

## Written evidence from Nikita Malik (COV0122)

### *About the Author*

Nikita Malik has been the Director of the Centre on Radicalisation and Terrorism (CRT) at the Henry Jackson Society since 2017. Her research focuses on governmental, private sector, and civil society responses to terrorism and other high-impact events. She has an MA and an MSc from the University of Oxford, and a second MSc from SOAS, University of London.

### *About The Henry Jackson Society*

The Henry Jackson Society (HJS) is a London-based international affairs think-tank.

### **Summary of Submission**

- The 9/11 attacks in the US, as well as those on 7 July 2005 in the UK (7/7), led to almost two decades of new legislation under the broad remit of ‘counter-terrorism’. These laws – often framed as emergency measures – changed the lives of ordinary citizens and communities: preventative approaches, for example, directly affected free speech and free movement (including the use of stop and search), the sharing of intelligence and data on civilians between nations (and sometimes between nations and technology companies), and the creation of provisions around new policies on ‘unacceptable behaviour’.
  - Similarly, new legislation in the form of the Coronavirus Act 2020 in the UK has been employed to respond to fast-moving conditions. Much like responses to terrorism, the response to COVID-19 has involved navigating the balance between civil liberties and national security.
  - This submission puts forward a number of recommendations to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant, based on historical approaches to countering terrorism in the UK.
1. If coronavirus legislation continues to be in force for more than two years, or some legislation becomes permanent, continued scrutiny of the new powers the legislation creates and their impact on civil liberties will be vital.
  2. The UK government should create a new Independent Reviewer of Pandemic Legislation, Preparedness, and Data Use. The new Independent Reviewer of Pandemic Legislation should review and publish insights into the legislation, as was the case with the Independent Reviewer of Terrorism Legislation.
    - a. Part of the remit of the new Independent Reviewer of Pandemic Legislation should be to expand and update guiding principles regarding surveillance and data collection for the purposes of countering COVID-19. Two years after the Home Office announced in their Biometrics Strategy that the Surveillance Camera Code of Practice would be updated, for example, this has not been done, and the Code is not moving in pace with technology.<sup>1</sup>
    - b. Where data needs to be utilised by governments to monitor activities, it is essential to create greater public accountability by enhancing transparency. To do this, existing privacy legislation (such as the Data Protection Act 2018) must be adapted to match the speed of technological reality. For example, the use of apps for health monitoring purposes could be subject to independent review, as was the case with the review of the UK’s Investigatory Powers Bill, led by the Independent Reviewer of Terrorism Legislation.<sup>2</sup>

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<sup>1</sup> Porter, T., ‘Surveillance and Covid-19: Lessons to be learnt’, Surveillance Camera Commissioner’s Office, 21 April 2020, available at: <https://videosurveillance.blog.gov.uk/2020/04/21/surveillance-and-convid-19-lessons-to-be-learnt/>, last visited: 22 May 2020.

<sup>2</sup> Martin, A. J., ‘Labour scores review of Snoopers’ Charter’s bulk powers from UK.gov’, *The Register*, 25 May 2016, available at: [www.theregister.co.uk/2016/05/25/labour\\_scores\\_review\\_of\\_snoopers\\_charter\\_bulk\\_powers\\_from\\_ukgov/](http://www.theregister.co.uk/2016/05/25/labour_scores_review_of_snoopers_charter_bulk_powers_from_ukgov/), last visited: 22 May 2020.

3. Where data on suspects of interest is held longer due to COVID-19 delays, or prisoners are released early because of COVID-19 concerns, such decisions must be assessed and made publicly available, in a similar way to the Independent Reviewer of Terrorism Legislation reviews on investigatory powers.<sup>3</sup>
  - a. The UK government should commission an independent review of the laws governing state surveillance, and it should combine all matters of state surveillance regulation within a single regulatory body with judicial leadership, powers of inspection, and powers of sanction. The new Independent Reviewer of Pandemic Legislation should sit on this new regulatory body.
  - b. Any independent reviewer, protection officer, or oversight board should monitor where common assault arrests have gone wrong in the UK and feed these factors into a police review board.
4. The results of counter-terrorism exercises have been made public by reports released by the Independent Reviewer of Terrorism Legislation. Similar results should be made available by a new Independent Reviewer of Pandemic Legislation.
  - a. The results of pandemic preparedness exercises in the UK should be made publicly available, and opportunities for improvement made transparent. This may entail greater involvement from existing intelligence and policing apparatuses.
  - b. The Joint Terrorism Analysis Centre (JTAC) in the UK, for example, is responsible for assessing the level and nature of the threat from international terrorism. A similar threat level model was announced by the UK government in May 2020, but this should be expanded to incorporate preparedness towards pandemics and other forms of diseases, and such results should be fed into strategic priorities for catastrophic risks. It will be important to communicate threat levels to the public in a consistent way; a model such as the US's America's Missing: Broadcast Emergency Response (AMBER) alert should be used to communicate news to the public for high-impact threat levels.
5. Where the military and police forces need to intervene to provide assistance in pandemic preparedness and response, it is essential that a policing review board is in place to ensure that lessons are learned from responses to the pandemic and any improvements stemming from these lessons are communicated to the public. A feedback mechanism whereby recommendations can be incorporated into existing systems, as is the case with Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), which puts forward recommendations to further improve policing in the realm of counter-terrorism, could be employed.
6. A civil liberties protection officer or oversight board should be created to issue guidelines and develop a system that protects privacy and civil liberties in the development of the use of data in response to COVID-19. To enhance transparency and oversight, guidelines should be made public.
  - a. It is essential that any data systems to process potential risks, which either use artificial algorithms or investigatory powers (or a combination of both), are accurate and transparent to the general public.
  - b. On an international level, UN Resolution 74/270 should be expanded to ensure that countries who have employed surveillance techniques or data mining mechanisms to contain the spread of COVID-19 sign an international code of practice to ensure that data analysis has sufficient oversight and public transparency.

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<sup>3</sup> Anderson, D., 'A Question of Trust. Report of the investigatory powers review', June 2015, available at: <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2015/06/IPR-Report-Web-Accessible1.pdf>, last visited: 22 May 2020.

7. Disease control and terrorism should be examined together, particularly when it comes to areas of defence and military funding, and where nefarious actors may use disease to increase power.
  - a. Certain divisions of the policing forces in the UK deal with existing capabilities to detect terrorist activity involving Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) materials and their precursors, and to control and safeguard these materials. In the future, lessons from responses to CBRNE risks should be applied in responses to global pandemics, particularly around new provisions on health and protective equipment. It will also be important that policing systems are able to deal with 'double threats'; terrorists, for example, planning to attack hospitals and other vulnerable areas. Systems and processes improvements will be necessary to ensure that planning is done to prepare for lockdown ease.
  - b. Defence agencies should examine catastrophic and global threats that affect everyone, and that may need a synchronised approach between countries rather than the current approach of a nation preparing itself for threats from a single foreign entity or from domestic extremism. As such, pandemic preparedness departments in the UK should receive more funding. Further departments, such as bio-preparedness and CBRNE within UK policing, may also require more funding to understand the use of pandemic as a bioweapon.
  - c. Concerns around the accuracy of data shared by countries such as China during the early stages of the pandemic raise issues. An international body such as the UN will need to ensure that countries avoid reporting inaccurate numbers, as this will affect the global system of preparedness and response and have long-term effects on power relations. Non-compliance should be met with similar responses to non-compliance for nuclear weapons; for example, the use of sanctions.
8. As within counter-terrorism efforts, monitoring the spread of the pandemic and potential carriers of disease following easing on lockdown restrictions will require greater security, particularly aviation security across borders.
  - a. On an international level, the UN should build on A/RES/74/270 'Global solidarity to fight the coronavirus disease 2019 (COVID-19)',<sup>4</sup> adopted on 2 April 2020, to create a tighter framework to contain the spread of disease, as it has done with international counter-terrorism aviation requirements (UNSCR 2396)<sup>5</sup> and financial sanctions on terrorists in the past (UNSCR 2462).<sup>6</sup>
  - b. The UK should hone its current framework of Advanced Passenger Information (API) to ensure that carriers of disease are contained and that risks are mitigated when it comes to border security. Further training in this regard will be required by the UK Border Agency (UKBA).

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<sup>4</sup> The General Assembly of the United Nations, 'Resolution adopted by the General Assembly on 2 April 2020', *United Nations Website*, 3 April 2020, available at: <https://undocs.org/en/A/RES/74/270>, last visited: 22 May 2020.

<sup>5</sup> United Nations Security Council, 'Resolution 2396 (2017). Adopted by the Security Council at its 8148th meeting, on 21 December 2017', *United Nations Website*, 21 December 2017, available at: [https://undocs.org/S/RES/2396\(2017\)](https://undocs.org/S/RES/2396(2017)), last visited: 22 May 2020.

<sup>6</sup> United Nations Security Council, 'Resolution 2462 (2019). Adopted by the Security Council at its 8496th meeting, on 28 March 2019', *United Nations Website*, 28 March 2019, available at: [https://undocs.org/en/S/RES/2462\(2019\)](https://undocs.org/en/S/RES/2462(2019)), last visited: 22 May 2020.