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**Submission to
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**REVOCAATION OF
CITIZENSHIP**

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Introduction

1 A version of this paper was delivered on 10 May 2019 at the Expert Roundtable, Bingham Centre for the Rule of Law, Charles Clore House, London WC1B 5JP. The Chatham House Rules applicable during the event do not apply to this paper which can be quoted and attributed as required.

2 Because of its provenance, the paper is confined to the issues which were assigned by the organisers, namely:

- Is revocation of citizenship consistent with international obligations?
- Is revocation of citizenship necessary?
- Is revocation of citizenship effective?

3 Further work which I have undertaken on this issue is reflected in the submissions made as senior special adviser to the report by David Anderson QC, *Citizenship Removal Resulting in Statelessness: First Report of the Independent Reviewer on the operation of the power to remove citizenship obtained by naturalisation from persons who have no other citizenship* by David Anderson Q.C. Independent Reviewer of Terrorism Legislation (London, 2016).

Background

4 What I described in 2007 as the ‘weaponization of nationality’ in counter terrorism¹ continues apace. My comment was made in the context of a major turning point in counter terrorism policy. Most people will immediately suppose that any turning-point must refer to 9/11. But especially in the UK context, having experienced Irish political violence, the 9/11 attacks were less decisive for domestic law than in most other countries (though were not without consequence).² Rather, the attacks of the 7 July 2005 in London were the subjects for attention. What they demonstrated was the era of ‘neighbour terrorism’.³ The London bombings were remarkable because they were perpetrated by British citizens. They were Yorkshiremen, whose mundane backgrounds set at nought several of the tactics of the security forces on the hunt for cells of foreigners. Foreigners could be dealt with by exit (deportation) or exclusion, and there were various legal ploys for strengthening both exit and exclusion models. But our dangerous neighbours would have to be persuaded or prosecuted. Neither tactic was straightforward, and the adaptations of criminal law (such as through incitement offences or notions of material support) have been only slightly less controversial than the ‘Prevent’ package of initiatives⁴ which are once again subject to review.⁵

5 The distinction drawn above between neighbours and foreigners has not broken down, but it was always hedged and fudged. One complication has been immigration, leading to pertinent issues of integration and disintegration.⁶ That incoming pressure has long existed. However, a new complication arose with Islamic State and the outgoing pressure from

¹ Walker, C., ‘The treatment of foreign terror suspects’ (2007) 70 *Modern Law Review* 427.

² Walker, C., ‘Terrorism and criminal justice: past, present and future’ [2004] *Criminal Law Review* 311.

³ Walker, C., ‘“Know Thine Enemy as Thyself”: Discerning Friend from Foe under Anti-Terrorism Laws’ (2008) 32 *Melbourne University Law Review* 275.

⁴ See HM Government, *CONTEST: The United Kingdom’s Strategy for Countering Terrorism* (Cm.9608, London, 2018)

⁵ Counter Terrorism and Border Security Act 2019, s.20.

⁶ See HM Government, *Integrated Communities Strategy Green Paper* (London, 2018).

Foreign Terrorist Fighters (FTFs).⁷ These erstwhile neighbours now declare that they do not wish to be our neighbours or even citizens of our country. Their allegiance is to the Caliphate. In response, it would be possible to continue to treat them as wayward citizens and to carry on applying the CONTEST elements of Prevent and Pursue. More tempting, however, is to divest responsibility as if they were foreigners. In this way, the FTFs can be taken at their word, divested of citizenship, and left to plot or rot or both, never to return to their neighbourhood.

6 As a result, especially after the declaration of Islamic State as a Caliphate in June 2014, an increasing number of countries have amended their laws to expand the legal powers to deprive citizens of their nationality in response to national security threats arising through terrorism.⁸ In 2017 alone, the Netherlands,⁹ Russia,¹⁰ and Turkey¹¹ produced amended legislation, though attempts have failed elsewhere, such as in the USA,¹² usually for reasons of constitutional history and formal restraint rather than because of any empathy with the plight of FTFs.

7 For its part, the UK has been in the vanguard of this trend. The Immigration Act 2014¹³ expanded the possibility of deprivation in response to the case of Hilal al Jemma,¹⁴ though this provision (which allows for statelessness where it is reasonably believed to be within the subject's power to avoid it) has not been applied as yet. Rather, above all, the UK has reacted by ramping up deprivations of citizenship under previous broad powers. Thus, there were 36 deprivations on public interest grounds from 2006-2015. Then in 2016, 14 people were deprived of British citizenship on the basis that to do so was 'conducive to the public good'; and in 2017, 104 people were deprived, again as to do so was considered to be 'conducive to the public good'.¹⁵

⁷ See Walker, C., 'Foreign Terrorists Fighters' in the Independent Reviewer for Terrorism Legislation, *Annual Report for 2015* (Home Office, London, 2016) Annex 2. See also Walker, C. 'Foreign Terrorist Fighters and UK Counter Terrorism Laws' (2018) 2 *Asian Yearbook of Human Rights and Humanitarian Law* 177.

⁸ For surveys, see Macklin, A., 'Citizenship revocation and the privilege to have rights' (2014) 40 *Queen's Law Journal* 1; Spiro, P.J., 'Expatriating terrorists' (2014) 82 *Fordham Law Review* 2169; Mantu, S., *Contingent Citizenship* (Brill, Leiden, 2015); Lambert, H., 'Comparative perspectives on arbitrary deprivation of nationality and refugee status' (2015) 64 *International & Comparative Law Quarterly* 1; Pillai, S. and Williams, G., 'Twenty-first century banishment' (2017) 66 *International & Comparative Law Quarterly* 521; Pillai, S. and Williams, G., 'The Utility of Citizenship Stripping Laws in the UK, Canada and Australia' (2018) 41 *Melbourne University Law Review* 845; Burchardt, D. and Gulati, R., 'International Counter-terrorism Regulation and Citizenship-stripping Laws—Reinforcing Legal Exceptionalism' (2018) 23 *Journal of Conflict and Security* 203.

⁹ Statute Law of February 10, 2017, on amending the Law on Dutch nationality in relation to the withdrawal Dutch citizenship in the interest of the national security (no.52).

¹⁰ Russian Federal Law on the Citizenship of the Russian Federation (N 62-FZ) as amended by N 243-FZ of 29 July 2017).

¹¹ Decree (KHK) 680 establishing procedures for the deprivation of nationality for Turkish citizens living outside of Turkey, Art.75, amending Turkish Citizenship Law (No. 403,11 February 1964).

¹² Herzog, B., *Expatriation in America from the Colonial Era to the War on Terror* (NYU Press, New York, 2015); Spiro, S.J., 'Expatriating terrorists' (2014) 82 *Fordham Law Review* 2169. Reverses and failures were also experienced in Canada (Act to amend the Citizenship Act and to make consequential amendments to another Act 2017 (c.14)) and France (see France – Projet de Loi 395 of 2016, Amendment 14: Bill on deprivation of citizenship).

¹³ British Nationality Act 1981, s.40(4A). See Gibney, M.J., 'The deprivation of citizenship in UK law' (2014) 28 *Journal of Immigration Asylum and Nationality Law* 326; Fripp, E., *The Law and Practice of Expulsion and Exclusion for the United Kingdom* (Hart, Oxford, 2015).

¹⁴ *Secretary of State for the Home Department v Al Jemma* [2013] UKSC 62.

¹⁵ HM Government, *Transparency Report 2018: Disruptive and Investigatory Powers* (Cm 9609, London, 2018).

Is revocation of citizenship consistent with international obligations?

8 The underlying rule is that States are free to regulate the acquisition and loss of nationality within the limits set by international law.¹⁶ This proposition is articulated in Article 1 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws:¹⁷

‘It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.’

Article 2 goes on to specify that ‘Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State.’ In addition to recognising the right to a nationality, international law since 1930 has explicitly prohibited in multiple instruments the ‘arbitrary deprivation of nationality’. The key values now expressed are: non-discrimination, legal basis, due process, legitimate purpose, necessity and proportionality, and the avoidance of statelessness. These norms can be found in multiple global statements,¹⁸ the leading elements of which are as follows.¹⁹

Universal Declaration of Human Rights 1948²⁰

9 Article 15(2): ‘No one shall be arbitrarily deprived of his nationality [...]’.

10 This pronouncement is backed by article 24 of the International Covenant on Civil and Political Rights 1966:²¹

‘1. Every child shall have, without any discrimination as to race, colour sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.’

Convention on the Reduction of Statelessness 1961²²

11 Article 6:

¹⁶ See also *Advisory Opinion No. 4, Nationality Decrees in Tunis and Morocco Opinion* (1923) PCIJ Series B No. 4; *Yearbook of the International Law Commission*, 1999, vol. II (2), p. 24.

¹⁷ 179 L.N.T.S. 89 (LoN-4137) (entered into force 1 July 1937).

¹⁸ See also American Convention on Human Rights Article 20(3): ‘No one shall be arbitrarily deprived of his nationality [...]’; Arab Charter on Human Rights Article 29(1): ‘[...] No one shall be arbitrarily or unlawfully deprived of his nationality’; ASEAN Human Rights Declaration Article 18: ‘Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality [...]’; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms Article 24(2): ‘No one shall be arbitrarily deprived of his citizenship [...]’; European Convention on Nationality Article 4(c): ‘No one shall be arbitrarily deprived of his or her nationality’.

¹⁹ See UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, A/HRC/13/34 (2009).

²⁰ G.A. res. 217A (III), U.N. Doc A/810 at 71.

²¹ United Nations, Treaty Series, vol. 999, p. 171.

²² 989 U.N.T.S. 175.

‘If the law of a Contracting State provides for loss of its nationality by a person’s spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.’

12 Article 8:

‘1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless; [...]

3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body”.’

13 Article 9:

‘A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds’.

International Convention on the Elimination of All Forms of Racial Discrimination 1965²³

14 Article 5:

‘In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ...

(d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; ...’

Convention on the Elimination of All Forms of Discrimination Against Women 1979²⁴

15 Article 9:

²³ United Nations, Treaty Series, vol. 660, p. 195.

²⁴ United Nations Treaty Series, vol.1249, p.13.

‘1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither the marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.’

Convention on the Rights of the Child 1990²⁵

16 Article 7:

‘1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.’

17 Article 8:

‘1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.’

Convention on the Rights of Persons with Disabilities 2006²⁶

18 Article 18:

‘1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;(c) Are free to leave any country, including their own;(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.’

International Convention for the Protection of All Persons from Enforced Disappearances 2006²⁷

19 Article 25(4):

²⁵ United Nations Treaty Series, vol.1577, p.3.

²⁶ United Nations Treaty Series, vol.2515, p.3.

²⁷ United Nations Treaty Series, vol.2716, p.3.

‘Given the need to protect the best interests of [children who are or whose parents are subjected to enforced disappearance] and their right to preserve, or to have re-established, their identity, including their nationality [...].’

International resolutions and soft law

20 In 1996, the UN General Assembly Resolution 50/152 recognised the prohibition of arbitrary deprivation of nationality as a ‘fundamental principle of international law’. After that time, resolutions on ‘Human Rights and the Arbitrary Deprivation of Nationality’ have been adopted periodically by the Commission on Human Rights and subsequently the Human Rights Council.²⁸

21 Prominent amongst the soft law on the subject is the document, *Tunis Conclusions on the interpretation of the 1961 Convention standards relating to the loss and deprivation of nationality*, which resulted from an expert meeting convened by the Office of the United Nations High Commissioner for Refugees, Tunis, 31 October-1 November 2013.²⁹

Provisos

22 This foregoing catalogue of restraints on revocation is rightly given prominence in legal discussions about citizenship revocation. However, two provisos should be entered.

23 One is that international law, including international human rights law, often represents the lowest common denominator of state tolerance of intrusion into state sovereignty. However, national jurisdictions may choose to grant more generous protections. This possibility should especially be considered in the procedural sphere so as to afford more generous opportunities for investigation and challenge than otherwise required by international law.³⁰ More generally, states should recognise the exceptionally drastic nature of citizenship deprivation³¹ and so ensure that standards of constitutionalism³² are applied not only the observance of human rights but also transparent laws and their accountability by way of scrutiny by experts, the legislature and the courts.

24 The second proviso tacks in the opposite direction. International law expects states to undertake counter terrorism. This demand has been the order of the day since UNSCR 1373 of 28 September 2001. The Resolution makes no mention of citizenship but has plenty to say about safe havens, movement, border controls, and identity checks. This harsh environment was ramped up with the advent of Islamic State, as reflected in UNSCR 2178 of 24 September 2014 onwards. Only recently has it been possible to detect some softening of the stance by way of the fuller appreciation recognition of the humanitarian and human rights implications of the conflict in Syria and Iraq. Thus in UNSCR 2396 (21 December 2017),

²⁸ See for example UN Human Rights Council, Human rights and arbitrary deprivation of nationality, A/HRC/RES/32/5, 15 July 2016.

²⁹ UNHCR, *Expert Meeting Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality Summary Conclusions* (<https://www.refworld.org/pdfid/533a754b4.pdf>, 2013).

³⁰ For details of UK legal processes, see Fripp, E., *The Law and Practice of Expulsion and Exclusion for the United Kingdom* (Hart, Oxford, 2015).

³¹ Revocation is said to remove the ‘right to have rights’: Arendt, H., *The Origins of Totalitarianism* (Meridian, Cleveland, 1958) p.296.

³² See Walker, C., ‘Constitutional governance and special powers against terrorism’, (1997) 35 *Columbia Journal of Transnational Law* 1.

article 29 mentions not only ‘appropriate prosecution’ but also ‘rehabilitation, and reintegration measures’. Article 31 goes further and ‘Emphasizes that women and children associated with foreign terrorist fighters ... may have served in many different roles ... and require special focus ... and stresses the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities’. Likewise the Madrid Guiding Principles of 2015, which were to guide states on the implementation of UNSCR 2178 in order to deal with FTFs,³³ were softened by the 2018 Addendum to the 2015 Madrid Guiding Principles.³⁴ Thus, the 2018 Addendum points not only to bringing terrorists to justice (Guiding Principle 11) but also to taking account of the interests of children (Guiding Principle 12).

25 The reflection in practice of this change in tone remains hesitant and even controversial. Enforced exile was condemned when used by the German Democratic Republic (GDR) against Wolf Biermann or by the Soviet Union against Aleksandr Solzhenitsyn.³⁵ Yet, the several European governments have adopted exclusion and citizenship deprivation as reactions to the FTF phenomenon. They include the UK government,³⁶ giving rise to cases such as that of Shamima Begum.³⁷ Likewise, a report in 2018 by the Children’s Ombudsman in the Netherlands, de Kinderombudsman, *Nederlandse kinderen in kampen in Syrië: De overheid moet zijn verantwoordelijkheid nemen deze kinderen te beschermen* (‘Dutch children in camps in Syria: The government must take responsibility to protect these children’)³⁸ produced highly negative official reactions and hesitant steps to repatriate. The courts in Belgium³⁹ and France⁴⁰ have so far been dismissive of legal claims to protection.

Is revocation of citizenship necessary?

26 Issues of necessity and effectiveness involve more a value judgment than dispositive legal tests, as with the relevance of international law. Therefore, the remarks below are confined to a few observations which were offered at the Expert Roundtable but are not intended to be comprehensive.

27 The first observation about necessity is that account must be taken not only of the arguments about law but also about wider counter terrorism policy. For instance, the political impetus to react to the public animus against FTFs might be condemned at one level as mere populism but understood at another as democracy. For FTFs to suffer no consequences might

³³ S/2015/93923 December 2015, https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Madrid-Guiding-Principles_EN.pdf

³⁴ https://www.un.org/sc/ctc/wp-content/uploads/2018/12/2018-Addendum-to-the-2015-Madrid-Guiding-Principles_as_adopted.pdf S/2018/1177

³⁵ See <http://wolf-biermann.de/vita>; KGB memorandum (350-A-ov, <https://bukovsky-archive.com/2016/07/05/7-february-1974-350-a-ov>, 7 February 1974).

³⁶ Part I of the Counter Terrorism and Security Act 2015. See Blackburn, J. and Walker, C., ‘Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015’ (2016) 79(5) *Modern Law Review* 840.

³⁷ The debates on the case can be found at Hansard (House of Commons) vol.656 col.45 11 March 2019.

³⁸ <https://www.dekinderombudsman.nl/ul/cms/fckuploaded/PositionpaperkindereninkampeninSyri.pdf>.

³⁹ *Cases of Bouchra Abouallal and Tatiana Wielandt*, https://www.washingtonpost.com/world/europe/belgian-appeals-court-says-government-cantbe-forced-to-bring-back-ex-islamic-state-mothers-or-their-children/2019/02/27/1f432524-3ad9-11e9-b10b-f05a22e75865_story.html?noredirect=on&utm_term=.072ca3fa9fb9, 2019.

⁴⁰ Le Conseil d’État, *Rapatriement de ressortissantes françaises et de leurs enfants retenus en Syrie*, N° 429668, 23 April 2019.

be treated as an encouragement to future misdeeds. The general population, including the victims of terrorism, expect responses to the FTF phenomenon. However, only around 24% of returning FTFs have been prosecuted,⁴¹ despite the priority rightly given to criminalisation,⁴² so a range of alternative sanctions represents a sound policy. The alternatives in the UK include prosecution, Terrorism Exclusion Orders under the Part I of the Counter Terrorism and Security Act 2015, orders under the Terrorism Prevention and Investigation Measures Act 2011,⁴³ and the default of active surveillance by security agencies. All have importance, but there are in practice restraints on the ability to gather sufficient evidence (especially for prosecution) and on the numbers of formal executive orders which can be handled,⁴⁴ while resources and the extent to which a surveillance state is to be created limit the active oversight of around 23,000 'Subjects of Interest' to no more than about 3,000.⁴⁵ Limited confidence in the success of any one counter-measure also seems to affect the attempts at deradicalisation or desistance under Prevent which are, as mentioned earlier, currently under review. The same applies to one of the latest UK counter-measures, the declaration of designated areas which has been enacted by the Counter Terrorism and Border Security Act 2019 and is now to be implemented under section 4;⁴⁶ whether it achieves more impact than the Australian equivalent is doubted.⁴⁷ The measure will still suffer from evidential difficulties and will be more likely to catch feckless jihadi brides than wicked jihadi fighters.

28 The second point about necessity is that while FTFs have been treated as an apposite case for citizenship deprivation, they are by no means a unique case. Therefore, necessity seems to involve a relatively low bar in practice. Accordingly, citizenship revocation has been implemented in various guises for centuries and seems to be a frequent habit in extremes of politics and battle.⁴⁸ A full history is not possible here, but a few precedents might be offered. One might consider, for instance, banishment after the Jacobite rebellions in 1715 and 1745.⁴⁹ Thus, forcible exile was the most common penal sanction.⁵⁰ In 1715, 81 prisoners were tried, 74 were convicted, and 35 executed, but it is reckoned that around 1500 went into hiding and exile and 600 went to North America. In 1745, out of 3463 listed prisoners, 120 were

⁴¹ Walker, C., 'Foreign Terrorists Fighters' in the Independent Reviewer for Terrorism Legislation, *Annual Report for 2015* (Home Office, London, 2016) Annex 2.

⁴² See Walker, C., 'Terrorism prosecution in the United Kingdom: Lessons in the manipulation of criminalisation and due process' in Gross, O., and ni Aolain, F., *Guantanamo and Beyond: Exceptional Courts and Military Commissions in Comparative and Policy Perspective* (Cambridge University Press, Cambridge, 2013).

⁴³ See Walker, C.P., *The Anti-Terrorism Legislation* (Third edition, Oxford University Press, Oxford, 2014) chap.7.

⁴⁴ There are around 20 TEOs (HM Government, *Transparency Report 2018: Disruptive and Investigatory Powers* (Cm 9609, London, 2018) p.26 (9 were issued in 2017)) and just 4 TPIMs in force at 28 February 2019: Hansard (House of Lords) HLWS1508, 9 May 2019.

⁴⁵ See Anderson, D., *Attacks in London and Manchester March-June 2017: Independent Assessment of MI5 and Police Internal Reviews* (Home Office, London, 2017).

⁴⁶ See <https://www.gov.uk/government/speeches/home-secretary-speech-on-keeping-our-country-safe>, 2019.

⁴⁷ Compare the Australian Criminal Code 1995, s.119.2 ('declared areas') as considered by Independent National Security Legislation Monitor, *Review of Sections 119.2 and 119.3 of the Criminal Code: Declared Areas* (Canberra, 2017); Parliamentary Joint Committee on Intelligence and Security, *Review of the 'declared area' provisions* (Canberra, 2018).

⁴⁸ Again, the often cited authority is Arendt, H., *The Origins of Totalitarianism* (Meridian, Cleveland, 1958).

⁴⁹ For earlier cases involving Irish rebels, see Vlahoplus, J., Foreign-born children of disloyal parents (2019) *St. John's Law Review* (pending).

⁵⁰ Morgan, G. and Rushton, P., *Banishment in the Early Atlantic World* (Bloomsbury, London, 2013) pp.93, 94.

executed, 348 banished, and 963 transported. It is arguably more shocking to realise that even more widespread practices around stripping citizenship arose from peacetime perceptions of disloyalty, namely on the part of women who married foreigners.⁵¹ The woman's allegiance to her husband was viewed as outweighing the bond of citizenship and so had to be given priority by revocation of her own British citizenship even if, as in many cases, it left the woman stateless. This recognition was set out in the British Nationality and Status of Aliens Act 1914, section 10 (provided by then that the woman acquired the nationality of her husband); revocation was eventually reversed by section 14 of the British Nationality Act 1948.

29 These practices lead to a third observation. A flexible understanding of citizenship as a reciprocal reward for loyalty has endured and has been applied instrumentally without much thought being accorded to underlying human security. Citizenship is thus treated as conditional, and, given the injunction against statelessness, makes dual citizens extraordinarily vulnerable. Indeed, the growth of dual⁵² or overlapping citizenships, which reflects late modern conditions of globalisation, has encouraged the more casual resort to citizenship revocation. A prime example is Brexit which, if implemented, will involve around 60 million people being stripped of one or another citizenship, with little reflection on either side of the debate about this monumental revocation.⁵³

Is revocation of citizenship effective?

30 The impact of deprivation of citizenship on individual lives is evident. In practical terms, it can engender expulsion from, or refusal of, readmission to the country of former nationality, family separation, loss of employment and societal stigmatisation. Other related consequences may include being sent to a country with which one has no real ties, or where one risks mistreatment as a designated security risk. Moreover, denationalisation also has permanence greater than many other administrative and even criminal measures. Conversely, citizenship is an important gateway to human security. The refusal to grant it to embedded asylum seekers or the expatriation of dual citizen terrorism suspects has severe detriments for human security. The need to demonstrate fair processes and justice in the outcome is therefore heightened.

31 Deprivation also can serve as a communal deterrent. Given the role of nationality as not only an enabler of rights but also a core element of a person's social identity, the threat of deprivation is a powerful tool in efforts to silence opposition voices or human rights defenders and those who emulate or support them. The differential impact of revocation on communities where dual nationality is more prevalent should also be considered. Here, the danger is that communities of émigrés most at risk will perceive revocation as operating at the edges of legitimacy to the detriment of their trust in state agencies. Once again, this

⁵¹ See Irving, H., *Citizenship, Alienage and the Modern Constitutional State* (Oxford University Press, Oxford, 2016).

⁵² See Spiro, P., *At Home in Two Countries: The Past and Future of Dual Citizenship* (NYU 2016); Mentzelopoulou, M.M. and Dumbrava, C., *Members'. Acquisition and loss of citizenship in EU Member States* (European Parliamentary Research Service, PE 625.116, 2018); Cheteuti Cauchi, *Dual Citizenship Report* (Valetta 2019).

⁵³ See Department for Exiting the EU, *Citizens' Rights* (London, 2018). There is a European Citizen's Initiative to advocate permanent EU citizenship: <https://www.eucitizen2017.org/>. For the current proposals see Peers, S., 'UK citizens as non-EU citizens in the EU after Brexit: applying the EU Directive on non-EU long-term residents' (EU Law Analysis 27 December 2018).

devaluation of the humanity of outsiders, whether neighbours or foreigners,⁵⁴ may ultimately become part of the problem rather than the solution, for it is dialogue and respect between individuals, communities and cultures which gives hope of an alternative to political violence.

32 The impact on counter terrorism policy may be more debatable. Is it a case of deporting terrorism rather than reducing terrorism? Does it actually increase terrorism abroad and allow for the planning of attacks at home, as was actually alleged in the justification for UK drone killings on 21 August 2015 of Reyaad Khan (the main target) and Ruhul Amin?⁵⁵ The device can also redound to the detriment of the reputation of the UK Government and to the enjoyment of human security within foreign states. Thus, the capture by non-state allies of the US in Syria of Alex Kotey and El Shafee El Sheikh (two of the notorious “Beatles” group who were involved in prisoner atrocities) has been followed by criticisms of the failure by Western states to take responsibility for their nationals, especially as they have more resources to deal with the risks that they represent.⁵⁶ It is reported that the two have been divested of British citizenship, and the then Defence Secretary, Gavin Williamson, declared they should never come back to the UK.⁵⁷ The policy of deprivation of citizenship appears irresponsible to allies, creates an unfair and unmanageable burden for weaker states,⁵⁸ and disregards the interests of victims. Instead, a junior Defence Minister, Tobias Ellwood, suggested trial abroad by the International Criminal Court⁵⁹ which would at least be preferable to summary trials in Iraqi courts.⁶⁰

33 However, sterner exclusionary responses remain the official line in the UK. The then Defence Secretary, Gavin Williamson, has argued that, ‘I do not believe that any terrorist, whether they come from this country or any other, should ever be allowed back into this country.’⁶¹ The idea is that they should be dealt with militarily rather than judicially because ‘Quite simply, my view is a dead terrorist can’t cause any harm to Britain.’ Even more forthright was Rory Stewart, then the Minister for International Development: the ‘only way’ to deal with British FTFs in Syria is ‘in almost every case’ to kill them.⁶² In reality, drone strikes against UK targets are rare.⁶³ Likewise, the panoply of security measures, ranging from prosecution to citizenship revocation, has not affected most FTF returnees or remainers. A dose of reality is required, a point reinforced by the then Independent Reviewer of

⁵⁴ See further J. Butler, *Precarious Life* (London: Verso, 2004).

⁵⁵ See Hansard (House of Commons) vol.599 col.25 7 September 2015 David Cameron; S/2015/688, New York, 8 September 2015; Joint Committee on Human Rights, *The Government Policy on the Use of Drones for Targeted Killing* (2015-16 HL 141/HC 574) and *Government Response* (2016-17 HL 49/HC 747); Intelligence and Security Committee, *UK Lethal Drone Strikes in Syria* (2016-17 HC 1152); *Corderoy v Information Commissioner* [2017] UKUT 495 (AAC). Note also the case of Naweed Hussain was killed on the orders of the RAF by a US drone (*The Times* 17 February 2018 p.16).

⁵⁶ *The Times* 10 February 2018 p.5.

⁵⁷ <https://www.independent.co.uk/news/uk/home-news/isis-beatles-uk-return-trial-gavin-williamson-defence-secretary-government-alexandra-kotey-el-shafee-a8209741.html>, 14 February 2018.

⁵⁸ Aine Davis, associated with the same group, and who brutalised and beheaded western hostages in Syria, was convicted in Turkey of membership of Islamic State and jailed for just seven and a half years in 2017: <http://www.bbc.co.uk/news/uk-39824266>, 9 May 2017.

⁵⁹ <http://www.bbc.co.uk/news/uk-43014215>, 10 February 2018.

⁶⁰ See Taub, B., ‘Iraq’s post Isis campaign of revenge’ *New Yorker* 24 and 31 December 2018; Hansard (House of Lords) HLWA 14765 and 14767 3 April 2019.

⁶¹ <http://www.dailymail.co.uk/news/article-5153613/Gavin-Williamson-Brits-fighting-be.html>

⁶² <http://www.bbc.co.uk/news/uk-politics-41717394>, 23 October 2017.

⁶³ In June 2017, Sally Jones and her son were killed by a US drone.

Terrorism Legislation, Max Hill QC, who argued that ‘we should be looking towards reintegration and moving away from any notion that we’re going to lose a generation due to this travel. But ... for those who travelled ... and who return in a state of utter disillusionment ... we have to leave space for those individuals to be diverted away from the criminal courts.’⁶⁴

34 In conclusion, citizenship should be taken more seriously by governments as it is more fundamentally an enabler of humanity rather than an ambiguous instrument of counter terrorism policy. Any revocation should observe due process at home and should involve cooperation abroad in order to secure justice for victims and safety for all communities. Too often at present, the operation of revocation, on a summary and unilateral basis, does not achieve these outcomes.

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⁶⁴ <https://terrorismlegislationreviewer.independent.gov.uk/my-interview-on-the-today-programme-on-thursday-19th-october/>.