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Mass Migration as a Hybrid Threat? – A Legal Perspective

Abstract: Migration as a weapon sounds like a policy statement by resurgent nationalistic parties (and governments) in the West. However, politics and the human cost aside, what if an adversary (both state and non-state actor) does exploit the current global crisis of mass migration due to globalization, war, and political unrest? This article will look at the ongoing mass migration to the European Union within the wider security context of the so-called hybrid threats and/or 'grey zone' tactics. It looks at the various legal categories of migration as how the law can be weaponized as so-called 'lawfare' to undermine the existing legal frameworks distinguishing between legal and illegal migration. The authors recognize the possibility that this article will be used as an argument by the political actors involved for their nationalistic and anti-migration politics and policies. Yet, we believe that the potential of abusing the current vacuum for political gains along ideological party lines makes it necessary to provide a wider legal-security focused perspective on mass migration.

Keywords: *migration, migrants, refugees, threat, hybrid threat, law*

Introduction

This article looks at the ongoing mass migration to the European Union within the wider security context of the so-called hybrid threats and/or 'grey zone' tactics.

While Europe has experienced large-scale migration, it shares with other parts of the world the effects on its economic and social structures within society, leading to increasing dynamics of a rise in right-wing politics at a scale unheard of since the end of World War

II. The scale of migration over recent years has been phenomenal (Atkinson, 2018)[1]. The root causes have tended to be armed conflict – some of which have been exacerbated by western involvement in originally civil uprisings – e.g., Libya and Syria – or through direct interference, e.g., Iraq. In addition, continuing political persecution and globalization in combination with climate change contribute to global migration in ever-growing numbers. Millions of people displaced by war and conflict have tried to find respite and safety in other states and increasingly within the borders of the European Union. However, interspersed with genuine refugees, many are economic migrants looking for a better life and fleeing abject poverty who otherwise would not be allowed to migrate.

As early as 2010, NATO (North Atlantic Treaty Organization) recognized new security threats as the so-called hybrid threats and, in the following two years, drew up a specific threat catalog as part of its *Bi-Strategic Command Capstone Concept*, identifying human trafficking and mass migration as security-specific risks beyond the threshold of conventional warfare threats (Bachmann, 2012, p. 14)[2].

Mass Migration as a Form of Hybrid Warfare?

Mass migration within the context of hybrid warfare is a strategic mechanism effected where the state deploying the threat will place pressure upon the targeted government to take some course of action – or not – which is to the advantage of the state making the threat and to the disadvantage of the targeted state. The targeted state will recognize that the threat to cause a migration flow across its borders will place tensions upon the welfare, social, medical, and educational sectors of its society which, in turn, raises the specter of unrest and dissatisfaction with the government. Changing demographics, and increasing unemployment, already high in many EU countries, through a cheaper workforce[3]. In an extreme case, this could conceivably lead to the collapse of the government, especially in a country that had a volatile economy.

Mass migration as a tool of hybrid warfare is a deliberate strategy used for a strategic purpose. It can include a military purpose (e.g., to change the focus of the nation's armed forces from defense to assisting with issues related to internal security or to effect demographic change), or it can be a more subtle form of gradual insinuation of a particular group that settles within the state and lays itself available to outside influence from the state it

[1] These figures were taken from the UN database on International Migrant Stock (https://www.un.org/en/development/desa/population/migration/index.asp).

[2] This article will not attempt to discuss the notion of Hybrid Threats as an emerging threat concept; for the most updated academic discussion on the topic (Bachmann, Dowse, and Gunneriusson, 2019).

[3] See the interesting discussion in (Kelo & Wächter, 2004, p. 7). The object of this study is international migration, i.e. migration across country borders. But it does not address migration on a global scale and does point out the positive benefits of migration.

identifies with. This diaspora group can also be manipulated through propaganda to feel under threat, so it becomes more willing to identify with the nation that is targeting it and responding against the interests of the host State where it is based.

The protection of national borders within the national and supranational jurisdiction (Schengen) (*Agreement signed at Schengen on 14 June 1985*, 1985) is a necessary condition of State sovereignty. Neglecting this international legal principle leads to an erosion of national sovereignty and identity, just as the terrorist attacks in Paris during November 2015 and other attacks elsewhere illustrate the dangers of deterioration of European border controls. Both EU and national border controls have absolute priority to restrict terrorists in their freedom of movement. Without adequate concerted action, the EU principle of free movement of persons is permanently eroded (Calha, 2015).

Kelly Greenhill (2010) refers to mass migration as an instrument of a state's foreign policy and power of an adversarial nature as 'Weapons of Mass Migration' through forced displacement, coercion, or foreign policy. She shows how such a weaponized use of mass migration can be achieved by

> "straightforward threats to overwhelm a target's capacity to accommodate a refugee or migrant influx, [or] on a kind of norms-enhanced political blackmail that exploits the existence of legal and normative commitments to those fleeing violence, persecution, or privation".
> In other words, by swamping a country with refugees, neighboring states can achieve the upper hand through State-to-State coercion, and is usually enacted by a generally already weakened nation against (usually) a liberal democracy. As we have witnessed in the last few months with Syria, Germany, and other EU states, the unlikely weapon may have been enacted again" (Greenhill, 2010, p. 26)[4].

In traditional military coercion, the aim is to achieve political goals "on the cheap". Weak actors could also use mass migration to achieve political goals that would be utterly unattainable through traditional military means or, in a more limited number of cases, for powerful actors to achieve aims wherein the use of military force would be too costly or potentially escalatory, and hence, dangerous Greenhill, 2010, p. 27).

Main Legal Provisions Applicable to Migration

There are many legal texts on the subject of migration. From an EU perspective – and the point of view of the hybrid threat, and despite EU Directives on the matter – the most important is the European Convention on Human Rights, through articles 2,3 and 8, as this is

[4] The use of the terminology of "swamped" has been widely condemned as fueling xenophobia and racism (Schariatmadari, 2015).

the mechanism by which legal challenge can be made to any decision concerning individual rights. These legal challenges focus on the *domestic level* impact of migration. International agreements focus on strategic relationships.

So, the domestic challenges are, first, to distinguish the genuine refugee from the economic migrant and the illegal migrant; second, to determine who is the threat and who is not. It is axiomatic that even an illegal migrant is not, *ipso facto*, a terrorist. But states need to be able to filter out and apprehend those who are.

How We Define the Lawful and Unlawful Migrant Refugees

The key document to defining refugee status is the 1951 Refugee Convention. It is the fundamental reference point and is grounded in article 14 of the Universal Declaration of Human Rights 1948, which provides that "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

The 1951 Refugee Convention, as amended by the 1967 Protocol, defines a refugee as

> A person who **owing to a well-founded fear of being persecuted** for reasons of race, religion, nationality, membership of a particular social group, or political opinion, **is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country**; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. [Emphasis added]

Migrants

A lawful migrant is someone who follows the relevant immigration procedures to gain entry to a country. An illegal migrant does not.

The Dublin Regulations are supposed to provide that *migrants* are to be deported back to the first EU country they entered (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN), often Italy or Greece, which are seriously under pressure to cope. It aims to prevent both 'asylum shopping', where an individual moves between States to seek the most attractive regime of protection, and the phenomenon of 'refugees in orbit' where no single State permits access to an asylum procedure ("Dublin III Regulation", 2017). However, Antonio Tajani, President of the European Parliament, points out, The Dublin Regulation "needs to be overhauled and replaced by a fair and effective alternative. Of the 650,000 asylum applications submitted in 2017, 416,000 were lodged in only three countries: Germany, Italy, and France" ("The migration crisis threatens to destroy the EU…", 2018).

More recently, nations have tried to promote a more understanding approach to migration. To this end, a draft document was produced called the "Global Compact for Safe, Orderly

and Regular Migration", which the United States, Austria, Hungary, the Czech Republic, and others have announced that they will not sign.

The main aims of the Global Compact for Migration[5] are to:

- address all aspects of international migration, including the humanitarian, developmental, human rights-related, and other aspects;
- make an important contribution to global governance and enhance coordination on international migration;
- present a framework for comprehensive international cooperation on migrants and human mobility;

Importantly, The Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law.

The gist of the objections of the withdrawing states is basically that the Compact would force states to admit migrants; would be a pull factor for migration; would contravene domestic migration policies, and violate the states' sovereignty. There is some substance to these objections, as Objective 17 encourages states to make laws to punish immigrants' criticism and treat this as a hate crime. The worry is how low the bar will be if such hate crime provisions become part of domestic law. The BBC reported that protests held in Brussels against the Global Compact turned violent and led to the Belgian Prime Minister, Charles Michel, offering his resignation. "Opposition to the pact underlines that migration is the number one political issue in Europe. It is the dividing issue for electorates" ("What's the UN global compact on migration?", 2018). However, it has to be emphasized that the Compact is not a binding treaty and does not have the force of law[6]. But it could be used in the future as a springboard to assist in the drafting of a binding document.

Mass Migration as a Hybrid Threat

If one examines the United Nations Charter, the purposes are spelled out in article 1, including maintaining international peace, developing friendly relations, and promoting human rights. The matter of sovereignty and peaceful coexistence is emphasized in article 2, which prohibits any *threat* or *use of force* against the territorial integrity or political independence of a member State, or is in any other manner inconsistent with the purposes of the United Nations. [Art 2§4]. Customary International Law recognizes that it is unlawful for one country to interfere in the internal affairs of another.

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[5] For more details see: https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

[6] "Paras 7 and 15 explicitly say that "[t]his Global Compact presents a non-legally binding, cooperative framework…". Para 15 "reaffirms the sovereign right of states to determine their national migration policy and their prerogative to govern migration within the jurisdiction" (Peters, 2018).

The use of population movement to promote one country's foreign policy to the detriment of another can challenge peace. It begs the question, what amounts to a use of force and an armed attack? And what response, if any, is permissible. Article 51 of the UN Charter provides that states are permitted to use force in self-defense where an armed attack occurs.

As 'Use of Force' and Armed Attack?

When we think of using force, we tend to think, conventionally, of using military hardware against another nation or its armed forces. Hybrid threats operate normally below the threshold of obvious use of force or an armed attack. That is the advantage of using them. They are a tool used principally for influencing behavior (Hagelstam & Narinen, 2018). Other such "influencing" tools include information operations. Does forced mass migration amount to the use of force? The leading case of *Nicaragua v. United States*, decided in 1986, held that customary international law prohibits one state from intervening in the affairs of another state. It is additional to the prohibition on states using force against each other, save for the specific circumstances defined by the UN Charter[7]. The court defined what was meant by the use of force in terms of coercive measures. It went on to decide that a use of force must attain a certain level of severity in order for it to be defined as an armed attack: "it will be necessary to distinguish the gravest forms of the use of force (those constituting an armed attack) from other less grave forms". [At §191]

It is only an "armed attack" that justifies invoking the self-defense provision of article 51 of the UN Charter.

These texts do not fully explain the situation *vis a vis* non-kinetic or hybrid use of force such as one sees, for example, in cyber operations or mass migration, within the context of the *jus ad bellum*[8]. However, we can find some helpful guidance in the Tallinn Manual.

Tallinn Manual

Bearing in mind there is no military manual or case law on acts of mass migration, one might look to Tallinn for help and transpose "mass migration" for "cyber" in the Tallinn definition so that one could understand that an attack in the *jus ad bellum* sense, qualified by the word 'armed', refers to a mass migration operation that justifies a response in self-defense.

As the Tallinn Manual (n.d., p. 4) points out, "the word 'attack' refers in common usage to a cyber operation against a particular object or entity, and in the military sense, it usually indicates a military operation targeting a particular person or object. However, attack in the *jus ad bellum* sense, qualified by the word 'armed', refers to a cyber operation that justifies

[7] See, in particular, the examples of a use of force in §§ 227-228 of the judgment.

[8] The lawful reasons that justify a state going to war.

a response in self-defense (Rule 71)…". as its effect would lead to damage comparable to a kinetic attack in terms of its impact on sovereignty and national security.

The sort of mass migration used to deliberately de-stabilize a country would certainly constitute an interference in the internal affairs of that state, and its impact on national security could qualify as the use of force. But it would have to reach a very high threshold, with a particularly grave impact, for it to amount to an armed attack. What that threshold is, is yet to be determined and may depend upon the perceived or stated intent of the country producing the outflow, the numbers of migrants involved, the clear adverse impact upon the economy and welfare systems, the rise in civic protest and demonstration, undermining stability and so on. Clearly, the perception of the targeted state will be important when it deliberates over any response. A mass population movement that was intended to deliberately overwhelm the ability of the target state to cope, engage its armed forces in support of the civilian police and border agencies, and undermine the economy of that state through the increased financial and social burden placed upon it might fit the bill. *A fortiori* where this was a softening up measure in preparation for a military attack, having first debilitated the target state in this way.

More likely, less egregious acts, which are, nonetheless, a violation of international law, may entitle the target State to resort to countermeasures (Tallinn Manual, n.d., pp. 20-25).

Consequently, as the threshold is likely to be quite high and very difficult to prove a necessary intent, it is difficult to see that, in isolation, mass migration targeted against another nation would amount to an armed attack, that is, a grave use of force. We have seen in Crimea how even significant military force could be used below the legal threshold of war. Crimea also highlights the difficulties which can be posed by state attribution for conduct which is classed as "wrongful acts" (*Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001).

Historical Examples of Mass Migration as a Method of Warfare or Hybrid Threat

Recent history has shown how mass migration can have a dramatic impact on our societies. It can be argued that it presents a significant concern for the future, as it has been seen to work. Turkey has been a very successful proponent of mass migration and has successfully employed the technique in various ways.

1. **TURKEY** – In 1974, Turkish Cypriots constituted about 18% of the population of Cyprus. In the wake of its two invasions in April and August of 1974, using 30,000 combat troops to attack Cyprus, which was defended by 2,000 lightly armed forces, Turkey changed the demography of the occupation area of Cyprus by importing mainland Turks in their thousands, thereby increasing the number of Turks on the island (30% after the August 1974 invasion) which, it could be said, was to provide

a bargaining chip in the event of any political settlement, as it would increase their hand in negotiating the composition of any future government by arguing parity in population numbers. It is an example of the stronger country attacking a much weaker power through a military use of migration to seize territory. It is illegal under ICL and prohibited under GC IV art 49 (Greenhill, 2010).

2. **TURKEY** – In 2016, Turkish President Erdogan threatened to open the floodgates of Middle East migrants into Europe, apparently in response to a move to suspend talks on Turkey's membership in the European Union unless the EU honored an agreement to pay Turkey €6.5 billion ("Erdogan Threatens to Let Migrant Flood into Europe…", 2016). It is an example of a successful application of migration to achieve economic benefits and political gain.
3. **TURKEY** – In March 2017, in the wake of a diplomatic row that had erupted between Holland and Turkey, Turkish President Erdogan professed he was enraged by the treatment of Holland and other European countries, which stopped Turkish ministers from holding "Yes vote" rallies in their territory. President Erdogan called on Turkish families in Europe to have five children to protect against 'injustices'. His Turkification call was premised upon a belief that a booming Turkish population would be the best answer to the EU's "vulgarism, antagonism, and injustice" ("Erdogan calls on Turkish families…", 2017). It is an example of exploiting a diaspora to aggressively expand to engender fear in the host nation of demographic change and as a retributive tool. It was also used for political gain in Turkish elections.
4. In October 2019, Turkish President Recep Erdogan threatened to flood Europe with 3.6 million migrants living in Turkey if European countries refer to the Turkish invasion of Syria as an "occupation" ("Erdogan threatens to flood Europe…", 2019)[9]. International criticism over the Turkish invasion was described as "deafeningly loud". It is an example of a threat to silence criticism of and gain acquiescence in a grave breach of international law. It also demonstrated the vulnerability of EU leaders whose commitment to human rights and international law required them to speak out.
5. **LIBYA** – Libyan leader Moammar Gaddafi threatened to flood Europe with migrants to lift European economic sanctions in 2004. He threatened that "Europe will 'turn black' unless the EU pays Libya £4bn a year to block the arrival of illegal immigrants from Africa" (Daily Telegraph, 2010, August 31). This threat was to extract financial advantage.
6. **UKRAINE/ DONBAS/CRIMEA** – Here was a case of Russian exploitation of the diaspora, which was made to feel under threat due to the de-Russification policies of Ukraine. Russia issued Russian passports (as they did in South Ossetia in

[9] "Any attempt at demographic change would be unacceptable. The EU will not provide stabilization or development assistance in areas where the rights of the local population are being ignored" (YouTube, 2019).

2008) ("Moscow to start distributing…", 2017)[10] and granted citizenship to residents within the region to feed division with the Ukraine government. Serhil Plokhy (2016) pointed out that the Russian annexation of the Crimea and the propaganda intended to justify Russian intervention in the Donbas have proceeded under the slogan of defending the rights of ethnic Russians and Russian speakers in general. The equation of the Russian language not only with Russian culture but also with Russian nationality has been described as an important aspect of the world view of many Russian volunteers who came to Donbas. Most of those in Crimea said their native language was Russian (BBC News, 2014, April 23).

The question posed by Stephen Blank, a senior fellow with the American Foreign Policy Council, is:

"What constitutes 'ethnic Russians' in Ukraine? The Russians have played fast and loose with this: Sometimes they mean Russian speakers. Or there is also the new Russian citizenship law that says if your grandparents lived in Russia and Russian is your native language, you can be a Russian citizen" ("Ethnic Russians…", 2014).

It is an example of exploiting a diaspora and military use (inserting "little green men", namely, unmarked combat troops to confuse attribution).

7. **GERMANY** – The decision by Germany's Chancellor Angela Merkel to disregard applicable European law (Schengen and Dublin), when she decided to grant Syrians general asylum status, has led to a split within the European Union and diplomatic upsets in the affected EU countries. However, it was unable to filter the genuine refugee from economic migrant, so conceivably admitted a number of undesirables and encouraged migrants to leave their home countries. Recognition rates in 2015 were 96 percent for Syrians and 88.6 percent for Iraqis. Germany's open-door policy induced more refugees to migrate—mostly on the Balkan route—which, in turn, put a strain on transit countries between the Middle East and Germany (such as Austria, Hungary, Slovenia, and Croatia). "The arrival of asylum seekers has tested member states' ability to respond to crises with a united front, a test that they have failed. As a result of the EU's inability to collectively address the new arrivals, states started unilaterally closing their borders" (Mayer, 2016).
8. **CHINA** – In 1979, China's Vice-Premier Deng Xiaoping visited Washington. At one of the meetings with President Jimmy Carter, President Carter began his standard lecture, stressing that China had to respect human rights. Among the specific human rights that concerned the President was the right of Chinese nationals to emigrate. Deng Xiaoping leaned back in his chair, smiled, and asked, "Well, Mr. President, how many Chinese nationals do you want? Ten million? Twenty million? Thirty million?"

[10] "Ukraine's President-elect Volodymyr Zelenskiy has told Moscow "not to waste time trying to lure Ukrainian citizens with Russian passports", after Russian President Vladimir Putin said Moscow could ease the process of granting Russian citizenship to Ukrainians" (Radio Free Europe, 2019).

Not surprisingly, that exchange marked the end of Jimmy Carter's brief campaign to grant Chinese citizens the right to leave their country (Borjas, 2001, p. 15). An example of political use to suppress criticism.

9. **UGANDA** – Idi Amin used the technique in 1972 with his threat to the UK government to expel 50,000 Kenyan Asians, who were British passport holders residing in Uganda, unless the British stopped their drawdown of military assistance to his country. When the UK failed to comply, he gave them 90 days to leave. The Right-wing MPs warned the government that letting more Ugandan Asians into the UK "could raise racial tensions", arguing that they "had no real links to Britain" ("1972: Asians given 90 days to leave…", n.d.)[11]. Interestingly, when the ploy failed, Amin delivered on the threat. The Kenyan Asians were assimilated not without difficulty.

> "The Home Secretary, James Callaghan, rushed through new legislation aimed specifically at curbing the flow of immigrants from East Africa. The 1968 Commonwealth Immigration Act introduced a requirement to demonstrate a "close connection" with the UK. There were deep cabinet splits over the legislation: cabinet papers have since quoted the then Commonwealth Secretary, George Thomson, saying that "to pass such legislation would be wrong in principle, clearly discrimination on the grounds of color, and contrary to everything we stand for". The criticisms, as well as growing tension on the issue provoked by Conservative MP Enoch Powell's infamous "Rivers of Blood" speech in April 1968, brought the issue of immigration to the fore, and ultimately led to the Race Relations Act of 1976" ("1968: More Kenyan Asians…", n.d.).

10. **UNITED KINGDOM –** Diasporas or large ethnic or religious groups are also susceptible to exploitation by their own leaders or by others for political purposes. For example, in the United Kingdom, about three-quarters of non-white voters vote for the Labor Party, while fewer than one in five votes Conservative, according to the 2017 British Election Study (BES). Census projections suggest that until 2051 between 20% and 30% of the UK population will be non-white. It was recognized that "Once the ethnic minority population of a constituency reaches 30%... it becomes almost impossible for [the Conservatives] to win it". Under the government of Tony Blair, Labor had a deliberate policy of relaxing migration ("The puzzle of the people…", 2018; "Labour wanted mass immigration…", 2009) as it realized it was a beneficiary of migrant votes. Migration Watch reported that [after 1998] "there

[11] The *Daily Telegraph* later reported: "Ministers were prepared to offer Asian families expelled from Uganda by Idi Amin £2,000 each to give up their right to live in Britain. They dropped the idea because they feared Enoch Powell would demand the same offer to immigrants already living here" (https://www.telegraph.co.uk/news/uknews/1417591/Britains-2000-carrot-to-deter-Ugandan-Asians.html).

> was a deliberate policy of loosening immigration controls in almost every sector – a policy that was not declared in any of the three election manifestos. These policies accounted for two-thirds of the 3.6 million net foreign migration under Labor" ("Immigration Under Labour", n.d.).

What is interesting is that, in the 2019 general election in the UK, although there was up to an 11% swing away from Labor to the Conservatives, areas with high migrant populations, such as Brent North, Hackney North & Stoke Newington, Hackney South & Shoreditch, and Birmingham Hall Green, were retained by Labor[12].

These examples show that mass migration can be employed domestically (even for domestic political advantage) and internationally and has the potential to be used as a geo-strategic weapon: state and non-state actors can derive direct financial and/or political capital out of this situation (Bachmann, 2016). Additionally, Non-State Actors and enterprising criminals can earn significant money as "people smugglers", charging several thousand Euros to smuggle individuals into EU countries.

Domestic Level Threats

At the domestic level, the effect of mass migration is often regarded as an emotive topic to discuss, as anyone wanting to debate the matter is usually met with a rapid attempt to close them down, calling them a xenophobe or, worse still, a racist. The wide-ranging ambit of "hate crime"[13] can potentially bring robust comment into the realm of hate speech and potential prosecution[14], while some may consider this may impinge upon the exercise of free speech (Tatchell, 2007).

Many reports have been undertaken to examine the impact of migration on crime statistics. David Goodhart, the chair of the think tank Demos (advisory group), has said, "Mass immigration is damaging to social democracy – it erodes our national solidarity"

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[12] However, it should be said that this election was an extraordinary event, as it was principally seen as an opportunity to confirm the wishes of those who had voted for "Brexit" (the UK leaving the EU) in the 2016 referendum, yet who had witnessed three and a half years of procrastination, and a perceived disdain, by politicians, who had promised to honor that vote, but had since had a change of heart. The general election was a way of punishing those political representatives who "betrayed" their constituents. Many were voted out.

[13] Racially or religiously aggravated offences – Crime and Disorder Act 1998 (amended by Anti--terrorism, Crime and Security Act 2001 and Part 11 of Schedule 9 Protection of Freedoms Act 2012). Racially and religiously aggravated crime is defined by the Crown Prosecution Service as, "Any incident/crime which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's race or religion or perceived race or religion" ("Public statement on prosecuting…", 2017).

[14] The Metropolitan Police use the definition of Islamophobia set out in the Runnymede Trust's 1997 report 'Islamophobia: A Challenge for Us All' in their report ("Hate Crimes against London's Muslim Communities…", n.d., p. 6).

("Why the left is wrong about immigration", 2013). Some reports show a direct correlation between increased migrant populations and crime. Others are more hesitant (Light & Miller, 2018)[15]. Increased sexual and violent crimes have been reported against nationals of the host State. The Gatestone Institute reported (Kern, 2016a):

> Sexual violence in Germany has skyrocketed since Angela Merkel allowed more than one million mostly male migrants from Africa, Asia, and the Middle East into the country. The crimes are being downplayed by the authorities, apparently to avoid fueling anti-immigration sentiments.

In its follow-up report, published in August 2016, the Gatestone Institute reported that "Germany's Migrant Rape Crisis Spirals out of Control". They alleged that suppression of data about migrant rapes was a "Germany-wide phenomenon" (Kern, 2016b).

Sweden has had its share of critical press coverage of immigrant sex crime. It has the second-highest rate of rape in Europe[16], a statistic that has been partially attributed to both Swedish law, wherein rape is given a wider definition than in other countries, as well as a higher tendency among women to report the crimes to the police ("Are Migrants Really Raping Swedish Women?", 2016). According to the BBC, in 2018, Swedish national TV reported that about 58% of men convicted in Sweden of rape and attempted rape over the past five years were born abroad (BBC News, 2018, August 22). According to official statistics on file with The Swedish Crime Survey (https://www.bra.se/bra-in-english/home/crime-and-statistics/rape-and-sex-offences.html), the sexual violence rate in Sweden against women since 2014 has increased from 1.8% to 5.7 percent who state they were a victim of a sexual offense involving the use of force. The official statistics do not refer to ethnicity, but the increase coincides with the influx of 103,059 immigrants entering the country in 2012 and rising steadily to 163,005 in 2016, before dropping back to 132,602 by 2018 and 82 518 by 2020 ("Preliminary population statistics, by month, 2021", 2021).

Regarding terrorist violence, a counter-terrorism expert Magnus Ranstorp (2011) pointed out that terrorist mobility within the European Union is cause for concern. The worrying element, he believes, is not what intelligence services see but rather what they

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[15] See also "Has immigration really led to an increase in crime in Italy?", which examined data from the Italian National Institute of Statistics and discussed the findings of Donato Di Carlo, Julia Schulte-Cloos, and Giulia Saudelli, who concluded that that crime rates across Italian regions and the share of crimes committed by foreigners have both fallen significantly over the last decade (https://blogs.lse.ac.uk/europpblog/2018/03/03/has-immigration-really-led-to-an-increase-in-crime-in-italy/).

[16] Relative to the population of each Member State, Sweden recorded the highest number of sexual violence offenses, with 178 violent sexual crimes per 100 000 inhabitants, ahead of Scotland (163), Northern Ireland (156), England & Wales (113) and Belgium (91). For rapes, the highest rates were recorded in England & Wales (62 rapes per 100 000 inhabitants) and in Sweden (57) (https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171123-1?inheritRedirect=true; "Recorded offences…", n.d.).

do not know or miss. He also chillingly pointed out that an equally important, "but often unexplored issue is the role of women, wives, and widows in these networks. These women play supporting roles and provide excellent cover for logistical transactions and become pivotal in cementing social network ties. The role of widows of prominent terrorist leaders is interesting in this respect as they can become recruitment sergeants".

This concern was recently highlighted in the UK on January 25, 2019, with the conviction of Asma Aweys for the collection of information useful to a terrorist ("Three people have been jailed…", 2019; "London teen guilty…", 2018; "How London teenager plotted…", 2018)[17]. She was imprisoned for 15 months. As indicated by a House of Commons Briefing Paper, in the year ending December 31, 2017, "85% of those arrested were male (351) and 15% (61) female. These broad proportions were maintained for the numbers of people charged, and again among those subsequently convicted of terrorism offences" (Allen & Dempsey, 2018).

The Global Terrorism Database posits (https://www.start.umd.edu/gtd/) that there is a perception that crime in Europe has increased due to mass migration. However, correlating statistics to assess accurately what proportion of crime is attributable to migrants is difficult, as many countries do not break down the information into that level of detail. As noted, Sweden, for example, does not collect statistical data on the ethnic background of criminals. Moreover, foreign-born naturalized terrorists are often described as being from the country of their naturalization, that is, "homegrown". It may directly impact the reports discussed below. As migration increases, diaspora populations increase, and there is a tendency to ghettoization, which does not help integration and assimilation, whereby migrants can understand host culture and values ("Research from the demographer…", 2013; Kaufmann & Cantle, 2016; "Luton, Slough, Birmingham…", 2007)[18].

Mass Migration and "Homegrown" Terrorism

According to a British Intelligence report from 2008 ("Behavioural Sciences Unit…", 2008; Travis, 2008), in the UK, the majority of terrorists are British nationals, and the remainder, with a few exceptions, are legally in the UK (Travis, 2008). The British Intelligence agency, MI5, says assumptions cannot be made about suspects based on skin color, ethnic heritage,

[17] There have been other instances of females travelling to Syria to become ISIS brides ("Shamima Begum…", 2019). Begum recently lost her attempt to return to the United Kingdom to challenge deprivation of her British citizenship (*Begum v. Secretary of State for the Home Department*, 2021).

[18] "Out of all regions, London had the smallest percentage of White British people, at 44.9%, and the North East had the highest percentage, at 93.6%... Newham in London was the local authority where people from the White ethnic group made up the lowest percentage of the population (at 29.0%); 8 out of the 10 most ethnically diverse local authorities were in London" (https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/regional-ethnic-diversity/latest).

or nationality[19]. Those involved in British terrorism are not unintelligent or gullible, and nor are they more likely to be well-educated; their educational achievement ranges from total lack of qualifications to degree-level education. However, they are almost all employed in low-grade jobs. However, it is self-evident that once released from prison, convicted terrorists – especially "homegrown" terrorists – are returned to society[20]. What is not apparent is whether and to what extent they have rejected their former ideology or confirmed it, or even been indoctrinated (further) into it while in prison[21].

In the wake of the 9/11 atrocities, the UK government developed a strategy called "Preventing Violent Extremism" ("Prevent") ("Eroding Trust…", 2016). While prompted by the best of motives, "Prevent" has been a very expensive project, costing more than £80 million, and its success is questionable. As long ago as 2010, it was realized that Prevent had "unintended consequences", in that many in Muslim communities felt that it thrust them into uncomfortable limelight. Sikhs were particularly conscious of the negative rebound of Islamic extremism on many turban-wearing Sikhs and their places of worship ("Preventing Violent Extremism", 2009-2010). Furthermore, after the Usman Khan's attack of November 30, 2019, information came to light at how rehabilitators had been hoodwinked by Khan, a man who still had links to hate preacher Anjem Choudary. Khan was of Pakistani heritage, born in England in 1990. He came to public attention when he was originally part of a gang of nine extremists from Stoke-on-Trent, Cardiff, and London who were sentenced in February 2012 at Woolwich crown court to plot terrorist acts. He had planned to establish a "terrorist military training facility" on land owned by his family in Kashmir. Khan was originally classed as never to be released unless deemed no longer a threat[22], but the Court of Appeal later lifted this condition. He was freed on license in December 2018 ("Usman Khan profile…", 2019). He had persuaded the monitoring authorities that he should be allowed to participate in a justice conference on prison rehabilitation in London. The conference was sponsored by Learn-

[19] But it was also noted that, from statistics for terrorist and extremist prisoners as at March 31, 2017, 88% were Muslim ("Terrorism in Great Britain: the statistics", 2003).

[20] "There is a very simple and immutable 'iron law of imprisonment': except for those who die in prison, everyone who goes to prison ultimately returns home" (quoting Joan Petersilia, "Beyond the Prison Bubble") (Morton & Silber, 2020).

[21] "The number of Muslim prisoners has more than doubled over the past 16 years. In 2002 there were 5,502 Muslims in prison, by 2018 this had risen to 12,894. They now account for 16% of the prison population but just 5% of the general population… Only one per cent of Muslims in prison are currently there for terrorism-related offences" ("Prison: the facts, 2019, p. 7). This means that there are about 129 Muslim prisoners convicted of terrorism-related offences (http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Prison%20the%20facts%20Summer%202019.pdf).

[22] Khan was sentenced prior to abolition of the Imprisonment for Public Protection scheme, a penalty introduced by sentence 225 of the Criminal Justice Act 2003 by the Home Secretary, David Blunkett, and abolished in 2012. They were designed to protect the public from serious offenders whose crimes did not merit a life sentence. Khan received an indeterminate sentence, with a minimum term of eight years.

ing Together, a programme run by the University of Cambridge's Institute of Criminology. Learning Together had helped Khan when he was released from prison in December 2018. He even appeared as a "case study" in a report by them, which focused on its work at HMP Whitemoor in Cambridgeshire ("London Bridge…", 2019). On November 30, while attending the conference, Khan stabbed to death two young organizers of the conference before being tackled by a group of brave civilians who tried to disarm him. He was shot dead by police. He was formally under investigation by MI5 at the time of the attack, classed as one of its 3,000 subjects of interest. He had not been placed in the top tiers of those under scrutiny.

Khan's case was a tragic example of the failure of rehabilitation and flaws in the criminal justice system that enabled a dangerous man to be automatically released after serving only half his sentence. Another example of a failure of the de-radicalization programme is the case of Lewis Ludlow, a 27-year-old British convert to Islam. Ludlow swore allegiance to the Islamic State and planned to kill 100 people in a vehicle-ramming attack in London, all while he was taking part in a government-sponsored de-radicalization program. In January 2019, the UK courts convicted him. He was subsequently sentenced to life imprisonment and will serve a minimum of 13 years ("Oxford Street terror plotter…", 2019).

The problem is exacerbated by the sheer number of prisoners convicted of their terrorist crimes who are then released back into the community, placing a huge burden on the resources and finances of the police and intelligence services to monitor them as best they can ("London Attack Reflects…", 2019). Khan's case also illustrates that the release back into the community of just one convicted terrorist, who has retained his extremist ideology, can have terrible consequences.

The authors of the MI5 report ("Oxford Street terror plotter…", 2019) stressed that the most pressing current threat is from Islamist extremist groups who justify the use of violence "in defense of Islam", but that there are also violent extremists involved in non-Islamist movements: Anders Breivik, who carried out the massacre in Utoya, Norway in July 2011; the murder of 49 worshippers at the mosque in Christchurch, New Zealand, in March 2019 by right-wing extremist Brenton Tarrant, and the San Diego synagogue shooting on April 27, 2019, by 19-year-old John Earnest ("London Attack Reflects…", 2019), to name a few.

Putting aside non-migration related terrorism, such as that in Northern Ireland, what is apparent, for this discussion on migration, is that the scale of homegrown terrorism in the UK is a problem in two major respects: arguably, some members of some diaspora communities have failed to fully integrate into western society and adopt western values and, secondly, that diaspora populations are susceptible to exploitation by outside, hostile, forces. Additionally, the impact on the diaspora of homegrown terrorism impinges adversely on the majority of law-abiding members of that community, who share revulsion of this extreme violence.

Online radicalization is still an attraction, despite promoting values diametrically opposed to those of the society inhabited. According to a report by the Henry Jackson Society,

half of Britain's jihadists are now radicalized online: "The rate of offending in the last five years has increased from the average rate for the previous 13 years: [Islamism-related offenses] have almost doubled, increasing by 92% from 12 to 23 per year, while distinct terrorism cases have almost tripled, increasing by 180% from an average of five per year last decade to 14 per year between 2011 and 2015" (Daily Mail, 2017)[23].

It is a significant number, as many extremist websites are removed by the Counter-Terrorism Internet Referral Unit (CTIRU)[24]. The internet provides a discreet opportunity for extremists to target young, vulnerable individuals within their own homes. Thus, the work of the CTIRU is crucially important in the fight against terrorism.

The Gatestone Institute identified homegrown terrorism as the top threat to the United Kingdom (Kern, 2017). Citing the comprehensive report by the right-wing think tank, The Henry Jackson Society (Stuart, 2017), homegrown terrorism inspired by the Islamic State posed the dominant threat to the national security of the United Kingdom. The report found little to no correlation between involvement in Islamic terrorism and educational achievement and employment status, confirming the MI5 findings.

Most of the offenders covered in the report were based in two cities, London and Birmingham, and a majority were living at their family homes with parents, siblings, spouses, and/or children. "These findings challenge common stereotypes of terrorists as well-educated and middle-class or as isolated loners". It was also reported that the UK intelligence service, MI5, noted:

> there is no easy way to identify those who become involved in terrorism in Britain, according to a classified internal research document on radicalization...[and]... it is not possible to draw up a typical profile of the "British terrorist" as most are "demographically unremarkable" and simply reflect the communities in which they live... The sophisticated analysis, based on hundreds of case studies by the security service, says there is no single pathway to violent extremism (Travis, 2008).
>
> The "restricted" MI5 report takes apart many of the common stereotypes about those involved in British terrorism. They are mostly British nationals, not illegal immigrants, and, far from being Islamist fundamentalists, most are religious novices. Nor, the analysis says, are they "mad and bad". Those over 30 are just as likely to have a wife and children as to be loners with no ties, the research shows.
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> The security service also plays down the importance of radical extremist clerics, saying their influence in radicalizing British terrorists has moved into the background in recent years.

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[23] Stuart (2017) reported that 264 convictions were a "result of arrests between 1998 and 2015 and five suicides as a result of two attacks on British soil. So, the data relates to a total of 269 individual offences".

[24] Set up in 2010 by the Association of Chief Police Officers (Baroness Williams of Trafford, 2017).

In the Foreword to the Henry Jackson Society report (Stuart, 2017), a former Independent Reviewer of Terrorism Legislation David Anderson points out:

> [M]ost Islamist terrorists in the UK are British men aged 18-34. But the reader also learns that 16% of offenders were converts, 76% were known to the authorities prior to their terrorist offenses, and 26% had prior criminal convictions. Trends noted include rises in travel-related offending and in intended beheadings and stabbings. And while individual offending and online radicalization have both increased, this work reveals the extent to which offenders – even if convicted alone – tend still to be in real-world networks with partners, siblings, or long-standing friends.

The report states, in Statistical analysis,

> There have been 264 convictions for Islamism-inspired terrorism offenses as a result of arrests from 1998 onwards involving 253 British or foreign nationals. Nine of these individuals have been convicted of offenses on two separate occasions, and one has been convicted on three separate occasions. There have been two suicide attacks on British soil – the 7/7 attacks in London and the 2007 Glasgow airport car bombing – in which five offenders were killed.

The report concludes:

> "The threat to the UK remains from homegrown terrorism and is heavily youth- and male-oriented with British nationals prevalent among offenders...
> While analysis of pre-offense behaviors shows that there is no one profile for engagement with Islamism-inspired terrorism (*this confirmed the MI5 report findings from 2008*) some trends can be identified. Offenders commonly consumed extremist and/or instructional material prior to, or as part of, their offending. Much of the pro-jihadist material accessed promotes 'them and us' thinking, dehumanization of the enemy, and attitudes that justify offending...".

It does not, of course, inexorably follow that every person radicalized goes on to commit an offense. "They may ultimately hold political, ideological, or religious views with which many others may disagree, perhaps to the point of finding them distasteful or even unacceptable. However, they are entitled to hold these views, and indeed—as long as they act lawfully—to express them as well" (Stuart, 2017).

The challenge is understanding the radicalization process which gives rise to changing a person from a law-abiding citizen to a terrorist. There appear to be three main areas where radicalization happens: online, in Mosques, with radical preachers like Abu Hamza and Abu Qatada preaching their extreme version of Islam to impressionable youths – although the

MI5 report indicates this has declined in recent years – and in prisons. Within the UK, the journalist Jawad Iqbal (Stuart, 2017) rightly points out that time is running out and that radicalization in jails is on the rise, and a growing number of extremist attacks are being linked back to prisons.

The Courts and Human Rights as a Tool of Lawfare

Despite some significant failures in the criminal justice system, as demonstrated by the Usman Khan case, the courts play an important role in the fight against extremism. The UK conviction rates for those prosecuted have been generally good[25]. From statistics seen, of the 1,043 individuals charged with a terrorism-related offense since September 11, 2001, 81% (845) were proceeded against, and of those 85% (716) have been convicted (Allen & Dempsey, 2018, p. 21). It is relevant to the discussion on migration regarding foreign-born terrorists who are convicted and imprisoned in an EU state who, on completion of a sentence, may be subject to deportation.

However, attempts to remove foreign terrorists from the jurisdiction have met with mixed results. An unpublished Home Office report, referred to by the *Telegraph* newspaper in 2017, reported that "[m]ore than 40 convicted terrorists have used human rights laws to remain in UK", thereby highlighting the "near-insurmountable problem for the Government in deporting dangerous jihadists and follows a series of Islamic State-inspired attacks in the UK" (https://www.telegraph.co.uk/news/2017/06/24/exclusive-40-convicted-terrorists-have-used-human-rights-laws/). The role of the European Convention on Human Rights (ECHR) is a significant one. In the UK, this is brought into domestic law through the Human Rights Act 1998, which permits British Courts to apply the ECHR provisions directly. From as long ago as 2010, there were cries to review the Human Rights Act (2006)[26]. Some proposed its abolition ("Theresa May speech…", 2016). Some even went so far as to propose withdrawing

[25] In 2017, Home Office statistics show that 412 people were arrested for terrorist-related offices, of which 110 were actually charged with terrorism (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686059/annex-a-flowchart-dec2017.pdf). The figures reflect the growing threat from jihadists in Britain. The director general of MI5, Andrew Parker, spoke in October of a "dramatic upshift in the threat this year" to the "highest tempo I've seen in my 34-year career" (The Guardian, 2018, March 8). In 2018, statistics reveal there were 273 similar arrests, out of which 81 were Terrorism-related charges and convictions (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783636/annex-a-flow-chart-dec2018.pdf). The number of offences dropped to 185 in 2020) (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965890/annex-a-flow-chart-dec2020.pdf).

[26] It identified decisions of the European Court of Human Rights as giving rise to the main difficulties and having an impact upon the Government's counter-terrorism legislation.

from the European Convention on Human Rights ("Home secretary calls…", 2016; "Theresa May faces huge backlash …", 2016)[27].

Unfortunately, the general perception which has emerged at the domestic level in the UK is that the human rights of terrorists (Naseer & Khan, 2010; Farooq & Sharif, 2015, November 26; *Appeal no: SC/138/2017*, 2017; Othman, 2012) involved have taken precedence over the human rights of the rest of society. This perception is exacerbated when decisions are given to provide legal aid funding to terrorist suspects whose rationale is to destroy our way of life while denying other non-terrorist applicants. The number of people who do not qualify for legal aid raises a real issue about the right to a fair trial ("Legal aid and human rights…", n.d.; "Cuts to legal aid and courts…", 2018). The debate within the UK about the jihadi bride, Shamina Begum, who wishes to return to the UK from Syria[28], has once more spotlighted the potential to exploit the UK liberal human-rights-based democracy[29].

Antipathy to the European Court of Human Rights was increased in the wake of decisions such as that in the *Abu Qatada* case ("The legal aid bill for radical cleric…", 2012), a Jordanian national "regarded by many terrorists as a spiritual adviser whose views legitimized acts of violence" (*Othman v. The United Kingdom*, n.d.). His appeals through the UK courts failed. He then successfully appealed to the European Court of Human Rights (ECtHR), relying on Articles 3, 5, 6, and 13. The court unanimously determined that deportation to Jordan would violate Article 6 of the Convention on account of the real risk of the admission of evidence obtained by the torture of third persons[30].

In an earlier case of *Chahal –v-United Kingdom* (Grand Chamber, 1996), the ECtHR decided, by twelve votes to seven, that, Article 3 of the ECHR would be violated by deporting Chahal to India. What may be thought worrying about this decision was the ruling that "[t]he national interests of the State could not be invoked to override the interests of the individual where substantial grounds had been shown for believing that he would be subjected to ill-treatment if expelled" (Grand Chamber, 1996). The protection afforded by Article 3 is thus

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[27] However, she subsequently backtracked on this, once she became Prime Minister (https://www.independent.co.uk/news/uk/politics/theresa-may-brexit-white-paper-eu-european-convention-human-rights-tory-mps-a8444386.html). Moreover, it is asserted that "Brexit deal locks the UK into continued Strasbourg Human Rights court membership" (Cowell, 2021).

[28] The family of 14-year-old Molly Russell, who took her own life after viewing self-harm and suicide content online were initially refused legal aid for her inquest. However, in the furor over the Shamina Begum case, they were granted legal aid on appeal ("Shamima Begum chose to leave…", 2019).

[29] In 2017-18, total legal aid expenditure was £1.62 billion. This was 2% higher than in the previous year but 37% lower than in 2010-11, prior to the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), when it was £2.55 billion ("The future of legal aid", 2018, p. 3; "User Guide to Legal Aid Statistics…, 2019). By the end of 2020, legal aid spending in England and Wales was £1.738 billion (https://www.statista.com/statistics/1098628/legal-aid-spending-in-england-and-wales/).

[30] See the summary (http://www.asylumlawdatabase.eu/en/content/ecthr-othman-abu-qatada-v-united-kingdom-application-no-813909).

wider than that provided by Articles 32 and 33 of the United Nations Refugee Convention (Grand Chamber, 1996, §80).

Relying on the ECHR, even UK domestic courts have been reluctant to deport dangerous terrorists. The following cases are illustrative.

> **Abid Naseer and Ahmad Faraz Khan** were among 10 Pakistanis arrested as part of a massive counter-terrorism operation in Liverpool and Manchester. The security services believed the men were planning to attack within days of their arrest, but neither was charged. They successfully appealed against deportation to Pakistan even though the Special Immigration Appeals Commission (SIAC) was satisfied that MI5's assessment was right. The SIAC said it believed Naseer, 23, posed a serious threat to national security, and Khan, 23, had been a "knowing party" to the attack plan. But in both cases, Mr. Justice Mitting said it would be wrong to return the men to Pakistan. The reasons were articulated under article 3 of the ECHR that the individuals would be subjected to ill-treatment by the Pakistan Security Services ("Commission to review Human Rights Act…", 2010) (*The open SIAC judgment in Appeal no: SC/77/80/81/82/83/09*, n.d.).
>
> **Umar Farooq** & **Rizwan Sharif** were two Pakistani men who were associates of Ahmad Faraz Khan and Abid Naseer. On April 8, 2009, Farooq and Sharif and nine others were arrested by police in Manchester and Liverpool under Terrorism Act 2006 powers. Police interviewed them but, on the advice of their solicitor, did not comment on questions. While they were released without charge, they were immediately arrested under immigration powers and deported to Pakistan because their presence would not be conducive to the public good. The SIAC quashed the Secretary of State's direction in both cases as the Secretary of State did not have all of the relevant information to enable her to make a decision (*Appeal no: SN/7/2014*, 2015).
>
> **E3 and N3** In 2017, the Home Secretary made an order depriving E3 and N3 of their British citizenship (*Appeal no: SC/138/2017*, 2017), (British by birth) on terrorist-related and national security grounds. They were, respectively, British/Bangladeshi dual nationals, in which circumstances deprivation of British citizenship did not render them stateless. The SIAC disagreed and overturned the decisions to deprive them of their British citizenship on national security grounds. Under Bangladeshi law, the men lost their Bangladeshi nationality at the age of 21. Consequently, they were successful in their claim as deprivation of British citizenship would render them stateless.

The Begum case involves similar issues of deprivation of citizenship.

These decisions lead to the anomaly that exceptionally dangerous individuals, who are a serious threat to the well-being of the UK citizens, whose primary duty it is for the government to protect, cannot be ejected as it would be a violation of *their* rights. It has the effect of turning the country into a repository for dangerous, violent, and undesirable terrorists, posing a danger to society on the basis that individual rights are paramount. On

their release from prison, where they may have been further radicalized – or have radicalized others – they will require expensive and labor-intensive surveillance, as they may still pose a significant security threat.

In some areas, the mood may be changing. Decisions of the ECtHR acknowledge the margin of appreciation each member State has when it legislates within its society. The "burqa" cases demonstrate this. Several unsuccessful challenges were made that a ban on allowing males and females to wear clothing that reflected their faith was a breach of the freedom of everyone to manifest his religion or his convictions (Article 9). The court has held that,

> "The national authorities have direct democratic legitimation and are, as the court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (Grand Chamber, 2011; *Aktas v. France – 43563/08 decided 30 June 2009 Information Note*, 2009).
> In other words, [the member State] had a wide margin of appreciation…" [§154].

All the same, in those cases where challenges are made, especially under articles 2 and 3 of the ECHR, the court will be more likely to support the individual and place his or her rights above those of wider society.

The challenges, therefore, appear to be multi-faceted. There needs to be more resilience to the hybrid threat of population flow manipulation at the international level. It is not made any easier by international treaties, which cater for a more sympathetic approach while lacking complementing provisions to deal with problems caused by a seemingly open door. There is a palpable incompatibility inherent in this approach. Understandably, most of us have some sympathy for the plight of desperate people fleeing tyranny and war. The real challenge is sifting the needy from the economic migrant circumventing the lawful requirements for entry to a country, and protecting borders by rigorously implementing the existing legal regimes. While the war in the Middle East has provoked recent refugee outflows, encouragement to those refugees to return home might be assisted by helping to end strife more quickly, avoiding economic sanctions, and providing financial support for re-building projects to repair and replace essential infrastructure and housing and to contribute towards stabilization. No one will be incentivized to return to their homeland if war continues or, once ended, they have no place to live.

Where migrants are admitted to a country to work and live, assimilation and integration are paramount so that they embrace the national identity, values, and cultural awareness of the host State, focusing on what unites our respective societies rather than what divides them. Also important is to sift out those who are economic migrants attempting to evade the regular, lawful migration channels to gain admission, with a fair and swift process for

their removal. Some levels of dishonesty are egregious and pretty obvious, such as male illegal migrants passing themselves off as minors ("Not refugees, not children", 2017).

Thus, it can be seen that the hybrid threat from mass migration operates at both strategic and domestic levels and poses legal and political challenges for our alliances and security services. In combating terrorism in all its forms, there is a continued need for cooperation between our military, security, investigative and prosecutorial agencies to ensure intelligence is shared and, where appropriate, coordinated responses delivered at both the strategic and local domestic level while addressing root causes of migration overseas. Threats to continuing this cooperation on the United Kingdom exiting the European Union are both unwise and dangerous. It should be axiomatic that security and safety are concerns for all states whose primary objective should be to cooperate in these areas for our mutual protection.

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