifying terrorism and inciting persons to commit acts of terrorism ■ Administrative blockage of websites glorifying or inciting terrorism.
<p>Law No. 2015-912 from 24 July 2015 on intelligence</p>	<ul style="list-style-type: none"> ■ The law aims to provide a legal framework for intelligence services' activities ■ Use of intelligence techniques are authorised by the Prime Minister after issue of an independent authority's opinion. ■ Intelligence-gathering techniques previously authorised in a judicial framework are made available to the intelligence services: tagging vehicles, wiretapping and video recording of private premises (microphones), computer data capture, access to telecommunications operators' networks to track individuals that have been identified as a terrorist threat. ■ Intelligence services can also use tagging to track a vehicle or object in real time, and use proximity mobile devices such as IMS-catchers, which allow interception of cell phone communications within a given radius. ■ These techniques can only be used for limited, listed purposes: national security, essential interests related to foreign policy and France's international commitments, France's essential economic and scientific interests, prevention of terrorism, prevention of organised crime and delinquency, prevention of the proliferation of weapons of mass destruction, prevention of infringements of institutions' republican form and prevention of collective violence that may affect national security. ■ Creation of an independent administrative authority: the National Commission for the Control of Intelligence Techniques (Commission nationale de contrôle des techniques de renseignement, CNRT), responsible for submitting an opinion before any authorisation to implement an intelligence technique is issued, as well as any useful information in the implementation of said technique. Techniques that have the greatest impact on privacy are only to be used in accordance with the principles of proportionality and subsidiarity (only when these are the only methods available to gather intelligence).

<p>Law No. 2016-731 from 3 June 2016 strengthening the fight against organised crime, terrorism and their funding, and improving the efficacy and guaranties of criminal procedures</p>	<ul style="list-style-type: none"> ■ Objective: strengthen the effectiveness of efforts to combat organised crime and terrorism ■ New means of investigation for judges and prosecutors: authorised night searches in homes for terrorism-related investigations and in life-threatening circumstances ■ New technical intelligence means ■ Proximity technical devices to directly intercept connection data necessary to identify terminal devices or subscription numbers of users (IMS catcher), use of wiretapping, image fixing and computer data capture in the context of investigations conducted by the public prosecutor. ■ Capture of stored computer data ■ Security forces are authorised to neutralise any armed individual who has just committed several murders or attempted murders and is suspected of preparing additional ones without having to wait until a new act is committed. ■ Possible use of body cameras only for national police and gendarmerie forces in performing their tasks of preventing disruptions of public order, preserving the security of people and property, and of judicial police ■ Possible administrative monitoring of persons who have been or intend to travel to theatres of terrorist operations. ■ Regular consultation of websites directly inciting persons to commit acts of terrorism or glorifying these acts has become an offence punishable by two years of imprisonment and a fine of 30,000 euros. Access to arms licence has been strengthened ■ Restrictions on prepaid cards and greater traceability of operations carried out with such cards. TRACFIN (<i>Traitement du renseignement et action contre les circuits financiers clandestins</i>) and banking institutions are covered by the measure.
<p>Law N° 2016-987 from 21 July 2016 extending the application of law No. 55-385 from 3 April 1955 pertaining to the state of emergency and introducing measures reinforcing counterterrorism</p>	<ul style="list-style-type: none"> ■ The law extending the state of emergency for a period of six months was enacted on 21 July 2016. <p>In addition to the extension of the state of emergency, this law includes several new provisions:</p> <ul style="list-style-type: none"> ■ The possibility of closing down places of worship in which statements are made constituting incitement to hate or violence or to commit acts of terrorism or glorifying such acts. ■ The prefect, without having received any instructions from the public prosecutor, can authorise police officers and their subordinate agents to carry out identity checks, visual inspection, and bag and vehicle searches on public roads. ■ Regarding administrative searches, the law authorises the capture of computer data, whether by copying it or seizing computer devices. At the end of the search, the administrative authority is to request the administrative court judge presiding over injunctive procedures for authorisation to use this data. People present at the site of the search can be held by police officers if there is serious reason to believe that their behaviour may pose a threat to public order and security. Custody in this case is not to exceed four hours. ■ The law provides a legal basis for video surveillance in detention cells within prison facilities. The prison administration can set up video surveillance monitoring in cells assigned to people placed under criminal justice control, subject to a confinement measure, or whose escape or suicide could significantly impact public order in the light of the particular circumstances that led to their imprisonment and their impact on public opinion. ■ The maximum period of provisional and criminal detention has been raised for acts of terrorism. Provisional detention can last up to two years for minors and three years for adults. 20-year sentences have been raised to 30 years; 30-year sentences have become life sentences. For foreigners convicted of an act of terrorism, the law creates an automatic ban on entering French territory (the court can decide not to impose this sentence for special reasons). Furthermore, people who have been convicted of terrorism cannot receive a reduction in their sentence. ■ Administrative wiretapping has been extended to individuals previously identified as being potentially linked to a threat. ■ The law also provides for the Superior Council on Audio-visual content (Conseil Supérieur de l'Audiovisuel) to draft a code of good conduct relating to media coverage of terrorist acts.

**Law on public security,
adopted on
16 February 2017.**

The law alters/updates conditions governing use of firearms in cases of legitimate self-defence and harmonises these conditions for all security and defence forces in the area of domestic security: police officers, customs officers, gendarmes and soldiers with the conditions applying to gendarmes.

After warnings have been made, firearms may be used:

- to defend one's life or someone else's life in the event of a direct attack or an imminent threat;
- to defend a position or people placed under protection of such persons;
- to prevent an individual under custody from escaping or to stop a vehicle or other means of transport;
- to prevent the reoccurrence within a short period of time of murder or attempted murder that has just been committed.

Furthermore, this law created a new offense: »habitual« consultation of jihadist websites.

New Terror – The Israel Case

Amir Fuchs

Abstract

This article will present the new challenges Israel is facing in its struggle against terror. Although Israel has had long and painful experience with years of terror attacks since its birth, it has had to come up with a new response to the waves of terror in late 2015 and 2016, referred to as the »individuals' Intifada« and characterised by terrorists acting alone and motivated mainly by social networks. The solution Israel came up with included changing criminal law and policy towards incitement in social media as well providing authorities with new powers to deal with social networks. These measures as well as the new Counter-Terrorism Law passed in late 2016 have triggered sharp criticism as being too far-reaching and infringing on human rights disproportionately.

Terror in Israel – Background

The Israeli experience in coping with terror attacks is unique. Israel has been struggling with terrorism throughout its existence. Most of the terrorism Israel encounters is Palestinian-related and is caught up in the Israeli-Palestinian conflict. Nevertheless, Israel has suffered from bloody terror attacks by Hizbolla from Lebanon as well as Al-Kaida and ISIS, mostly from the Sinai desert.

In these years, major terror »waves« were clearly organised by terrorist organisations, mostly Palestinian: Fatah, Hamas and Islamic Jihad. The most deadly »waves« of terrorism were referred to as the first and second »Intifada«. During the second Intifada (2000–2005), Israel suffered as many as 1,100 casualties. In the years 2002–2003 alone, about 600 Israelis lost their lives, mostly to suicide bombers in the main cities of Tel Aviv, Jerusalem and Haifa. Almost all of these terrorist attacks were organised and planned by these terrorist organisations.

The New Challenge

The new challenge Israel now faces is very different. After rising tensions surrounding the issue of »Al Aqsa« mosque

and the uprising on the temple mount, the Palestinians started what can be called an »Individuals' Intifada«. What is unique about this wave of terrorism is that almost all of the terrorists were persons acting alone and not connected to any organisation and most of them brandishing primitive weapons such as knives, screwdrivers and sometimes their cars. This wave started in east Jerusalem, but after a while spread to the entire country, even in some cases involving Arab citizens of Israel. One important common feature in these events was that most of the terrorists were young (86% were 16–25 years of age)¹, some of them minors, and the fact that they were profoundly influenced by social media. In lots of cases the terrorist announced their intentions in Facebook or Tweeter, and were exposed to extreme religious incitement from sites designed to motivate people to go out and fight.

During this wave of terrorism (from late 2015 until end of 2016) 49 Israelis died and hundreds were wounded. There were 177 stabbing attacks and 58 vehicle ramming attacks².

This short article describes the measures the Israeli authorities took to fight this unique wave of terrorism, which did not resemble any previous waves of terrorism. In addition, it describes Israeli counter-terrorism laws and the new Counter-Terrorism Act passed at the end of 2016. This law was not specially designed to counter the new »Individuals' Intifada«, but still was a major development within Israeli law against terrorism and also had some elements addressing incitement to terrorism.

The Basis of Terrorism Law

Israel's laws on terrorism have been laid down over the years many different pieces of legislation enacted one at a time.

1. Shabak, Characteristics of the wave of terrorism – October 2015, JSS site, 9 November 2015; in Hebrew at <https://www.shabak.gov.il/publications/Pages/study/skira101115.aspx>.

2. Israel Ministry of Foreign Affairs, Wave of terror 2015–2017, MFA site, 7 May 2017; <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx>.

The foundations of Israeli law on terrorism has been provided by mandatory regulations – laws of mandatory British rule before 1948. These laws laid down some of the definitions of terrorist organisations, assignment of the status of a terror organization and some of the offences of terror acts. Also, most administrative powers have been laid down within these mandatory regulations. During the years, Israeli legislation has replaced some of the mandatory legislation. One of the most important examples was the new Law of Administrative Detention from 1981. Since then administrative detention in Israel has been executed under an Israeli Law. Also, an important law targeting the financing of terrorism was enacted in 2005³. This law also lays down some important definitions of a terrorist act and a terror organisation, although it only makes reference to the offence of financing terrorism. Besides these specific laws, general penal law in Israel has been applied to terrorists (when they are brought to justice in Israel) – for example, murder, attempted murder, possessions of arms or explosives, etc. Also, laws regarding special needs of the police while an accused terrorist is under investigation have been laid down in regular criminal procedure laws⁴. Even now, after the new Counter-Terrorism Law was enacted, some old mandatory laws are still in force and have not been abolished⁵.

Special Counter-Terrorism Measures

Use of Force During Investigations (Torture)

After a wave of serious terrorist attacks in the 70s (the Munich Olympics attack, two plane hijackings, major massacres in buses – one of which caused 35 casualties), the authorities in the Global Security Service (GSS) decided to employ special methods of interrogation⁶. The fact that the GSS had been using force in investigating terrorism (and then covering it up) was revealed in the 300-line case of 1984⁷ and the 1987

Nafsu case⁸. Following these cases, a committee was formed led by Supreme Court Justice Landau. The report of the committee was clear: since 1967 the GSS has been allowed to use some force in interrogating terrorist suspects and then lie about these methods in court.⁹ Although criticising the cover-up and perjury, the committee decided that several »moderate physical pressure« methods are legal and should not be considered as »torture«. The committee decided that these methods fall within the definition of the criminal defence of »necessity« because it was convinced that these methods were essential to security. The report was criticised by most of the Academy and human rights organisations¹⁰. The next stage, which brings us to the current legal situation, was a verdict handed down by the High Court of Justice (HCJ) in 1999, when the Supreme Court finally rendered a decision regarding the legality of these investigations methods. The Court held that these methods are illegal and forbidden because they violate human dignity. The Court ruled that the need to defend against terrorism does not warrant authority for interrogators to use force or make it legal. Nevertheless, the Court did not exclude the option that in »ticking bombs« situations, the defence of »necessity« can block criminal charges against interrogators that use these methods in the interrogation.¹¹ This verdict has changed the way the GSS works dramatically. The use of special methods was merely narrowed to »necessity cases« (extreme and immediate danger, such as a »ticking bomb«) – but it must be stressed that in these cases physical duress is still employed.

Administrative Detention

The practice of administrative detention in Israel originates from mandatory regulations. The first government

3. Prevention of Funding of Terrorism Law, 5765-2005.

4. For example, special rules regarding national security investigations.

5. One important regulation that was never abolished relates to the demolition of houses.

6. Israeli Gov't Press Office, Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity, 1987, [LANDAU REPORT] reprinted in 23 ISR. L. REV. 146 P 2.20.

7. The 300-line case involved two terrorists who hijacked a bus on a road and were captured alive on the scene and eventually killed by GSS interrogators. After a long cover-up, the story was uncovered and charges filed against the GSS officials. After a major scandal they were pardoned by the President even before their trial, see HCJ 428/86 Itzhak Barzilai vs. The Government of Israel.

8. The Nafsu Case involved an appeal to the Supreme Court regarding an Israeli officer who was falsely convicted of treason after he was tortured during his interrogation. The fact that he was tortured was only covered up in the appeal. The state admitted that torture was performed after denying it in the lower instances, see CA 124/87 Deputy Izzat Nafsu vs. the Chief Military,

9. 2.53 see above LANDAU REPORT P

10. Symposium on the Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity, 23 ISR. L. REV.

11. HCJ 5100/94, The Public Committee Against Torture in Israel vs. Government of Israel, P. 40; http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Public%20Committee%20Against%20Torture%20in%20Israel%20v.%20Government%20of%20Israel%281%29_0.pdf.

to enact a new »Israeli« law of administrative detention was the government of Menachem Begin in 1981, which opposed the practice of administrative detention that was used against many of his fellow »Etzel«(»the Irgun«) comrades in the resistance during the British mandate. The new law, which only goes into force during a »state of emergency«, makes it possible for the Minister of Defense to issue a warrant of administrative detention for a person who constitutes a threat to national security, but the detainee must be brought to a district court judge within 48 hours to confirm the warrant. The detention can be extended up to 3 months in a hearing, and each decision can be appealed to the Supreme Court. Detention can be repeatedly renewed, theoretically indefinitely.

There is much criticism of the practice of administrative detention in Israel. Although not used frequently within Israel (in the West Bank Territories it is used more frequently and the process is performed in a military court), it constitutes a very extreme measure depriving suspects of liberty without trial or even charging the detainee with any wrongdoings: the whole idea is that a suspect is dangerous and might commit a crime later. Also, the fact that the law is limited to a »state of emergency« is absurd since Israel has formally been in a state of emergency since its existence and this has actually been the normal situation down to this day. Also, the fact that the decision is based on secret evidence, and that sometimes the accused does not even know the essence of the accusation against him, make it very difficult to conduct an effective defense¹².

At present, a new version of the law is in the process of being adopted in the Knesset. The bill the government is proposing makes it possible to employ alternative methods such as restrictions on movement instead of total deprivation of liberty. Also, the new law is not to be dependent on the fictional state of emergency and is to apply at all times.

The Counter-Terrorism Law (CTL) (2016)

After a long process that started in the GSS and Ministry of Justice, the »Counter Terrorism Memorandum« was issued in 2009. It was a very long, detailed bill, designed,

12. Gil, Elad; Tuval, Yogev; Levy, Inbar (Under the guidance of Kremitzer, Mordechai; Shany, Yuval), *Exceptional Measures in the Struggle against Terrorism*, IDI, 2010.

as it was said in its grounds, to give Israeli authorities tools geared to the new era of terrorism while enabling the state to conduct the important task of fighting terrorism, and to acknowledge the fact that Israel is a democracy that cherishes human rights and due process. Hence, the bill is intended to be a modern law that replaces the old bits and pieces of laws and regulations, some of which are still mandatory, and some of which, even according to the security authorities, are not totally befitting a liberal democracy.

Nevertheless, the bill has generated extreme criticism from most of the legal community in Israel¹³. In a roundtable meeting held at the Israel Democracy Institute (IDI)¹⁴, almost all of the Academy experts in criminal and international law as well as other experts agreed that the bill suffers from severe flaws in dozens of its articles, some of them constituting a revolutionary approach to criminal law that will severely harm the pursuit of justice and tarnish the legitimacy of the criminal process against terrorist suspects. Some of the organisations such as IDI and the Association for Civil Rights in Israel (ACRI) have published detailed position papers outlining the criticism that was focused on definitions, offences and the procedure and administrative powers conferred upon the state.

Before the bill was sent to the Knesset, it was softened in some of its clauses, while criticism was taken into account in the new version of the CTL. For example, the »assistance by negligence« offence that was included in the first bill was removed from the final version. Also, some specific definitions and other parts were relaxed. After years of deliberations in the Knesset (mainly during 2013–2016), in which the Law was again changed in light of criticism by experts on the committee, and based on work performed by the legal counselor for the Knesset Legal and Constitutional Committee, it finally passed in late 2016.

13. Kremnitzer, Mordechai; Shani, Yuval; Fuchs, Amir; Position papers on proposed Anti-Terrorism Law, IDI site, 17 February 2014; in Hebrew at <https://www.idi.org.il/articles/7757>; ACRI, 2010, position papers on memorandum Anti-Terrorism Law, ACRI site, 28 July 2010; in Hebrew at <https://www.acri.org.il/he/2542>; Shapira, Gil; Yishai, Sharon; Public defence attorney position papers on proposed Anti-Terrorism Law, Knesset site, 4 March 2014; in Hebrew at http://www.knesset.gov.il/committees/heb/material/data/H12-05-2014_17-17-59_sanegurya10032014.doc.

14. IDI, Roundtable: The Counter-Terrorism Memorandum Bill, IDI site, 3 October 2010; in Hebrew at [.https://en.idi.org.il/events/7146](https://en.idi.org.il/events/7146)

The Flaws of the New CTL

It must be stressed that the idea and the initiative to consolidate Israeli legislation on terrorism into one piece of coherent and modern legislation is a positive one. The fact that Israel's law of terror was mainly based on mandatory regulations was a disgrace to a democracy. Also, the fact that most of the laws were »immune« from constitutional review posed a real problem from a human rights and due process point of view.

However, the general picture that emerges from the Counter-Terrorism Law is quite alarming. The law includes a number of truly revolutionary points at all levels in which the legal system deals with terrorism. These range from the bill's definition of terrorism (which also includes organisations with very limited connection to terrorist acts), to changes in substantive law (incitement, identification with a terrorist agenda, and communication of terrorist threats), changes in applicable legal procedures (for example, allowing statements by witnesses who are not present to be admissible in judicial hearings or re-issuing legislation restricting access by detainees to judicial review that was already struck down by the Supreme Court), to a dramatic increase in the severity of punishment following convictions. The law also lays down administrative confiscation procedures that allow severe penalties being committed to personal property without due process.

The basic problem with CTL lies in its overly broad definitions of terrorist organisations, acts of terrorism, and membership in terrorist organisations. For example, in order to be treated as a member of a terrorist organisation one need only »agree« to join such a group and nothing more. As a result of the breadth of these definitions, legal tools that increase the severity of punishment, compromise due process, and violate rights of suspects and defendants are employed in far too many cases, causing serious violations of rights. Arguably, these broad definitions dilute the notion of »terrorism« and, as such, miss the point of the proposed legislation. Instead of differentiating between terrorism and other violent crimes that warrant less severe responses, the law puts a variety of actions and behaviors all in one »basket,« when separate consideration of each would be justified.

An additional problem is that the law, ostensibly new and modern, relies too heavily on pre-existing local leg-

islation that is archaic in nature, as well as on new legislation from other countries adopted in the post-9/11 hysteria. Israel should not embrace comparative laws that reflect a short-term response to an unexpected emergency situation; rather, the situation in Israel is an ongoing problem, which merits a more careful and increasingly sensitive balancing act between security interests and human rights concerns. The problem is that on this special occasion, efforts to devise a modern new »tool box« for counter-terrorism authorities in Israel has not abolished all the mandatory regulations – only those which were embodied in the new law. For example, the regulation on house demolitions has not been abolished.

One should also bear in mind that when legislation of this nature is enacted with regard to terrorism, there is the danger of a spill-over effect on other areas. Practices in dealing with terrorism that become routine are liable to affect other areas, such as organised crime and other types of serious crimes. The draft memorandum bill itself does indeed this, as its broad definitions of terrorism include acts that are not classic examples of terrorism. Given this, Israel must be careful not to overstep the boundaries of criminal law, both in terms of substantive criminal law and criminal procedure law.

Coping with the New Media and »Individuals' Intifada«

As stated above, Israel faced a wave of terrorism in 2015–2016 (which appears to have subsided in 2017) that was unique in terms of its features: most terrorists acted alone and not through an organisation, most of them were young and used primitive weapons. What was more important from the perspective of prevention: In a lot of cases the terrorists were clearly incited by hatred in social media, in some cases themselves helping spread extreme, sometimes religious messages. In some cases, the terrorists even implicitly stated what they were planning.

Israeli politicians were very callous in response of this development. For example, the Minister of Internal Defence, Gilad Erdan, was quoted as saying »some of the victims' blood is on Zuckerberg's hands. Facebook has turned into a monster. The younger generation in the

Palestinian Authority runs its entire discourse of incitement and lies and finally goes out to commit murderous acts on Facebook's platform¹⁵«. This rhetoric is not only representative of the coalition, a hard-liner right-wing grouping, at present in Israel. Erel Margalit, Labour Party MK, made roughly similar remarks: »Facebook has become a hothouse for new terrorism. The next terrorist attack is hiding among the thousands of likes and shares that terrorists get these days«.

Ayelet Shaked, Minister of Justice, published a memorandum that the media in Israel has dubbed »the Facebook law«. According to this bill, Israel's courts will have the authority to issue an order to delete contents from social media sites if their content poses a serious threat to national security. In the explanatory notes, the Ministry claims that although it is preferable for networks to delete the contents themselves on the basis of their community rules, as is actually done in most cases, Israel needs to have the power to remove dangerous posts, in some instances without consulting with the networks.

It should be noted that this law is not designed to replace any criminal charges, nor is it a substitute for them. The criminal law is aimed at publishers of material and lays down penalties for someone who has broken the law by such publication. This proposed bill is meant to provide a more efficient and speedy way to deal with dangerous contents and not with the publisher.

Civil society has criticised the bill. Dr. Tehilla Shwartz Altshuler, who is in charge of the media reform program at the Israel Democracy Institute, criticised the bill harshly¹⁶. According to Shwartz Altshuler, the bill constitutes an extreme infringement of freedom of speech and is not geared to modern times. She describes the bill as unprecedented in the democratic world, advised that it be altered to only cover cases where the publisher cannot be reached through regular criminal proceedings. The bill is currently under debate in the Knesset's Law and Constitutional Committee.

15. Lis, Jonathan, Israeli Minister Slams Facebook: Terror Victims' Blood Is on Zuckerberg's Hands, *haaretz*, 3 July 2016; <http://www.haaretz.com/israel-news/1.728554>.


16. Schwartz Altshuler, Tehila, Position paper of IDI on the new facebook law, IDI site, 25 December 2016; in Hebrew at <https://www.idi.org.il/knesset-commities/12069>.

The Amended Law on Incitement and New Policy

Another important path that the Israeli authorities have taken in order to cope with the challenge of the »Individuals' Intifada«, which relies mainly on incitement through social media, is to try to enforce the laws on incitement in a more intensive manner. The 2016 Counter-Terrorism Law constituted an important amendment to law governing incitement to terrorism. Whereas the old law only laid down criminal penalties for publications that pose a serious threat that they will lead to a terrorist act, the new law is broader: First, the new law adds a clause of »direct incitement« to terrorism that is independent of any probability or actual danger – as long as the incitement is direct and clear. Secondly, the law adds a complex offence of »identifying« with a terrorist organisation, including waving a flag, wearing a shirt, etc., as long as these deeds include an intention of identifying with a terrorist organisation or under circumstances perhaps influencing other people to join the terrorist organisation. This means that the law now restricts freedom of speech considerably more. This development was finalised in late 2016, when the new CTL was passed.

Meanwhile, law-enforcement authorities have also changed their policy regarding investigation and pressing charges against people who commit incitement, especially on social media. *Haaretz*¹⁷ writers have stated that since late 2015 more than 200 Palestinians have been arrested and charged with incitement on social media. After years in which police and the public prosecutor have not enforced the law to its full extent, the dangers that have become apparent during the »Individuals' Intifada« have pushed them towards a stricter enforcement policy. The Minister of Intelligence, Israel Katz, declined to deny that Israel »may be« using an automatic scanning program that provides alerts on extreme speech in social media and pinpoint and predicts profiles that could pose a threat to national security. He noted that this method has proven efficient in hundreds of cases. It must be stressed that no charges are filed based solely on a statistical analysis of social media – every case has to be examined with specific evidence once discovered. This policy has also triggered criticism from civil rights or-

17. Hirshauga, Or; Sheizaf, Hagar, Targeted prevention: The new method of dealing with terrorism is exposed, *haaretz* 26 May 2017; in Hebrew at <http://www.haaretz.co.il/misc/iphone-article/.premium-1.4124379>.



ganisations, mainly because of its tendency to produce »false positive« cases, some of which ended in charges of incitement for »sharing« posts about martyrs, the Palestinian struggle for liberty and other content that has been interpreted as »extreme« and inciting others to commit terrorism.

Conclusion

Israel has always been an important »test case« in dealing with terrorism and balancing between the preservation of national security and democratic values. In recent years Israel has faced a new challenge in the guise of the »Individuals' Intifada«, which has faced Israeli authorities with major problems. The measures that Israel has been trying to institute include both a shift in the policy towards criminal incitement and an attempt to institute a law that would allow the state to delete dangerous content from social media. Nevertheless, in order to preserve Israel's nature as a liberal democracy these measures need to be employed with extreme care and be scaled closely to specific cases of extreme incitement that may probably lead to terrorism.

Norway: A Lack Of Reckoning?

Sindre Bangstad

Abstract

The 22 July 2011 terrorist attacks in Norway were perpetrated by a white right-wing Norwegian extremist, Anders Behring Breivik (32), who in the two attacks altogether murdered 77 people. The political response to the attack focused on national unity and Norwegians standing together in defence of democratic values and the rule of law. Civil society mobilisation across Norway brought over 1 million Norwegians onto the streets in memorial marches between 24 and 26 July. The ensuing trial in 2012 offered an important arena for the enforcement and inculcation of the importance of the rule of law in a democratic society. There has, however, been an ongoing process of de-politicizing and externalizing Breivik and his terrorist attacks since 22 July 2011, with popular attitudes towards immigrants and minorities – and Muslims in particular – having if anything hardened since 2011. Efforts to secure critical infrastructure and co-ordination between various critical institutions in Norway six years on remains inadequate.

Introduction to the Case

An Account of the Attack

The worst terrorist attacks in modern Norwegian history took place on 22 July 2011, carried out by a white right-wing Norwegian extremist, Anders Behring Breivik, from Oslo West, aged 32 at the time of the attack. A bomb placed by Breivik at Government Headquarters in Central Oslo which went off at 15.22 p.m. local time killed 8 people, including office workers and random passers-by between the ages of 20 and 61. At Government HQ, 9 people were severely injured by the blast, whilst another 200 people sustained less severe injuries. Breivik then proceeded unhindered by car to the small island of Utøya, 60 kilometres north of Oslo, where the social-democratic youth organization AUF (*Arbeidernes Ungdomsfylking*, or Labour Youth Organisation) was holding its annual summer camp.

Breivik was dressed in a fake Norwegian police uniform complete with helmet and a bulletproof vest during his attacks, and was pumped up with a cocktail of steroids and performance-enhancing drugs. In the period between his arrival by boat on the island at 5.15 p.m. to his peaceful arrest by a Delta (SWAT) Team from Oslo Police Headquarters at 6.32 p.m., Breivik single-handedly massacred 67 out of 564 people on the small island of Utøya by shots to their heads. 2 persons died from drowning in an attempt to escape. All in all, 69 people between the ages of 13 and 51 died on or off the island. Most of the victims were young and defenceless teenagers – some of them killed at point blank range whilst begging for their lives.

Breivik, the son of a short-lived relationship between a senior Norwegian and Labour Party-affiliated diplomat and an auxiliary nurse, was involved with the Norwegian right-wing populist Progress Party (Fremskrittspartiet, FrP) as an activist and member of the party from 1999 to 2004 and of its youth wing FrPU from 1997 to 2007 (Bangstad 2014: 109). A high-school drop-out with a troubled childhood, a narcissistic personality and grandiose ideas about himself, Breivik failed as a self-employed businessman, and withdrew from society and to his room as a small boy in his mother's apartment in Oslo West in 2006. In his child's room, he spent countless hours and months ›self-radicalizing‹ on far-right¹ Norwegian and international websites and playing on-line war games such as *World of Warcraft*.

Breivik's ideas about a high-profile terrorist attack appear to have crystallised around 2009. He had originally toyed with the idea of a terrorist attack directed against Norwegian Muslims, but, inspired by his main ideological inspiration, the far-right counter-jihadist Peder Are Nøstvold Jensen (aka ›Fjordman‹) (Enebakk 2012), abandoned this idea in favour of a terrorist attack targeting

1. The term far-right refers to a part of the ideological spectrum which includes right-wing extremism as well as right-wing populism. It should be noted, however, that though ideas and sentiments relating to particular minorities – and in this context – Muslims are often shared across this ideological spectrum. Right-wing extremists generally endorse violence and terror as political means, whereas right-wing populists generally do not, and instead prefer democratic and electoral means.

Norwegian social-democrats in the then governing Norwegian Labour Party (Arbeiderpartiet, AP), which Breivik considered responsible for mass Muslim migration to Norway from the late 1960s onwards. Breivik was profoundly influenced by far-right conspiratorial ideas about Islam and Muslims propagated in and through the so-called ›Eurabia genre‹ (Carr 2006, Larsson 2012, Bangstad 2013), and his attacks were meant to inspire a continent-wide European ›civil war‹ leading to the eventual and ultimate ethnic cleansing of Norway and Europe of Muslims (Gardell 2013).

Breivik professed not to be racist and to take exception to Nazism in his 1518 page-long, cut-and-paste ideological tract *2083: A European Declaration of Independence*, sent to well over a thousand potential sympathizers in Norway, Europe, the US and Israel in the minutes before the first attack at Government HQ. But in police interrogations and at the 22 July trial before Oslo Magistrate's Court from 16 May to 22 June 2012, Breivik endorsed a long line of Norwegian and international Nazis, including the German Nazi collaborator Vidkun Quisling and the German neo-Nazi ›Zwickau cell‹, and has in prison increasingly styled himself as a neo-Nazi.

Breivik's attacks were so-called ›lone-wolf‹ terrorist attacks (Spaaj 2012), and Norwegian police investigations made it clear that Breivik planned and executed these attacks by himself. However, terrorism studies' recursive notions of ›self-radicalisation‹ and ›lone-wolf terrorism‹ are misleading: Breivik may have been alone in planning and executing his attacks, but he was certainly part of a wider ideological pack (Burke 2017) in terms of the ideas which inspired his attacks. Though Breivik claimed to have spent 1.7 million Norwegian kroner (NOK) in sum total on the attacks, police investigations concluded that Breivik in reality spent a meagre amount of 300,000 Norwegian kroner (NOK) (VG. no 2012), funds acquired through personal loans from his aging and unsuspecting mother and through the sale of forged documents online.

The economic costs of the 22 July terrorist attacks for Norwegian society are difficult to estimate. It would at the outset be necessary to distinguish between short-term and long-term costs. As of October 2011, the short-term costs were estimated at 1.7 billion Norwegian kroner (Vårt Land 2011). But this cost estimate does not include the long-term cost of health support

for the significant number of Norwegian citizens personally affected by these attacks, the temporary relocation of a number of Norwegian government ministries from Government Headquarters, the reconstruction of Government Headquarters, and the cost of Breivik's imprisonment at a high-security detention facility at Skien Prison, nor of the 22 July trial in 2012, or of successive court cases that Behring Breivik has filed against Norwegian authorities on the grounds of alleged violations of the European Convention on Human Rights (ECHR) (The Guardian 2017). Since his arrest on Utøya on 22 July 2011, Breivik has been the most costly inmate in Norwegian prisons ever, at a cost estimated at 5.2 million per year (Klassekampen 2016). Behring Breivik's pre-trial detention at Ila Prison near Oslo was estimated to have cost 12.5 million Nrk. no 2012). The costs of the 22 July trial before Oslo Magistrate's Court was confirmed as having been in excess of 142 million Norwegian kroner (ABC Nyheter 2013). As for the short terms and long-term costs for these terrorist attacks, a conservative estimate of 15 billion Norwegian kroner has been in circulation in Norwegian news media.

The Political and Social Environment in which the Attacks Occurred

Prior to the terrorist attacks of 22 July 2011, Norway had had little experience with national or international terrorism inflicting mass casualties. Norwegian citizens had been the victim of international terrorist attacks in Afghanistan, Pakistan, Chechnya, Somalia and at Lockerbie, but the scale of these terrorist attacks was unprecedented in modern Norwegian history. The 22 July terrorist attacks were preceded by a long and sustained period of increasing mainstreaming of far-right discourse concerning Islam and Muslims in Norway (Bangstad 2011, Bangstad 2014). The populist-right wing Progress Party, in power in Norway since the parliamentary elections of September 2013, has ever since the party leadership made opposition to immigration in general and Muslim immigration to Norway in particular central to the party's electoral platform in 1987 been crucial to the mainstreaming of far-right anti-Muslim ideas and sentiments in Norway.

The then centre-left tripartite coalition government's response to the attacks was designed to maximize national unity in a time of national crisis, and emphasised

democratic principles and the values of a society which it presented as anchored in trust, tolerance and openness, and commitment to the rule of law. The response of the government at the time must in hindsight be qualified as measured in that it underlined the need for all citizens to respect the rule of law and due legal process, and that it did not rush into proposing a raft of counter-terrorist measures and legislation in the wake of the attacks.

Analysis of the Response to the Attack

Response by Politicians, the Public and Media

Whilst press statements from the government's Head of Communications issued some 25 minutes after the bomb explosion at Government HQs on July 22 2011 reported that the Prime Minister at the time, Jens Stoltenberg (Labour Party), was safe and at an undisclosed location, Stoltenberg spent 22 July at the Prime Minister's Official Residence in Oslo holding a series of crisis meetings with his senior staff, the first of which was officially logged at 6.30 p.m. that evening (Stormark 2011: 309), at a time when the first reports of shootings and potential mass casualties started coming in from the island of Utøya.

The attacks on 22 July 2011 took place in the midst of the Norwegian public summer holidays. This meant that the number of government bureaucrats killed or injured in the first bomb attack at Government HQs was less than what would otherwise have been the case. On the other hand, it also meant that there was a very limited number of staff available at the various state bureaucracies as well as at Oslo Police Headquarters. As a consequence, much of the response by public authorities in Norway on 22 July 2011 was characterized by improvisation under rather chaotic circumstances – with little or no co-ordination between public authorities and the police with regard to communication strategies towards the general public.

It also meant that the response time of various units of the Norwegian Police and the Norwegian Defence Force [Hæren] was disastrously slow and marked by a lack of training in co-ordination between various units. As a case in point, it took until 6.10 p.m., or in other words almost 3 hours after the bomb blast at Government HQ

for the National Policing Unit Kripos in Norway to issue a nation-wide alert to all police districts in Norway, and until 5.40 p.m. for it to issue instructions for stricter border controls to be imposed (Stormark op. cit.: 202). The police helicopter normally available at Oslo Police Headquarters never got off the ground on 22 July 2011. Had it been available, instead of being grounded and unmanned due to summer holidays, it would have enabled the Delta or SWAT Team from Oslo Police Headquarters to get to the island of Utøya much faster than they did. In actual fact, a helicopter from NRK TV actually got to Utøya before the police, only to witness the unfolding massacre from the air. Furthermore, it took Norwegian military units from the Norwegian Army's Home Guard [Hjemmevernet, HV] until 6 a.m. on 23 July 2011 to secure the most critical infrastructure in the centre of Oslo, including the Norwegian Parliament (Stormark op. cit. 369).

In Stoltenberg's first comments to the national broadcaster NRK TV Dagsrevyen at 8.08 p.m. on the evening of 22 July, Stoltenberg underlined the need to »stand up for what we believe in; an open society, a society in which political activities may be pursued in safety, without threats, and in which violence should not scare us away from completely normal activities« (cited from Stormark op. cit.: 328).

By this time on the evening on 22 July, international news media had also started to report on events in Norway, and in both national and international news media speculation was rife about the perpetrators being of Muslim and radical Islamist background, and these attacks being motivated by the Norwegian military presence in Afghanistan or Iraq. Fed by the framing of so-called »terrorism experts« who by and large had little or no knowledge or experience with Norway and were based far from the tragic events in Oslo and at Utøya, many international media outlets continued to characterise the 22 July 2011 terrorist attacks in Norway as »radical Islamist terror« many hours after Norwegian police and media had reported the arrest and identification of Anders Behring Breivik as a primary suspect at Utøya.

A Norwegian »security expert«, Mr Helge Lurås, appeared on NRK Dagsrevyen's rolling coverage in the early evening of 22 July 2011, fanning wild speculation about the attacks being linked to al-Qaida. He later claimed

to have felt pressured into so doing.² Given hegemonic media frames for understanding and analysing terrorism (Morey and Yaqin 2011) across the Western world since al-Qaida's terrorist attacks on the USA on 11 September 2011, it is hardly surprising that suspicion of one or several Muslim perpetrators were predominant among Norwegians in the early evening hours of 22 July 2011. Muslims who happened to be on the streets of the Norwegian capital of Oslo also reported several instances of public harassment and threats in the aftermath of the bomb at Government HQ, but there were no serious incidents reported.

To their credit, neither the Norwegian Prime Minister at the time, Jens Stoltenberg, nor other Norwegian cabinet ministers ventured any speculations about the identity, background or motives of the perpetrators. At the first press conference given by Prime Minister Stoltenberg at 10.30 p.m. in the evening on 22 July 2011, purporting to be speaking on behalf of »all of Norway«, Stoltenberg referred to the »two shocking, bloody and cowardly attacks«, insisting that the perpetrators would »not be able to destroy our democracy and our engagement for a better world« (cited from Stormark op. cit.: 345).

The tripartite government then in power in Norway³ and Prime Minister Jens Stoltenberg adopted a pragmatic message of national unity in response to the 22 July 2011 terrorist attacks. Mobilisation by private citizens via social media brought an unprecedented number of Norwegian citizens onto the streets in towns and cities

across Norway between 24 and 26 July 2011. Research has documented that over 1 million Norwegians out of a total estimated population of 5 million at the time took part in memorial marches after 22 July 2011 in over 150 municipalities across Norway (Aagedal, Botvar and Høeg 2013: 9, Botvar 2013: 28).

At the largest of these, a memorial event at the Town Hall Square in the capital of Oslo on 25 July 2011, an estimated 200,000 people gathered to hear speeches from Prime Minister Jens Stoltenberg and Norwegian Crown Prince Haakon Magnus. This was the single largest gathering ever recorded in modern Norwegian history (Aagedal, Botvar and Høeg op. cit.: 9). This memorial event was broadcast live on national television, and widely covered in international news media. Many persons at the event were carrying red roses, originally a symbol of the Norwegian Labour Party, and now re-inscribed in collective Norwegian minds as akin to national symbols of peace. Norwegian state and government officials as well as officials of the Lutheran Church of Norway also took part in funerals across Norway for individuals killed in the terrorist attacks on 22 July 2011.

Given that the Labour Youth Organization AUF had long been the party's political youth organization in Norway attracting the highest percentage of youth of immigrant and/or minority background in Norway, a significant number of the victims were of immigrant and/or minority background. This occasioned widely reported ecumenical services for the some of the victims, which served to underline the political message of unity beyond cultural and religious differences in a multicultural Norway. Cabinet ministers as well as senior officials from the City Council of Oslo also made a specific point of visiting large mosques in central Oslo after the terrorist attacks. One week after the terrorist attacks, Prime Minister Stoltenberg paid a visit to the largest mosque in the inner-city district of Grønland in Oslo, the Central Jama'at-E-Ahl-E-Sunna, during Friday communal prayers. Making direct reference to the first victims of Anders Behring Breivik's massacre at Utøya to have been buried according to Islamic customs, the Labour Party Youth activists Bano Rashid (18) from Nesodden and Ismail Haji Ahmed (19) of Hamar, Stoltenberg asserted that »I grieve for Bano and Ismail. They have given the new Norwegian »we« a face. We shall be one community [united] across religion, ethnicity, gender and rank.« (VG.no 2011a) The government declared 22 August a

2. The right-of-center newspaper *Finansavisen's* edition on July 23 also featured a front-page in which a Professor of Political Science at the University of Oslo, Mrs Janne Haaland-Matlary, was cited as confirming that these were al-Qaida-linked attacks. The author of this article was called by the same newspaper in the early evening of 22 July 2011, but unlike Haaland-Matlary declined to speculate on the identity and motivations of the perpetrator/s, on the grounds that it was by no means clear at the time. Haaland-Matlary, a former cabinet secretary of Defence for the Christian Democratic Party (KrF) in Norway, later made an attempt at depoliticizing the 22 July 2011 terror attacks by stating in an interview with the left-wing newspaper *Klassekampen* that she did not think Behring Breivik »had any ideology.«

3. The tripartite government coalition in power from 2009 to 2013 consisted of the social democratic Labour Party (AP), the centrist Center Party (SP) and the Socialist Left Party (SV). The prime minister was Jens Stoltenberg from the Labour Party, then in his third term as prime minister of Norway. The government lost its parliamentary majority to a coalition of the Conservative Party and the populist right-wing Progress Party in the Norwegian parliamentary elections of September 2013. Jens Stoltenberg is currently the Secretary-General of NATO. The right-wing coalition government in power since October 2013 has counted on the often ambiguous parliamentary support of the liberal Venstre Party and the Christian Democratic Party (KrF).

day of national mourning. At an official memorial event held in Oslo on 21 August 2011, the Norwegian King Harald V also spoke.

Central to Stoltenberg and the government's message was the notion that Behring Breivik's attacks were attacks on Norwegian democracy and all democratic Norwegians in general rather than attacks on Norwegian social democrats in particular (see inter alia Rafoss 2015). Given the extensive and unprecedented international media coverage which surrounded Norway and Norwegians in the first month after the attacks, and also in the context of the ensuing Behring Breivik trial before Oslo's Magistrate's Court from April to June 2012 and the verdict in the trial in August 2012, there can be little doubt that Norwegian politicians and cabinet ministers in particular knew very well that they were performing roles receiving not only national, but also international attention, and that the messages they were conveying about Norway and Norwegians in the course of this would have considerable repercussions. It is noteworthy, however, that individuals with express electoral preferences for the populist right-wing Progress Party and express negative attitudes towards immigration were significantly less likely to take part in memorial marches and events in honour of the victims of the 22 July 2011 terrorist attacks than other Norwegians (Botvar 2013: 39).

22 July 2011 in many respects ushered in a relatively short-lived political ›grace period‹, in which Norwegian populist right-wing politicians for a time toned down their anti-immigrant and anti-Muslim rhetoric, and the Party Chair of the Progress Party, Mrs Siv Jensen, declared in a media statement that ›we are all Labour Party Youth now.‹ In the context of a public and media debate about the state of Norwegian political discourse on immigration, Islam and Muslims, some Progress Party politicians even went to the length of calling for greater introspection about the more virulent sides of past Progress Party rhetoric in this field. However, though the party was forced to admit that Breivik had been a member of the party, the party leadership and apparatus reacted very strongly towards anyone publicly linking Breivik with the party, and did their utmost to underline his peripheral position in the party in the past.

The grace period did not last very long, however: in late November 2011, Progress Party Vice-Chairman Per

Sandberg went to the lectern at the Norwegian Parliament in a state of admitted alcoholic intoxication and declared that ›the Labour Party has so played the victim after 22 July‹ (VG.no 2011b) – a statement so offensive to Labour Party MPs present at Parliament that some left the main hall of Parliament in tears.

Whilst no doubt necessary at the time, the Norwegian political leadership's messaging about national unity was not uncontested and uncontroversial, and especially not among a significant number of Labour Party Youth activists who had survived the attacks at Utøya. It also came at the cost of a longer-term societal de-politicization of the 22 July 2011 terrorist attacks (Bangstad 2014) and rendering of any mentioning of the linkage between the far-right discourse that inspired Breivik and its ubiquity in the Progress Party before and after the 22 July 2011 terrorist attacks unacceptable in Norwegian political and media discourse (Bangstad 2016).

Studies of Norwegian media coverage of the 22 July 2011 terrorist attacks (Falkheimer and Olsson 2015, Kolås 2017) as well as studies of the vast number of books about Behring Breivik and the 22 July 2011 terrorist attacks (Eriksson 2016) have also documented how the intense focus on Breivik's troubled childhood and social psychological make-up in media and literary accounts⁴ served to contribute to this de-politicization. The Head of the Norwegian Police Security Services (PST) at the time of the 22 July 2011 terrorist attacks, Ms Janne Kristiansen, also contributed to the de-politicization of the attacks by asserting in a Norwegian Parliamentary hearing on the 22 July Commission Report that ›Anders Breivik has his own ideology, which none of us really understands‹ (cited in Bangstad 2014: 76). It is worth mentioning that the leadership of the Norwegian Labour Party was not unanimous in its approach to this matter: then Foreign Minister Mr Jonas Gahr Støre made extensive references to the ›political nature‹ of the attacks in statements to the media, and so did the Labour Party's Secretary-General at the time, Mr Raymond Johansen.

Since the emergence of modern terrorism, terrorist acts, which are more often than not attempts to communicate specific political messages through the spectacle of

4. The most well-known of these accounts internationally is Seierstad (2013), but see also Borchgrevink (2012) for an account based on the same framing of Behring Breivik and the 22 July 2011 terrorist attacks.

inflicting massive violence on civilians, have been parasitic on the media and its mediated logic. It is clear from Breivik's 1518-page cut-and-paste tract *2083: A European Declaration of Independence* that his terrorist acts were designed to provide a propaganda platform for his right-wing extremist ideas. So, too, with the court case, which Breivik attempted to orchestrate through the use of shocking effects such as greeting the court room with a fascist salute, and providing minutely detailed accounts of his killings to the court while expressing a shocking degree of satisfaction and remorselessness on his own part.

Breivik's defence team, thinking that it would be in their client's best interest and receive a more lenient response from Norwegian society, first settled on an insanity defence. When the Norwegian psychiatrists first appointed to assess Breivik concluded that they considered Breivik to be a paranoid schizophrenic and thus not liable for criminal punishment, this clearly represented an acute challenge to Breivik's vision of using the court and the trial as a platform for his political messages. The first psychiatric assessment was soon leaked to the Norwegian press, and it quickly became clear that the two court-appointed psychiatrists were practically clueless as to the online right-wing extremist netherworld that Breivik had inhabited for over a decade.

When the court under strong pressure and in the face of opposition from the head of the national commission of legal psychiatrists, who had validated the first psychiatric assessment and appointed a second team of psychiatric assessors, who concluded that Breivik, though suffering from an extreme lack of empathy and severe narcissistic traits, was not a paranoid schizophrenic, media coverage of the trial came to revolve around the question of Breivik's mental state of mind and criminal liability for his acts.

Believing that this would be in the interest of a wider discrediting of his right-wing extremist views, the public prosecutors settled for a strategy aimed at having Breivik declared criminally insane and not liable for criminal punishment. In the end, the defence team, which under pressure from their client had made a complete turnaround when it came to legal strategy, enlisting a number of experts on right-wing extremism as well as Norwegian far-right activists as witnesses for the defence,

convinced the court of Breivik's criminal liability (Jacobsen and Maier-Katkin 2015). Breivik clearly considered this a personal vindication at the time, and it is also clear that the great majority of Norwegians were convinced that he was criminally liable for his actions.

Norwegian news media wanted to have the right to broadcast the 22 July trial live from Oslo Magistrate's Court. This was ruled out by Oslo Magistrate's Court at an early stage.

However, the trial and the verdict received massive media coverage both nationally and internationally. Norwegian media houses covered the court case with a continuous written live feed on every day that the court was in session for the trial. Victims' interest groups asserted to various Norwegian media outlets at the time that they considered the media coverage of the case and the trial excessive and potentially traumatising for survivors and the bereaved.

However, the July 22 trial may also be seen as remarkably successful in providing a wider Norwegian public insight into and knowledge about due legal process and the rule of law in a liberal and democratic society (de Graaf et. al. 2013).

As for Breivik's vision of the trial being a grandiose stage from which to propagate his right-wing extremist ideas nationally and internationally, it would be fair to conclude that these were overblown in the first place. The presiding female magistrate at Oslo Magistrate's Court, Mrs Wenche Arntzen, also acted authoritatively in limiting Behring Breivik's opportunities to use the courtroom as a political stage and clamped down on the defendant's most theatrical political antics.

In any event, as the Norwegian terrorism researcher Brynjar Lia sardonically declared in court in his witness testimony to the 22 July trial, »massacring children is an inefficient way of launching a book« (cited in Bangstad 2014: 219), and by this measure, Breivik had lost his propaganda battle long before the trial.

Prime Minister Stoltenberg in his first speeches after the attacks also called for »more democracy and more openness« in response to the terror – lines and a stance widely reported and hailed in international news media. There is, however, little reason to conclude that the

successor government has abided by these lines when it comes to making political and bureaucratic processes more open and transparent to the public.⁵

Counter-Terrorism Strategies

The Stoltenberg government also appointed an official commission of inquiry into the terrorist attacks of 22 July 2011. This commission, known as the 22 July Commission in Norway, presented its findings in a 481-page long report published in August 2012. The report was a damning indictment of a series of institutional and individual failures on the part of the Norwegian Police Security Services (PST), the Norwegian Directorate of Police (Politidirektoratet) and the Oslo Police before and during 22 July 2011. The report contended in its conclusion that »22/7 demonstrated serious failures in society's ability to obstruct and to protect itself against threats« (22/7 Commission 2012: 450, author's translation).

The 22 July 2011 terrorist attacks in Norway brought heightened awareness of the challenges relating to on- and offline »radicalisation« and extremism in Norway. Though few new counter-terrorism initiatives and little counter-terrorist legislation have been introduced as a direct result of the 22 July 2011 terrorist attacks, it is, however, clear that this heightened awareness about the threat of terrorism has been conducive to the introduction of such initiatives and legislation.

It is, however, somewhat paradoxical that new counter-terrorism initiatives and legislation introduced by the state after 22 July 2011 have for the most part in actual practice targeted radical Islamists or Salafist-jihadists⁶ rather than right-wing extremists.

This has to do with the fact that Norway along with numerous Western European countries saw the rise of the so-called »foreign fighter phenomenon« in the wake of

the outbreak of war in Syria in 2012, and the emergence of the Salafist-jihadist terror group ISIS in Iraq and Syria in 2012, as well as a small group of ISIS sympathizers among Muslims in Norway known as »the Prophet's Ummah« in 2012. It is estimated by the Norwegian Police Security Services (PST) that some 90 Norwegian citizens of Muslim background have travelled to Syria and/or Iraq as »foreign fighters« since 2012. Local leaders of the »Prophet's Ummah« in Norway are believed to have been central to their recruitment and have together with returned »foreign fighters« faced prosecution in Norwegian courts under Norwegian General Penal Code § 147c and d.

In the most serious case to date, on 6 April 2017, the former spokesperson of the Salafist-jihadist group »The Prophet's Ummah«, 32-year old »Ubaydullah« [Arslan Maroof Hussain] was sentenced to nine years' unconditional imprisonment by Oslo Magistrate's Court for terrorist recruitment and membership in a terrorist organization. The case has been appealed, and is likely to proceed all the way to the Supreme Court of Norway.

Regardless of the fact that the 22 July 2011 terrorist attacks were perpetrated by a right-wing Norwegian extremist, and that not a single Salafist-jihadist terrorist attack has taken place on Norwegian territory, the PST has in its Annual Threat Assessments every single year since 2011 maintained that »radical Islamists« pose the greatest terrorist threat to Norway. The cross-ministerial Government Action Plan Against Radicalization and Violent Extremism from 2014 (Ministry of Justice and Preparedness 2014) is ostensibly concerned with preventing all forms of violent extremism and »radicalization«,⁷ but data on its drafting and implementation makes it clear that it has mainly targeted »radicalisation« and »violent extremism« among Norwegian Muslims.⁸

Amendments to the Norwegian General Penal Code – § 147c and 147d – which criminalise incitement to a terrorist act, recruitment to a terrorist act, training for the

5. As a case in point, the Norwegian government in 2016–2017 declared a highly critical report from the Norwegian Auditor-General which held the Norwegian Police Directorate (POD)'s and the Norwegian Defence Forces' ability to secure critical infrastructure in the event of a new terrorist attack to be severely deficient, and to such an extent that lives were at risk to constitute classified information. This was in spite of the fact that the Norwegian Auditor-General, Mr Per-Kristian Foss, a former MP for the Conservative Party, as well as the Head of the Norwegian Parliament's Oversight and Constitutional Committee, Mr Martin Kolberg, an MP for the Labour Party, declared that they saw no reason whatsoever for classifying the report (Nrk.no 2017). the

6. A standard title on Salafist-jihadism is Maher (2016).

7. For scholarly critiques of the concept of »radicalisation«, see Sedgwick (2010).

8. The author has in the context of a Norwegian Research Council (NRC)-funded project on »Muslim Diversity and Governance Of Islam« in Norway in the period 2013–15 collected data on state, police and municipal-level measures aimed at countering violent extremism and »radicalisation« in Norway, and the extent and quality of co-operation between state actors and Muslim civil society actors. The findings from this research project, which has been submitted for international publication (Bangstad, forthcoming), confirms that the current Norwegian right-wing government has mainly been concerned with potential Muslim terrorist recruitment in Norway rather than right-wing extremism.

purpose of executing a terrorist act, or financing a terrorist act upon a penalty of imprisonment of up to six years – was introduced by an Act of Parliament by the Norwegian Storting in May and June 2013. These amendments were introduced due to concerns over the ›foreign fighter phenomenon‹, and have already been used to convict a limited number of ›foreign fighters‹ who have returned to Norway (see f.ex. Fangen and Kolås 2016).

Norwegian Minister of Justice and Preparedness Mr Per-Willy Amundsen of the populist right-wing Progress Party – who entered the cabinet after a cabinet reshuffle in late 2016 – has also proposed amendments to Norwegian laws on citizenship designed to make it easier to strip Norwegian citizens of non-Norwegian background of their citizenship on grounds related to ›threats to national security‹ and without recourse to the courts.

A proposal still under debate, the move is clearly targeted at Salafist-jihadist extremism rather than right-wing extremism. It has been widely criticised by senior legal scholars in Norway, and has according to available research material no documented effect preventing terrorism. Add to this that, in a pattern also found in numerous Western European countries, a full 18 per cent of Salafist-jihadi recruits and sympathizers in Norway are according to the Police Security Services (PST) Norwegian converts to Islam, who cannot under any circumstances be stripped of their Norwegian citizenship.

The current PST in Norway in its latest Annual Threat Assessment for 2017 makes the patently absurd claim – a mere six years after the 22 July 2011 terrorist attacks were perpetrated by a white Norwegian right-wing extremist – that ›So far, Norway has not suffered from violence and terrorism by (...) right-wing extremists in the same way as some other countries in Europe‹ (PST 2017; cited in Bangstad 2017).

As regards critical societal infrastructure, the Norwegian Auditor-General has in a hitherto classified report declared that efforts to secure this infrastructure since the 22 July 2011 terror attacks have been severely deficient. According to media leaks, the report, the summary of which a parliamentary majority at the time of writing (late March 2017) called for it to be de-classified by the government, points to a severe lack of co-ordination between the Directorate of Police (POD) and the Norwegian Defence Forces in this regard. In parliamentary

hearings on the issue, Norwegian Prime Minister Mrs Erna Solberg (Conservative Party) stated that she was not aware of this situation.

The previous Norwegian government also initiated large-scale funding for civil society initiatives aimed at countering hate speeches at a European level after the 22 July 2011 terrorist attacks. This has included funding to the European No Hate Speech Movement, and other civil society actors in this field. The present government has continued this support, and also initiated a Government Strategy Against Hate Speech (Ministry of Children and Equality 2016), launched in November 2016.

Oslo Police has also established Norway's first dedicated Hate Crimes Unit at Manglerud Police Station in Oslo East – a unit which since its formal establishment in September 2014 has both managed to initiate an increased number of prosecutions for hate crimes against minorities in the Oslo Police District, and to vastly improve reporting and registration of hate crimes against minorities in the Oslo Police District. In a context in which hate speech against citizens of Muslim background in Norway was hardly ever prosecuted under Norwegian General Penal Code § 135 (a) on hate speech prior to 2011 (Bangstad 2012), the number of prosecutions performed under what is now Norwegian General Penal Code § 185 for hate speech against Muslims has made a significant contribution to increasing confidence in the Oslo Police on the part of Muslim minorities in Oslo in particular.

The current Norwegian government has also provided core funding of 50 million Norwegian kroner (NOK) for a Centre for Research on Extremism (C-REX) at the University of Oslo, which was established in 2016. Research on how the July 22 terrorist attacks have been handled in Norwegian schools in the following years indicates that neither Breivik's acts, ideology, motives nor background have been subject to discussions or instruction in Norwegian schools, and that systematic silence has surrounded this topic in Norwegian schools to date (Anker and von der Lippe 2015).

Response by Civil Society

Central civil society organisations in Norway were practically unanimous in their support of the message of national unity after the 22 July terrorist attacks. The

amendments to Norwegian anti-terror laws enacted by the Norwegian Parliament in 2013 (Norwegian General Penal Code § 147c and d) were pushed through Parliament with little public and media debate. A central feature of civil society responses after 22 July relates to the establishment of various social media initiatives (anti-extremist and anti-racist websites, etc.).

In general, these initiatives have often proven to be relatively short-lived and to have a limited ability to compete with some far-right and anti-Muslim websites, which are among the websites with the most online traffic in Norway. Some of these websites, like *rights.no*, a website run by the far-right civil society organization *Human Rights Service* (HRS), also receive substantial financial support from the Norwegian government, courtesy of its long-standing and favoured relations with the Progress Party.

The Progress Party has since coming to power in October 2013 introduced a raft of measures aimed at restricting rights of asylum to Norway – measures widely and repeatedly criticised by Norwegian legal experts and international human and refugee rights organisations – and committed significant resources to stepping up forced deportations from Norway. To the extent that some may have assumed that the terrorist attacks of 22 July 2011 would lead to significant changes when it comes to Norwegian attitudes towards immigration and immigrants, and a greater level of societal tolerance towards Muslims and other minorities, this has certainly not proven to be the case (Aardal and Berg 2015: 68).

If anything, opinion surveys in Norway indicate a hardening of attitudes among Norwegians on these matters since 2011. Having a party whose main mobilising factor has since 1987 been opposition to immigration in power has entirely as expected not served to curtail far-right ideas and sentiments, either.

Progress Party cabinet ministers provide a more or less constant stream of negative messaging about Muslims in Norway, are regularly caught fraternising with far-right activists online and allowing their social media platforms to be flooded by far-right hate speech and thereby ipso facto providing legitimacy for such, and linking to various far-right websites without any ensuing consequences.

In this context, one must of course also take the rise of ISIS and widely reported ISIS or al-Qaida-orchestrated or

inspired terrorist attacks in various European countries since 2012 as well as the instrumentalisation of popular fears relating to immigration by populist right-wingers across Europe in the context of the refugee crisis in Europe in 2015 into account.

Lessons Learnt

The 22 July 2011 terrorist attacks appear not to have changed Norwegian society in any fundamental respect. By any reasonable standards, the rule of law and democratic rules and norms have prevailed in Norwegian society, and civil liberties have not been significantly curtailed in efforts to combat terrorism now and in the future. However, the widespread de-politicisation of the 22 July 2011 terrorist attacks by means of a socio-psychological ›othering‹ of Anders Behring Breivik's ideas and acts has in effect prevented a greater level of introspection in Norwegian society about the pernicious effects of far-right ideas and sentiments. Civil society initiatives aimed at countering far-right ideas and sentiments have to a large extent proven inefficient in the context of a political environment in which such ideas and sentiments have significant support, including in the Norwegian government. Media and public debate after 22 July 2011 has been dominated by a frame relating to public security (see Kolås 2017 for this), which has the benefit for most parties involved of being politically neutral, therefore allowing technocratic responses which can draw on cross-political support. The lack of governmental progress in achieving a more secure critical infrastructure against potential future terrorist attacks therefore also has the potential of evolving into political crisis for a government that has so far failed to deliver on many of the recommendations of the 22 July Commission in this respect.

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