BLOWBACK –FOREIGN FIGHTERS AND THE THREAT THEY POSE

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"A man leaves his home to fight for the oppressed people sounds heroic until you add in 'Muslim Man' then he's a terrorist."

[Iftekhar Jaman, a British national killed fighting in Syria]

Introduction

"In every discussion that we have had about Syria, we have also discussed the dangers of British people travelling to Syria, the dangers of extremism and the dangers of terrorists returning home. I think that the signs in Syria are extremely worrying on that front. Not unrelated to that is why, downstairs in the House of Commons, we are debating how we should be able to take away people's citizenship. So we have a cross-government response, which has got to be about securing our own borders, discouraging people from travelling to Syria, working with allies to deal with the terrorist threat and stopping people coming back et cetera. It is a very big focus for us right now."[1]

N his National Security Strategy, the UK Prime Minister David Cameron quoted a number of keywords synonymous with the climate of fear that exists around terrorism. Within a few lines, he managed to conflate 'Syria', 'extremism', danger' and 'terrorists', making an unsubstantiated assertion that the UK is currently facing a proven security threat.

Since the start of the conflict, there have been a number of claims made about those who have joined the rebel groups in Syria and the impact that their involvement might have on international peace and security. In particular, the UK government and security agencies have focused on a phenomenon they refer to as 'blowback' – basically a concern that those British citizens who fight in Syria will return to the UK and actively take part in hostilities against the UK government.

This report seeks to highlight the issues that surround the fear of blowback. The historical context within which the fear exists is analysed by studying previous incidents of foreign fighters going abroad, and the concept of 'blowback' is placed within a contemporary context by looking at the way those fears are currently being assessed and dealt with.

What will be seen is that the UK government continues to look at a substantial part of its Muslim population through the prism of security, but also presents itself as inconsistent in its application of both policy and law. The treatment of those who have fought in Syria and Libya are in stark contrast to one another, that careful consideration is required in order to be able to situate the narrative within which current polemic exists.

Syria and foreign fighters

ONE of the salient features of the conflict in Syria since the beginning of 2011 has been the lack of response by the international community, particularly compared with the response to the uprising against Colonel Muammar Qaddafi. From the middle of 2013, international policymakers and the media have turned their attention to Syria, particularly since concerns began to emerge as to the identity of those who were travelling to the region in order to join the rebel groups.

At the same time, it must also be noted that during the same period these claims of an increased threat were being made, the British and American governments were both seriously considering the possibility of targeted airstrikes against the Syrian regime in the wake of a suspected chemical weapons in the outskirts of Syria on 21 August 2013. If it wasn't for the narrow defeat of a government motion in the House of Commons on 30 August 2013, Britain could feasibly have been currently militarily engaged in Syria on the same side as those it now seeks to criminalise upon their return to the UK.

At the end of 2013, a memo was circulated within the Council of Europe expressing concern over the way in which European countries were responding to European nationals travelling to Syria. The memo claimed:

"Foreign fighters traveling to Syria are a major security threat to the EU and its Member States. While the primary responsibility of dealing with this threat lies with the Member States, the EU can and should play a supportive role."[2]

The information relied on by the Counter-Terrorism Coordinator for the Council of Europe very much relied on the numbers provided to them by right-inclined think tank, The International Centre for the Study of Radicalisation (ICSR), claiming that 2,000 – 5,000 foreign fighters had entered the region.[3] Of these figures, the ICSR clarifies:

"Many news outlets and analysts frame all foreign fighters as terrorists or al Qaeda-aligned. The reality is more complex. As mentioned above, not all rebel forces in Syria are jihadist in orientation, nor are all the jihadist groups linked to al Qaeda. Furthermore, not everyone who has joined a jihadist group has been motivated by a fully formed jihadist worldview."[4]

This view is echoed by Dr Thomas Hegghammer from the Norwegian Defence Research Establishment, who gave evidence before the UK Home of Commons with the claim that the UK should begin to prepare for the threat of blowback. According to Dr Hegghammer, *"Syria will prolong the problem of jihadi terrorism in Europe by 20 years. Probably more jihadists have gone there than to all the other previous destinations combined."[5]*

> "What is missing in the line of argumentation by these experts and officials, is any reliable empirical evidence in relation to historical examples of blowback, and how within the context of Syria, such a phenomenon might translate based on that past experience.

The specific concern raised in relation to UK nationals travelling to Syria was raised by a western counterterrorism official:

"Our worry is that they (the extremist groups in Syria) will switch their attention to Europe…Our concern is anyone who comes back with training and experience and then starts up a militant network perhaps with links back to al-Qaeda in Syria. Or they could simply be very psychologically damaged from what they have seen."[6]

What is missing in the line of argumentation by these experts and officials, is any reliable empirical evidence in relation to historical examples of blowback in the UK, and how within the context of Syria, such a phenomenon might translate based on that past experience. The research currently produced by those within the field of counter-terrorism studies in this area is methodologically flawed, crucially resulting in an exaggerated causal link between fighting abroad and returning to a home country to carry out acts of violence.

While Dr Hegghammer and others focus very much on statistics relating to terrorism convictions in Europe, we feel that assumptions based on such statistics are skewed by convictions that relate to relatively minor offences, such as glorification and possession charges. CAGE's methodology in relation to understanding the perceived threat is to first focus solely on the UK, but further to look at actual terrorism plots against those who had previously fought or trained abroad. By taking such an approach, the statistics provide a very different picture of the risk posed by foreign fighters.

As mentioned by ICSR, it is important to have a nuanced debate, however that debate must also be based on real world scenarios, rather than conflating past acts with current situations. Consequently, CAGE takes a more critical view of these assumptions that have been built into the rhetoric surrounding Syria and the threat of blowback.

The views from Syria

N an in depth piece written by Moazzam Begg, *Syria: Britain's War on Terror*[7]. Begg presents an alternative analysis to why these foreign fighters have attracted so much attention:

"Since the groups that attract foreign fighters in Syria have varying affiliations to Al-Qaeda and its beliefs, the reasoning continues, it is safe to assume that young men and women enlisted into the ranks of these organisations are all potential terrorists. Cue more work hours for Counter Terrorism Command (SO15) as well as much needed funding for the counter extremism/terrorism think tanks trawling through twitter feeds of teenage and twenty-something Britons "gassing" about jihad, to produce more reports to justify more funding."[8]

In order to fully understand the threat level that is posed by those who fight in Syria, it is important to understand the perspectives of those who are out there. CAGE researchers in the region have provided primary source accounts of the experiences of those who continue to fight in the region:

"I don't have any plan for waging jihad or any kind of fighting in the UK…we've just come for one purpose, to save the oppressed people of Syria from the evil of the terror of Bashar al-Asad, here…. When the conflict in Syria happened and there wasn't anyone coming here to save people's lives or even help them, but once people like me came and no one else did, somehow

we got labelled as terrorists. I mean how did that happen?"[9]

- British fighter, anonymous, Northern Syria. Brigade of exclusively British jihadists fighting in Syria, 17th December 2013

"I am not a part of Al-Qaeda and I've never been a part of Al-Qaeda…ever. I'm not a terrorist in anyway and…so yes, it bothers me…if people could see how much goodness we have in our hearts, how much mercy we have for people and how much, you know, we are driven by compassion to help other people they wouldn't think that we were terrorists. This [terrorism] is a line that they have been fed, pushing that narrative about us."[10]

- British fighter "Mustafa", Northern Syria. Brigade of exclusively British jihadists fighting in Syria, 17th December 2013

"I came to Syria for Syria only. I didn't come to Syria to learn how to make bombs…that's not the mentality many of these fighters have….A lot of people think 'he left his house because he's radicalised, he left his house because he's disturbed, he left his house because he's emotional etc etc.' These are standard things that the media try to tell the people. One of these things that they try and do is [say] whoever comes to Syria as a foreigner is by definition Al-Qaeda. In my case there is no such thing…Me being here in Syria does not mean per definition that I am part of Al-Qaeda."[11]

- Dutch former Royal Netherlands Army soldier "Yilmaz" training Syria's foreign fighters, Northern Syria

The above quotes represent a small selection

of commonly held views among those who fight in Syria, but further, state a specific intent that they do not wish to bring any harm on their fellow countrymen. For those involved in the *jihad*, there is a view that has been taken that the conflict there, like Libya, is a 'non-complex *jihad*'. The complex refers to multiple pulls that an individual may have in terms of their legal and moral obligations, such as in Afghanistan and Iraq, where Europe saw hardly any of the numbers travelling to fight as we have seen with Libya and Syria.

Much of view regarding the 'non-complex jihad' has to do with British, but also European, nationals feeling that they can do something to aid the cause of those they consider to be their Muslim brothers and sisters, which does not interfere with their legal obligations to their countries of birth or naturalisation. Indeed, the numbers of those who have gone abroad is indicative of the desire of many Muslims to engage in a morally righteous cause, without having to feel that they, or their families, will be targeted as terrorists/criminals due to their involvement. One young man, who left his family in Cardiff on 21 February 2014, left a note for the police knowing that his family would face harassment:

"I am going to help the needy and orphans, please leave my family alone. I have no intention to come

back to the UK."[12]

By studying the incidents of terrorism cases in the UK, a more accurate assessment can be made as to the extent to which the threat of blowback is real, or rather exaggerated based upon the general climate of fear that exists within Europe.

British Muslims and the threat of blowback

THERE is no denying that there have been acts and plots relating to political violence that have either succeeded or threatened the civilian population of the UK. Operations such as *Crevice* and the *Airline Plot* uncovered potential mass casualty plots, which were foiled by police operations. There are other examples, however, where the police were not able to intervene, such as the bombings on 7 July 2005, the Woolwich incident, Glasgow Airport and on a much smaller scale, the attack on a UK parliamentarian by Roshanara Choudary.

What is common among all these incidents is that they were specifically motivated by foreign policy grievances that the individuals had due to the invasions of Iraq and Afghanistan. There was a great deal of recognition by the security community that it was foreign policy that would increase the risk of threat to the UK. In particular Eliza Manningham-Buller[13], the former head of MI5, told the Chilcott Inquiry that Iraq in particular would lead to such a situation. Begg has reinforced this, stating:

"It appears that terrorism is the only crime that doesn't take motive into account. Despite British intelligence's assessment that the likelihood of reprisal attacks in Britain significantly increased as a result of the invasion of Iraq our politicians flatly refused to acknowledge the link. Statements made by 7 July bombers as to the motive behind their actions were also dismissed. The same was true of

" There is increasing admission that UK foreign policy has played a great role in the threat of political violence in the UK.

Michael Adebolajo after the Woolwich murders. Both justified their actions by blaming British occupation of Muslim lands. British combat operations in Iraq ceased in 2009 and by 2011 they had all left; by the end of 2014 they will also be out of Afghanistan. Unless Britain invades another country it is logical to assess that the terrorism threat will also diminish. One thing that both Blair and Cameron governments wanted us to believe is that the threat doesn't come from foreign and domestic treatment of Muslims but from latent and blatant Islamic belief systems."[14]

There is increasing admission that UK foreign policy has played a great role in the threat of political violence in the UK. However, within the context of foreign fighters and the risk they represent in terms of blowback, is there any empirical evidence that can be suggested to claim that returning fighters pose a national security threat to the UK? Some suggest that cases such as Andrew Rowe, Babar Ahmad and Abu Hamza al-Masri are examples where individuals have been in conflict scenarios abroad and have been accused of having been involved in terrorism related activity in the UK. In an attempt to better understand the notion of blowback, a fresh perspective on these cases will provide some

insight into the way in which counterterrorism operations have been conducted and the extent to which fighting abroad has an impact on the UK.

Empirical study on the threat of 'blowback'

In order to understand the threat level of blowback, we must analyse the terrorism cases in the UK dating pre-9/11 and post-9/11. It is imperative to acknowledge the distinction between the number of individuals that travelled overseas to train with *mens rea* (criminal intent) to commit hostilities in the UK, and those that travelled overseas as foreign fighters to assist in a non-international armed conflict.

It is evident from interviews and research conducted by CAGE, that those travelling to the realm of conflict in the 70s, 80s and 90s did not possess the intent to participate in political violence upon return to the UK, and there is scant empirical evidence that any significant numbers have done so.

Pre 9/11 Plots

From the perspective of plots that were actually prosecuted as taking place prior to 9/11, the only example that is known in the UK, is that of Moinul Abedin. Abedin was convicted of planning to bomb a building in the UK with explosives, and was sentenced to 20 years. Although Abedin pled

not guilty, it is necessary to make clear that he did not travel abroad as a foreign fighter or train in a camp abroad – illustrating that Abedin was not 'radicalised' abroad, and thus blowback theory is inapplicable to this case.

As for those who fought or trained prior to 9/11, the cases of Andrew Rowe and Dhiren Barot must be assessed. It can be noted that although it was alleged that Rowe fought in Bosnia as a foreign fighter, there is no evidence to suggest that he undertook training and fought with the intent to commit acts of terrorism within the UK at any point. There was no direct link to any terrorism plot in the UK, and although the UK government convicted Rowe with a possession charge, amounting to a 15 years sentence, there was no plot or targets identified in the course of his trial. The possession solely related to trace explosives on a sock that he had explained would have been from his travel to Bosnia. Thus, it is not possible to assert that blowback occurs as a consequence of foreign fighters joining the realm of conflict using his conviction as evidence.

Post 9/11 Plots

Of key note in terms of the data provided below, is that the data does not take into account the hundreds of British Muslim men who fought abroad in a pre and post-9/11 context that have never been involved in any kind of plot or criminal conspiracy or act in the UK (in other words, the

data is selected upon the dependent variable). If the data was looked at within the context of total numbers who have fought abroad, who number in the hundreds and possibly thousands, it would further highlight that the attention given to potential "blowback" is far out of proportion to the statistical likelihood of it occurring. However, in order, to ascertain potential examples of blowback, we have only included data from actual alleged plots in the UK, excluding non-plots such as Ricin, Brent Cross, Forest Gate and others.

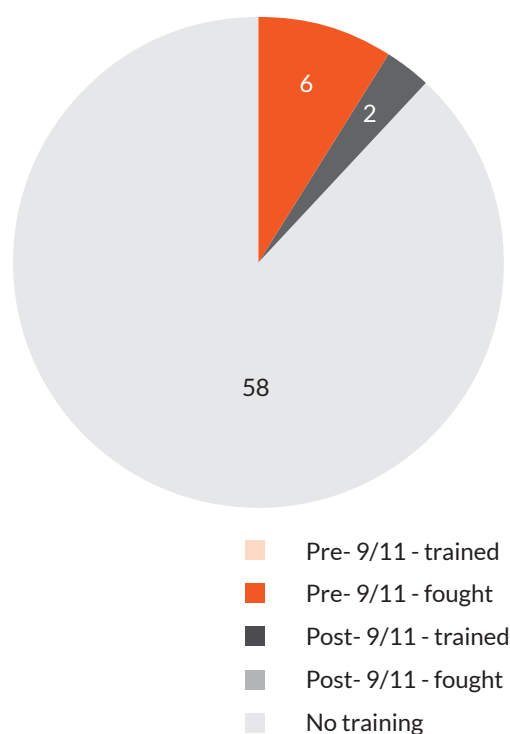## United Kingdom 2001–present Terrorism plot cases involving fighting / training abroad

TOTAL TERRORISM PLOTS:	13
INDIVIDUALS INVOLVED:	66
TOTAL CIVILIANS KILLED:	57
TRAINING ABROAD PRE-9/11:	0
TRAINING ABROAD POST-9/11:	6
FIGHTING ABROAD PRE-9/11:	2
FIGHTING ABROAD POST-9/11:	0
NO TRAINING:	58
FOREIGN POLICY REASON:	65
DOMESTIC POLICY REASON:	6
UNKNOWN REASON:	1

Cases concerned:

- **Fertilizer Bomb Plot** – *(Justification: Foreign policy) - Salahudin Amin and Omar Khyam among 7 defendants in the case trained in Pakistan.*

- **Financial Building Plot** – *(Justification: Foreign policy) – Dhiren Barot trained and fought.*

- **London Bus/Tube Plot** – *(Justification: Foreign policy) - Mohammad Siddique Khan, among four defendants in the case trained in Pakistan.*

- **Failed London Plot** - *(Justification: Foreign policy)*

- **British Soldier Behead Plot** - *(Justification: Foreign policy)*

- **Transatlantic Airline Plot** – *(Justification: Foreign policy) - Ahmed Abdullah Ali trained in Pakistan, among 8 defendants.*

- **Soldier Behead Plot** - *(Justification: Foreign policy)*

- **Glasgow Airport Plot** - *(Justification: Foreign policy)*

- **Exeter Bomb Plot** – *(Justification: Foreign policy)*

- **Suicide Bomb Plot** - *(Justification: Foreign policy)*

- **EDL Bomb Plot** - *(Justification: Foreign & Domestic policy)*

- **Woolwich incident** – *(Justification: Foreign policy)*

Chart 1

- Pre- 9/11 - trained
- Pre- 9/11 - fought
- Post- 9/11 - trained
- Post- 9/11 - fought
- No training

The post-9/11 cases all cited foreign policy justifications by the defendant, with one case citing a foreign policy and domestic justification. It is interesting to note that 6 out of 66 individuals included travelled overseas for training purposes, without any mention of them being involved in physical military activity or fighting. Those involved who went abroad in this period left the UK with the specific intention to train and return to carry out acts of politically motivated violence in the UK.

The exception to this rule is the Barot who was involved in armed conflict pre 9/11. Like Rowe, Barot had been trained abroad as part of his fighting in Kashmir, but not with the intention to commit acts of violence in the UK specifically at the time.

Dhiren Barot's case effectively started before 2000, as he joined several non-state armed groups, and fought in Kashmir. Barot was arrested in 2004 in Britain, and it is clear from the findings in his case, that any plot he may have thought of, no matter how unlikely (as described by the judge in the case) was purely based on foreign policy grievances, and very little to do with any kind of ideological positions he had learnt during his time fighting in Pakistan. Barot's grievance with the UK had not been apparent prior to this due to a lack of foreign policy motivation.

When the cases are read through the lens of blowback theory, it is plausible to assert that UK foreign policy is the primary rationale for acts of terrorism in the UK. The data illustrates that 2 out of 66 defendants, pre-9/11 actually fought abroad. This is in line with other statistical research that has been conducted on the correlation between suicide attacks and foreign occupations. According to a major study conducted by Simon Collard-Wexler and colleagues:

"...when we treat foreign and domestic occupations separately, we find that foreign occupations are associated with a higher risk of suicide attacks, while there is no consistent evidence of association between domestic occupations and the occurrence of suicide attacks."[15]

The evidence indicates there is a causal link

between UK foreign policy and acts of politically motivated violence in the UK, a fact the UK government continues to dismiss. This position is echoed by the Ministry of Defence (MoD), admitting that multicultural Britain is reluctant to observe UK troops deployed in armed conflict overseas. The MoD particularly highlighted the fact that majority of UK extraterritorial activities with armed forces are deployed in combat within Muslim jurisdictions.[16]

Chart 2

- Foreign policy
- Domestic policy
- Unkown rationale
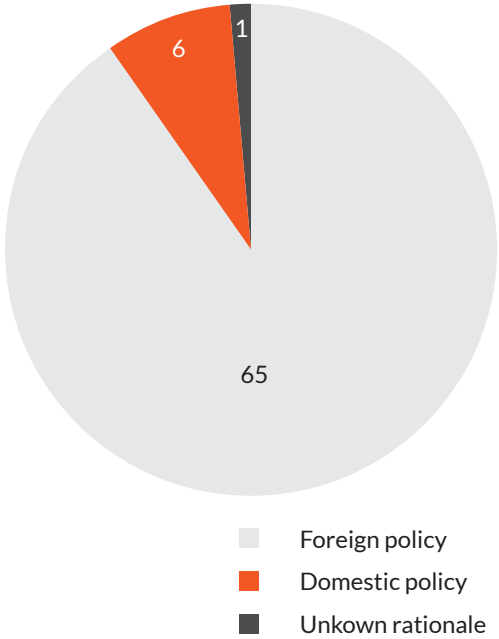
As can be seen from the datasets above, the resonance between those who have fought abroad with those who pose a threat to the UK very much seems out of congruence. In almost every single case of individuals having fought abroad, there is little to suggest that such training or fighting had resulted directly in the decision to carry out an act of political violence in the UK. What, however, is clear, is the correlation between foreign and domestic grievances against the UK government, and the decision by these men to be involved in some form of plot.[17] Stripped of all the terrorism statistics involving those who were convicted on relatively minor charges, the evidence does not follow logically through to the validation of the 'blowback' theory.

CAGE researchers based in Syria have ascertained that many fighters there do not wish to return

to the UK and conduct any acts of violence. This lends credence to refuting the blowback theory, as those that were spoken with did not envisage any tensions between travelling to Syria to join the civil conflict, and legal and moral obligations to Britain. However, due to the climate of fear that has been created, it appears that disproportionate measures have been incorporated to reduce the threat from foreign fighters.

An interview conducted by ITV explicitly highlights the dissonance between the 'blowback' theory and how the fighters themselves feel about returning from the conflict zone to the UK.

According to Abu Firas:

"I fought in Afghanistan against the Northern Alliance, I've fought against the American occupation and I returned back to the UK straight after that.

"I was there for some time and I came back to the UK and I was a law-abiding citizen in the UK.

"I didn't [pose a] threat or a security risk in the UK, I'm perfectly normal. I have my beliefs and I think that it's wrong what's happening in Syria and that's why I want to go there.

Hopefully once I've served my time and I think that it's time to come back, I will do that."[18]

The legal treatment within the context of the blowback theory is concerning, particularly for those foreign fighters in Syria. The inception of citizenship stripping in the context of the conflict and the heavy-handed life sentence of 14 years upon return, appears highly disproportionate for an act that is justified through the framework of international law. There are several indications that the majority of foreign fighters do not wish to return to Britain, as they believe they are engaged in a righteous cause, assisting the self-determination of the people in Syria. In any case, if British foreign fighters intend to return, the UK government should assist them to reintegrate into British society, and not criminalise them. The heavy-handed approach may trigger an unintended consequence, particularly as all foreign fighters view the conflict in Syria as a '*non-complex jihad*'.

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UK policy pre and post Libyan revolution

RELATIONS between the UK and Colonel Qaddafi's Libya, particularly since the murder of Yvonne Fletcher, were strained beyond repair. Publicly, Qaddafi was referred to as the 'Mad Dog' due to not only his personal eccentric habits, but also because of a brutal foreign and domestic policy.

The War on Terror however changed the nature of the relationship between the two countries as they have sought to help one another in detaining individuals they suspect to be involved in terrorism. Libyan political dissidents once considered as merely opponents of Qaddafi, now became suspected terrorists in the eyes of the UK government.

Individuals like Detainee M, a Libyan who was living in the UK, was detained at Heathrow in November 2002 and held indefinitely without charge or trial under the Anti-Terrorism Crime and Security Act of 2001. He was interned in HMP Belmarsh as a Category A prisoner and spent 22 hours a day in his cell. After 16 months, Special Immigration Appeals Commission (SIAC), released him in March 2004 ruling that the evidence against him was *"clearly misleading"* and *"inaccurate and conveyed an unfair impression."*[19]

M had been a member of the Libyan Islamic Fighting Group (LIFG), an anti-Qaddafi group that operated in Libya. At the time of his original arrest and detention, this group was not a proscribed organisation in the UK. In October 2005, the British government signed a Memorandum of Understanding (MoU) with Libya *"to facilitate the deportation of persons suspected of activities associated with terrorism"*. This agreement was to 'ensure' that any 'terror suspects' returned to the country would not face torture. In November 2005, the British government proscribed the LIFG as a terrorist organisation. M was rearrested in December 2005 and sentenced to three years and nine months in prison for his membership in this group.

Justice MacKay recommended that M be deported to Libya upon completion of his sentence. As M was involved in a dissent group; this recommendation would amount to deportation to torture. He could face a substantial threat of torture or inhuman and degrading treatment if he was deported.

On 9 April 2006 the Court of Appeal allowed the appeals of two Libyans, AS and DD, *"against deportation orders made against them on national security grounds, on the ground that there were substantial grounds for believing that they faced a real risk of treatment in violation of Art 3 of the Convention if returned to Libya"*[20]. Following this ruling, M was placed under a control order, which he managed to successfully appeal.

With the end of the Labour government, the new Conservative/Liberal Democrat government was faced with a unique situation - the revolutions taking place in the Middle East. While the former Prime Minister Tony Blair continued to publicly show his support for dictators such as Hosni

Mubarak, the new coalition government was forced to reassess relationships that the Labour government had maintained.

In particular, the revolution in Libya, which resulted in a civil conflict saw the British and NATO decide to assist the rebels in the overthrow of Colonel Qaddafi. Hundreds of Muslims left from Europe in order to join the fighting, all without scrutiny from the UK security agencies. As Moazzam Begg writes:

"It is also worth mentioning that several British Libyans went to fight with Islamic groups in Libya during the revolution; some of them were killed while others returned to resume normal lives without fear of prosecution. In fact, Britain even helped train some of the fighters and directly conducted bombing sorties in Libya."[21]

It is not just that Britain aided those who fought in Libya, in particular, they fought alongside those they had previously subjected to control orders, deportation orders and anti-terrorism legislation.[22] The very men they had labelled al-Qaeda affiliates due to their open membership of LIFG, turned out to be allies after they returned to Libya for the revolution.[23] As one example, one former detainee held under a control order was subsequently given the responsibility of being the personal bodyguard of foreign dignitaries such as Hillary Clinton and Tayyip Erdogan. This detainee still maintains a position of prominence within Libyan public life.

There is a wider debate that must be had about the way in which the government's rhetoric changed from Libya to Syria. A cursory glance through online resources show that the extent of debate and discussion in the media regarding the presence of UK nationals fighting in Libya was nothing like that regarding Syria in tone and content. Rather, based on experiences reported to CAGE by those who fought in Libya, there was an active permissive culture by the Border Agency in allowing these men to travel to fight. Even discussions in relation to blowback were marginal at best, and have not occupied the debate as they have with Syria:

"Isn't it interesting how they were hunting us for years and were working with Muammar el-Qaddafi?...Now we are cooperating with NATO and the West, those who used to put us in jail."[24]

The above quote from Abu Sohaib and those like him, who have maintained a close and open connection between London and Benghazi, have been involved in the flow of fighters and funds without any specific restrictions on those travelling or assisting the rebels. According to one interview conducted by CAGE with a returned fighter from Libya:

"On one occasion, I returned from Libya – through Egypt – after having completed my second tour of the fighting against Qaddafi's regime. As I made my way through Heathrow airport, I was stopped under schedule 7 of the Terrorism Act. I was asked many questions regarding my activities and in particular

what I had been up to in Libya. I explained that I had been out there working to remove Qaddafi and stop him oppressing our people. They seemed to be happy with this response and permitted me to return to my home. This was near the end of 2011 and I have never been hassled since, despite having returned to Libya on many occasions."[25]

There has been a great deal of media coverage over the threat of blowback on the part of British men going to Syria to fight, a polemic that was virtually non-existent compared with the coverage on Libya. Even ten months into the fighting against Qaddafi's forces, there was coverage by media outlets of teenage British boys travelling to fight, without any questioning of their further motives. According to some of the reporting, *"It's thought hundreds of young British men travelled to fight, most of them from Manchester…Some of them have decided to stay in the country."[26]* The reports from that time make no mention of any threat that those returning might pose to the UK.

The only assumption that can be drawn from this change in rhetoric, is the differing level of importance attached to UK interests in the two countries, led by the government's own interests. In Libya, there was a great deal of interest shown by the UK, particularly in relation to post-conflict reconstruction work in order to rebuild the country and develop its natural resources. Again, according to Abu Sohaib, *"We start to question the true intentions of the West in Libya. If they would have wanted to kill Muammar el-Qaddafi, they could have done it several times. I guess this is about making as much money with oil and weapons deals as possible."[27]* Syria provides little to no such interests for the UK. Other than this glaring detail, it is difficult to understand why the UK government has taken to such polar approaches to the issue of foreign fighters in the Middle East.

Jewish Museum of Belgium – an example of blowback?

On 24 May 2014, four people were tragically killed in a shooting attack, allegedly by the French national Mehdi Nemmouche. Commentators have suggested strongly that this is the first real example of blowback from Syria, as Nemmouche

had spent over a year in the country and was allegedly recorded in a video supporting ISIS.[28]

While many are suggesting this connection is a simple one to make, there are many underlying assumptions which may in fact not adequately take into account his motivations. Similar killings in Toulouse previously had no connection to Syria, and as such there is nothing specifically to suggest that Nemmouche had been directed to initiate such an attack.

The reality remains, that while Europe continues with an aggressive foreign and domestic policy which is perceived to target Muslim communities around the world, the threat of political violence will always exist, whether or not there is a conflict in Syria.

As a group, ISIS have specifically mentioned that they do not care about alleviating the suffering of the Syrian people, their only concern is the establishment of the Islamic state. The types of attacks, such as Toulouse and Brussels, are known to take place due to foreign policy concerns, largely related to anger over Palestine. It appears ISIS currently have no such agenda, and thus bringing attacks against western targets does not meet any specific objective they have laid out.

Rather than reaching for a simplistic analysis around the blowback theory, it is important to understand each case on its merits, lest a disproportionate response is initiated which falsely criminalises those who have no intention of harming anyone in Europe. Underlying grievances remain a crucial theme in understanding political violence. The alleged war crimes being carried out by ISIS in Syria and Iraq, do not go any way in ideologically explaining the reasons why attacks would take place in the west. In order to make sense of the Brussels attack, the motivations of Nemmouche must be first better understood.

The basic proposition must be made, that without the politics of the War on Terror, and the aggressive foreign and domestic policies, there is very little doubt that those who are currently engaged in the internal armed conflict in Syria would have any notion of attacking targets in their countries of residence.

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When writing to him, please bear the following in mind:

- Do not discuss his case
- Keep the letter to a sensible length
- Bear in mind that all letters are filed and read by the prison security, and can be used as evidence against Moazzam during his trial.
- Please keep the tone as an encouragement to him, so that he feels the presence of his supporters from around the world.

A9429OO, HMP BELMARSH, WESTERN WAY, THAMESMEAD

MOAZZAM BEGG

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Legality of foreign fighters

"But ministers propose including life sentences for more terror offences, including weapons training for terrorist purposes, other training for terrorism and making or possessing explosives. These currently carry a maximum sentence of 14 years." [29]

[Chris Grayling, Justice Secretary, on tougher approach to those fighting in Syria]

"The message for people who are considering going out there and getting involved in terrorist training or getting involved in the conflict is that they will be potentially breaking the law in this country... Potentially it's an offence to go out and get involved in a conflict, however loathsome you think the people on the other side are." [30]

[Sue Hemming, head of counter-terrorism at the Crown Prosecution Service]

THE above two quotes by Chris Grayling and Sue Hemming of the Crown Prosecution Service suggest that currently it is an offence to travel to Syria with the purposes of taking an active role in hostilities whether it's simply by virtue of being involved in training, or by taking part in the fighting in order to remove the current regime.

> CAGE advocates that the correct framework in which to understand foreign fighters leaving the UK for Syria is not within the context of counterterrorism legislation, but rather international law.

The way in which the government is attempting to apply these disparate articles in the terrorism legislation is not only disingenuous, but also undermines the purpose for which the legislation was conceived. CAGE advocates that the correct framework in which to understand foreign fighters leaving the UK for Syria is not within the context of counterterrorism legislation, but rather international law.

By the UK government incorrectly identifying the nature of the conflict, and the status of actors involved in the conflict, it is using terrorism legislation as a blunt tool to catch all those leaving. As our argument below and conclusions will show, the situation and activities are far more nuanced; the response must be too.

The principle of self-determination

The principle of self-determination is not merely a post-UN Charter occurrence, but rather finds roots dating back to the American Declaration of Independence (1776) and French Revolution (1789).[31] Both important historical events marked

a change from a previously recognised paradigm of subjects being subordinate to a King who could deal with them as he pleased. The weight of this concept spread across Europe where it reached Giuseppe Mazzini in Italy who promoted nations being allowed to freely choose their status. He is famously quoted as saying, *"The Countries of People will rise, defined by the voice of the free, upon the ruins of the countries of the Kings and privileged castes."*[32] Thus a situation began to emerge whereby the will of the people to determine their own political destiny gained favour.

Once the UN Charter came into effect, the key provision which provides that one of the purposes of the United Nations is:

"...to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[33]

As a tool within the charter, the principle does not amount to very much as it only suggests that states should be permitted to be granted self-government as much as possible – particularly to the communities over which they exercise jurisdiction.[34] However, where the UN Charter marks an important milestone in international relations is the heralding of self-determination from being a mere political desire into an international standard of behaviour.

The status of self-determination as an internationally accepted norm received further acquiescence through a wave of international agreements and legislation which all helped to reiterate the importance of the principle. The 1960 General Assembly Resolution 1514, The Declaration on the Granting of Independence to Colonial Countries and Peoples, Article 1 of both the UN Covenant on Economic, Social and Cultural Rights 1976 and UN Covenant on Civil and Political Rights declares:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

From the line of agreements that have been internationally made, what is clear is that there is a strong emphasis on the right of determination for people. What is the standard for determination? Is it a unilateral right that can be exercised by any and all?

The principle of self-determination actually provides a very loose standard that has no real means or methods for implementation. It does not specify exactly what the nature of the determination should be, or the objective. It seems as if the right has been given in order to set a general guideline from which to conduct international relations.

Can this principle be enforced under international law? Many commentators have come to the conclusion that it has now attained the status of *jus cogens* (customary international law) and further than that, it is a peremptory norm that cannot be derogated from.[35] The only problem with this theory, is that in order for a principle to attain the status of *jus cogens* under customary international law, there must be State practice and *Opinio Juris* (the opinions of scholars). Unfortunately there are few examples of either to justify the emergence of a norm of self-determination. However, through all the pronouncements of the General Assembly, Conferences, and Declaration on Friendly Relations, enough statements have been made globally to justify the existence of such a principle under customary international law.

> "
> The Syrian people have a right to self-determination in the pursuance of the fall of the Assad regime. The starting point, however, should not be to assume that the Assad regime has in fact de facto or indeed de jure control of the country, rather that it is a minority entity with the strength of its army backing it to retain control over its power.

The rule of law requires that all international norms and obligations be complied with. Thus for a State to determine itself politically, socially and economically is not merely a right under the rule of law, but could in fact be seen as a duty for the correct establishment of political design by the people. To interfere with that is contrary to the established norm, and therefore a breach of international obligations.

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An effective government?

Built into the UK Crown Prosecution Service's assessment of the applicability of the terrorism legislation to those fighting in Syria, is that the terrorism acts specifically forbid the overthrow of a government – making it a criminal offence. The question, however, must be asked – is the Assad regime an effective government that can be recognised as being so – particularly in light of the principles of self determination?

Article 1 of the Montevideo Convention 1933 sets the conditions for a State:

"The State as a person of international law should possess the following qualifications:
 (a) a permanent population;
 (b) a defined territory;
 (c) government; and
 (d) capacity to enter into legal relations with other States."

Most of the commentaries that have accompanied the Montevideo Convention have required that the condition that a government must be 'effective' in its nature.[36] There must be effectiveness of the government to be able to deal with the needs of the people, to protect aliens and their property, and also to protect the State contrary to the interests of other States. The principle of self-determination, especially off the back of the colonial system greatly lowered the standard of what was considered to be an effective government. Those states that exercised their right to determine themselves went through an initial period of instability, with that in mind their status was preserved despite falling below the previously established level of governance.

It needs to be seen as to what extent a government is truly effective with regard to the control over the state. A government may have one of two types of control, *de facto* (in fact) or *de jure* (in law). A government may have the *de jure* legal right to governance, but that right may not have any reality behind it. As an example, Chiang Ki Chek was considered to be the leader of the *de jure* Chinese government, even though he was exiled in Taiwan. Another government may have come to power by unconstitutional means, for

example by a military coup, however, it would retain its right as the *de facto* government for the reality of the situation is, that it is truly in power.

De facto control over the years has been given more and more importance as it is seen as a more significant criteria when dealing with international relations. It makes little sense to have dealings with a government who is not able to make effective decisions on the part of the State.[37] Thus in 1980 the British Foreign Secretary stated the following policy:

"We shall continue to decide the nature of our dealings with regimes which come to power unconstitutionally in the light of our assessment of whether they are able...to exercise effective control of the territory of the State concerned, and seem likely to continue to do so."

The *de facto*, or 'effective control' test of governmental legitimacy was given its most famous formulation by Taft CJ in the Tinoco Concession Case where he stated:

"The issue is not whether the new government assumes power or conducts its administration under constitutional limitations established by the people during the incumbency of the government it has overthrown. The question is, has it really established itself in such a way that all within its influence recognise its control, and that there is no opposing force assuming to be a government in its place?"[38]

" The current situation of the conflict in Syria highlights that effective control is neither with Bashar al-Assad or the rebel forces. Thus, for either side to claim de facto control would be difficult. Assad's claim of being the de jure legitimate government, in and of itself is the very heart of the struggle for self-determination, and thus both requirements remain unfulfilled.

The US delegate at the Security Council, when justifying the US intervention of Grenada in 1983 as being in line with the principle of self-determination, said that the proof was in free press and elections.[39] However, only three countries in the Security Council made the principle of self-determination synonymous to the establishment of democratic institutions. Overwhelmingly it was held that democracy is not the only form of correct political determination. Ironically, Syria unleashed a scathing attack against US action as a *"...flagrant violation of the inalienable right of the people of Grenada to self-determination and the structuring of its society free from any outside intervention."[40]*

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The right to armed struggle

To what extent do the rebel forces have a legal right to struggle against the Assad regime? Article 2(4) of the UN Charter prohibits the use of force between States. However, there is very little law actually relating to civil or internal conflicts. When a group of people rise in arms against the government in power, this kind of civil conflict has little law to deal with it. The situation in Syria has proved somewhat problematic though in the context of legal rights and duties when conducting an insurgency.

Due to the internal nature of the armed conflict, the right of self-determination allows the conflict to maintain the status of being an international armed conflict. Article 1(4) of Additional Protocol II states:

"...armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and

Cooperation amongst States in accordance with the Charter of the United Nations."

If the conflict is one of self-determination and within the terms of Article 1(4), the members of the self-determination movement involved acquire the status of combatants and cannot be regarded as committing any criminal offence when fighting. The insurgency in Syria is being carried out to achieve political determination. Therefore the highest standard that international humanitarian law can provide should be applied to all the parties concerned as they are legitimate combatants.

Placing the Syrian conflict within the international law framework allows us to understand the rights and duties of both combatants and civilians.

Within the international law framework, there is no rule that does not permit foreign fighters from joining a cause that is considered to be of high moral probity. Article 1(4) above sets out the moral position of those fighting in such a conflict.

The question of battles for self-determination and civil conflict arose in the case of The Government of The Russian Federation v Akhmed Zakaev before a UK court. In his judgment, Senior District Judge Timothy Workman threw out the extradition request by the Russian government for Zakaev due to the internal nature of the armed conflict between Chechnya and Russia. The Russian government claimed that:

"The fighting which was taking place in Chechnya amounted to a riot and rebellion, "banditry" and terrorism."

The Russian government had attempted to invoke the word terrorism as part of its justification for requesting Zakaev, despite there being a long conflict in the Caucasus. The judge said specifically in response to this claim:

"I am quite satisfied that the events in Chechnya in 1995 and 1996 amounted in law to an internal armed conflict. Indeed, many observers would have regarded it as a civil war...I was unable to accept the view expressed by one witness that the action of the Russian Government in bombing Grozny were

counter-terrorist operations.

"Having satisfied myself that this amounted to an internal armed conflict which would fall within the Geneva Convention, I reach the conclusion that those crimes which allege conspiring to seize specific areas of Chechnya by the use of armed force or resistance are not extraditable crimes because the conduct in those circumstances would not amount to a crime in this country."

The current conflict in Syria in many ways reflects the conflict in Chechnya in 1995, with the added feature that there is no effective control of the country by either side. Unlike in Russia, where it could be said that the Russian government had control of the country and could be said to be in *de facto* and *de jure* control, the Syrian regime cannot make any such claim. This only serves to highlight the further legitimacy of the rebel forces in seeking to remove Assad and exercise their own political determination.

War crimes or terrorism?

UK government security analysts are concerned about the activities of British nationals going out to Syria and fighting alongside Islamic groups that have established themselves in the region as part of the wider decentralised rebel groups. Groups such as the Islamic State of Iraq and Shaam (ISIS) and Jabhat al-Nusra have been proscribed as terrorist groups and so involvement with them may give a different perception than with some of the other groups. According to one Whitehall official:

"It comes down to the advice given by the Crown Prosecution Service...It is important to know who is using that camp?"[41]

Due to the confusing nature of the situation on the ground in Syria, it is sometimes difficult to ascertain the exact nature of each group, with even UK government assessments being changed constantly. Statements by scholars such as Abu Muhammad al-Maqdisi and Abu Qatada al-Filastini, denouncing ISIS and claiming they have no affiliation to al-Qaeda further complicates matters and results in confusion on the ground.[42]

In terms of the groups fighting on the ground, some of them are being supported by western countries, such as Ahrar al-Sham, who in turn have signed statements renouncing the main dialogue partners for the West, the Syrian National Coalition.

The complexity of the situation on the ground is not lost on the UK security agencies, and similarly is not lost on those who are seeking to remove Assad's regime.

By pursuing the line of applying terrorism legislation to foreign fighters, what will inevitably result is the criminalisation of those who were never part of or intended any criminal activity. Rather, the UK security agencies should be concerned about war crimes that take place in the region, both serious and grave breaches of the Geneva Conventions. Whether it is attacks on civilians, non-combatants or journalists, such actions should not be brought into the framework of terrorism, but rather should be placed within the laws of armed conflict, which have been established precisely to deal with such scenarios.

As for the methods and means employed by the forces, it is a condition under international humanitarian law that the belligerents pay heed to the protection of civilians and innocents during the conflict. Common Article 3 of the Geneva Conventions specifically provides that even in the case of an internal armed conflict, there must be strong humanitarian considerations when dealing with combatants and civilians.

Additional Protocol I, Article 52, defines a legitimate military target as one, *"which by [its] nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstance ruling at the time, offers a definite military advantage."* Any attack requires that it be justified, in the first place, by military necessity. It is a war crime to attack wilfully anything that is not a legitimate military target. On the other hand, incidentally causing damage to a protected person or object is not always a war crime.

Many of the resistance groups already began the process of making distinctions between tactics.

For example within the context of the 2003 Iraq war, the Islamic Front for the Iraqi Resistance (Jama') strongly opposed attacks on civilians, all Iraqis (including police), and Iraqi infrastructure.[43]

What of those who use illegitimate means? Do they force the whole movement of self-determination and national liberation to become one associated with terrorism?

Unfortunately, due to the very nature of those who commit acts of so-called terrorism, it has been impossible to legally define this crime under international humanitarian law. The Geneva Conventions and Additional Protocols do however strictly prohibit any atrocities carried out against the civilian population.

The South African Truth and Reconciliation Commission documented a number of crimes that had been committed by the African National Congress (ANC) in their struggle for liberation. The ANC admitted to targeting public bars and restaurants in order to intimidate and punish supporters of the Apartheid government. Despite these actions, the ANC are seen now as a legitimate national liberation movement who were fighting against a racist regime to politically establish themselves and gain freedom. The picture that can be drawn from this is that the crimes committed by the ANC did not make it a terrorist organisation, rather, the individual acts carried out were crimes against humanitarian law.

If one is to apply the South African formula to the situation in Syria, it can be seen that there is an insurgent movement that is working very hard in order to rid the country of a brutal dictator. There may be elements working within the insurgency who are breaching their obligations under international humanitarian law, but there is now a strong understanding amongst those who are trying to fight for a better Syria that they cannot lower themselves to committing atrocities.

Conclusion

CURRENT UK government policy in relation to Syria is both confused and dangerous. The government has been inconsistent in the way it has handled the revolutions in Libya and Syria. While in the former they were actively involved in supporting rebels and permitting foreign fighters to become involved, in the latter they have taken the approach that involvement constitutes terrorism.

> British Muslims who are currently engaged in the conflict in Syria, have gone there in large numbers with the belief that there is nothing that places them at odds with the UK state and its legal system. They have felt a moral pull to travel to Syria and fight alongside the rebel forces, and yet are being criminalised for taking such a stance. The very idea that these men wish or may return to the UK in order to carry out acts of violence, betrays the logic of why a voluminous number have gone out there already. It is also not supported empirically if we consider how previous Muslim groups have acted in similar circumstances.

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Assumptions that are made about these men and women and what they are engaged with risks ushering in a domestic policy which will only seek to further disenfranchise Muslim communities in the UK.. It runs the risk of turning a cooling foreign policy grievance into a heated domestic one. As stated by Hegghammer:

"Talk of insurgents and foreign fighters as 'terrorists' will likely fall on deaf ears and may irritate rather than dissuade the fence-sitters."[44]

The law itself has not been correctly suggested by the CPS, who are pushing the line that by virtue of fighting in Syria, the foreign fighters are committing an offence. The Assad regime is despotic and has lost *de facto* control of the country. While that situation remains, the rebels have every right to exercise self-determination,

and to be assisted by those who are willing to join them. By framing the issue in a way that tries to construe the Syrian regime as being a legitimate government, the UK not only betrays its brave nationals who are seeking to fight, but also the Syrian people themselves.

Among the security establishment, there is still a great deal of debate as to the approach that should be taken against those who fight in Syria. The former head of counter-terrorism at MI6, Richard Barrett, is very much of the view that arresting those who return from Syria is a, "knee-jerk reaction" and explained that such tactics would risk disenfranchising people further.[45] He went on to say:

"I was a bit horrified to see a few weeks back some chief constable was saying all these guys should be locked up, and I think already 16 people have been arrested who have come back from Syria. Maybe there was good reason for that. But how you treat people is really important. There is a balance to be struck, where you do not mistreat people on the one hand, but do not overlook people who are a threat [either]."[46]

According to the Ministry of Justice, in the aftermath of the Spanish Civil War, no British citizens were charged or had proceedings brought against them despite having contravened the Foreign Enlistment Act 1870.[47] Despite the UK's relationship with Franco's Spain, those who fought were treated with dignity, rather than

be criminalised for their participation, much in the same vein as those who travelled to Libya in order to remove Qaddafi. The rules of the game seem to have changed however when the same considerations are made regarding those who travel to Syria.

As summarised by the writer George Monbiot in his assessment of the foreign fighters in Syria:

"Whatever you might think of armed intervention in Syria, by states or citizens, Hemming's warning illustrates the arbitrary nature of our terrorism laws, the ring they throw around certain acts of violence while ignoring others, the risk that they will be used against brown and bearded people who present no threat. The non-intervention agreement of 1936 was not the last elaborate system of official humbug the British government devised."[48]

The paradigm of risk that has been assumed by the British authorities has built into it a threat that is based on very little empirical evidence. By understanding the motivating factors behind these men and women, a more honest assessment can be made in finding solutions. The politicisation and securitisation of the conflict rejects any notion that those who fight abroad can be assisted in settling back into the UK. The rhetoric around 'blowback' has skewed all discussion around Syria, it is only honest approaches to the conflict and those who fight there that will bring to fruition a more understanding British Muslim community, not one that perceives itself at threat.

Responding to the threat

As the group Islamic State of Iraq and Shaam (ISIS) occupies further ground in Iraq and Syria, tensions increase around the world as the stability of international peace and security is brought into question. Much is made of the potential threat that is posed by terrorist groups, particularly to western Europe, however this narrative seems to exist in a disconnect with received wisdom around the way in which political violence operates.

What we know about ISIS, is that its formation is entirely founded in the insurgency arising out of the 2003 invasion of Iraq. So far, figures such as Tony Blair have refused to accept that narrative[49], claiming that the problem lies in particular brands of Islam, rather than with an unlawful invasion that destabilised the whole region.

When responding to perceived threats, CAGE recommends that four positions be closely borne in mind, in order that the threat nor the response are exaggerated:

1. The threat has always existed

The UK government's foreign, and more recently, its domestic policy have directly contributed to the disenfranchisement that has led to the continued threat of terrorism in the UK. Irrespective of the instability in Syria, the threat of political violence has not significantly diminished. Ultimately if grievances are not addressed, the underlying causes of political violence will never cease.

2. No empirical evidence of blowback

As evidenced above, there is no direct evidence of blowback. Policies should not be based on fictional scenarios, rather the security agencies should accept that the threat currently posed has little to do with fighting in Syria, and much more to do with the politics of alienation.

3. Responses must be proportional

The form of blanket criminalisation that is being witnessed in response to the involvement of British men and women in Syria, is completely disproportional to any threat that has so far manifested. When juxtaposed with other societal issues, such as drugs or other forms of violent crime, no such disproportionate policing or securitisation is seen.

4. The 'War on Terror' has not increased security

Over the last 13 years, western governments have chosen to favour criminilisation over due process and human rights. The failed policies have led to the creation of suspect communities around the world. The perpetuation of those policies have continually resulted in increased disenfranchisement, leading back to point number 1, that while these policies continue, there will always be a threat.

The cyclical nature of political violence has shown us that abuse and ill treatment, only reinforces

views of those who consider themselves an oppressed community. While many may choose to live in the fear of the securitisation of their world, there will always be some who choose to react to perceived injustices with violence. The responsibility of governments and those who care for the security of the UK, is find a way of not only breaking this cycle, but also not disenfranchising those who have not chosen such a path – in our response to Syria, we choose the way in which we not only interact with communities, but also show how we listen to their concerns.

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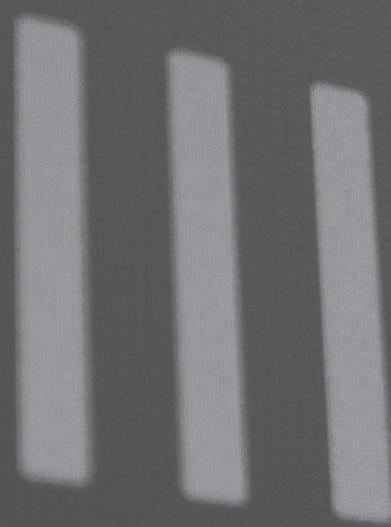
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