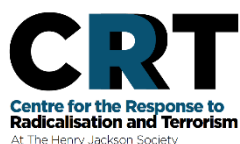# Radical Islam Conference

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Transcription –

7th December 2017- Panel Four

Centre for the Response to Radicalisation and Terrorism (CRT) at the Henry Jackson Society

Panel Four

Moderator: Timothy Stafford, Research Director, The Henry Jackson Society (UK)

Panellists:

Dr Shmuel Bar, Senior Research Fellow, Samuel Neaman Institute for National Policy Studies (Israel)
Nikita Malik, Senior Fellow, The Henry Jackson Society(UK)
The Rt. Hon. The Lord Carlile of Berriew, CBE, QC, FRSA

Timothy Stafford: "I'm delighted to carry on the conference by opening the next panel which considers the legal and political, versus security and intelligence tools available to deal with some of the threats regarding radical Islam that we've been talking about yesterday and this morning. It follows on from where the last panel ended, which touched on how to respond to the challenges we're facing.

One of the most interesting things about this conversation is the fact that we're still having this debate. In the immediate hours after 9/11 President Bush declared a 'war on terrorism', and stated that the acts in Washington and New York were acts of war rather than crimes. Yet in 2017 we're still debating how best to respond, either through law enforcement, intelligence services, military options, and so on. Sayfulllo Saipov, who was the individual who carried out the vehicular attacks in New York City earlier this year was instantly reads his 'miranda' rights after he was detained, even though during the campaign Donald Trump had said that this would no longer be the case, and that the Obama-era practice of reading miranda rights to terrorism suspects detained in the United States would be terminated. We heard from Judge Mukasey yesterday some critiques of the military tribunals that have yet to result in any verdicts, and the possibility of a new national security court being established.

In the UK we've seen more progress with the introduction of the [Prevent] 'statutory duty' across all public bodies, requiring them to respond to the threat of extremism, but still the appropriate legal response – as people have picked up from the Defence Secretary's comments with regard to killing ISIS fighters before they return to the UK – remains very much alive. Just on the extreme end of the security and intelligence end of the spectrum, one thing I always remind audiences is that we've seen a complete disappearance from our parlance of the term 'detainee', that used to plague the discussion, which has been superseded by endless drone strikes in a series of conflict spots ranging from Somalia and Yemen to Syria and Iraq.

We have an excellent panel of three speakers who are going to consider these issues in more detail, and the appropriate way to respond. We're going to start with Lord Carlile, who has had a distinguished political and legal career, and of most relevance for today's discussion served as the Independent Reviewer of Terrorism Legislation, so very well placed to talk about the legal responses that the UK has adopted since 2001, and the issues it continues to wrestle with.

Dr Shmuel Bar is senior fellow at the Samuel Neaman Institute for National Policy Studies, and adjunct Senior Fellow at the Hudson Institute will give another perspective, perhaps with a greater emphasis on the Middle East, having spent a significant amount of time working in the office of the Israeli Prime Minister.

Lastly we have Nikita Malik, who is a Senior Research Fellow with the Henry Jackson Society, and was previously at Quilliam. For those who have not yet had the opportunity to read it, she recently authored a report detailing the overlap between terrorists and human traffickers, which encapsulates the spectrum of challenges stretching for our own societies to areas further afield including Nigeria and the Islamic State.

So I'd like to begin by turning over to our first panellist – Lord Carlile, the floor is yours and we eagerly await your comments2.

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Lord Carlile: "As you've just heard, I used to be the Independent Reviewer of Terrorism Legislation, and I did it for nine and a half years, until the beginning of 2011, and I've been following the picture ever since then from within the private sector where I've been doing some connected work. A few days ago, I heard one of the five most senior American officials saying that we are moving in relation to the so-called Islamic State, from attrition to annihilation, and I think that that was something that Gavin Williamson, our new and very inexperienced Secretary of State for Defence may have had in mind yesterday because he was present at the same private event at which it was said. I don't agree with Gavin Williamson. I think that it is erroneous to step outside the rule of law, and I think that everything we need to do when dealing with terrorism can be done within the rule of law. The particular point that he was making, which is that we should refuse entry to the United Kingdom to anyone who is a UK citizen who has fought for Islamic State, is just wrong in international a law. It would be a substantial derogation from international law, which we have led for decades. Just to be particular about this, because I don't think Gavin Williamson actually understands the particularity, we can refuse entry to anyone who is a national of another country. That means if someone is a dual national of another country to the UK, even if its France, we can refuse entry. However, we have an international obligation to give entry to someone who is solely a United Kingdom citizen.

Now I disagree with the new Independent Reviewer of Terrorism Legislation, Max Hill QC, who seemed to suggest a few days ago that we should simply go to their homes and 'be cuddly with them'. My view is that if there are individuals who have been overseas engaging in terrorism abroad, who seek to return to the UK, they have the right so return, but they should be put through rigorous procedures and if possible prosecuted. I'm no dove on these issues, and I have advocated repeatedly for the return to control orders which during my time as the Independent Review of Terrorism Legislation, not only disrupted a small number of people – there were 23 people on control orders – but by disrupting those 23 people, disrupted their network. So, if for example, an Abedi – the Manchester Arena bomber, had been subject to a control order, then it is quite possible in my view that the event would never even have been thought of let alone taken place.

Perhaps I need a little bit of evidence for my proposition that we should work within the rule of law. Well I'll use a sort of *argumentum ad majorem* if I may – in 2015 Jan Eliasson, the UN Deputy Secretary-General said this:

"When counter-terrorist methods neglect the rule of law and violate fundamental rights, they not only betray the values they seek to uphold, they may also fuel further violent extremism. Respect of human rights and the rule of law is an essential and inseparable part of successful counter-terrorism action. The United Nations system will continue to support member states in this area".

It is part of the written responsibility of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, that even when countering terrorism, we must act within the rule of law. What is the problem about acting within the rule of law? I speak as a British Parliamentarian, and we do not have executive action by the government in this country. All new measures have to go through Parliament. If you think, for example, that we should have internment – which I would be strongly opposed to – of people suspected of being terrorists, your way to achieve that is to persuade Parliament to introduce a law to enable internment. It's doubtful that it would, but its theoretically possible that it would. It did, after all, in the Second World War, it did pass regulation 18B, which Churchill later described as being "in the highest degree, odiuous".

But if that kind of law is not passed, then one has to be a pragmatic utilitarian in this area, which is how I would describe myself as. Pragmatic utilitarianism and the law tells you that you must adapt acceptable rule of law criteria in order to meet the exigencies of the issue. So I would suggest that we should bring

back control orders. I would suggest that the Government use Terrorism Prevention and Investigative Measures (TPIMs), which replace Control orders, much more extensively than they do. I can see an argument for having 100, 150 people subject to control orders or TPIMs, complete with relocation. I've agreed with what David Anderson said two days ago, and more detail, the report by the police and security service son which David Anderson's review was based, that the one hundred and twenty-six measures that have been agreed, led by Andrew Parker the head of MI5, should be implemented as soon as possible. I believe that there should be much more co-ordination of the electronic information which comes in to the possession of various parts of the legal structures in this country. I believe there should be much greater co-ordination between counter terrorism police and the intelligence services, and community policing. Actually, the real evidence is that much of the useful information that has been used to interdict terrorism, has come from members of the public, often through community policing, and often from members of the Muslim community who are concerned about family members. And I believe above all, and this applies to the Manchester perpetrator, that we should improve our port procedures which I'm afraid are largely symbolic and vestigial, so that when someone enters a port of entry, shows their passport and answers questions that may be asked of them, those are not simply recorded on the machine that's in front of the official, but are immediately co-ordinated by algorithms which mean that they have some meaning. It all needs doing, it just needs good will and pragmatism to achieve.

My point is that all this enables us to counter terrorism within the rule of law. And we should be very careful, very, very careful, about stepping outside the appropriate legal systems including international law. Because what is 'sauce for the goose', is 'sauce for the gander'. And my worry is that we will not be such powerful advocates against horrific activities such as the burning to death of the Jordanian airman, which fell so outside any international standards, as to be in my view, one of the great outrages of the last fifty years.

So that's my view, it may be controversial here I don't know. Gavin Williamson obviously doesn't deal with it, but rule of law, 'ok' ".

Reuel Marc Gerecht: "Could you just describe, currently, what control orders consist of?"

Lord Carlile: "Yes well control orders don't exist at the moment. They existed until 2011 when the then coalition government decided to abandon them. What they did consist of was up to 27 or 28 controls that could be imposed upon someone, who up to the satisfaction of a senior court, was reasonably suspected of being a terrorist. And included within those controls were limits on internet access, mobile telephony, and there could also be a relocation order that required – in some of the cases – the individual to move to a different part of the country to property that was supplied by the state, where they could be securely monitored. As independent reviewer, I visited a number of those locations and was satisfied that they were compliant.

TPIMS are a dilution of control orders. Eventually the government reintroduced relocation, but the conditions are significantly less stringent than control orders. We're now in a situation where we've had five terrorism events during the course of this year, and stop one a month in addition to that. So I think we need to have another look at how, within our legal system, how we seek to control people's behaviour in this area".

Timothy Stafford: "Thank you very much, Dr. Shmuel Bar, maybe we could start there – with the rule of law. Is this an issue which will always plague societies, or can it be reconciled?"

Dr. Shmuel Bar: "Well, first of all, the Israelis still have control orders – we inherited them from the British mandate, for which we are eternally grateful because if we had to legislate them through the Knesset they probably wouldn't have gone through! They're there, they are active, and they are effective

in the area of disruption, because when you make it more difficult for people to get involved [in terrorism] – to meet, co-ordinate, etc, you are making the whole process of preparing terrorist attacks more transparent. There are more places where you can identify them, and this makes them easier to disrupt. Essentially, you extend the time for training etc. They also represent a form of tactical deterrence when used correctly, and of course, under the oversight of courts, they're very effective. Israel has a very stringent method which we developed for interrogation [when applied to] 'the ticking bomb' idea. You have a ticking bomb, so what measures are you allowed to use? You go to the court and say this is the reason I believe there is a ticking bomb, this person knows about it and what's going to happen, and the court instructs saying you are allowed to do 'a, b and c'. You have to have two people in the room, it has to be videoed, and it has to be under stringent court supervision. So, we do have those laws, but everything has to be within the law. There were a number of cases in Israel where officer sin our security agency acted outside the law and they were prosecuted.

I just want to mention that when we're talking about radical Islam, they are relative to culture and memes. There is no clear firewall between 'radical' and 'mainstream', so when we're talking about disrupting or are monitoring radicalism online, one man's preferences are another man's poison.

Another thing we have to understand is that we are talking, to a great extent among the young population. Radicalisation among youth towards Islamic radicalisation is not a process of rebellion against authority, but searching for an alternative authority to the one with which they grew up. They're throwing away the authority of their own imams, and parents, and so on - and they're looking for someone who can say 'you don't have to think about any ethical issues, come to me, you are exempt from your own moral considerations which is the foundation of western society, which is that you have to have your own moral judgment. That's why we had the Nuremburg trials – because we expected people to have their own moral judgments.

In current radicalisation efforts, we talk about moral arguments, community outreach, Islamic de-radicalisation programs, cultivation of liberal Muslim clerics, and so on. I'm going to discuss two categories of counter-radicalisation tools, because I'm a humble technological persona and involved in an EU project to develop tools to monitor radicalisation on the internet. It's a project we offered to the European Union, and soon after that we were told that it was essential to have the involvement of a lawyer who quickly told us that we couldn't do almost all the things that we believed had to be done. So, monitoring of social media is very, very important, because a lot is happening there.

How do you diagnose individuals? No individual is entirely one thing. He was brought up in one home, he was affected by this imam, he then met with these peers, etc. So his ideological makeup is a hybrid. Can use tools to determine which influences are strongest, and to do so defensively, blocking radical messages and enforcing zero tolerance of extremist ideas? Also, can you advance counter-messaging? I'm very sceptical about 'white propaganda' – when you bomb Dresden and then say 'it's not us targeting you, but the regime'. It's not good when you come out, as the CVE experts at the State Department try to do, which is to go into forums where people are talking about killing infidels, and publicly declaring yourself to be State Department and try to change people's minds. So the question is how you develop counter-messaging tools which integrate into the extremist information of the radicals, and disrupt this stream of information, thus undermining the reliability and credibility of that information.

Social media tools today are designed for the commercial world, and do not satisfy the world of counter terrorism. What is need are tools which will answer, within a stream of information, 'are these people radical?', 'what radical branch do they believe in', 'what are the ideas that they are expressing?', what are the concepts they are talking about?', and 'how can we latch on to that and counter it?'. This calls for tools based on artificial intelligence, that will engage not so much in data mining, but in '*meaning*

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mining'.

The social media providers are like kids in the 1960s – they haven't grown up – and they've decided that the 'forces of evil': governments, security agencies, armies, militaries, are the 'axis of evil', and if you are a company that offers your services and it is discovered that five years ago you had a contract with Special Operations Command (SOCOM), they will often refuse to work with you. This makes it very difficult, and that if you want to deal with this, you're on your own. The companies which provide social media will not help you.

Monitoring social media – if you isolate all of the Arabic, Urdu and Islamic social media in Egypt, there are about five million posts a day, which is about 20% of the total. Once you've done that you can see what they're talking about: What are the memes? What are the ideas? Etc. You can see that there are people who are more prominent in talking about key issues, and that suggests you should be paying more attention to them. Essentially we are looking for black swans. There is in the intelligence world a vicious circle: I think I know what the world looks like, I task my intelligence agencies to bring me back the information I want, which they do, but what I don't ask them they won't give me. As a historian, I can tell you much more about this. So you can see they are mostly talking about building the jihadi potential, taking spoils of war, etc. and then you can see what the key topics are in the radical space, and then you can see how to counter it.

Diagnosis for radicalisation is another aspect. Diagnosis for de-radicalisation requires you to identify what ideological sphere they belong to, and the level of religious devoutness and knowledge. I have spoken with many terrorists, and I know more Koranic verses than they do. If you ask them something, they can call upon five verses which they can deliver by wrote, and little more. Also importance is their self-identification as Muslim – are they Sunni, Shia, Islamic, are do they consider themselves a British Muslim? Attitudes regarding freedom of choice and acceptance of authority - what is his assessment of non-Muslims? Beliefs associated with violent ideologies, response to different ideological streams, etc. These are eventually a form of Myers-Briggs questionnaire, and it's very hard to cheat because the people who put it together are real experts in Islam from different countries. They collaborated with us and gave us help with a questionnaire. So for instance, you have questions such as 'what is the meaning of jihad', and you have to answer. Here, if you are a mainstream Muslim, your views will differ from how you'd answer if you were a Salafi-Jihadi, and then there is an algorithm which sorts the answers.

The paradigm of 'hearts and minds' has failed, because we are talking about a collective problem, not a personal problem. It is less 'hearts and minds' but 'souls and guts'. Take for instance the Ft. Hood shooter in Texas, carried out by Nidal Hasan. Millions of Muslim mothers would name their children after him because of what he did If you take away the belief these people have that they operate with a support group, then you can affect their motivation.

I take the view that we must block, not argue with radical messages. The supermarket of ideas, just like any supermarket, requires you to dig in the depths for less desirable products. There is no reason why equal time should be given to 'love they neighbour as thyself' as 'strike him at his neck and kill him'. During the intifada, we found that radical messages were being distributed by pamphlets, so we created pamphlets of our own that were similar, but we created enough fear and uncertainty about the content that eventually people ignored them altogether.

So, the best counter-messaging tool is one you insert into the stream of information, and then ultimately you confuse, or you prompt the adversary to bring down the stream of information because it's no longer valid as a carrier of messages.

I worked quite a lot in previous jobs where I interacted with intelligence agencies across Europe, and

was amazed to discover how many people dealing with counter-terrorism and Islamic radicalism didn't even have a basic knowledge of Arabic, let along possess a basic understanding of Islamic concepts or the hadith. We need a much better understanding, because we can't keep fighting last year's war. We fought ISIS as if it was al-Qaeda. Al-Qaeda became like McDonalds, it became a franchise. We kept fighting it, but we needed to fight the evolved version. Now we're fighting ISIS, but we're not thinking about ISIS 2.0 – we're just remaining focused on ISIS 1.0, and that's not enough".

Timothy Stafford: "Thank you very much, Dr. Bar. Nikita, I know you've spent time working on social media and related issues so perhaps you'd like to comment on that aspect as part of your remarks?"

Nikita Malik: "Sure, so I'm in the unique position of having published a report looking at prosecutions and legal issues, and I'm also working on a project looking about social media. So in terms of looking at what was just mentioned about initiatives that failed, I remember about two years ago being told about an initiative that was run by the State Department which I found quite funny. I don't think it was intended to *be* funny but it was a failed initiative of theirs where you were watching individuals, people going online, say on Twitter, and looking at their risk of radicalisation, and then working with companies to then send them private messages saying 'hey, are you thinking about joining Islamic State?'. And people found that incredibly creepy, getting these personalised messages. So that's an example of intruding on someone's privacy a bit too much.

So I'd like to talk briefly, and I'm happy to answer questions later, about this issue of prosecutions and how realistic it is, to understand how we can possibly prosecute these individuals from say Islamic State, which have committed these crimes. I began to think about this idea, and I published this report looking at the issue through the lens of sexual violence, because many of these individuals have committed acts of sexual violence. If we go under the premise that they would be tried in the areas where they have committed these crimes say Syria, Libya, Iraq and Somalia – which were the areas I considered in the report – we have this conundrum that the national laws in those countries are very different, and likely don't accept some of these crimes of sexual violence. In Iraq and Libya and Syria for instance, the laws on sexual violence are actually incredibly weak. We have the idea that marital rape is not considered rape, or that an individual can get out of the punishment if they marry their victim.

One of the things we put forward was actually the idea that any aid given to these areas should be tied in to a serious examination form the bottom to the top of these laws. We also, following a trip I made a few months ago – I was speaking at the International Criminal court in the Hague, where I did a day long trip to the Special Tribunal of Lebanon, which has been going on for the last ten years and is trying to bring justice in the case of former Prime Minister Hariri in Lebanon, and try those four terrorists. And that was when I learned of the unique situation that the ICC will try only the individuals at the 'top level' who have committed crimes in the Islamic States. Now the individuals at the top level will be tried at UN courts, whereas the mid-ranking individuals and those at lower rungs of Islamic State's leadership will be tried in national courts. These national courts believe in the death penalty, whereas the international UN courts do not, so you have people who have committed the worst crimes, who have been the leaders of these groups, being allow3ed to live and other individuals being given the death penalty.

Then if you look at the state of Lebanon, and what happened, you have a textbook, perfect example of what you would want if you wanted to prosecute terrorists. You have an entire tribunal which is funded by the United Nations, the United States, and Lebanon, international lawyers who have been given access to all of the telephone communications of the Lebanese for that time, and still – I hate to criticise – after ten years, after hundreds of victims have come forward to give their testimonies, there's really been no justice.

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So I asked the question, here we have a country that recognises international laws. What would we do about Islamic State? For the first time we have an organisation that has a territory, does not recognise any international laws and treaties. How are we going to bring those individuals to justice? I wish I could so that I had an answer – I didn't have an answer – the answer was "we need more innovation in this space".

So one of the things I put forward in my report on trafficking, was really focused on the evidence collection side of crimes. I put forward the idea of an international legal task force, which was debated in the House of Lords, following the release of the report. And I think it's incredibly timely, given the recent news that the unit set up by the Foreign Office, to try and assist in areas dealing with outbreaks of sexual violence, was described as 'weak'. There has been a lot of criticism of the 'preventing violence' initiative, which has seen the UK, since November 2011, deploy seventy-four experts to thirteen countries, but it's still unclear what the impact has been. So what do we do about it?

Next year the International Criminal Court is considering opening up in Libya for the first time. This is based upon the precedent that was set when they were trying Gaddafi's family. So can we then use the International Criminal Court opening up in Libya, as a way to try these individuals for the multiple crimes they've committed, given that all of the other countries here these crimes have occurred have not signed up to the Rome statute, and as a result the International Criminal Court can not go in there unless they are recommended to do so by the United Nations Security Council, something that could be very easily vetoed by a member such as Russia.

I think this all touches on some ideas regarding how problematic it is to really try these individuals and bring them to justice. That isn't to say that we can't do it, it's just that there are a lot of challenges set up by this unique situation.

I'd like to briefly touch on what's happening nationally in the United Kingdom. As Lord Carlile said, two days ago David Anderson QC released his report looking at the attacks, the five terrorist attacks that have occurred in the United Kingdom this year alone. One of the things that I found, which was hidden in a footnote, which I found very important, was how David Anderson spoke about one of the biggest problems in the UK, which is the definition of extremism, and the definition of terrorism.

In the UK, he said, there is an outdated, confusing term – "domestic extremism", and then we have "international counter-terrorism". The reason it is outdated is because international terrorism was back when we were still dealing with actors like the Afghan Terrorism, and these individuals really were international. Now we have so many instances of home-grown terrorism, and a global '*Ummah*', and the availability of propaganda online, can we really designate domestic and international extremism so clearly? What makes it even more problematic is that the concept of extremism is not only hard to pin down, but there are also three working definitions of domestic extremism. One is held by the association of chief police officers which was set in 2006, then there is the Prevent Strategy, as we know that definition was set in 2011, and then there is the national domestic extremism unit, which set a different definition in 2013. So in 2012 there was a call to ask to bring together these definitions and create an agreed definition, and that call has yet to be answered. So we talk about international legislation, but even in the UK these terms are marred with confusion, and as a result, the reason it was part of this report is because it has serious consequences, in my opinion, for our ability to both prosecute and prevent terrorism".

Timothy Stafford: "Nikita thank you very much indeed. I'd like to open it up to questions but I'd like to start with the chair's prerogative and ask the first one, and this is to all panellists although I think that Lord Carlile is the person best-placed, which is, a lot of what we've been talking about are what I'd describe as preventative legal measures, ie, operating in the space before a particular terrorist attack has

been undertaken, using control orders, TPIMs, or going online to try and disrupt radicalisation. I think partly because of the growth in domestic, home-grown extremism, and partly because our intelligence agencies have become more proficient, then a lot of the extremist that we're dealing with are 'on the radar' so to speak. My concern is this, which is, I accept the point that you can lose civil liberties or stray outside of the rule of law framework by having essentially creeping, 'mission creep' authoritarianism, but you can also have a vigorous over-reaction to a large-scale event. This is all leading up to a particular question. We see more and more frequently that every time one of these attacks occurs, the individual perpetrator was in some realm or another known to authorities, maybe because of online activity, maybe because they strayed onto an intelligence radar. In some sense that's a good thing, because it means that our authorities agencies are getting closer and closer to the threat, but do you think there is a danger, if there were a large scale event – greatly larger than what we've seen saw in the UK this year, more on the 9/11 scale – and the perpetrators were known to authorities, that there would be a very strong backlash, that the authorities had not undertaken as severe an approach to this threat as they could have done, and that therefore the rule of law is then threatened by public anger and populist outrage?"

Lord Carlile: "The short answer to your question is yes. I think there is that danger, but I can develop it a little, particularly by referring to something that Nikita said a few moments ago. In 2007 the then Labour government asked me, as the Reviewer, to carry out a review of the definition of terrorism in the UK, and I did a worldwide review of terrorism definitions. They varied a fair bit, but not as much as I expected. The definition [in the UK] has expanded a very small amount, and actually it's a definition that can be found in section 1 of the Terrorism Act 2000, which has served us reasonably well because its broad, and takes into account anything that is likely to result in a "something's got to be done" reaction. And my determination, as well as that of Governments up to 2015, was to ensure that we had in place laws that were sufficiently broad for all eventualities to be dealt with within the law.

If I can just take up another point that is connected, which is the definition of extremism. Terrorism isn't very difficult to define, unless you ask academics. I asked academics and they produced a 101-line definition which was useful neither to man, nor as we're in a zoo, to beast. The definition of extremism is a much greater challenge. When Theresa May became Prime Minister, she said that there would be a new package of terrorism measures which would include an Extremism Act. And off went Parliamentary counsel and officials to produce a definition of extremism. A bill was produced by parliamentary counsel. I've not seen it. Very few people have seen it, because Parliamentary counsel said, as I understand it, 'we've done what you've told us to do – produce a bill – but its rubbish, don't use it'. And the Government decided not to use it, after consideration, because they could not find a definition of extremism that was neither narrow enough nor broad enough to be legally viable.

Now we do have some laws which are fairly elastic, and we leave the decisions as to whether a crime has been committed to juries. I'll give you an example: manslaughter by gross negligence. If you open your car door and a passing cyclist is knocked off his bicycle into the path of a passing taxi, you could be prosecuted for manslaughter by gross negligence if that person dies. And if you are, its left to a jury to evaluate what you have done. And it seems to me that that kind of measurement system, under our system of law, is better than trying to over define something with a definition that will be out of date within a small number of years, because we have exclusive forms of legislation, unlike the Germans which have purposive legislation. Of course, if there was a terrible outrage, and an aircraft was flown into a major football ground and 2,500 people died, there would be a huge demand for something to be done, and ever tighter law. My hope is that we have good enough law to be able to resist that temptation, but it does depend on Parliament, and particularly the Government, having done everything that is reasonable necessary to prevent such events, and the Anderson report highlighted the importance of that".

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Timothy Stafford: "Thank you very much, I'd like to pen up to questions now, we have one right at the back".

Hillel Fradkin: "My questions are just points of clarification. One subject you've taken up is what to do with returning British citizens, return from having been members of and having fought for the Islamic State. It wasn't clear what crime they'd be charged with. You [Lord Carlile] took up the issue of whether they'd be would allowed re-entry, but whether they'd be chargeable with an offence under British law was not clear to me. When you were speaking about laws that were fairly flexible, where juries would become to some determination, were you speaking about terrorism, or extremism, or both?"

Lord Carlile: "On the first question you ask, for I think twenty-one years now there has been universal, compulsory jurisdiction, which requires all nation states to prosecute for terrorism offences, wherever in the world they've been committed, so if we have evidence, which may be evidence derived from intelligence originally, which shows that an individual has committed an offence – murder, a terrorism offence - then we can prosecute them. Under UK law now, which is very different from American law in this respect, hearsay evidence, or second-hand evidence is firmly admissible in certain circumstances. The Criminal Justice Act 2003 sets out the circumstances of admissibility, and in a case like the sort of case you and I are thinking of, I believe that a conviction could be obtained entirely on the basis of good second-hand evidence.

The Government still needs to legislate in some way about extremism. At the moment the Government is appointing an Extremism Commission – well, nearly, they're at the moment appointing a Lead Commissioner for an Extremism Commission, there's a short-list in existence, some people in this room probably know who's on the short-list, and a choice will be made shortly. That Commissioner will then consult with the Government as to what the remit or powers of the Extremism Commission will be. I hope that the Extremism Commission will be thoroughly independent, and will regard it as its responsibility to make open, public, independent recommendations to the Government or any changes of the law. I can foresee that people could be prosecuted under the Terrorism Act, or under new legislation, for acts which amount to extremism which encourage terrorism. Not in the particular sense, such as to blow up London Zoo on the 7th of December, but the ideation, the real ideation, of how to set about terrorism acts under these sort of heretical principles, that my colleague referred to in his presentation. I believe it can be done, and I think that UK law, the common law system, also Australian, New Zealand and Canadian law, is flexible enough to provide for juries to decide whether people have broken the law in that way".

Dr Shmuel Bar: "In Israel what happens is very simple, an Israeli-Arab who crosses the border, joins Daesh, and the comes back after he discovers it's not that much fun, he is prosecuted for knowing contact with an enemy entity. The entity doesn't have to be a state in order for it to be an enemy. This is one of the problems with of the older states where the enemy is a state. Secondly, the whole issue of incitement or support of terrorism... the moment you openly express your satisfaction with the murder of human beings in any context, then you have violated the law. Definitely you don't have to claim its extremism, but open support of any online, or openly, or in the mosque or in synagogue of murder of individuals, people, is a violation of the law and you can be prosecuted".

Lord Carlile: "I should have added something actually. We do have prescribed, banned organisations in this country. If they don't like it they can apply to a special court to be removed from the list, and people can also be prosecuted for membership of these organisations. Its similar to Israeli law, but I do have real reservations about prosecuting people who say for instance, 'will someone rid me of this turbulent priest'".

Hillel Fradkin: "What I'm unclear about, and it relates to the issue... Someone from Islamic State will say I fought for a state, I'm not engaging in terrorism but fighting for a far state, which didn't attack

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Britain, so under what conception of his status would you prosecute them".

Timothy Stafford: "I'll take a few more questions before we move on"

Rashid Ali: "Our legislation in the UK covers membership of a terrorist organisation, and judicial cases have actually considered the mere oath of fealty to ISIS as basis for having individuals in the UK prosecuted, and I think that we'll probably find the premise for that in the decision to travelling to ISIS, as sufficient evidence to show they've sworn an oath".

Timothy: "Nikita you were going to say something on this point?"

Nikita: "Yeah I was just going to say exactly what Rash said, that the Islamic State is a prescribed terrorist organisation, moreover sections 15-19 of our Terrorism Acts focus on material support statutes, so you can forget about joining the stat e- if you're sending money, and we've had a few controversial cases of families in the UK whose sons have gone to join the Islamic State, and they've sent them money, and then they'd found themselves under investigation as well, so that's quite well covered. The point I wanted to make was about international courts. At the moment, the ICC cannot try for terrorism, because terrorism doesn't not fall under a crime against humanity, they are trying for genocide and sexual violence, which is why last year - and its contained within the report I wrote, - the United Nations said that sexual violence is a tactic of terrorism. That was an incredibly unique statement, because here we're able to now try terrorists for crimes against humanity, for doing that, for committing genocide as well, so that has been done by lawyers acting in an international context".

Phil Gurski: "Phil Gurksi, former intelligence officer with the Canadian Security Intelligence Service (CSIS), Lord Carlile, my question is for you – you talked about control orders, we call them peace bonds in Canada but it's a similar type of arrangement. I understand why they're used and why they were developed. The problem is that a control order or peace bond is only as good as the conditions being monitored. Which means you have to put resources on the person, to ensure they're not accessing online, they're not chatting with their old mates to talk about things. My question is, how is it an effective tool, and how is it any different than just letting MI5 or CSIS investigate the person anyway? So is it actually a solution to a problem, or is it just displacing the problem into a different realm which requires the same amount of resources as if you had left it with the security services in the first place?"

Lord Carlile: "I think it's part of the toolkit of solutions for the problem. If you take the period after the 21ˢᵗ of July 2005, when there was a failed attempt to commit serious terrorism acts in London, from that time for several years, until the murder of Lee Rigby, there was no successful terrorist plot, and one of the reasons for that was the existence of control orders. Now as to the effectiveness I've studied this in detail, and there are things I can't say because they're covered by the Official Secrets Act, but I can tell you that anybody who was under a control order - with relocation at least - was subject to *the* most rigorous scrutiny, and it worked reasonably well.

I used to go and visit people who were subject of control orders and talk to them about what they thought of being under control orders, and although of course they complained about certain aspects, such as, 'it made it more difficult for the children to do their homework', because they weren't allowed to use a laptop in the home so they had to do their homework at school, it was actually I think it was an incredibly valuable measure, I'm sure it worked and of course it focused the minds of the police and the security service on those individuals – it actually broke up networks. When I talked earlier with linkage with community policing, it was applied there. In relation to every relocated person, there was a team of community police officers, who were required to make a relationship with that family as best they could, and the control orders review group in the Home Office, of which I was a member actually, used to review these cases on a very regular basis, and obtain factual updates. So it was very hands on, and it

worked well, and the only reason it was abandoned was because Nick Clegg, when he was Deputy Prime Minister - and I was a member of his party at that time - when Nick Clegg was Deputy Prime Minister he got it into his head that his party wanted them taken away because they were civil liberties non-compliant, a view that was rejected repeatedly by the courts".

Dr. Shmuel Bar: "I'd like to make a point when we're talking about the legal issues. One of the most problematic legal issues is the issue of privacy. I've encountered this, because this has to do with mass information. As long as a person hasn't committed a crime then he has a right to privacy, but if he has the right to privacy until the point when he commits the crime then it won't help you later one, that's when you investigate and wrap up the case. I was asked by people we're working with, we have a case - a person posted online: 'My mother, my father, my brothers, my sister, you will be happy, I am going to paradise, don't cry for me, etc'. Automatically this is identified as an announcement. You don't know if he posted this 10 minutes before, 15 minutes before, or two days before [an attack]. You cannot go to a court and say 'will you please allow us to de-anonymise this post because it looks dangerous?' You really don't have that much time. The law has to deal with this because once you say we anonymise because of privacy, then you have to find a way to expedite the process, because you really don't have time. In this case, it was about half a day, it was about six or seven hours or something like that. I'm not a lawyer but I have common sense, and my common sense says that the right to life of innocent people is greater than the right to privacy of the person who wants to kill them".

Timothy Stafford: "Yes, more questions".

Zuhdi Jasser: "I would be interested in all of your positions. .. I know we've been focused on terrorism and the legalities of fighting that. Some terms I haven't heard you use or salafi-jihadi insurgency. Along with insurgency comes the concept of separatist movements, and then treason and sedition. I'm not saying that we should necessarily be arresting folks for sedition and treason, but should we be – and maybe Lord Carlile can address this and then I would be interested in Nikita and Dr. Bar's position - why don't we start using that language more? Terms like separatist movements, treason, and sedition, because you mentioned people like (Nidal) Malik at Fort Hood, the core is a disgust for the country they live in, and a sense that they are living in the land of war versus the land of Islam, and unless we start targeting that as the problem versus terrorism which is a symptom, I don't think we're going to get to the root of the problem, and I haven't heard the terms separatist, treason or sedition used today".

Lord Carlile: "I think that we need to separate political language from legal language. I don't have an objection, if people want to – I wouldn't use that language myself because I don't think its helpful - but I have no objection to other people using those words as part of their political language, but please don't start using it as legal language. I spent the last forty-five years amongst other things as a trial lawyer, and I appeared in many very serious cases in front of juries, of different kinds - cases and juries. Juries will not convict people if they think that the prosecution is over-weighted, and they are much happier on the whole when dealing with cases that are brought on conventional grounds, with crimes they read about every day in the paper, even if they are murder, conspiracy to cause explosions, membership of a terrorist organisation and so on. Also one has to be realistic about Parliament, the British Parliament will never reintroduce crimes of sedition, treason and insurgency, unless there was a genuine physical insurgency that endangered the life of the nation, and we haven't had that situation. If you're interested in the legal theories behind this, read the decision of the in the House of Lords - I think in 2010 though my memory may be letting me down - which dealt with some of the conceptualities of this".

Dr. Shmuel Bar: "I have something on separatism, because there's some obscure document I once read which says 'When in the course of human events it becomes necessary for one people to dissolve the political bands that have connected them to another... etc, etc. I don't remember where I read it or who wrote it! The problem is separatism or nationalist separatism must also obey certain – call it – rules of

law. If you do it through terrorism you're a terrorist, but insurgency is a word which was invented for Afghanistan – this wasn't 'insurgency', oh my goodness, insurgency, its a ridiculous term. So I think we have to be very careful about keeping alive all sorts of concepts that people after 9/11 were flapping around looking for words that named what they were involved in, and then giving them all sorts of meanings. This is something I've been dealing with quite a lot – what an insurgency is. Its when you have a government, and you have people who are against the government, but they have to obey the rules of law. They have to carry their weapons openly, they have to abide by the Geneva conventions, and what we're talking about here is not insurgency, and it's not separatism".

Timothy Stafford: "Nikita, you wanted to come in on this one?"

Nikita Malik: "We touched on this earlier with dual nationalities.. what we're having in the United Kingdom already is if you are a dual national, you can be stripped of your UK passport. The main issue is what do we do with individuals who aren't, and the international conventions on statelessness. So we have a unique situation where people are burning their British passport – I did a big project looking at the educational curriculum of those bring brought up in the Islamic state, and yes you are right they are brought up to hate. Their geographical maps only show the Islamic State, the rest of the countries are black – insignificant. That is something we have to look at very carefully. There have been multiple ideas bounced around about countries of ancestry, and I don't want to comment on that because those are political opinions. But even though there is this idea that statelessness should not be allowed, it is still happening. There are so many kids that are born to the state who don't have citizenship of anywhere – they are stateless. There are children in refugee camps who are stateless. So a lot of this talk that statelessness should not be allowed – well, statelessness occurs all the time".

Timothy Stafford: "I'd like to take some more questions..."

Ehsan Jami: "I have a Dr. Barr. The Netherlands for example has about 150 people that the intelligence community says they may be willing to form terrorist groups – perhaps. Now I know that Israel is doing administrative detention. Can you go into what you've learned from what Israel does with administrative detention. Would that be effective? We talked about long-termism, and Lord Carlile focused on the rule of law, so could you go into that?"

Dr. Shmuel Bar: "Right well, first of all in Israel we are bit different to Europe because the level of intelligence which is admissible in court is different to what is acceptable in Europe. When I was a civil servant, I was liaising with European countries, and things were black and white. GCHJQ, NSA have it – no that intercept, you can't use it in court, so then you have to find some other way to do it. Interrogation methods are different in different countries, and then it creates a situation for the Europeans that if you get information from the Jordanians, and the Jordanians are suspected of using certain methods, then you say you can't use it. So you have to use some other methods. In our situation we have found, with administrative detention, is extremely effective in making planning of terrorism far more complicated The general idea is that the more complicated it is, the more people they have to go through - 'A' to go through 'B', 'C' to go through 'D' - it means there are more areas where can infiltrate it and you can get intel from it. So administrative detention is frequently just a means to enhance your intelligence gathering capabilities, and its structure does that, and its part of a strategy. It's not just 'oh let's give them administrative detention and forget it – it's an order to do that. It's been a very effective. Discussions in Israel about it should not be used in the political context, you have to be very careful about it, but in the terrorist context it can be very effective".

Timothy Stafford: "Lord Carlile did you want to come in on this?"

Lord Carlile: "Only to say that the situation in Israel is very different to the situation here, even before

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President Trump's intervention yesterday. And I am not going to criticise Israel, all I can say is I've looked at Israel's administrative detention arrangements, and they would not last two minutes in a British court".

Timothy Stafford: "Different circumstances... Yes any more questions please..."

Burzine Waghmar: "You'll remember the case of the Japanese who ended up in West Asia [the Middle East], and attacked Lod airport in Israel. Tokyo was disgusted to say the least, and two years ago some still languished in Syria those individuals, still stateless, and their nationality was stripped".

Dr.Shmeul Bar: "I'm familiar with the affair, but with Japan it's a cultural thing. Let me tell you – I was a student at university then. It was the middle of the night and we heard about the events then. This tall Japanese fellow – a student knocked on my door, and said "I want to apologise for the terrible thing my countrymen did, and he went from room to room in the dormitory to apologise for what his countrymen did. That actually tells us quite a lot about how the Japanese government responded – it did so out of honour".

Timothy Stafford: "I'd like to just pick up on one question which we've not dwelled upon , because we're talking about the tools available to Governments. This is the social media question, which came up in your presentation Dr. Bar and Nikita I know you've worked on this as well, if you look at the Social Media companies, which host platforms where we now find a lot of extremist content whether its YouTube or Facebook. You touched on the issue of privacy, and one reason why the companies have been able to skirt the issue of privacy is because people are supplying their own content, and therefore these companies have emerged with a culture of not intervening in the creation of their products, which is a remarkably successful business model. The product is created by consumers, so given the comments we've seen this year from Theresa May about the need for governments to take a much more interventionist role in this space, do you think that the governments we're considering – primarily Western governments but also Israel – have the requisite tools that they need to regulate social media, or are companies taking sufficient steps? I know Israel has a thriving sector so I'd like your comments"

Dr. Shmuel Bar: "Well first of all a lot of effort has been put into the preliminary stage of monitoring, in other words, you cannot regulate if you can't monitor. You can't monitor if you're only doing meta-data. You have to have a deep understanding of the content, potential content and ideological content etc, because you have to read between the lines. The people who are being influenced are reading between the line because these are their cultural memes. So all of the tools that have been developed for the commercial – do people like coca-cola, do they not like coca-cola, are not really relevant for governments. Governments have to develop capabilities which are specific to this task, and then the question is, can governments use avatars. There are discussions within the United States about what right the government has to create avatars who go online and pretend to be something, and this is the same debate about can you have sting operations. And after you go through that you have the question of are you allowed to insert misleading information to disrupt the messages? These are psychological operations. In Israel its really easy, because the law allows Shin Bet to do that, and I think that the problem here is that in Europe you haven't adapted yourself to the social media age- to take the tools. I'm involved in an EU effort on that, and actually every single thing that the technology can provide - and you can provide a lot - you come across a lawyer who says 'no, no you can't do that', and if you do that it will carry on until the next big attack, and after that the inquiry will find out that everything was visible on Social Media etc, and only then will someone respond".

Timothy Stafford: "Nikita – do you we have the correct tools in place or are we really playing catch up?"

Nikita: "I'd just like to make a few points on that – David Anderson's report quite clearly demonstrated

that in all of the attacks that occurred this year, individuals were using encrypted messaging such as WhatsApp, they were downloading things on Youtube, and I think that of course there is the idea that, yes, as mentioned earlier, these are consumer products, and people sign up to this, and therefore the people who regulate it should also be consumers. So that is the premise of this 'trusted flagger' concept on Youtube, and that people who are watching content should be the ones who flag up disturbing content. The issue I have with that is why expose individuals to this the first place, and it isn't just in the terrorism space. We also see very much with child pornography and paedophilia. There's no need to expose such individuals with such a large platform. There's a responsibility to stop that. Just as we have panels to regulate what's on TV and what's on the radio – we can't have swearing on the radio for instance, so the question is why are we not doing that on social media?

An interesting example came a few weeks ago – I was at an event run by Facebook, and the Institute for Strategic Dialogue (ISD)'s Rashid Ali who is in the front row, actually brought up to Facebook that there's an Islamic state video he found on Facebook, and there wasn't a mechanism to report it for terrorism. The Answer was simply to select the option "I don't think this should be on Facebook". And so there is a lot of work that still needs to be done in this space, and in some ways – I worked with Google and they're trying to do a lot, they're creating jobs – but they are playing catch up, and we see that all the time when we have a media expose all over the front pages of the papers saying 'paedophiles are commenting on child pornography all over the internet and look how easy it is to find'. So there is a lot of catch up – and I take the comments on board about what we could be doing to stop that by being more proactive".

Dr. Shmeul Bar: "Also, the idea that users themselves flag things – the Simon Wiesenthal Centre had a Facebook, page which was taken down because a lot of neo-Nazis got together and complained that it was maligning the Nazi party. It was saying bad things about Hitler, and so it was taken down because people were complaining, the Middle East Media Research institute (MEMRI) was taken down for a few days because they were showing videos of ISIS and saying 'look what they are doing' – it's an academic site showcasing what is happening, but people wanted to take down MEMRI and people just wanted to take it down. And with all respect to rule of law and the jury system, I don't think a jury system in which every cult member on facebook is part of the jury seems not to me to be the way to go about it".

Timothy Stafford: "Thank you – and not to pile on, but one of the things that has always concerned me is that the 'consumers acting in a self-regulatory manner' model assumes that there are just as many people going out to look for harmful content as there are people who want it in the first place. IE, that there as many people wanting to find extremist content so they can flag it as there are extremists wanting to find it and watch it because they're extremists. That's likely not the case.
We have time for a couple of questions, and I see two more so Zuhdi Jasser and Rashid Ali the final questions are yours".

Zuhdi Jasser: "Just a quick follow up on the online stuff. There was a recent large article in the New York Times in which they heralded the removal of Anwar al-Awlaki's videos. We had some disagreement amongst some of us activists on this issues. Obviously he was justifiably droned for declaring war, so his videos calling for violence were rightly removed, but this guy had a trove that was spiritually based and other things, so is it right? I worry about the slippery slope that Dr. Bar just mentioned which is if you start removing any videos, or a video that has an image of Awlaki – things that aren't a call to war, when the guy has volumes and volumes of spiritual videos, does that get us to where we need to be or does that just push the war of ideas underground.

Rashid Ali: "Just on that theme, it is typical because you have content that is very clear that you can determine easily, and some that's not. The second area is stuff which is material which is put up by

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people who we would regard as terrorists or advocates of terrorism, but has nothing to do with the subject matter, so what do you do with that content? Because obviously its part and parcel of propaganda, and removing that is effectively no-platforming particular types of individuals rather than content, which is a slightly different way of going about it. From a legalistic perspective, once you become a public domain and a public platform, effectively you move away from being a private space, to being regulated by public legislation. So depending on which legal jurisdiction you're in, all sorts of issues come out. The US leans towards absolute free speech – less so the UK. We can have much more restrictions than in the US. The last kernel of this is that when stepping back and looking at things like reporting content and monitoring content, technically speaking because its just a platform, according to UK law, none of those platforms are required to monitor content, as long as they do not interfere in the manner in which that content is distributed. The problem here is that Facebook and its algorithms do interfere in the content and the way that content appears to you, so this is like a legal fudge which Facebook have persisted in advancing, and governments haven't enforced. So either you need legislation to deal with this, or you need greater prosecutor courage to move that forward.

Zuhdi Jasser: "Youtube is facing a lawsuit which asserts that it is a public platform rather than private one".

Nikita Malik: "I'll comment on the privacy aspect – I think it's absolutely true, but if you look at it form a moral perspective, there is also paid advertising – the capacity of these companies to know what you've been looking at in a different platform. When you go on Youtube you see all kinds of things about holidays that you looked at yesterday elsewhere. There's much more to it than just a platform, and the right to privacy and your browsing history are affected.

What we've seen in our analysis of Awklai videos is that even if those videos are taken down, there are individuals who will do copycat videos. There are people who will preach exactly like him, and they're not the only ones. There are others who do that as well, and increasingly, because of Youtube's guidelines, we're seeing the sophisticated use of Youtube by extremists – both Islamists and the Far-right, who know exactly what to say to make sure their video doesn't go against any guidelines and can stay online. They're obviously developing their ability to do this, which goes to your question about will it go elsewhere – yes, we see it in google chat if its moved off Youtube. So there is a lot of work to be done looking at that issue and also the moral issue".

Dr. Shmuel Bar: "If somebody is a terrorist or preaches attacking innocent peoples, like Awlaki, he should be condemned to disappear from social media. It doesn't matter what he says, because his preaching - what you say is benign –is not so benign. He's preaching in order to get a following in order which he uses to say I'm your sheikh for A, B, C which is completely in the personal level, and D, E etc. So he is gaining the obedience and becoming the authority in one way, and then using this authority in another way, So the only way to combat it is to say these people will just not appear anywhere. Regarding the benign or not benign – before the attacks on the American embassies in Nairobi and Dar es Salaam, there was a document circulating which no one paid attention. It was a document produced by a number of Sheikhs in Peshawar, around Osama bin Laden, and the question was, whether it is a greater sin to shirk jihad and refrain from the duty of jihad, or to possibly kill Muslims or people who have a writ of safe passage, even though it says you kill someone who is such a person you will not see paradise. This is completely esoteric, it is theoretical, but it was sent from Peshawar to London, and on to Nairobi and Dar es Salaam, and the question was essentially 'are we allowed to attack these embassies?', and the answer given was yes. But none of that would violate anything – there wasn't one word relating to kill, or massacre, or blow up".

<u>END</u>