

Radical Islamism in Europe: Terrorism, Security & the Law

W. Jason Fisher

INTRODUCTION

Radical Islamism and the terrorism that has come to be associated with it are on the rise in Europe and have been for the past decade. The London bombings this past summer, the ritual murder of Dutch filmmaker Theo Van Gogh in 2004, and the Madrid train bombings that same year have highlighted the danger that Islamist radicalism poses to the European continent. Islamist radicals harbor numerous grievances against the West and regimes in several Muslim states that they view as corrupt puppets of the West. For instance, they blame Western “imperialism” for the “subjugation” and “oppression” of Muslims throughout the world, and for the Muslim world’s lack of development and relatively inconsequential position in the system of states. Islamist radicals also decry the presence of Western troops in Saudi Arabia, which contains the majority of Muslim holy sites, and what they consider the West’s preferential treatment of the Israelis vis-à-vis the Palestinians. They demand strict adherence to a fundamentalist interpretation of Islam and sanction the killing of “apostates,” Muslims and, in particular, the leaders of Muslim states, who do not adhere to such an interpretation. Perhaps most ominously, Islamist radicals seek to create a caliphate, a kingdom uniting the various Muslim peoples of the world, and advocate the use of force to do so if necessary.¹

Violent radical Islamism is no longer, if it ever was, limited to the likes of al Qaeda. Rather, likeminded networks of autonomous Islamist radical terror cells who aid one another in pursuit of common goals now crisscross the globe. Liberal asylum and refugee laws and policies

¹ For a detailed discussion of the grievances, beliefs, and goals of radical Islamist terrorists, see generally DANIEL BENJAMIN & STEVEN SIMON, *THE AGE OF SACRED TERROR: RADICAL ISLAM’S WAR AGAINST AMERICA* (2002).

have allowed many dangerous Islamists to obtain residency in several Western European states. Once such aliens secure entry into any European Union (EU) country, the Schengen Agreement provides them with access to all.² Moreover, Islamist radicals have benefited from the cover and often empathy afforded by large, heavily concentrated Muslim minority populations. Muslim minorities comprise approximately nine, six, four, and three percent of the populations of France, the Netherlands, Germany and Belgium, and the United Kingdom, respectively.³ Radical Islamists have been able to depend on suburban Muslim enclaves, in which the majority of Europe's Muslims live and whose residents frequently assume a marginalized status, suffering higher unemployment, earning less income, and achieving lower levels of educational attainment than is typical, for recruiting, fundraising, and logistical support. Increasingly, young second and third-generation European Muslims, citizens of Western European countries born in Western Europe to first-generation Muslim immigrants, from such disadvantaged communities are joining the ranks of Islamist radicals and terrorists. More troubling, potentially, young second and third-generation European Muslims from middle and upper class families who are relatively well educated and appear to have assimilated successfully into the Western European societies into which they were born are also joining the cause of radical Islamism.

Terrorist attacks carried out in Europe have and may continue to have a devastating impact on the well-being of the residents, the physical infrastructures and significant architectural sites, and the economies of America's European allies. Terrorism in Europe also threatens the many US interests located in and citizens residing on that continent. As this

² The Schengen agreement created a common border and immigration system for European states. Robert S. Leiken, *Europe's Mujahideen: Where Mass Immigration Meets Global Terrorism*, CENTER FOR IMMIGRATION STUDIES: BACKGROUNDER 7 (April 2005), available at <http://www.cis.org/articles/2005/back405.pdf>.

³ *Id.* at 5.

summer's London bombings suggest, a substantial, large-scale terrorist attack, especially one employing weapons of mass destruction or a significant amount of conventional explosives, targeting one of Western Europe's financial centers, such as London or Frankfurt, would likely cause major consequences for the world's economy. The involvement of second and third-generation European Muslims with terrorist cells has the potential to lead to more deadly and destructive attacks. Their experience with European society makes them less suspicious, more able to gather intelligence and conduct operations, more able to take advantage of technology, and more mobile than their foreign resident Islamist radical counterparts. As citizens of Western European states, second and third-generation Muslim Europeans enjoy the ability to travel quite freely to many parts of the world. That being the case, second and third-generation European Muslims involved with terrorist cells are in a position to carry out attacks globally. For example, the US Visa Waiver Program (VWP) allows holders of passports from EU countries, which citizens of Western European countries are entitled to, to enter the United States without visas and without entry interviews.⁴ The Hamburg cell, which led the 9-11 terrorist attacks, Zacarias Moussaoui, the infamous "20th hijacker" meant to partake in those attacks, and Richard Reid, the "shoe bomber," were all able to secure entry into the United States in accord with the VWP.⁵

Given the threat that European-based Islamist radicals pose to Europe and the rest of the world, it is crucial that the governments of European states have legal and policy regimes in place that will allow them to counter terrorism actively and effectively. This paper explores Europe's growing terror threat and examines the anti-terror laws and policies of two of its premier countries in an effort to advance the effectiveness of counter-terrorism regimes in Europe, the United States, and the rest of the world. Part I of the paper documents the growing

⁴ Robert S. Leiken, *Europe's Angry Muslims*, 84-4 FOREIGN AFF. 120, 134 (July/Aug. 2005).

⁵ *Id.*

involvement of European Muslims in terrorist acts and the increasing incidence of terrorist acts tied to radical Islamism conducted in Europe over the last ten years. Part II discusses how radical Islamist foreign residents, “outsiders,” have successfully operated in many Western European countries and converged with disaffected second and third-generation Muslim Europeans, “insiders,” to increase the scope of radical Islamism and membership in associated terrorist cells. Part III lays out the anti-terror regimes in place in France and the United Kingdom, compares them, and offers some suggestions on where the latter’s may yet be improved. Many security scholars and professionals consider France’s regime to be the most effective in Europe, while the United Kingdom’s was forged in order to replace a system that had made that country Europe’s largest haven for Islamist radicals and international terrorists.

I

A DECADE OF RADICAL ISLAMIST TERRORISM IN EUROPE

Acts of terrorism are becoming more frequent, lethal, destructive, and costly. Terrorist casualty ratios – the number of those injured and killed in a terrorist attack divided by the total number of terrorist attacks – have increased substantially over the past thirty-five years.⁶ The 1970s produced an average casualty per incident rate of 4.47, the 1980s 4.87, the 1990s 12.29, and the period 2000-2003 14.49.⁷ This growth in casualty ratios can be traced to the emergence of radical Islamist terrorism, the type that increasingly involves Europe. This part provides a survey of noteworthy terrorist attacks planned or conducted by European Muslims and of significant terrorist attacks plotted or carried out against targets within European borders by Islamist radicals. The survey covers incidents from 1995 to the present. Only those terror plots, terrorist acts planned but foiled by authorities before being carried out, that have led to the

⁶ Leiken, *supra* note 2, at 4.

⁷ *Id.*

conviction or the arrest and detention until trial of the person or persons alleged to have been involved have been included in the discussion.

In 1995, a series of terrorist attacks was mounted against the Paris Metro. On July 25 of that year, the deadliest attack took place at the St. Michel rail station – the station that services the Notre Dame Cathedral. A gas canister packed with nails exploded inside a train at the station killing 7 and injuring over 150 people. By the end of 1995, the terrorist attacks directed at the Metro were responsible for 8 deaths and approximately 200 casualties. French authorities were able to trace the series of attacks back to four Algerian residents of France, each suspected of belonging to Algeria's largest terrorist organization, the Armed Islamic Group (GIA). French police arrested Boualem Bensaid and Smain Ali Belkacem in 1995; they were subsequently tried, convicted, and sentenced to life in prison. French police shot and killed Khaled Kelkal, the third suspect, in a gun battle that ensued when they attempted to apprehend him. The fourth suspect, Rachid Ramda, has remained under arrest in the United Kingdom since 1996 on charges related to the Metro bombings, awaiting extradition.⁸ French authorities have criticized the British frequently and vociferously for taking so long in handing Ramda over.

A string of terrorist attacks hit France again over the course of the first three months of 1996, this time in the northeastern region of Roubaix-Lille. Lionel Dumont and Christophe Caze, two native French citizens who had fought alongside the mujahideen in Bosnia and had ties to the GIA and the London-based radical Islamist cleric Abu Hamza al-Masri, led the Roubaix terror cell. The Roubaix cell often resembled a criminal gang rather than a terrorist group. French police linked the Roubaix group to at least six holdups of vehicles carrying cash deposits, an unsuccessful rocket-propelled grenade attack on an armored car, a chain of assaults,

⁸ Zachary K. Johnson, *Chronology: The Plots*, FRONTLINE, at <http://www.pbs.org/wgbh/pages/frontline/shows/front/special/cron.html> (last visited Nov. 5, 2005).

shootings, and armed robberies, and a botched attempt to car bomb Lille's police headquarters – three twenty-eight pound gas canisters failed to explode when their detonator, a smaller explosive device, was ignited. Ensuing attempts to apprehend members of the Roubaix cell led to two armed standoffs with French police, which resulted in the deaths of Caze and three of his fellow group members, two Moroccans and one Algerian, and the arrest of a second Algerian national. Dumont and a third Moroccan member of the group fled to Bosnia where they were subsequently arrested in 1999; however, Dumont was able to escape from a Sarajevo prison and remains a fugitive today.⁹

Authorities foiled two terrorist plots involving Europe in 1998. The first was uncovered in March of that year and involved the targeting of the World Cup, in France. Belgian police, acting on intelligence gathered by France, Sweden, the United Kingdom, and Italy, conducted an apartment sweep and found explosives and detonators. Algerian Farid Melouk, a suspected member of the GIA, was arrested, tried, and convicted of attempted murder, in Belgium. The second plot, interrupted in November, involved eight second-generation Muslim UK citizens with plans to carry out Christmas bombing attacks against a church, the British consulate, and a US de-mining team in Yemen. The eight individuals all had strong ties to Abu Hamza, one was his son, Mohammad. Yemeni authorities arrested the British nationals after an incident stemming from a routine traffic stop; a subsequent search of their house turned up machine guns, mines, rocket launchers, and encrypted communication equipment.¹⁰

⁹ EVAN F. KOHLMANN, *AL-QAIDA'S JIHAD IN EUROPE: THE AFGHAN-BOSNIAN NETWORK* 188-98 (2004).

¹⁰ *Islamic Extremism in Europe Before the Subcomm. on Europe and Emerging Threats of the House Comm. on International Relations*, 109th Cong. 5-10, 9 (2005) (statement of Peter Bergen, Fellow, The American Foundation).

In 1999 and 2000, authorities prevented three more terrorist plots with ties to Europe from being carried out. In December 1999, Ahmed Ressay was arrested trying to enter the United States from Canada with explosives and timing devices. It was later revealed that Ressay, an Algerian introduced to radical Islamism in Milan, was to use those materials to attack the Los Angeles International Airport (LAX) in coincidence with the Millennium. A US court convicted Ressay in 2001 and he awaits sentencing. Abu Doha, the alleged mastermind and financier behind the LAX plot was arrested in London in 2001 and awaits extradition to the United States. In December 2000, German police raided an apartment in Frankfurt and arrested four members of the Algerian terrorist organization, Group for Call and Combat, after finding bomb-making equipment. Following the arrests, it was determined that the four were planning to attack the Strasbourg Christmas Market and the European Parliament. A German court eventually found the four guilty of conspiracy to commit murder.¹¹

The year 2001 brought the suicide attacks on the World Trade Center and the Pentagon, and Richard Reid's attempt to detonate a "shoe bomb" aboard a transatlantic flight. The events of September 11, 2001 are widely known and documented in detail elsewhere.¹² For the purposes of this paper, it is sufficient to note that the leaders of the 9-11 terrorist attacks, the members of the Hamburg terror cell, were radicalized and introduced to one another in Hamburg.¹³ With regard to Reid, a Jamaican-born citizen of the United Kingdom with ties to cleric Abu Hamza, in December 2001, he attempted to detonate a "shoe bomb" on American

¹¹ Johnson, *supra* note 8.

¹² For a detailed description of the events of and leading up to the 9-11 attacks, see generally THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT (2004).

¹³ Bergen, *supra* note 10, at 7-8.

Airlines flight 63 from Paris to Miami. He has since pled guilty to eight charges brought against him by the US government and may yet stand trial for attempted murder.¹⁴

Somewhat lesser known plots uncovered in 2001 include those directed at the US Embassies in Rome and Paris, and the Kleine Brogel NATO airbase in Belgium. In January of that year, Italian authorities unraveled the Rome embassy plot and arrested five Tunisians with ties to al Qaeda. An Italian court convicted the leader of the planned attack, one of the five arrestees, Ben Khemais, in 2002. Khemais is suspected of also having had ties to the Strasbourg plotters. In September 2001, Belgian and French authorities dismantled a terror cell planning to attack the Paris embassy and Kleine Brogel. A raid on a Brussels apartment and coffee shop owned by Tunisian Nizar Trablesi turned up a submachine gun, ammunition, and bomb-making ingredients. Subsequently, Trablesi and six other Muslim foreign nationals living in Belgium and France were convicted of conspiring to conduct attacks on the embassy and the air base.¹⁵

British citizens and foreign residents of the United Kingdom were responsible for much of the terrorist activity conducted, attempted, and planned but successfully prevented by authorities in 2002 and 2003. In February 2002, Ahmed Omar Saeed Sheik, a British citizen born in the United Kingdom and graduate of the London School of Economics, took part in the kidnapping and murder of Wall Street Journal reporter Danny Pearl. Pakistani authorities captured Omar Sheik and a Pakistani court has sentenced him to death for his involvement in the Pearl murder.¹⁶ In late 2002 and early 2003, a ricin poison-gas network was uncovered. A ricin laboratory was found in a London apartment in January 2003, that search led to the seizure of ricin-making materials from an apartment in Manchester in February 2003, and ricin matching

¹⁴ *Who is Richard Reid?*, BBC NEWS, Dec. 28, 2001, at <http://news.bbc.co.uk/1/hi/uk/1731568.stm>.

¹⁵ Johnson, *supra* note 8.

¹⁶ *Alleged 9-11 Plotter Killed Daniel Pearl, US Officials Say*, ONLINE NEWS HOUR, Oct. 22, 2003, at http://www.pbs.org/newshour/media/media_watch/july-dec03/pearl_10-22.html.

that found in London and Manchester was found in a Paris rail station locker in March 2003. Nine North African residents of the United Kingdom were subsequently charged with conspiring to produce chemical weapons and producing chemical weapons.¹⁷ Also in 2003, Asif Mohammed Hanif and Omar Khan Sharif, British citizens who had grown up in the United Kingdom, carried out a suicide bombing attack of Mike's Place, a Tel Aviv bar. The attack marked the first suicide bombing in Israel perpetrated by foreigners. On April 30, 2003, Hanif and Sharif approached the bar and attempted to detonate their devices. Hanif's successfully detonated killing himself and three others, and injuring fifty-five. Sharif's device did not explode; he fled the scene and was later found dead in the streets of Tel Aviv. It should be noted that both men had ties to radical London cleric Omar Bakri Mohammed.¹⁸

A flurry of terrorist activity struck Europe in 2004. On March 11, 2004, ten bombs went off in or near Madrid's Atocha train station. The attack claimed the lives of 191 and wounded more than 1,800. Spanish authorities have more than thirty suspects, mostly North African, in custody; all are set to face charges in connection with the bombings. Also in March 2004, UK authorities conducted raids focused on eight British citizens of Pakistani descent and found a half-ton of ammonium nitrate, a fertilizer commonly used in fashioning bombs, and other bomb-making materials. The eight men have been charged with offenses related to terrorism and possession of ammonium nitrate.¹⁹ In April 2004, Belgian federal police prevented attacks that had been planned against a Jewish school and the inauguration of a high-speed train tunnel, both in Antwerp. In June 2004, a Moroccan Combatant Group attack in Lisbon targeted several

¹⁷ Johnson, *supra* note 8.

¹⁸ Bergen, *supra* note 10, at 9; QUINTAN WIKTOROWICZ, *RADICAL ISLAM RISING: MUSLIM EXTREMISM IN THE WEST* 1-3 (2005).

¹⁹ Johnson, *supra* note 8.

prominent European politicians, including President of the European Commission Jose Manuel Baroso.²⁰

October 2004 saw the unraveling of a plot to attack Spain's National Court, where that country's top judges investigate terrorism, with a truck loaded with a half-ton of dynamite. An informer alerted police of the imminent attack and stated that it was meant to punish Spain, kill its judges, and destroy its terrorism records. Spanish authorities are holding approximately thirty North African, mostly Moroccan, suspects in connection with the plot. On November 2, 2004, Dutch filmmaker Theo Van Gogh, who had received several death threats since the release of his film, "Submission," critical of the mistreatment of Muslim women, was ritually murdered in Amsterdam. Dutchman Mohammed Bouyeri shot Van Gogh, slit his throat, and pinned a note, written in Arabic, on his chest with the knife. A Dutch court sentenced Bouyeri to life in prison on July 26, 2005.²¹ Bouyeri and his murder of Van Gogh will be treated in more detail in Part II.

Most recently, four British citizens, Mohammad Sidique Khan, Shehzad Tanweer, Hasib Mir Hussain, and Germaine Maurice Lindsay, carried out suicide attacks against London's transport system. Three of the attackers targeted the London underground rail system, the "Tube;" one attacker detonated his device while on a double-decker bus. The bombings killed at least 56 people and injured over 700.²² Part II discusses the backgrounds and actions of two of the London suicide bombers in greater detail.

²⁰ *Islamic Extremism in Europe Before the Subcomm. on Europe and Emerging Threats of the House Comm. on International Relations*, 109th Cong. 31-38 (2005) (statement of Claude Moniquet, President and Director General, European Strategic Intelligence and Security Center).

²¹ Johnson, *supra* note 8.

²² *Id.*; *Hasib Hussain*, WIKIPEDIA, at http://en.wikipedia.org/wiki/hasib_hussain (last visited Nov. 8, 2005); *Mohammad Sidique Khan*, WIKIPEDIA, at http://en.wikipedia.org/wiki/mohammad_sidique_khan (last visited Nov. 8, 2005); *Germaine Lindsay*, WIKIPEDIA, at http://en.wikipedia.org/wiki/germaine_lindsay (last visited Nov. 8, 2005); *Shehzad Tanweer*, WIKIPEDIA, at http://en.wikipedia.org/wiki/shehzad_tanweer (last visited Nov. 8, 2005).

Part I chronicled the significant terrorist attacks plotted or carried out by European Muslims and the major terrorist attacks planned or conducted against targets in Europe from 1995 to the present. Radical Islamist terrorism with ties to Europe has steadily been increasing in frequency, scope, and sophistication over the past decade. While foreigners and foreign legal residents have been responsible for much of the violence, Muslim citizens of European states and native-born European Muslims are increasingly engaging in terrorist activity, both within Europe and outside of it. Moreover, a number of second and third-generation European Muslims have demonstrated a willingness to involve themselves in some of the more heinous acts of terror and to carry out suicide attacks.

II

OUTSIDERS & INSIDERS: A DOUBLE THREAT

Western Europe, as the above suggests, has two types of candidate Muslim terrorists, outsiders and insiders. Outsiders are first-generation immigrants, aliens, often those in search of better economic circumstances, students, and asylum seekers, many of whom are dissidents seeking refuge from anti-Islamist crackdowns in North Africa and the Middle East. Among the outsiders are extreme Islamist clerics, imams, who preach radical Islamism and less mobile and visible first-generation immigrants, such as merchants, laborers, and criminals. Insiders are native-born second and third-generation European Muslims, typically the progeny of guest workers from North Africa, Turkey, and the Middle East who arrived in Europe as first-generation immigrants in the 1950s and 60s. Insiders include the disaffected youth associated with the suburban Muslim enclaves in Marseilles, Paris, Birmingham, and London, but also young, upwardly mobile middle and upper class European Muslims.²³ The two sections that

²³ Leiken, *supra* note 2, at 7; Leiken, *supra* note 4, at 126.

follow present the backgrounds and actions of select outsiders and insiders in order to demonstrate the threats posed by members of both designations and the relationships that exist between them.

A. Outsiders

Liberal asylum and refugee laws and policies, and large minority populations of Muslims created by the guest worker programs initiated in the two decades following World War II served to make Western Europe, and particularly, the United Kingdom, a preferred destination for outsiders facing hostility for their radical Islamism and dissident activities from their home governments. With respect to the United Kingdom's relaxed residency requirements and elevated free speech protections, Mohammed Sifaoui, the French journalist who managed to infiltrate al Qaeda cells in France and the United Kingdom, has explained that "the most sought-after terrorists in the world have found shelter in the UK ... [t]hey propagate their ideology here ... [t]hey distribute booklets on their philosophy – giving them out freely outside mosques ... Islamists considered the UK as a secondary base for their actions."²⁴ The United Kingdom's perceived indulgence of Islamist radicals has led French authorities to label the United Kingdom's capital city "Londonistan."²⁵ Radical outsider imams living in the United Kingdom preach extreme Islamism, frequently issuing fatwas, religious edicts, condoning or calling for

²⁴ Mohammed Sifaoui, *quoted in* Jamie Campbell, *Why Terrorists Love Britain*, NEW STATESMAN, Aug. 9, 2004, *available at* <http://www.newstatesman.com/200408090012>.

²⁵ John Kampfner, *Why the French Call Us Londonistan*, NEW STATESMAN, Dec. 9, 2002, *available at* http://www.findarticles.com/p/articles/mi_m0FQP/is_4617_131/ai_95764278. Several scholars, security professionals, and radical Islamists have referenced a "covenant of security" that existed in the United Kingdom and that is pointed to in an effort to explain the British government's "indulgence" of radical Islamists over the years; the notion of the covenant draws heavily on the Prophet Mohammad's years of refuge in Medina, years that allowed him to prepare for his triumphant return to Mecca. For an in depth discussion of the covenant see *Id.*; Lynne O'Donnell, *Militant Muslims Find a Haven in Londonistan: Some say Britain Overdoing Tolerance*, S.F. CHRON., July 24, 2004, *available at* <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/07/24/MNGN67SF4U1.DTL>.

acts of terrorism, at their mosques and employ radio, satellite, and internet connections to extend their reach globally. Government authorities suspect that many outsider clerics are also recruiting, channeling funds, and providing logistical support for radical Islamist terrorists. Two such London-based imams, Abu Hamza and Omar Bakri, are discussed below, in turn.

1. Abu Hamza al-Masri

Sheik Abu Hamza al-Masri is perhaps the most distinctive radical Islamist cleric in the United Kingdom. An exiled dissident originally from Egypt, he sought and was granted refuge in the United Kingdom in 1979 after fighting with the mujahideen in Afghanistan. Abu Hamza's appearance, radical sermons, and ties to perpetrators of terrorist attacks have made him a highly visible proponent of radical Islamism. Having lost both hands and an eye fighting the Soviets in Afghanistan, he usually delivers his public presentations with the use of a prosthetic hook. Abu Hamza led the Finsbury Park Mosque in London until government authorities shut it down in 2003. Beyond openly supporting the 9-11 attacks and Usama bin Laden and warning the United Kingdom to expect attacks against it if it took part in hostilities in Iraq, US and European authorities suspect Abu Hamza of recruiting and raising funds for radical Islamist terror groups, including al Qaeda. Both Zacarias Moussaoui and Richard Reid worshiped at the Finsbury Park Mosque and, as noted above, Abu Hamza had known ties to Christophe Caze and Lionel Dumont, of the Roubaix terror cell, and the eight second-generation British Muslims caught plotting terrorist attacks in Yemen in 1998.²⁶

It is estimated that up to 1,200 people would regularly attend Abu Hamza's fiery Friday sermons while he led the Finsbury Park Mosque. In the immediate wake of the 9-11 suicide

²⁶ See Bergen, *supra* note 10, at 9; KOHLMANN, *supra* note 9, at 189-90; O'Donnell, *supra* note 25; *Profile: Abu Hamza*, BBC NEWS, May 27, 2004, at <http://news.bbc.co.uk/1/hi/uk/3752517.stm>.

hijackings, he delivered a sermon entitled “The World Trade Series: The Believers vs. the Infidelity of America.” In it, he proclaimed that:

Terrorism is a tool for everybody to get his way. And it has also been a tool for Islam ... It is a tool, it is a weapon. Allah said, to terrorize the enemies of Allah and your enemies, it is a weapon, and it is a very effective weapon. And if you leave this weapon, the Allah’s destruction and wrath will be upon you.²⁷

Abu Hamza has also addressed conferences attended by upwards of 6,000 people in which he has explained the utility of the “Muslim Anti-Aircraft Net,” a device designed to destroy civilian passenger planes. A video of one such conference captures him stating that:

[D]esigned by our brothers in Afghanistan. These nets will increase the hazard and risk to flying, and are a response to the destructive inventions of the infidel West ... These nets, if mass produced, can cost less than £10, and are undetected by radar. They can be launched from any point, and move to anywhere in the world. We urge all brothers and sisters to also begin thinking of designs and techniques such as these, because the time for talking has long since passed.²⁸

Despite the open connections between Abu Hamza’s rhetoric and the acts of several terrorists, the British government allowed him to remain in the United Kingdom, unfettered, where he could go on making incendiary speeches and distributing materials supportive of radical Islamist terrorism.²⁹

Not until May 2004, when the United States indicted Abu Hamza on eleven counts related to aiding al Qaeda, attempting to set up a terrorist training camp in Oregon, and partaking in plotting terrorist attacks in Yemen in 1998, did UK authorities act against him. He is currently being held in London’s high security Belmarsh prison pending extradition to the United States.³⁰

²⁷ Abu Hamza, *quoted in* KOHLMANN, *supra* note 9, at 190.

²⁸ *Id.*

²⁹ *See supra* note 26.

³⁰ Johnson, *supra* note 8; O’Donnell *supra* note 25.

2. Omar Bakri Mohammed

Sheik Omar Bakri Mohammed is another infamous London-based militant Islamist cleric. Born in Syria, dissident views he expressed there eventually led Syrian authorities to force him to flee to Beirut. There he joined Hizb ut-Tahir, a movement devoted to establishing a caliphate via military coup. Omar Bakri later attempted to take his radical agenda to Saudi Arabia; the Saudi government responded by arresting and deporting him. He subsequently sought and was granted asylum in the United Kingdom in 1985. Omar Bakri continued to preach the message of Hizb ut-Tahir there until establishing his own movement, al Muhajiroun (the Migrant's Movement) in 1997. Since that time, al Muhajiroun has become the most visible radical Islamist organization in the United Kingdom, with branches in thirty cities and towns. Prior to Parliament's passage of the Anti-Terror Act of 2000, Omar Bakri and al Muhajiroun members would openly solicit funds to support international terrorism. While no direct links between Omar Bakri and al Qaeda have been demonstrated, Omar Bakri has issued a number of fatwas supporting al Qaeda actions, including its attacks on the US embassies in Africa and the USS Cole.³¹ Like Abu Hamza, Omar Bakri appears to have influenced some second and third-generation British Muslims to engage in terrorist activities. He was the spiritual advisor of the two British citizens that perpetrated the Mike's Place attack in Tel Aviv and has been linked to the eight men involved in the 2004 ammonium-nitrate bomb plot, discussed above.³²

Omar Bakri has made many incendiary statements and issued several calls for violence. Maintaining adherence to and expanding upon the central Hizb ut-Tahir tenet, he has demanded that British Muslims struggle and use force if necessary to establish an Islamist state in the United Kingdom. Omar Bakri has also encouraged British Muslims to fight for the Taliban and

³¹ WIKTOROWICZ, *supra* note 18, at 6-10.

³² Bergen, *supra* note 10, at 9.

the Iraqi insurgents against US and British forces and declared that Islamic law would support the assassinations of Prime Ministers John Major and Tony Blair if carried out in Muslim countries. Further, he has publicly extolled the virtues of suicide attacks.³³ After citing “heroic” examples, such as the 9-11 attacks and the Mike’s Place bombing, he explained that “[s]omebody, he fly airplane and he decide to land the airplane over 10 Downing Street, for example, or over the White House ... this is a form of self-sacrifice operation.”³⁴ Omar Bakri, moreover, publicly sanctioned an al Muhajiroun senior member’s statement that “allegiance is to Islam, not to Queen or country – if I have to shoot British soldiers, then so be it.”³⁵

Apparently concerned about the possible personal consequences of his statements, Omar Bakri has made a point, one the British government has seemed to embrace, of distinguishing between informing individuals of their religious duty to use force and actually telling them to do so. However, it is not clear that young people understand the distinction, if there is indeed intended to be one. Responding to a journalist’s questions following one of Omar Bakri’s public presentations, one young Muslim expressed, “I have pledged myself to what Omar Bakri Mohammed says. It’s a promise and one that I intend to keep. I’d do anything he’d ask me to do.”³⁶ While another stated, “[I]n the West the dream is to become a footballer. For us it is to become a great martyr.”³⁷

The British government allowed Omar Bakri to propagate his radical Islamism and calls for violence without interference, effectively subsidizing him by providing social welfare

³³ WIKTOROWICZ, *supra* note 18, at 6-10; O’Donnell, *supra* note 25.

³⁴ Omar Bakri Mohammed, *quoted in* WIKTOROWICZ, *supra* note 18, at 76.

³⁵ *Id.* at 74.

³⁶ *Id.* at 73.

³⁷ *Id.* at 76.

payments for himself and his family, until August 2005.³⁸ In the wake of the July 2005 London bombings, the UK government banned Omar Bakri from returning to the United Kingdom from a trip to Lebanon – as of August 2005 he was “no longer conducive to the public good.”³⁹

Generous asylum and refuge regimes have allowed a number of radical Islamists to establish residency in the United Kingdom and other Western European states. Many such outsiders, several of whom were forced from their former countries because of their militant behavior, have taken advantage of the broad civil liberties found in the Western states in which they have come to reside to spread their militant views, recruit, fundraise, and provide support for radical Islamist terrorists, and carry out their own terrorist attacks. Figures like Abu Hamza and Omar Bakri are not a rarity in Western Europe, various outsider clerics can be found in several countries of that region preaching the virtues of radical Islamism and condoning and calling for violent action.⁴⁰ Outsiders may pose direct and indirect threats, including, increasingly it seems, the radicalization of many of Europe’s second and third-generation Muslims.

B. Insiders

Insiders, both those from suburban Muslim enclaves and those from middle and upper class upbringings, present a growing threat in Europe. The living conditions of and racism

³⁸ WALTER LAQUEUR, *NO END TO WAR: TERRORISM IN THE TWENTY-FIRST CENTURY*, 65 (2004).

³⁹ See Kevin Sullivan, *Under New Guidelines, Britain will Deport Terror Supporters*, WASH. POST, Aug. 25, 2005, available at http://www.boston.com/news/world/europe/articles/2005/08/25/under_new_guidelines_britain_will_deport_terror_supporters.

⁴⁰ Another radical Islamist imam with ties to the United Kingdom and other Western European countries is Abu Qatada, a Jordanian Palestinian UK authorities granted asylum to in 1993. Since that time, Jordan has tried and convicted him in absentia for terrorist activities. Known as “al Qaeda’s ambassador in Europe,” tapes of his sermons were found in the Hamburg apartment of 9-11 attacker Mohammed Atta. Having spent two years in Belmarsh prison, Abu Qatada was released on bail in March 2005; he now faces possible deportation to Jordan. Johnson, *supra* note 8; O’Donnell *supra* note 25; *Profile: Abu Qatada*, BBC NEWS, Aug. 11, 2005, at <http://news.bbc.co.uk/1/hi/uk/4141594.stm>.

experienced by a majority of Western Europe's Muslims affects youth from both groups of insiders. Most Muslim communities in Europe suffer from poor health, overcrowded housing, and low educational attainment resulting from a cycle of poverty brought on by high unemployment.⁴¹ In January 1999, the unemployment rate among Muslims in France stood at thirty-three percent, today it is hovering near forty percent.⁴² Similar levels of unemployment among Muslims are to be found elsewhere in Europe. Racism and "Islamophobia" have also served to marginalize Europe's Muslims, "distrust, fear, and even hatred of Islam and Muslims are pervasive in [European] society."⁴³ This combination of racism and poor living standards has led to what some sociologists have termed "adversarial assimilation," whereby young enclave-Muslims' experiences in the various Western societies in which they live spur abhorrence rather than emulation – witness the November 2005 riots in France's highly concentrated Muslim suburbs.⁴⁴ Another sociological phenomenon, "vicarious humiliation," has led both groups of insiders to empathize and personalize the plights of those Muslims living abroad they perceive as being persecuted, such as Muslims in Iraq and Palestine, and the more upwardly mobile Muslims to do the same with respect to the circumstances confronting their fellow European Muslims in the enclaves.⁴⁵ Young alienated insiders, whether driven by adversarial assimilation, vicarious humiliation, both, or some other factor, have been increasingly turning to radical Islamism and terrorism. Three such insiders, Theo Van Gogh's killer and two of the four London suicide bombers, are profiled below.

⁴¹ Humayun Ansari, *The Legal Status of Muslims in the UK*, in *THE LEGAL TREATMENT OF MUSLIMS IN EUROPE* 255, 257 (Roberta Aluffi & Giovanna Zinconone eds., 2004).

⁴² John Carreyrou, *Muslim Groups May Gain Strength From French Riots*, *WALL ST. J.*, Nov. 7, 2005, A1, A15. John Carreyrou, *The Shame of the Cites: French Unrest Finds a Home in the Projects*, *WALL ST. J.*, Nov. 14, 2005, A1, A14; see also ROBERT J. PAULY, JR., *ISLAM IN EUROPE: INTEGRATION OR MARGINALIZATION?* 39 (2004).

⁴³ JORGEN NIELSEN, *MUSLIMS IN WESTERN EUROPE* 169 (3d ed. 2004).

⁴⁴ Leiken, *supra* note 2, at 7-10; Carreyrou, *supra* note 42.

⁴⁵ See Moniquet, *supra* note 20, at 32.

1. Mohammed Bouyeri

Dutch Muslim Mohammed Bouyeri's ritual slaying of his fellow Dutchman, filmmaker and Vincent Van Gogh relative, Theo Van Gogh shocked the Netherlands and the rest of Western Europe in November 2004. The murder, presenting a graphic symbol of Muslim discontent in the manner in which it was carried out, puzzled and disturbed the Dutch even more that it might have otherwise because the Netherlands had gone further than any other Western country in accommodating its Muslim population. Priding themselves on their trademark tolerance of minorities and dissenters, the Dutch have welcomed thousands of Muslim asylum and refuge seekers, especially from North Africa, over the years. Furthermore, once in the Netherlands, Muslims could benefit from generous welfare benefits, an affirmative action hiring policy, state funded Muslim schools, and public television programs produced in Arabic. Despite such policies, the Van Gogh killing demonstrated that Dutch Muslims were not all on a path towards successful assimilation and that, instead, many alienated Muslim youth were radicalizing. European counter-terrorism authorities interpreted the murder as an historic evolution of the terrorist threat: no longer was the radical Islamist attacker limited to outsiders from North Africa and the Middle East, now "lilywhites," seemingly well adjusted and mobile second and third-generation youth, were a danger.⁴⁶

Born in 1978, the Dutch government has deemed Bouyeri "an average second-generation immigrant."⁴⁷ The child of first-generation Moroccan immigrant parents who moved to the Netherlands in the 1970s, he was raised in a Muslim enclave in the suburbs of Amsterdam known as "Satellite City," named as such for the satellite dishes protruding from nearly every

⁴⁶ See Francis Fukuyama, *A Year of Living Dangerously*, WALL ST. J., Nov. 2, 2005, A17; Leiken, *supra* note 2, at 5-7, 9; Leiken, *supra* note 4, at 124-26.

⁴⁷ Dutch Parliamentary Commission on Mohammed Bouyeri, *quoted in*, Leiken, *supra* note 2, at 5.

balcony there tuned to al Jazeera and North African television channels. Bouyeri graduated from the area's best high school and then attended college in the northwestern Netherlands. He changed his major several times and left after five years without a degree. Bouyeri then worked as a volunteer at Eigenwijks, a neighborhood organization serving a suburban Muslim community, and began receiving unemployment benefits, benefits he was receiving when he murdered Van Gogh.⁴⁸

The 9-11 attacks and the wars in Afghanistan and Iraq appeared to radicalize Bouyeri, it was during that period that he grew a beard and began to refuse to serve alcohol and attend coed activities at Eigenwijks. He also began to attend the El Tawheed Mosque, a radical Islamist mosque, several times a week; that is where he met Syrian exile and ringleader of the Hofstad terror group, Redouan al Issar, who has disappeared since Van Gogh's killing. The Hofstad group is believed to have had links with Abu Musab al-Zarqawi, al Qaeda's ostensible leader in Iraq, the Madrid train bombers, and a group of Moroccans suspected of targeting a Dutch nuclear power plant. An AIVD, Dutch intelligence service, report describes how Hofstad recruits, including Bouyeri, watched jihad videos, attended readings, and discussed jihad and martyrdom in internet chat rooms. The AIVD has also concluded that the Van Gogh murder was "a Dutch plot, homegrown terrorism" and that militant Islamism has become "an autonomous phenomenon" in Western Europe.⁴⁹

At Bouyeri's trial for the murder of Van Gogh, it was revealed that the note he pinned to Van Gogh's chest included threats against specific members of the Dutch government and decried alleged Jewish influences in European politics. Bouyeri expressed no remorse for his

⁴⁸ See *Mohammed Bouyeri*, WIKIPEDIA, at http://en.wikipedia.org/wiki/Mohammed_Bouyeri; Leiken, *supra* note 2, at 5, 7.

⁴⁹ General Intelligence and Security Service, *quoted in* Leiken, *supra* note 2, at 6; *see also* *Bouyeri*, WIKIPEDIA, *id.*; Leiken, *supra* note 2, at 5-6.

killing of Van Gogh and rationalized the slaying as fulfilling his duty as a Muslim. In July 2005, a Dutch court convicted Bouyeri and sentenced him to life in prison.⁵⁰

2. *Mohammad Sidique Khan & Shehzad Tanweer*

The July 2005 suicide bombings in London powerfully demonstrated that Bouyeri's radical Islamism inspired terrorist attack was not going to be an isolated, one-off occurrence in Europe. The London bombings proved that there were second and third-generation European Muslims willing to kill themselves in order to terrorize their fellow citizens and advance the cause of militant Islamism. The London suicide bombings were carried out by four seemingly well adjusted Muslim citizens of the United Kingdom, three, Mohammed Sidique Khan, Shehzad Tanweer, and Hasib Mir Hussain, native-born Britons, and one, Germaine Lindsay, Jamaican-born immigrant raised partially in the United Kingdom.⁵¹

Mohammed Sidique Khan was born in Leeds, England in 1974. His parents were first-generation immigrants from Pakistan; upon arriving in the United Kingdom, his father took a position as a foundry worker. After graduating from South Leeds high school, Khan attended the University of Leeds, where he met his future wife, Hasina. Married in 2001, the couple had their first child, a daughter, Maryam, in May 2004. Following university, Khan worked as a "learning mentor" at Hillside Primary School in Dewsbury, England, teaching the children of immigrant families who had recently arrived in the United Kingdom. In recognition for his work at the school, Khan was introduced to Members of Parliament Hilary Benn and Jon Trickett.⁵²

Though appearing to lead a rather ordinary life, one marked by a commitment to community involvement, Khan had also been attending military training camps in Afghanistan, Pakistan, and Indonesia in the early years of this decade. Authorities, having now examined his

⁵⁰ *Bouyeri*, WIKIPEDIA, *id.*

⁵¹ *See supra* note 22.

⁵² *Khan*, WIKIPEDIA, *supra* note 22.

travel history and finding that it seems to coincide with the likely planning phases of the 2002 Bali and 2003 Mike's Place bombings, believe Khan was linked to those attacks in some capacity.⁵³

Khan also volunteered at a Muslim youth outreach project, the Hamara Youth Access Point (HYAB). It is there that he met, and possibly recruited, the other three suicide attackers. Khan was the oldest of the four London bombers; that and his ostensible links to terrorist activities elsewhere have led British authorities to suspect him of leading the July 7 attacks. On that day, Khan detonated a bomb on the Edgware Road train killing at least seven people, including himself.⁵⁴

Shehzad Tanweer was born in 1982 in Bradford, England and moved with his family to Leeds in 1984. The child of first-generation Pakistani immigrants, Tanweer enjoyed a comfortable middle class upbringing. His father was respected locally as a prominent businessman; he owned a fish and chip shop, in which Tanweer worked occasionally, and he previously owned a curry takeaway and a butcher's shop. Tanweer attended Wortley High School, where as those who knew him then recall, he was politically moderate and active athletically, excelling in cricket, soccer, and long-distance running. After high school, Tanweer studied at Leeds Metropolitan University before leaving to Pakistan in 2004 to attend a course in Islamic studies.⁵⁵

Tanweer arrived, Pakistani government released footage shot at the Karachi International Airport shows, to attend his course in Pakistan with Mohammad Khan. The two men also flew back to London together approximately three months later. As has already been noted, Tanweer frequented the HYAB; it is there that he initially encountered and became acquainted with Khan

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Tanweer*, WIKIPEDIA, *supra* note 22.

and the other two suicide bombers. On July 7, Tanweer detonated a bomb on a Circle Line train between the Liverpool Street and Aldgate Tube stations, in London's financial district, killing himself and at least seven other people. Tanweer's remains were buried at the shrine of a local Islamic saint in his ancestral village in Samundari, Pakistan on October 27, 2005.⁵⁶

The backgrounds and actions of Mohammed Bouyeri, Mohammad Sidique Kahn, and Shehzad Tanweer demonstrate that insiders may now pose a danger to the Western European societies in which they live. Disaffected second and third-generation European Muslims, both the marginalized and the upwardly mobile and both those from the suburban enclaves and those from middle and upper class upbringings, are increasingly turning to, whether because of adversarial assimilation, vicarious humiliation, both, or some other process, radical Islamism and terrorism.

Outsiders and insiders present threats to Europe independent of and in combination with one another. The former may provide the latter with ideology and international experience and the latter may provide the former with first-world capabilities and cover. More and more it seems that radical Islamist outsiders are looking for recruits and support from young disaffected insiders and that alienated insiders are turning to radical Islamism espoused by outsiders for solace and meaning. Addressing the roots of that dynamic will require a long-term strategy focused on the effective integration and assimilation of Muslims into Western European society, one that will become all the more vital as that region's population growth slowdown and aging workforce require it to depend on immigrants, which will most likely be Muslim, for labor in the future.⁵⁷ What such a long-term strategy should include is beyond the scope of this paper. It is

⁵⁶ *Id.*

⁵⁷ PAULY, *supra* note 42, at 58, 120.

to the laws and policies that Western European states will depend upon to counter the terrorist threats outsiders and insiders pose in the immediate term, however, that the paper now turns.

III

COUNTERING TERRORISM: LAWS & POLICIES

Effectively crafted laws and policies are critical to combating radical Islamist terrorism in Western Europe and the world more generally. The laws examined herein are limited to those that were specifically designed to address terrorism or that have come to be interpreted as critical to doing so. Other laws, therefore, that may indirectly bear on or that may have relevance in certain limited, fact dependent circumstances have not been included for discussion. With respect to policies, that term is being used in this instance to refer to the measures that administrative authorities, namely interior ministries, law enforcement organizations, and intelligence services, and judiciaries have sanctioned or implemented, to the extent that they can be discerned, to combat terror in accordance with the counter-terrorism laws in existence in their respective jurisdictions.⁵⁸

This part focuses on the anti and counter-terror laws and policies currently in place in France and the United Kingdom. Security scholars and professionals have long considered France's regime to be one of the most effective; "[w]ell before September 11, France had deployed the most robust counterterrorism regime of any Western country."⁵⁹ In contrast, the United Kingdom's regime, developed in 2000 and 2001, was created largely to address the failures of and international criticism directed at that country's laws and policies relating to terrorism, those that, as discussed above, had made the United Kingdom a haven for radical

⁵⁸ Many policies relating to terrorism that Western European government authorities have sanctioned or implemented have not been released to the public, in either exact or general terms, and are thus unavailable for inclusion in this paper.

⁵⁹ Leiken, *supra* note 4, at 130.

Islamists and international terrorists.⁶⁰ While laws from the United Kingdom's new regime had granted authorities there counter-terrorism powers equivalent to and, in certain instances, greater than those available to French authorities, British authorities, prior to the 2005 London bombings, were "less willing" than their French counterparts to "fully use the powers available to them."⁶¹ Such revelations, in the wake of the July 7 suicide bombings, led Prime Minister Tony Blair to question his ministers openly on why, if France operated under the same types of civil and human rights constraints, its anti-terrorism policies seemed to go further.⁶² The simple answer to Blair's queries, it appears, is that French authorities have been willing to adopt a broad or flexible reading of the laws pertaining to the counter-terrorism measures they may employ, whereas British authorities have only been willing to engage in a narrow reading of what is permissible under the laws that are applicable to them. Since the London bombings, in addition to seeking the creation of more anti-terror laws, the Blair government has been pushing British

⁶⁰ With respect to why the British government allowed foreign radical Islamists and suspected Islamist terrorists to reside in the United Kingdom, in addition to the covenant of security discussed at *supra* note 25, some security scholars have suggested that the British government did not believe that the Islamists, mostly from Arab countries, would be able to connect with and, therefore, radicalize, the majority of the United Kingdom's Muslims, which were and are predominantly of Bangladeshi and Pakistani descent. See RICHARD BARLTROP, *MUSLIMS IN EUROPE, POST 9/11: UNDERSTANDING AND RESPONDING TO THE ISLAMIC WORLD* (2003). Also, with its reputation as a haven for radical Islamists who supported terror and international Islamist terrorists, it is ironic that the United Kingdom drafted United Nations Security Council Resolution 1373, which calls on states to "[d]eny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens; and to prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other states or their citizens." Campbell, *supra* note 24. At least a nominal argument could be made that the United Kingdom has been in violation of resolution 1373 since its enactment on September 28, 2001.

⁶¹ See John Diamond & Matt Kelley, *Islamic Radicals Can Find Nest in Nations of Europe*, USA TODAY, July 10, 2005, available at http://www.usatoday.com/news/world/2005-07-10-europe-terror_x.htm.

⁶² *Focus: Fight on Terrorism: The Crackdown*, THE OBSERVER, Aug. 7, 2005, available at <http://observer.guardian.co.uk/focus/story/0,6903,1544134,00.html>.

agencies to reinterpret the relevant laws currently governing terrorism related measures in a more expansive fashion.⁶³

France's counter-terrorism regime developed from its experiences with domestic anarchist, left wing, and nationalist terror groups, such as the Maoist group, Action Directe, Basque-separatist organizations ETA and Iparretarak, and the National Front for the Liberation of Corsica, and international terrorist groups, like the Lebanese Armed Revolutionary Front, the Armenian Secret Army for the Liberation of Armenia, and the GIA.⁶⁴ As a general matter, France classifies an offense as a "terrorist offense" if it contains a terror element, if an "individual or collective undertaking" is "intentionally" designed "to cause a serious disturbance to public order by means of intimidation or terror."⁶⁵ As such, if one of the many ordinary offenses listed in article 421-1 of the French Penal Code, such as kidnapping, property destruction, and money laundering, is carried out with the requisite terror element, that ordinary offense is considered a terrorist offense and the perpetrator is tried according to special terrorism protocols and sentencing guidelines.⁶⁶ France has also created certain offenses that amount to terrorist offenses in and of themselves without requiring the terror element, namely environmental terrorism and membership in a terrorist group, but they are few and the vast majority of terrorist offenses are classified as such using the terror element approach.⁶⁷

The United Kingdom's regime largely took from the counter-terrorism laws that country had created to deal with the various paramilitary factions active in Northern Ireland's

⁶³ See, e.g., Clive Crook, *Britain, Its Muslims, And the War on Terror*, NAT'L J., Aug. 12, 2005, available at http://www.theatlantic.com/doc/prem/200508u/nj_crook_2005-08-16.

⁶⁴ Stephanie Dagon, *Country Report on France*, in *TERRORISM AS A CHALLENGE FOR NATIONAL and International Law: Security versus Liberty?* 276-79 (Christian Walter et al. eds., 2004).

⁶⁵ Law 86-1020 of 9 Sept. 1986, concerning the combat against terrorism and against attack to Sate safety, J.O.R.F., 10956, *quoted in* Dagon, *id.* at 269.

⁶⁶ Art. 421-1 Penal Code, *quoted in* Dagon, *id.* at 269-70.

⁶⁷ See Dagon, *id.* at 270.

“Troubles.”⁶⁸ The United Kingdom does not subscribe to the French terror element approach to classifying which offenses are terrorist offenses. Instead, ordinary crimes are prosecuted as such, while certain offenses are deemed terrorist offenses because they are specifically enumerated as being so, like directing a terrorist organization or inciting terrorism abroad.⁶⁹

The anti-terrorism regimes of France and the United Kingdom are examined below. The laws and policies of each country are separated, primarily for discussion’s sake, into three categories: asylum and immigration measures, preventive measures, and repressive measures. While some laws and policies extend into more than one category, the classification structure remains useful.

A. Asylum & Immigration Measures

Asylum and immigration laws and policies can have an obvious impact on the threats that radical Islamist outsiders pose. While illegal entry is a concern for Western European states, most actual and would be terrorist attackers that have crossed national borders in Western Europe have done so legally and, therefore, focus has been placed on buttressing laws and policies pertaining to legal immigration.⁷⁰

In France, the entry of foreigners is subject to generally applicable legislation or to texts specifically applicable to asylum seekers and refugees. In either case, in accordance with the Ordonnance of 2 November 1945, administrative authorities may refuse entry to a foreigner,

⁶⁸ Rainer Grote, *Country Report on the United Kingdom, in* TERRORISM AS A CHALLENGE FOR NATIONAL AND INTERNATIONAL LAW: SECURITY VERSUS LIBERTY? 594-96 (Christian Walter et al. eds., 2004).

⁶⁹ *Id.* at 609-14.

⁷⁰ For example, a Nixon Center for Immigration Studies study of 373 suspected or convicted terrorists who resided in or crossed national borders in Western Europe and North America since 1993 found that only six percent of the sample had entered countries illegally. *See* Leiken, *supra* note 2, at 9.

even one in possession of required documentation where documentation is required, suspected of or already representing a threat to “national security or public order.”⁷¹

With regard to individuals seeking asylum, Article 13 of the law of 25 July 1952 requires them to demonstrate that living in their countries constitutes a threat to their lives, liberties, or would subject them to torture or to inhuman treatment or punishment. The Minister of the Interior, in consultation with the Minister of Foreign Affairs decides whether to grant a request for asylum. Such requests may be denied, under French law, if an applicant represents a threat to public order or if his admission into France would not be compatible with the interests of the state. The Minister of the Interior has complete discretion over asylum decisions and need not provide reasons for deciding one way or another.⁷² In a concerted effort to prevent radical Islamist proselytizing from radicalizing its mostly North African Muslim population, France adopted a policy, during the 1990s, of denying asylum to Arab and Middle Eastern Islamist radicals even while they were being welcomed by many of its neighbors.⁷³

The law of 25 July 1952 also governs France’s conferment of refugee status. In conformance with that law, persons persecuted for their actions in favor of freedom, persons protected by the United Nations High Commissioner for Refugees, and persons defined as refugees under the 1951 International Refugee Convention may be granted refugee status. However, the law of 25 July 1952 excludes persons connected with the preparation or commission of terrorist acts anywhere from being designated refugees.⁷⁴

Authorities may also strip foreign residents of their legal authority to reside in France. Residency permits granted for a period of less than ten years are reviewed for renewal on an

⁷¹ Art. 26 of the Ordonnance of 2 Nov. 1945, *quoted in* Dagon, *supra* note 64, at 304.

⁷² Art. 13 of the law of 25 July 1952, *quoted in* Dagon, *supra* note 64, at 304-05.

⁷³ Leiken, *supra* note 4, at 130.

⁷⁴ Art. 2 of the law of 25 July 1952, *quoted in* Dagon, *supra* note 64, at 305; Dagon, *supra* note 64, at 305.

annual basis. If the Interior Ministry determines that the presence of a foreign resident subject to such renewal is a threat to public order, his permit may be withdrawn.⁷⁵ All foreign residents, no matter which type of permit they hold, may also be expelled from France if they “constitute a serious threat to the public order or where it is absolutely necessary for State safety or public security.”⁷⁶ The French state’s ability to deport persons to particular countries may be limited, however, as both French and international law prohibit persons from being deported to countries where they will face persecution.⁷⁷ Despite the existence of such potential limitations on deportation, French authorities have aggressively availed themselves of the expulsion option. The former Minister for Europe, Denis MacShane, speaking on that subject, stated, “In France there is a long tradition of political exile, but on condition that people who accept asylum do not use French territory to propagate hate campaigns.”⁷⁸ That policy has led to the deportation of several high-profile radical Islamists, including, in 2004, five imams, one of whom, Algerian Abdelkader Bouziane, defended wife beating and stoning adulterous women.⁷⁹ With respect to the expulsion of radical Islamists, French Prime Minister Dominique de Villepin has explained that “[u]nder the cover of religion, individuals present on our soil have been using extremist language and issuing calls for violence ... these favor the installation of terrorist movements ... it is necessary therefore to oppose this together and by all available means.”⁸⁰

In the United Kingdom, in accordance with the Anti-terrorism, Crime and Security Act of 2001 (ACSA), authorities may, similar to their French counterparts, deny asylum requests and refugee classification to individuals suspected of having “planned, facilitated, or participated in

⁷⁵ Art. 12 of the Ordonnance of 2 Nov. 1945, *quoted in* Dagon, *id.*

⁷⁶ Art. 23 & 26 of the Ordonnance of 2 Nov. 1945, *id.* at 306.

⁷⁷ *Id.*

⁷⁸ Denis MacShane *quoted in* Focus, *supra* note 62.

⁷⁹ Peter Ford, *France Tries to Soften Local Style of Islam*, CHRISTIAN SCI. MONITOR, May 6, 2004, *available at* <http://www.csmonitor.com/2004/0506/p01s04-woeu.html>.

⁸⁰ Dominique de Villepin, *quoted in* Ford, *id.*

the commission of terrorist acts.” British law charges the Home Secretary with making such determinations. Unlike the situation existing in France, however, the Home Secretary’s decisions on asylum and refugee matters may be appealed twice, first to the Special Immigration Appeals Commission (SIAC), and, secondarily, to the Court of Appeal.⁸¹ Both before and after the passage of the ACSA but prior to the London bombings in 2005, UK authorities adhered to a liberal asylum policy, one that granted the asylum claims of radical Islamists like Abu Hamza and Omar Bakri, discussed above. British authorities had also followed rather lax general immigration policies. For example, in 2004, two militant anti-Western clerics, Egyptian Yusuf al Qaradawi and Saudi Sheik Abdur Rahman al Sudais, both banned from visiting the United States, were allowed to visit the United Kingdom.⁸²

The United Kingdom, like France, reserves the authority to expel foreign residents who have engaged in terrorist activities. If the Home Secretary certifies that a foreign resident is a risk to national security because he reasonably believes that resident to be a terrorist, someone who has been concerned in the commission, preparation, or instigation of acts of international terrorism, is a member of an international terrorist group, or has links with an international terrorist group, that foreign resident may be deported.⁸³ In this context, “terrorism” is defined, as it is in the ACSA, according to the Terrorism Act of 2000, as the use or threat of action “designed to influence the government or to intimidate the public or a section of the public ... for the purpose of advancing a political, religious or ideological cause,” which involves serious violence against a person, serious damage to property, endangers a persons life, involves serious

⁸¹ Sec. 33(3)-(5), 33(8), (9) Anti-terrorism, Crime and Security Act, 2001, c. 24 (Eng.) (hereinafter “ACSA”).

⁸² O’Donnell, *supra* note 25.

⁸³ Sec. 21(1) ACSA.

risk to health of the public, or is designed to seriously disrupt an electronic system.⁸⁴ The Home Secretary's certification of individuals as terrorism related national security risks may be appealed to the SIAC and the Court of Appeal.⁸⁵ Deportations resulting from such certification are, as they are in France, limited to the extent that they would result in foreign nationals being sent to countries where they would face persecution.⁸⁶

In order to enable British authorities to quash the dangers that foreign residents certified as terrorism related national security threats who could not be deported because of persecution concerns posed, section 23 of the ACSA allowed such foreign residents to be indefinitely detained. Foreigners detained pursuant to section 23 did not need to be tried but did have the ability to appeal their detention and certification to SIAC and the Court of Appeal.⁸⁷ The ACSA's indefinite detention provision was widely criticized in the legal community as a draconian measure and, in early 2005, the House of Lords, in the case of *A v. Secretary of State for the Home Department*, invalidated it. The House of Lords found that section 23's differential treatment of foreigners violated the Human Rights Act of 1998 and, by extension, the European Convention on Human Rights.⁸⁸

It appears, since the overhaul of the United Kingdom's anti-terror laws in 2000 and 2001, that French and British authorities have equivalent powers to deny entry to asylum and refugee seekers and to expel foreign residents who represent a terrorist threat to their respective

⁸⁴ Sec. 21(2), ACSA; Sec. 1 Terrorism Act, 2000, c. 11 (Eng.); *see also* Grote, *supra* note 68, at 593.

⁸⁵ Grote, *supra* note 68, at 620.

⁸⁶ 11 ECHR 439, para. 90-91 (1989); Sch. 1(1)(3) Human Rights Act, 1998, c. 42 (Eng.).

⁸⁷ Sec. 23 ACSA.

⁸⁸ *See* Mary Arden, *Human Rights in the Age of Terrorism*, 121 (Oct.) -2005 L.Q. REV. 604, 605-10 (2005); *see also* Dirk Haubrich, *September 11, Anti-terror Laws and Civil Liberties: Britain, France and Germany Compared*, 38 GOV'T & OPPOSITION 3, 15, 24 (2003).

countries. However, UK authorities have historically been less willing, than French authorities, to interpret their powers broadly and, instead, have adhered to liberal entry policies concerning asylum claimants, refuge seekers, and persons attempting to visit the United Kingdom generally, and have docilely pursued the deportation of radical Islamists. The House of Lord's decision in *A v. Secretary of State for the Home Department*, further threatens to limit the ability of British authorities to deal with foreign resident terrorist threats, given that such authorities have seemed to be more self-limiting, than their French counterparts, with respect to the countries that they are willing to send such foreign residents to. There have been signals, however, in the aftermath of the 2005 London suicide attacks that the United Kingdom is moving away from its tradition of lax asylum and immigration policies. Home Secretary Charles Clarke has announced that foreign residents who "foment, justify, or glorify terrorist violence" will be deported and banned from the United Kingdom, as will foreign residents who utilize websites, writing, preaching, or the distribution of materials to "seek to provoke others to terrorist acts" or "foster hatred." Prime Minister Blair has stated that the list of which countries deportees could be sent to would be expanded, even if that meant contravening international law. Clarke has also stated that a "database of individuals around the world who have demonstrated these unacceptable behaviors will be developed" and that those who appear in it will not be able to gain entry into the United Kingdom. Clarke, moreover and perhaps most tellingly, has barred Omar Bakri, as noted above, from returning to the United Kingdom from his trip to Lebanon.⁸⁹

⁸⁹ Charles Clarke, *quoted in* Kevin Sullivan, *Under New Guidelines, Britain will Deport Terror Supporters*, WASH. POST, Aug. 25, 2005, *available at* http://www.boston.com/news/world/europe/articles/2005/08/25/under_new_guidelines_britain_will_deport_terror_supporters; Tony Blair, *quoted in* Crook, *supra* note 63. Prime Minister Tony Blair, lending support to his Home Secretary, has also stated that grounds for deportation would include "fostering hatred, advocating violence to further a person's beliefs, or justifying or validating such violence." Tony Blair, *quoted in* Crook, *supra* note 63.

B. Preventive Measures

Preventive laws and policies can help countries counteract and prepare for the terrorist threats that both outsiders and insiders pose. Preventive measures include those concerning the proscription of terrorist organizations, searches, the collection of information, the enhancement of security at particular points, and the suppression of the financial activities of terrorist groups.

In France, groups concerned with supporting, planning, or executing terrorist attacks may be proscribed. Article 3 of the law of 15 July 1901 allows administrative authorities to obtain a judicial order to shut an association down if it is incompatible with public order or accepted standards of behavior. Such a decision on the part of French authorities does not require an association to have previously committed illegal acts; the law is preventative in that sense.⁹⁰

The French government, under the laws of 10 January 1936 and 9 September 1986, may also shut down groups or arrangements that have been set up to prepare terrorist attacks in France or abroad. Article 1 of the law of 10 January 1936 gives the President the power to dissolve associations that call for armed demonstrations in the streets or advocate racial hatred or violence.⁹¹ Such a Presidential decree was used to dissolve the group *Unite Radicale*, in 2002.⁹²

The Terrorism Act of 2000 grants the British Home Secretary powers of proscription similar to those available to executive authorities in France. The Home Secretary, under section 3 the Act, has broad discretion to proscribe groups that he believes are concerned with committing acts of terrorism, as defined in the Act and noted above, and in preparing, promoting, or encouraging terrorism.⁹³ The Home Secretary may amend the list of proscribed organizations

⁹⁰ See Art. 3 of the law of 15 July 1901, *quoted in* Dagron, *supra* note 64, at 289.

⁹¹ See Art. 1 of the law of 10 Jan. 1936 & the law of 9 Sept. 1986, *quoted in* Dagron, *supra* note 64, at 289-90.

⁹² Dagron, *supra* note 64, at 290.

⁹³ Sec. 3(5) Terrorism Act 2000.

by order, subject to the affirmative resolution procedure in Parliament.⁹⁴ The Terrorism Act also makes it a crime to “belong or profess to belong to a proscribed organisation, to invite support or arrange meetings for a proscribed organisation or to wear items of clothing or articles typical of such organisation.”⁹⁵

In periods of elevated terror threat, the French government may institute the vigipirate plan, or day-to-day security plan. First conceived of in 1978, the far-reaching plan mobilizes law enforcement, customs, and intelligence agencies, and the military, if necessary, to enhance the security of sensitive points and networks. The vigipirate plan has been in place since September 12, 2001.⁹⁶ In its current form, the plan allows authorities to conduct bag and body searches and limited forms of inquiry at airports, ports, stadiums, stores, and other designated public places, and to extend such search power to private security firms and national rail service employees.⁹⁷ The vigipirate plan also grants the procureur de la Republique, the state prosecutor, the power to authorize the judicial police to search vehicles in public areas when no criminal offense is being perpetrated, so long as such searches are tied to an investigation relating to terrorism.⁹⁸ Moreover, under the plan, the judicial police may search a vehicle in a public area without authorization from the procureur de la Republique if “plausible grounds” exist to suspect persons inside the vehicle of attempting, having attempted, or having carried out a criminal offense.⁹⁹ With respect to biological and nuclear materials, the vigipirate plan enhances security at facilities involved in the production, storage, and transport of hazardous biological agents, redefines

⁹⁴ Sec. 123(4) Terrorism Act 2000.

⁹⁵ Grote, *supra* note 68, at 599; Sec. 11-13 Terrorism Act 2000.

⁹⁶ Dagon, *supra* note 64, at 283-84.

⁹⁷ Art. 14, 25-27 of the law of 15 Nov. 2001, *quoted in* Haubrich, *supra* note 88, at 11-13.

⁹⁸ Art 11 of the law of 18 Mar. 2003, *quoted in* Dagon, *supra* note 64, at 284.

⁹⁹ Art. 12-13 of the law of 18 Mar. 2003, *quoted in* Dagon, *supra* note 64, at 284.

conditions for the handling, possession, and transfer of poisonous substances, and restricts access to and surveillance and over flight of nuclear facilities.¹⁰⁰

British authorities, similar to their French counterparts, have broad security enhancing powers designed to prevent terrorism. Unlike French authorities, however, UK authorities have been granted such powers on a permanent basis and do not therefore need to wait for further government approval before exercising them. British police may arrest and search a person, without a warrant, if they have reasonable grounds for suspecting that that person has been or is involved in the commission, preparation, or instigation of acts of terrorism.¹⁰¹ Senior police officials may also authorize additional search powers, including the powers to stop and search vehicles, their occupants, and pedestrians generally, to be used in designated geographic areas if they deem such measures expedient for the prevention of terrorist acts. Such authorizations are granted for a period of twenty-eight days, may be renewed, and are subject to Home Office confirmation within forty-eight hours of their being issued.¹⁰² Senior police officials, moreover, may authorize the prohibition of parking in certain areas if they consider doing so expedient for the prevention of terrorist attacks.¹⁰³ Furthermore, the police, immigration authorities, and customs officers have the power to stop, question, and detain persons traveling to, from, or within the United Kingdom to determine whether they have been involved in the commission, preparation, or instigation of an act of terrorism.¹⁰⁴

With regard to toxic substances, hazardous biological materials, and the nuclear energy industry, much like the security enhancing steps that the vigipirate plan has put into place in

¹⁰⁰ See Dagon, *supra* note 64, at 283-85.

¹⁰¹ Sec. 40-43 Terrorism Act 2000.

¹⁰² Sec. 44(3) Terrorism Act 2000.

¹⁰³ Sec. 48(2) Terrorism Act 2000.

¹⁰⁴ Sec. 118 ACSA.

France, the ACSA has introduced a range of new security measures in the United Kingdom.¹⁰⁵

They include, allowing the police to request information about persons who have access to dangerous chemical and biological substances, obliging occupiers of facilities holding chemical and biological materials to implement security improvements that the police recommend, and restricting the sharing of information related to nuclear sites.¹⁰⁶

Several laws give French authorities the ability to collect and share information concerning individuals and groups suspected of having ties to terrorism. The law of 10 July 1991 authorizes the Prime Minister, at the request of one or more of the Ministers of the Interior, Defense, Economy, or Finance, to order the interception of private communications issued, transmitted, or received via telecommunication. The Prime Minister may only give an interception order if he believes such communications bear on national security or the prevention of terrorism or organized crime.¹⁰⁷ The current vigipirate plan also allows authorities to require internet providers to store and make available client contact information and to disclose encryption keys so that digital information can be deciphered; such information can be shared without the knowledge of the individual being monitored.¹⁰⁸ Additionally, the law of 18 March 2003, authorizes the gendarmerie and the judicial police to survey personal files, apart from any criminal record, contained in police data-processing systems; administrative authorities may also obtain access to such files when considering whether to bestow French citizenship or grant a residency extension to a foreign national.¹⁰⁹ Concerning the collection of genetic information, article 29 of the law of 18 March 2003 permits French law enforcement authorities to obtain

¹⁰⁵ See Grote, *supra* note 68, at 606-09.

¹⁰⁶ Sec. 61-63, 79-80 ACSA.

¹⁰⁷ Art. 3, 4, 6, 10-12 of the law of 10 July 1991, *quoted in* Dagron, *supra* note 64, at 285-87.

¹⁰⁸ Art. 29, 30 of the law of 15 Nov. 2001, *quoted in* Haubrich, *supra* note 88, at 11-12.

¹⁰⁹ Art. 21, 25 of the law of 18 Mar. 2003, *quoted in* Dagron, *supra* note 64, at 287-88.

genetic data, for retention in the national files of genetic information, from persons who have committed or are suspected of having committed felonious crimes.¹¹⁰

The ACSA provides British authorities with information collection and sharing capabilities comparable to those that French authorities possess. In accordance with the ACSA, communications providers, such as telephone and internet companies, may be required to retain information concerning their customers and who they contact, when and from where, and to make such information available to law enforcement and intelligence agencies. The Act gives the Home Secretary broad discretion to determine the specific aspects of any such communications retention requirements.¹¹¹ Under the ACSA, administrative authorities may share any personal information they have with one another for the purposes of any criminal investigation.¹¹² This includes disclosures of the customs and inland revenue services to intelligence agencies.¹¹³ The only requirement limiting such sharing of personal information is that the disclosing authority must be satisfied that making the disclosure is proportionate to what is sought to be achieved by it.¹¹⁴ Thus, once such information has been made available, there appears to be little control over it being used for purposes unrelated to the precipitating criminal investigation or being held in some sort of law enforcement databank.¹¹⁵

The suppression of financial activities that support terrorism is another goal of French counter-terrorism measures. Reporting requirements that those involved in transactions must adhere to provide the central mechanism with which French authorities monitor and suppress financial activities tied to terrorism. Banks, notaries, attorneys, jewelers, real estate brokers,

¹¹⁰ Art, 29 of the law of 18 Mar. 2003, *quoted in* Dagron, *supra* note 64, at 287.

¹¹¹ *See* pt. 11 ACSA.

¹¹² *See* pt. 3 ACSA.

¹¹³ Sec. 19 ACSA.

¹¹⁴ Sec. 17(5) ACSA.

¹¹⁵ Grote, *supra* note 68, at 617.

auditors, and persons engaged in like professions, as well as casino operators and persons who regularly engage in trade involving precious stones and works of art, are required to report suspicious transactions that might be linked to terrorist activities to the French Financial Intelligence Unit (TRACFIN).¹¹⁶ Individuals to whom that suspicious transactions reporting model does not apply and who carry out, monitor, or provide advice concerning movements of capital must report operations relating to criminal activities, including terrorism, of which they have knowledge to the procureur de la Republique.¹¹⁷ Additionally, all persons transferring funds, securities, or other financial instruments with a conversion value of 7,600 euros or more into or out of France without employing an intermediary, such as a credit institution or service organization, must file a declaration with customs.¹¹⁸ Once a report, either to TRACFIN or the procureur, or a customs declaration is made, authorities rely, if they determine such treatment is warranted, on arrests, seizures, and prosecutions to prevent the proceeds of such a transaction from being used to finance the activities of terrorists.¹¹⁹

Legislation in the United Kingdom gives British authorities powers, not unlike those that their French counterparts possess, to curtail financial activities associated with terrorism. The ACSA allows UK authorities, via judicial order, to require financial institutions to provide information on accounts for up to ninety days if doing so would aid a terrorism investigation and obligates financial institutions, generally, to report knowledge or suspicion of terrorist financing.¹²⁰ The ACSA also grants the Treasury the power to freeze the assets of overseas governments and residents who have taken or are likely to take action detrimental to the United Kingdom's economy or that constitute a threat to the life or property of a national or resident of

¹¹⁶ Art. L-562-1, L-562-2 of the law of 12 July 1990, *quoted in* Dagon, *supra* note 64, at 290.

¹¹⁷ Art. L-561-1 of the law of 12 July 1990, *quoted in* Dagon, *supra* note 64, at 290.

¹¹⁸ Art. L-152-1 of the law of 12 July 1990, *quoted in* Dagon, *supra* note 64, at 291.

¹¹⁹ Dagon, *supra* note 64, at 290-91.

¹²⁰ Sch. 2 ACSA; *see also* Haubrich, *supra* note 88, at 13.

the United Kingdom.¹²¹ Under the ACSA, police, customs, and immigration officers are also authorized to seize and seek the forfeiture of cash that they have reasonable grounds to suspect is terrorist cash. That is, cash intended to be used for the purposes of terrorism, cash consisting of the resources of a proscribed terrorist organization, or cash representing property obtained through terrorism.¹²²

While it appears that French and British authorities have roughly equivalent powers with respect to exercising preventive measures, as was the case with regard to asylum and immigration measures, French authorities seem to have pursued the use of preventive measures more vigorously than their British counterparts. Agreeing with and seeking to explain that assessment, a French counter-terrorism expert stated that France's "long tradition of internal subversion has created more tolerance for what [the British] would consider police state activities."¹²³ French authorities have been willing to monitor radical Islamists and take preventative steps to counter them. For example, in 2004, special police units were set up in each of France's twenty-two regions to conduct surveillance on approximately thirty mosques, whose imams were suspected of radical Islamist leanings, and on a number of restaurants and bookshops that could serve as contact points for Islamist radicals.¹²⁴ French authorities, moreover, have begun an attempt to use "soft" preventive measures. France now offers university training in French law, civics, history, and culture to resident Muslim clerics and has set up the French Council for the Muslim Religion so that the authorities and the Muslim

¹²¹ Sec. 4 ACSA.

¹²² Sch. 1 ACSA.

¹²³ Jeremy Shapiro, *quoted in* Steven Bodzin, *Preemption vs. Prosecution: Strategies in Combating Terrorism*, FRONTLINE, at <http://www.pbs.org/wgbh/pages/frontline/shows/front/special/pre.html> (last visited Nov. 5, 2005).

¹²⁴ See Ford, *supra* note 79; Jon Henley, *Imams to be Taught French Way of Life*, GUARDIAN, Dec. 8, 2004, available at <http://www.guardian.co.uk/france/story/0,11882,1368735,00.html>.

community have a standard interface with which to address common concerns.¹²⁵ In contrast, British authorities have traditionally shied away from involving themselves with religious-based organizations and institutions, even with regard to implementing preventive measures. The fact that it took four years to place al Muhajiroun, Omar Bakri's group, on the UK Home Secretary's list of proscribed organizations with links to terrorism and that Interpal, Hamas's fundraising front in London, has not yet been placed on the list serves to illustrate that point.¹²⁶ However, there have been signs, since the London suicide bombings, of a shift, with respect to preventive measures, on the part of British authorities. For instance, Prime Minister Blair has announced that several mosques in which "extremist" ideas have been preached are now being monitored, that a number of Islamic organizations will be proscribed within the coming year, and that Muslim community leaders will be asked to "identify and isolate" potential extremists.¹²⁷

¹²⁵ *Id.* Some social scholars, such as Gilles Kepel, have also argued that France's 2004 law banning "conspicuous" religious items from its public schools, which effectively banned Muslim girls from wearing headscarves, was a preventive measure. Marlena Telvick, *Identity Crisis: Old Europe Meets New Islam*, FRONTLINE, at <http://www.pbs.org/wgbh/pages/frontline/shows/front/special/roots.html> (last visited Nov. 5, 2005). In defense of that law, Kepel has stated that:

[W]hen you look at the people who are arrested for terrorist actions, you see how step by step, this evolution started with their sporting jellabas and growing beards. Then, they severed cultural links. And then they became easy prey to be recruited by these jihadist generals. Either you nip this thing in the bud or you allow the development of a separate society until one day, one of these kids stabs a Theo Van Gogh.

Gilles Kepel, *quoted in* Telvick, *id.*

¹²⁶ Bergen, *supra* note 10, at 9; *Islamic Extremism in Europe Before the Subcomm. on Europe and Emerging Threats of the House Comm. on International Relations*, 109th Cong. 18 (2005) (statement of Matthew Levitt, Director, Terrorism Studies Program, The Washington Institute for Near East Policy).

¹²⁷ Tony Blair, *quoted in* Crook, *supra* note 63; Matthew Taylor, *Muslim Help Sought to Find Campus Extremists*, GUARDIAN, Sept. 15, 2005, available at <http://politics.guardian.co.uk/terrorism/story/0,15935,1570275,00.html>.

C. Repressive Measures

Repressive laws and policies allow countries to effectively deal with outsiders and insiders who have engaged in terrorist activities. Repressive measures include those that relate to the detention of suspects, investigation of crimes, judicial process, and sentencing.

Provisions providing special detention standards for terror suspects aid French and British authorities in investigating terrorist offenses. French authorities may detain persons suspected of carrying out acts of terrorism for at least forty-eight hours without pressing charges; during that period, they may choose to bring the detainee before a magistrate to seek authorization to hold the detainee for an additional forty-eight hours.¹²⁸ British authorities, in much the same manner, may detain suspected terrorists without pressing charges for an initial period of forty-eight hours and seek judicial authorization to hold suspects for an additional period of up to five days.¹²⁹ French authorities pursuing an investigation also benefit from article 63-4 of the Code of Criminal Procedure, that article entitles persons suspected of committing terrorist offenses to a lawyer after they have been held for seventy-two hours, ordinary detainees may have access to a lawyer after they have been held for twenty hours.¹³⁰ UK authorities investigating crimes related to terrorism, on the other hand, benefit from section 38(B) of the ACSA, which makes it a criminal offense for a person to fail to disclose information that he knows or believes might help prevent another person from carrying out an act of terrorism or might help in bringing a terrorist to justice in the United Kingdom.¹³¹

In France, terrorist offenses warrant a centralized and specialized judicial process. In the United Kingdom, a terrorist offense receives the same treatment from the judicial system as any

¹²⁸ Art. 706-23 of the Code of Criminal Procedure, *quoted in* Dagrón, *supra* note 64, at 294.

¹²⁹ Sec. 41(3), Sch. 8 Terrorism Act 2000.

¹³⁰ Art. 63-4 of the Code of Criminal Procedure, *quoted in* Dagrón, *supra* note 64, at 294.

¹³¹ Sec. 38(B) ACSA.

other crime would. French courts maintain, with obvious implications for terrorists, universal jurisdiction; they may prosecute, try, and adjudge, where the individual concerned is in France, offenses committed irrespective of the geographical location of the commission of those offenses and irrespective of the nationality of the offender(s) or of the victim(s).¹³² According to the French Code of Criminal Procedure, the procureur de la Republique, the examining magistrate, the Tribunal Correctionnel, and the Cour d'assises of Paris must handle acts of terrorism, local prosecutors, magistrates, and courts are not permitted to do so.¹³³ The French state has opted for such centralization in an effort to deal with the complexity and international character of terrorism. Examining magistrates operating from Paris may more easily specialize in handling terrorist offenses because they have access in one place to all the relevant information they might require and because they may exercise their competence over the entire territory of France.¹³⁴ A Cour d'assises comprised of professional judges and not ordinary citizens, as is the case when ordinary offenses are at issue, also hears cases involving alleged perpetrators of acts of terrorism who are eighteen-years of age or older are.¹³⁵ The French deemed such composition of the Cour d'assises necessary for judging acts of terrorism because their complexity makes it difficult for ordinary citizens to do so.¹³⁶

Furthermore, as noted above, French courts, in contrast to British courts, may sentence persons convicted of terrorist offenses, offenses carried out in a manner satisfying the terror element requirement, more harshly than they would otherwise be able to do. Where the terror element is present, the maximum sentences initially available to the court are increased as follows: imprisonment for thirty years becomes life imprisonment; twenty years in prison

¹³² Art. 689 of the Code of Criminal Procedure, *quoted in* Dagron, *supra* note 64, at 293-94.

¹³³ Art. 706-17 of the Code of Criminal Procedure, *quoted in* Dagron, *supra* note 64, at 292.

¹³⁴ *See* Dagron, *supra* note 64, at 293.

¹³⁵ Art. 706-25 of the Code of Criminal Procedure, *quoted in* Dagron, *supra* note 64, at 295-96.

¹³⁶ *See* Dagron, *supra* note 64, at 296.

becomes thirty; fifteen years becomes twenty; ten years becomes fifteen; seven years becomes ten; five years becomes seven; and where the initial applicable penalty was between one and three years it may be doubled.¹³⁷

With respect to detention and investigation, French and British authorities appear to possess roughly equivalent powers. UK authorities, in contrast to the patterns they have traditionally exhibited with regard to asylum and immigration and preventive measures, have historically been willing to implement the repressive measures at their disposal assertively. Moreover, in the wake of the 2005 London attacks, British authorities have sought authorization to employ more extreme repressive measures. For example, Home Secretary Clarke had requested that Parliament extend the allowed period of detention without charge to ninety days; while Parliament declined to pass such legislation, it is expected to back an alternate Home Office proposal to extend the length of time that a terrorist suspect may be held without charge to twenty-eight days.¹³⁸

Unlike the parity observed between France and the United Kingdom with regard to detention and investigation, the centralized and specialized judicial process developed in France to address terrorism and the sentencing scheme specific to terrorist offenses in place there have no parallel in the United Kingdom. In fact, many legal and security scholars and professionals maintain that the “French legal system provides ... anti-terrorism magistrates with powers that have no equal in Europe [or] the United States.”¹³⁹ While the London suicide bombings have led British authorities to press for many changes in counter-terrorism laws and policies, there has of

¹³⁷ Art. 421-3 of the Penal Code, *quoted in* Dagon, *supra* note 64, at 296-97.

¹³⁸ *See Blair Defeated Over Terror Laws*, BBC NEWS, Nov. 9, 2005, at http://news.bbc.co.uk/2/hi/uk_news/politics/4422086.stm.

¹³⁹ *Islamic Extremism in Europe Before the Subcomm. on Europe and Emerging Threats of the House Comm. on International Relations*, 109th Cong. 28 (2005) (statement of Lorenzo Vidino, Deputy Director, The Investigative Project); *see also* Leiken, *supra* note 4, at 130.

yet been no indication that a unique judicial process to handle cases concerning terrorism or that specific sentencing guidelines directed at terrorist offenses are being developed. Considering the success that the French system has had in promoting efficiency and expertise in the anti-terror realm, the British might be wise to reconsider their stance on the matter of judicial centralization and specialization. The UK government, in order to further stigmatize terrorist acts and signal its resolve in dealing with them, might also contemplate establishing a French-like terror element approach that would allow it to implement harsher sentences for acts tied to terrorism.

Part III analyzed and compared the counter-terrorism regimes in place in France and the United Kingdom. Both countries' experiences with laws and policies concerning terrorism indicate that an anti-terror regime must include effective measures relating to asylum and immigration, prevention, and repression in order to deal successfully with the terrorism threat that radical Islamist outsiders and insiders pose. The above comparison also revealed that having counter-terrorism laws in place is necessary but not sufficient for combating terrorism effectively. While UK legislation enacted in 2000 and 2001 updated counter-terrorism laws and provided authorities with powers to institute broad and intensive counter-terrorism policies, British authorities, adhering to tradition, continued to implement liberal asylum and immigration measures and to shy away from applying preventive measures to religious-based organizations and institutions. Unfortunately, it appears, British authorities were only able to overcome the inertia of tradition following the London suicide bombings. Getting bureaucratic agencies to acknowledge and adequately respond to the scope of the threat that outsiders and insiders pose is a difficult but essential task. The analysis conducted above, moreover, suggests that UK authorities, in addition to the anti-terror policies they have advocated since the London suicide attacks, may benefit, as the French have, from instituting soft preventive measures, centralizing

the judicial process, and punishing those involved in terrorist acts under a harsher, terrorism-specific sentencing scheme.

CONCLUSION

Radical Islamism inspired terrorism has been on the rise in Western Europe for the past decade. Both outsiders and insiders, whether of disadvantaged circumstance or upwardly mobile, or whether acting in combination or independently, may now pose a terrorist threat. As such, in addition to developing long-term strategies to integrate and assimilate Muslims successfully, it is imperative that European states have comprehensive and intensive counter-terror regimes in place. European countries, as well as other countries facing the threat of radical Islamist terrorism or terrorism generally, can look to France, which is widely considered to possess the world's most effective anti-terror regime, and the United Kingdom, which rather recently updated its laws concerning terrorism and is further attempting to revamp its counter-terrorism laws and policies in the wake of the London suicide bombings, as models for designing laws and policies to combat terrorism.

The experiences of France and the United Kingdom counsel that effective measures relating to asylum and immigration, prevention, and repression must be established to confront terrorism successfully. Their experiences also demonstrate that states can improve their anti-terrorism regimes, that it is crucial to both enact laws and actively pursue policies aimed at terrorism, and that states may benefit from their administrative agencies interpreting anti-terror laws broadly and flexibly. Moreover, the French and British experiences document the tensions that countries attempting to counter terrorism face in balancing national security with international law, particularly with respect to deportation, and national security with civil liberties, especially with regard to issues of privacy.