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The development of Norwegian counter-terrorism measures post 9/11 and their impact on the private sphere

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Abstract

In a thriving democracy, there will always be a tension between the public's need and desire for safety and security and the fundamental precondition for democracy itself: the State's respect for the citizens' civil and political rights, practiced particularly in the private sphere. While it is widely accepted (though not approved) that some degree of crime is part of democracy, terrorism is in a unique position as something one never wishes to occur. No democracy can accept terrorism. It challenges the State's ability to protect its citizens, and thus also its legitimacy. For Western democracies, the 9/11 terrorist attacks in the United States marked a watershed for security politics, shifting the balance in favor of more interference with people's private sphere, in the name of national security. However, if terrorism is placed in such an extraordinary position as something that needs to be prevented in advance, this also demands a different set of requirements from a society to be able to handle such challenges. This dissertation focuses on the liberal democracy of Norway's developments in counter-terrorism measures post 9/11, and how these developments have affected the balancing between the societal security needs and Norwegians' individual rights.

Abbreviations

9/11	Terrorist Attacks in the United States 11 September 2001
22/7	Terrorist Attacks in Norway 22 July 2011
CoE	Council of Europe
DRD	Data Retention Directive
EEA	European Economic Area
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
Eurojust	European cooperation between Member States' prosecution and judicial powers
Europol	European Police Office
The Terrorist Financing Convention	International Convention for the Suppression of the Financing of Terrorism
ICCPR	International Covenant on Civil and Political Rights
NDI	Norwegian Data Inspectorate
PST	Police Security Service [Politiets Sikkerhetstjeneste]
UN	United Nations
UNSC	United Nations Security Council

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1 Introduction

In a thriving democracy, there will always be a tension between the public's need and desire for safety and security and the fundamental precondition for democracy itself: the State's respect for the citizens' civil and political rights, practiced particularly in the private sphere. While it is widely accepted (though not approved) that some degree of crime is part of democracy, terrorism is in a unique position as something one never wishes to occur. No democracy can accept terrorism. It challenges the State's ability to protect its citizens, and thus also its legitimacy.¹ For Western democracies, the 9/11 terrorist attacks in the United States marked a watershed for security politics, shifting the balance in favor of more interference with people's private sphere, in the name of national security. However, if terrorism is placed in such an extraordinary position as something that needs to be prevented in advance, this also demands a different set of requirements from a society to be able to handle such challenges. In doing so, the authorities will implement actions in the name of security needs, which often challenge fundamental rights, such as the right to privacy and freedom of expression, hoping that these measures will have the intended effects.²

1.1 Focus and Research Question

The focus country of this thesis is the liberal democracy of Norway. Norway can pride itself as the best country in the world to live in – 13 years in a row.³ Simultaneously, Norway has topped the Prosperity Index's list of most prosperous countries from 2009-2015.⁴ Consequently, Norway can be considered one of the best functioning democracies that exists today, which places it in a unique position for analysis, and might say something about the state of the world's democracies in regards to dealing with threats of terrorism.

Norway is affected by international events, and as a real democratic State should, it adapts at pace with and in light of new experiences. In the wake of 9/11 and the following immense pressure to take action against international terrorism, Norway was one of many States that amended its Criminal Code to counter terrorism.⁵ In the aftermath of the 22 July 2011 terrorist

¹ Fierke, 2007:108

² Wessel-Aas, 2012

³ UNDP, 2016:198

⁴ Legatum Prosperity Index, 2016

⁵ For example: Norwegian Penal Code 1902, §147a and b, 17.06.02

attacks in Norway, the Criminal Code was amended again.⁶ These changes follow the logic that there are needs and a desire for increased security in the wake of terror, to protect and prevent it from occurring. In other words, when acts of terrorism occur, lack of protection readily comes as criticism afterward. The response from the government to the criticism will often be to implement new laws and increase surveillance of the population and risk groups, to raise the level of protection and try to forecast the next attack.⁷

With the increased frequency and geographical closeness of attacks to Norway, my thesis will focus on how Norway is adapting to this new post 9/11-reality, where terrorism and the fear of terrorism are genuine concerns. I seek to explore how the new counter-terrorism measures are negatively affecting Norway's private sphere, and how these developments correspond with the necessity for protection and the realistic possibility to protect from and prevent terrorist attacks. The analysis will attempt at giving a broader understanding, and greater insight into the level of security provided by the Norwegian State and the total pressure these measures place on individual's rights. Accordingly, the research question is as follows:

What are the developments in the Norwegian State's counter-terrorism measures post 9/11, and how have these developments affected the balancing between societal security needs and Norwegian citizens' individual rights?

1.2 Definitions, Limitations, and Clarifications

For the scope and purpose of this thesis, it is necessary to make some clarifications and limitations to make the discussion meaningful and useful. The research question is twofold: the first part, looking at what the developments in counter-terrorism measures in Norway are, is more descriptive. This part is necessary to provide a fruitful analysis of the second part of the question, which looks at the impact of these developments on the balancing between societal security needs and citizens' individual rights.

The basis for the analysis is the prerequisite that Norway is a liberal democracy. While it is difficult to give a precise definition of a liberal democracy, characteristics of classic liberalism include individual rights, law enforcement, democracy, restrictions on State power

⁶ The (new) Norwegian Penal Code was passed on May 20, 2005 and entered into force in two rounds, first part March 7, 2008 and last part October 1, 2015. It thereby repealed the Norwegian Penal Code of 1902.

⁷ Ibid.

and a free economic market.⁸ A *democratic* State is a State governed by its people, where the people's rights are legally rooted in the rule of law. This ensures the citizens' power and limits the power of the authorities.⁹ The division of power and the public debate are core dimensions of democracy, and the basic idea of a democratic rule of law is that all citizens are equal, with equal rights and freedoms.¹⁰ A characteristic of a well-functioning democracy is that the government is not above the law.¹¹

I use the words *measures* and not *laws* in my research question specifically because the developments in combating terrorism post 9/11 are not purely legal. It is thus necessary to include aspects that are beyond the law, such as surveillance and intervention methods. Even so, the focus is to look at legal changes, as these lay the basis for precisely those other measures. When using the word *security*, what I mean is the *degree of protection from harm*. In this thesis, the *harm* I am referring to is from terrorism in particular, and the protection is provided by the State. I have not focused on *who* executes the terrorist action, meaning I do not differentiate between national or international terrorist actors, as neither do the legal texts. *Terrorism* is thus used as a generic term, which will be further explained and discussed in chapter two.

As Norway is the focus country, it is important to emphasize that I am limiting the analysis to Norwegian domestic laws, and I will not focus on Norway's military, nor military contributions in the war against international terrorism abroad, such as through NATO or other international alliance obligations. It is although worth mentioning, that such contributions increased after 9/11,¹² which again may have affected the level of security threats against Norway. Further, the thesis will limit its discussion of international conditions to the international collaborations Norway is partaking in that are mirrored in national legislation relating to terrorism, in particular, the UN and the EU, as an EEA Member State.

Furthermore, as I am not a lawyer, this thesis will not be a complete judicial review of the domestic laws. Instead, the thesis will seek to gather and summarize them to gain a broader understanding of the current situation in Norway and the State's view on terrorism. This is to

⁸ Burchill, et. al. 2009:57

⁹ Ibid.:84

¹⁰ Husabø 2012:5

¹¹ Gisle 2007:275

¹² Engene & Nordenhaug 2008:92

discuss further how these post 9/11 modifications, especially in law, are affecting the balance between security needs and individual's rights in Norway. In doing so, I wish to highlight how extensive, interconnected and complicated the situation is, and how, even for the right authorities, it can be complex to interpret the law. By doing this, I pursue to shed light on the total pressure these laws and measures combined place on Norwegian citizens' rights, balanced against the societal security needs.

It is part of the liberal tradition to use legislation to improve society. Hence, looking at how counter-terrorism laws affect Norwegian citizens' rights, particularly exercised in the private sphere, is critical, because virtually by default, counter-terrorism measures curb the personal sphere and implemented counter-terrorism laws have almost exclusively had an adverse impact on individual's rights.¹³ There is also a danger that the fear of being subjected to terrorism causes few to react to the measures.¹⁴

In a liberal State, there is a defined separation between the private and public spheres. Formal law, laid down in Parliament, must authorize the most restrictive measures in privacy. This is necessary both to ensure predictability for citizens and to ensure that the proportionality of the measure is identified and assessed in broad, democratic legislative processes.¹⁵ The rule of law provides guarantees against arbitrariness and abuse of power by the State, as the State itself is bound by the rules it has created. This balances and provides predictability for the citizens of the State.¹⁶ Further, the State has a violence monopoly, but *Privacy Policy* is the legal guarantee that limits the government's use of force on its nationals. If there is no concrete suspicion of criminal activity, the private sphere is protected through a set of freedoms and privacy policies, which protects the citizens from the arbitrary and unreasonable use of force and intervention by the State.

Privacy Policy originates from the idea of the individual's inviolability and entitlement to respect from other people: respect for their integrity and their privacy. Privacy Policy thus ensures and facilitates a private sphere for the individual, including self-determination and self-expression. Human rights would be incomplete without an article defending the right to privacy for the simple reason that these are prerequisites for individuals to realize good lives

¹³ Thon, 2014:119

¹⁴ Meyer, 2009:10

¹⁵ Thon, 2014:105

¹⁶ Sejersted, 2001:121

in freedom.¹⁷ The right to privacy is included in, for example, ECHR Art.8, to which Norway partakes.¹⁸ When I refer to citizen's individual rights in my research question, what I am referring to are specifically these civil and political rights exercised in the private sphere.

1.3 Methodology

Given my research question, a multidisciplinary research approach is most suitable to provide a thoughtful answer, although I keep a legal emphasis. To understand the complexity of the situation and provide an in-depth analysis, a research approach that combines both a legal and a socio-political research approach is needed. This is to move the analysis beyond a pure legal discussion to get a more profound understanding of the implications of counter-terrorism measures. Terrorism is a highly complex issue, so looking at the law in context rather than the law itself creates a better framework for analysis. The aim is to nuance the debate further, and to increase knowledge in defense of privacy and human rights. This being said, I do recognize the necessity for security measures and strive to remove any potential biases and conflict of interests I might have in this debate.

The thesis is conducted primarily as a qualitative desk-study applying both primary and secondary sources. In addition, I have attended two lectures by criminologist Heidi Lomell on the topic of human rights and counter-terrorism,¹⁹ as well as a forum that took place in Oslo, where relevant speakers partook and discussed the issues.²⁰ The primary sources applied consist mostly of Norwegian domestic criminal laws, such as the Norwegian Constitution, the Norwegian Penal Code, the Criminal Procedure Act, and the Police Act. When I refer to all of them generically, I use the wording *Norwegian Criminal Code*. Additionally, official statements by the Norwegian government, such as from the Ministry of Justice and Public Security, and reports like the Gjørsv Commission report on the 22 July 2011 attacks, will be discussed. As Norway partakes in international human rights treaties that carry domestic responsibilities, particularly the ECHR and the ICCPR, these are used in the discussion on privacy and human rights.

As the thesis also builds on a socio-political approach, secondary sources by relevant scholars on the topic of both terrorism and privacy policy are relevant. Prominent voices in the

¹⁷ Svendsen, 2010

¹⁸ Thon, 2014:104

¹⁹ Lomell, UiO: 17.09.15 and 24.09.15

²⁰ MR-Forum, UiO: 10.05.16

Norwegian debate include Professor Erling Johannes Husabø, the terrorism researcher and author Joakim Hammerlin, Professor and criminologist Heidi Lomell, Lawyer and former Director of the Norwegian Data Inspectorate Bjørn Erik Thon, terrorism researchers and co-authors Iselin Nordenhaug and Jan Oskar Engene, lawyer Jon Wessel-Aas and terrorism expert Anders Romarheim. Their arguments and critical views on the debate, especially on the balancing between security needs and individual's rights, provide valuable contributions to the discussion.

Lastly, this thesis will build its arguments on the Black Swan theory developed by Professor Nicholas Taleb, which will be introduced and explained further. By using the Black Swan theory as my lens, I attempt to add to the larger discussion on the realistic abilities to prevent terrorist attacks, in particular through new law implementations, without simultaneously endangering the open and democratic society one wishes to preserve.

1.4 Reader's Guide

The following chapters strategically introduce the different elements necessary to analyze the posed research question. Divided into six chapters, *Chapter one* presents the situation, the research question, methodology, clarifications, and limitations, to provide the reader with a point of departure. *Chapter two* goes on to introduce the key element for analysis of this thesis, the Black Swan theory and its take on terrorism, which affects the discussion on the balancing between counter-terrorism measures and individuals' rights. To understand the framework of which the debate on the balancing between counter-terrorism measures and individuals' rights is grounded, *Chapter three* looks at the developments in Norwegian counter-terrorism measures post 9/11, which frames the context for the next two chapters. *Chapter four* then moves into analyzing how the counter-terrorism developments from the previous chapter point toward a greater shift in crime prevention, which has implications for the personal sphere and individuals' rights. Following the aforementioned analysis, *Chapter five* continues by looking more specifically at the pressures on individual's rights, and the concerns the developments in counter-terrorism pose for the private sphere. The thesis ends with *Chapter six*, which provides some concluding remarks.

2 The Black Swan Theory and Terrorism

To study the Norwegian State's developments in counter-terrorism measures post 9/11 it is vital to get a grasp of what terrorism entails as the basis for the measures introduced. Following, as these measures place pressures on the private sphere, it is necessary to assess the effectiveness of the measures and the realistic possibility of preventing terrorism, to which the Black Swan theory provides a comprehensive basis for analysis. Henceforth, the concept of terrorism and the Black Swan theory are introduced in this chapter.

2.1 Terrorism: The Context

In today's political reality, counter-terrorism is considered synonymous with broader intervention policies and martial law. It gives governments room to act outside of the traditional regulatory frameworks and democratic principles, which normally places restrictions on the government's use of force.²¹ Terrorism is a very diverse and complex concept, and consequently, there is not an internationally agreed generic definition of 'terrorism,' leaving the term without an operative legal purpose. Over the years, there have been at least 109 possible definitions of terrorism, according to Professor Helen Duffy.²² Without going too much into detail, largely three traits prevail with relatively broad consensus as to why terrorism is not defined:²³

1. 'Terrorism' is a plastic concept, which has changed its content throughout history;
2. There are vague boundaries between terrorism and closely related actions, such as resistance movements, guerrilla warfare and sabotage; and,
3. Terrorism can be a political concept: one man's terrorist can be another man's freedom fighter.

The term 'terrorism' is thus fairly ambiguous and imprecise, but several scholars argue that we do perhaps not need any legal definition of what constitutes terrorism, as long as criminal acts that are part of terrorist activities are illegal.²⁴ Duffy emphasizes that even though there is no basic definition of terrorism in international law, serious crimes and different types of

²¹ Hammerlin, 2014:83

²² Duffy, 2005:30

²³ Hammerlin, 2014:73

²⁴ Walter, 2004:24

terrorism, such as terrorist bombings, hijacking, hostage-taking, and financing terrorism, are all covered in international conventions, as well as in domestic legislation.²⁵

According to an expert on terrorism, Brian Jenkins, what is important to realize about terrorism is that terrorism is generally not mindless violence – terrorists are not mindless, irrational killers.²⁶ Rather;

“Terrorism is a campaign of violence designed to inspire fear, to create an atmosphere of alarm which causes people to exaggerate the strength and importance of the terrorist movement. Since most terrorist groups are small and have few resources, the violence they carry out must be deliberately shocking. Even apparently indiscriminate violence is based on the terrible logic that indiscriminate violence gets the most attention and is the most alarming. Terrorism is violence for effect. Terrorists choreograph violence to achieve maximum publicity. Terrorism is theater.”²⁷

As the American author, Jeffrey Kaplan argues: “Terrorism is ... a tactic of desperation by the weak in defiance of the strong. The key is not the weak versus the strong, however. Rather, the key is understanding that terrorism is, in fact, a tactic”.²⁸ The purpose of a terrorist act is to provoke a state of instability and fear in a society, by producing immediate dramatic effects, such as a substantial number of violent deaths, and use this state to attain political advantages or gains. Typically this materializes through an act of violence against a random group of victims. Those physically affected by the violence are commonly not the target of the terrorist act; they are rather the means used to achieve a targeted goal. Jenkins argues that incidents in which terrorists have deliberately tried to kill scores of people or cause widespread damage are pretty rare; terrorists want many people watching, not many people dead.²⁹

As such, terrorism as an act is extremely destructive, and something societies never want to see happening. While terrorism is rare, we would like it never to happen at all. Terrorism also separates itself from regular crimes because a terrorist attack is considered an attack on

²⁵ Duffy, 2005:68

²⁶ Jenkins, 1974:4

²⁷ Ibid.

²⁸ Kaplan, 2011

²⁹ Jenkins, 1974:4-5

society as a whole; there is a disparity between the action and the reaction. This has consequently produced legal consequences. Society is not interested in seeing people re-offending terrorist offenses because if a terrorist attack has occurred, it is already too late. This marks a clear distinction between counter-terrorism policies and regular crime preventive policies. As for crime, one does accept, to a certain degree, a small amount of it in society. Even though society does not approve of it, it is not scandalous that i.e. shoplifting happens. One speaks more often of *reducing* crime than *stopping* crime from occurring.³⁰ Over the past decade, there has been a shift in crime prevention, mostly due to terrorist threats in society. This change will be discussed in chapter four.

With the above context of terrorism in mind, the rest of this chapter seeks to explain the Black Swan theory and use it as a lens to analyze terrorism and the realistic possibility to prevent terrorist attacks from occurring. This will provide a full contextual basis for further analysis on Norway as a case study, and further incorporate the discussion on the possible negative impacts the current counter-terrorism strategies might have on the democracy Norway wishes to preserve.

2.1 The Black Swan Theory

A Black Swan (capitalized) is an event or occurrence which is *unimaginable* before it occurs. It deviates beyond what is normally expected of a situation and is extremely tough to predict. The term, popularized by finance professor Nassim Nicholas Taleb, was developed in his book *The Black Swan* from 2007,³¹ which was described in a review by *the Sunday Times* as among the twelve most influential books since World War II.³² While Taleb is a risk analyst and statistician whose work focuses on problems of randomness, probability, and uncertainty – usually applied in mathematical finance – his ideas can easily be implemented in other contexts, such as dealing with the ability to prevent terrorism.

The background for the term stems from the Europeans' discovery of Australia and the first black swan. Before the sighting of Australia, people in the Old World had no reasons to believe that swans could be any other color than white, according to the empirical evidence

³⁰ Lomell, UiO: 17.09.15

³¹ Taleb, 2007

³² Appleyard, 19.07.09

available. The observation of the black bird invalidated a general statement derived from millennia of confirmation and posed a logical problem: one cannot rule out a black swan just because one has not seen any. In Taleb's words, it illustrates a severe limitation to our learning from observations or experience, and the fragility of our knowledge.³³ The tale attempts to illustrate our limited ability to imagine something other than what we already know. Everything needed to turn what we know inside out is a single black bird.

Transferred from birds to society, Taleb's Black Swan metaphor is a term used for an event with the following three attributes. First, it is an *outlier*, meaning that it is hard to predict. It lies outside of our realm of normal expectations, "because nothing in the past can convincingly point to its possibility."³⁴ This characteristic originates in the belief that human thought is all-encompassing in its ability to explain things, whereas, in fact, it can account for a lot less than what is believed. In other words, a Black Swan is *rare*. Secondly, while it has low predictability, it carries an *extreme impact*. The enormous impacts the events have are partly caused by human's incapacity to predict their occurrence. Impacts can be examples such as changes in human behavior or fundamental changes to societies. Third, despite its outlier status, it carries what Taleb calls a *retrospective distortion*: when one looks back after the event, one can find clues that make people concoct explanations for its occurrence, making it explainable and predictable. It is thus prospectively unpredictable, but retrospectively predictable. Human knowledge has a limited scope and because of this the information available from past experiences is the main component in predictive models for the future. The assumption that justifies the use of these experiences to predict the future lies in the belief that there exists patterns or factors that made the event possible in the first place, and that they can be used to determine future events.³⁵

In summary, the three traits are *rarity*, *extreme impact*, and *retrospective* (though not prospective) *predictability*. The inability to forecast the repercussions of a Black Swan naturally biases human thought towards classifying them as impossible. However, the Black

³³ Taleb, 2007:*Black Swan Prologue*

³⁴ Ibid.

³⁵ Correa, 2012:8

Swan logic makes what one does *not* know far more relevant than what one does know. Humans are bad at acknowledging life's unpredictability. Things happen that surprise us, and yet, afterward, we act as if they were explainable all along. Humans have an illusion of understanding the world by using disciplines such as history and economics to predict the future, according to Taleb.³⁶ Humans are chronic explainers: once an event has occurred, we hurry to create a narrative that makes it look predictable all along. By using those explanations, people then pretend they can control the future.³⁷

History is full of Black Swan events, both positive, such as the invention of the Internet, new vaccines, and the mobile phone, but there are also negative, such as the First World War, economic crises and, what is relevant to this discussion, certain terrorist attacks, like 9/11. However, the most important part of these events' occurrence is their influence; the impact of a Swan can radically modify a civilization's lifestyle.

2.2 The Black Swan and Terrorism

The 9/11 attack in the United States in 2001 was, in comparison to previous terrorist attacks, an outlier in scale, scope, and breadth. A series of coordinated terrorist attacks by the Islamic terrorist group Al-Qaeda targeted symbolic U.S. landmarks. By hijacking and crashing four airplanes, the terrorist group claimed the lives of 2996 people, \$10 billion cost in property and infrastructure damage, and \$3 trillion in total costs.³⁸ The brutality and dimensions of the attacks were massive; in comparison, only 14 times in the 1900s had terrorist attacks claimed more than 100 lives.³⁹ The attacks targeted the economic, military and political power symbols of the United States, causing large-scale consequences, including the Bush administration moving the center of gravity of US foreign policy.

The grave impact the attacks had are illustrated in several ways. One simple example is enhanced airport security worldwide; to this day we still take off our shoes at most airports around the world when we walk through the security checkpoint. Another was that following the attacks there was an immense international pressure to take action against international terrorism, in particular through the call for anti-terrorism law ratifications. Implementations of

³⁶ Ibid.

³⁷ Burkeman, 2007

³⁸ New York Times, 08.09.11; Hoffman, 2002:2

³⁹ Hammerlin, 2011:31

counter-terrorist laws worldwide have been considered areas of major positive development post 9/11.⁴⁰ While their specifics generally vary, usually these laws limit civil rights and expand law enforcement powers in the interest of protecting national security. World leaders embraced counter-terrorism laws as an efficient and visible way of demonstrating their co-operation, particularly in light of President Bush's 'with or against us'-warning.⁴¹

In Taleb's words, had the risk of the attacks been reasonably plausible on September 10, they would not have happened. Fighter planes would have circled the sky that day if such a possibility had been deemed worthy of attention, and airplanes would have had locked and bulletproof doors, hence the attacks would not have taken place.⁴² Something else might have happened instead, but this one does not know.

It is important to point out that terrorism in itself is not a Black Swan, but something new and unexpected could be. As Black Swans are fundamentally unknowable, owing to the limitations in human cognitive abilities – what former US Secretary of Defense Donald Rumsfeld referred to as “unknown unknowns”⁴³ – they are unpreventable. While governments are often criticized in the aftermath of terrorist attacks for their inability to prevent them, by this logic, these allegations merely constitute attempts to rationalize these events with the benefit of hindsight. The point of this theory in regards to counter-terrorism measures after 9/11 is that it is often under-communicated that one can never create an entirely safe society and that humans must accept that they have to live with some degree of threat and uncertainty. We have an illusion that we can protect ourselves 100 percent from terrorism when reality proves otherwise.

More security measures and governmental control are thus not necessarily the answer to all threats because then the purpose of terrorism is being misunderstood. There is no clear profile of a terrorist or a recipe for how the problem can be completely solved.⁴⁴ When one tries to improve policies after a Black Swan attack, in reality, what one is trying to prevent is the previous attack. That is why people still have to take shoes off at the airport. Repeatedly one sees people failing at predicting the future because the reality is that they are predicting more

⁴⁰ Duffy, 2005:68

⁴¹ Ibid.

⁴² Taleb, 2007

⁴³ Rumsfeld, 12.02.02

⁴⁴ Hoffmann, 2014:101

of the same. However, the next successful Black Swan attack will not be the same, as that is not the nature of terrorism.⁴⁵ Continuously trying to prevent the last attack from occurring, in reality, makes one badly prepared for a new attack. Events that are unrepeatable are often unnoticed before their occurrence but often overestimated after their occurrence – which is the core dilemma of terrorist prevention. Because what defense does one have against that? When whatever is known may become inconsequential if the terrorists know what you know too? In such a strategic game, it seems at odds that what one knows can be truly inconsequential. The point is, we cannot get much better at predicting, but it is possible to get better at realizing how bad we are at predicting.⁴⁶

2.3 Retrospective vs. Prospective Predictability

A critical aspect of Taleb's theory, especially in relation to developing counter-terrorism measures, is the idea of retrospective predictability contra prospective predictability. Retrospectively one can almost always find predictability, which is not the case for prospective predictability. In psychology, the term for the retrospective distortion is hindsight bias. That is, after an event has occurred, to see the event as having been predictable, despite there being little or no objective basis for predicting it.⁴⁷ A phrase like 'I knew it!' is common in such instances. A simple example is being nicely dressed going out, and ending up spilling something on the clothes while out. In the aftermath, one feels as if one knew that was going to happen, although the fact of the matter is that one could not possibly actually know that it would. Same if one's favorite team wins in a sports game: when the team wins, one reinforces the feeling that one knew what was going to happen. This stresses the tendency people have of overestimating their ability to predict an outcome that could not possibly be predicted. Retrospective predictability is explanatory. The event has already happened, and thus it is easier to establish the chain of occurrences that led up to the event.

In contrast, prospective predictability is always forward-looking, and thus requires a whole lot more data and parameters to even come close to a prediction, due to the additional uncertainty. For example, at an early stage of preparing for a terrorist attack, the terrorist's activities may not differentiate that much from normal activities. There may be many people doing similar activities without intending to do something criminal. There can be a lot of

⁴⁵ Lomell, UiO: 17.09.15

⁴⁶ Burkeman, 2007

⁴⁷ Huffington Post, 17.10.12

‘threads’ to look into when trying to establish who is intending to do something criminal, and who is not. A Black Swan event contains the element of surprise, something unpredictable.

However, it is important to emphasize that this is not to claim that all attempts to prevent terrorism are useless because Black Swans are unpredictable. Evolving and having a critical view of current practices is essential for any democracy to progress and improve. The point is that when one assesses past events to better protect society in the future, one needs to realize that one undergoes a hindsight bias when doing so. In this perspective, it becomes paramount to look at the larger picture of already implemented measures to determine whether new measures will, in fact, be effective, and not undermine society’s liberal values and principles in the process, due to political pressures of urgency. In short, one must be careful not to overestimate one’s ability to predict the future.

3 Norwegian Counterterrorism Law post 9/11

Measures to combat terrorism are considered successful, as long as no act of terror occurs. If such an incident takes place, however, the authorities will, due to the changes in the security situation posed, likely propose and implement actions that negatively impacts the private sphere. When fearing that the security measures in the State are not already good enough, it is likely that these new measures will be accepted by the population. The balance between the necessities for State security and the population’s individual rights will henceforth likely be adjusted multiple times. This development can be very problematic if each action taken by the State is viewed in isolation, without looking at the broader implications the actions collectively make for the rule of law of the State and the impacts on the citizens’ individual rights, exercised in their private sphere.

The consequences of the international climate post 9/11 were significant for Norway in numerous ways. The Government changed its perspective on prospective threats and the implemented counter-terrorism laws post 9/11 can be categorized roughly under two main traits; moving the focus away from national to international conditions and increasingly move towards a pre-active legal terrorism response. These developments of Norwegian counter-terrorism measures will henceforth be discussed under this and the following chapter.

3.1 International Pressures

Following the 9/11 attacks, the requests for ratifying counter-terrorism laws and implement actions against terrorism were immense. As previously mentioned, while their details differ, generally these expand law enforcement powers and limit civil liberties in the name of national security. The UNSC adopted resolution 1373 after 9/11, calling for United Nations Member States to become parties to all relevant international conventions on terrorism and enact the necessary legislation to criminalize terrorist acts in their domestic laws.⁴⁸ While counter-terrorism measures have been pushed through several international channels, the United States has clearly been seen as the driving force.⁴⁹

In their book *Norway combating terrorism*, Iselin Nordenhaug and Jan Oskar Engene have analyzed the major trends of Norwegian counter-terrorism measures from 1993 to 2008. They describe 9/11 as a watershed for Norwegian counter-terrorism politics; altering from passivity to pre-activity.⁵⁰ Before 9/11, terrorism was viewed as a potential threat, rather than an actual threat. After 9/11 this relationship reversed.⁵¹ The focus of Norwegian national security became internationalized and focused on how international conditions affect national security. Where the threats were coming from were vaguely described before 9/11, while extreme Islamic non-governmental groups were singled out as the most likely actor on this arena, based on the 9/11 experience.⁵² With the new changes, Norway joined in on the broad international trend.⁵³

Norway ratified resolution 1373 in October 2001, in addition to the UN's Terrorist Financing Convention in August 2002.⁵⁴ As a result, Norway implemented a number of other legislative changes to comply with Resolution 1373 and the Terrorist Financing Convention. The Norwegian Immigration Act, for example, changed so that foreigners who have violated the new provisions, or give or have given abode to someone who has committed such offenses and is aware of this, may be expelled.⁵⁵ Penal Code §104a was changed so that it affects recruitment to terrorist groups. The Terrorist Financing Convention and Resolution 1373 also

⁴⁸ Rutzen, 2015:30; Duffy, 2005:33

⁴⁹ Howell, 2008:83

⁵⁰ Ibid.

⁵¹ Nordenhaug & Engene, 2008:73

⁵² Ibid.

⁵³ Hammerlin 2009:55; Nordenhaug & Engene 2008:145

⁵⁴ International Convention for the Suppression of the Financing of Terrorism, UN 1999

⁵⁵ Proposition. no. 61 (2001-2002): 8

laid the basis for the introduction of a separate penal provision in the Norwegian Penal Code, which, among other things, prohibited the financing of terrorism and contained a provision for earmarking of funds linked to terrorist activities.

This separate terrorism provision of the Norwegian Penal Code, popularly called the Norwegian Terrorist Act (*terrorloven*), was adopted into legislation on June 17, 2002, and was beyond what the international obligations would require.⁵⁶ The new provision, §147a and b, targeted the planning and preparation of terrorist acts, by conspiring with others, as well as the financing of terrorist activities. For example, the 2002 provision §147a last paragraph states “Any person who plans or prepares such terrorist acts as are mentioned in the first paragraph, by conspiring with another person for the purpose of committing such an act, shall be liable to imprisonment for a term not exceeding 12 years.”⁵⁷ This requirement of an outward manifestation to determine that the act committed is indeed terrorist planning requires an association with at least one other person. If a person plans to commit a terrorist act, those ideas must be shared with someone else, and although the original person changes his or her mind, the plans have initiated a process with another person that the original person cannot control, and this is a criminal offense.⁵⁸ When observing this using the Black Swan theory, it is clear that this is a good example of an implemented law happening due to past events and making sure that in the event of a reoccurrence, these acts are criminalized. What this provision does not cover, however, is solo-terrorism. At this point in time, it was unthinkable to the lawmakers to criminalize solo-terrorism, but later events that will be discussed later on changed this thinking.

The new provision also gave Norwegian courts the opportunity to adjudicate on international terrorism.⁵⁹ None of the new changes aimed at protecting the individual against State intervention.⁶⁰ This was criticized by the Lund Committee, the Committee investigating Norwegian secret services, which issued its investigation in July 2003, after having prepared proposals for the new and timely legislation for the Penal Code, chapters 8 and 9, about the internal and external security of the nation.⁶¹ The investigation is relevant because the Lund

⁵⁶ Nordenhaug & Engene, 2008:90-91

⁵⁷ Ot.prp. nr.90 2003-2004:102, [translated by Professor Heidi Lomell]

⁵⁸ Wessel-Aas, 2012

⁵⁹ Ot.prp nr 61 (2001-2002), Innst. O. nr. 70 (2001-2002)

⁶⁰ Nordenhaug & Engene, 2008:96

⁶¹ NOU: 2012:14

Committee gave sharp criticism of the direction the Norwegian legislative processes have developed in this area after 9/11. The Committee stated that the legislation is characterized by the fact that each measure is perceived independently of the consequences that these measures as a whole impact the Norwegian legal tradition, as well as the legal and democratic values one wishes to protect.⁶² They also claimed that the balance of the relationship between societal protection and the security of individuals' rights is constantly shifting and placing human rights under pressure.⁶³ Furthermore, the Lund Committee pointed out that Norway, like many other countries, had adopted new impending precautionary rules of differing nature, and that this legislation went beyond international obligations. Despite the criticism, Norway witnessed in 2001-2002 the historically largest change in its Criminal Code related to combating terrorism, with its own legislation specifically targeting terrorism.⁶⁴

The Norwegian government's white paper no. 42, says something about the motivation behind the need for introducing these legislative changes:

“In Norway [as well], the terrorist threat has led to new legislation, including in the criminal law area. Norway must have a law that is reasonably harmonized with other countries, to prevent liberal legislation from attracting organized and other serious crimes. If Norway is perceived as a country with less control and safety than other countries, Norway could be attractive to terrorists or people linked to terrorist environments because they think it is easier to hide here.”⁶⁵

The suggestive nature of this quote emphasizes the importance the government placed on keeping up with international developments. However, this does not mean that the threat against Norway in itself was considered any higher than before, but rather that the developments globally indicated that something had to be done domestically. By introducing these special provisions, both terrorist offenses and the threat that terrorism represents were concretized.

⁶² Nordenhaug & Engene, 2008:119

⁶³ NOU 2003:18: 16-17, 63-64, 135

⁶⁴ Wessel-Aas, 2012:117

⁶⁵ St.meld. nr. 42 (2004-2005):21 [Author's Translation]

In the Police Security Service's (PST) threat assessment for 2002, it is stated that:⁶⁶

“The terrorist attacks in the USA on 11 September 2001 marked the start of a period in international politics characterized by increased uncertainty and a higher threat level. The United States emerges as the primary target, but it cannot be ruled out that other countries, including Norway, may be affected in the future”.

The direct threat against Norway has thus not changed, but due to international conditions Norway cannot be excluded as a potential target in the future, and this recognition requires preparation. The PST is the central unit working actively to prevent terrorism in Norway, and on the top of their list of priorities in 2002 it stated:⁶⁷

“[The] PST's efforts against international terrorism should be given the highest priority. This includes continued and strengthened cooperation with other countries' security services and relevant professional institutions in Norway and abroad. Through its counter-terrorism activities, the PST will include seeking to identify networks in Norway that are believed to be able to exercise violence or support violent groups.”

It is clear that the Norwegian State considers terrorism to be a critical threat to security, which needs to be countered before an attack. Additionally, the Norwegian authorities and the PST consider coordinated efforts with close allies to be the most robust response to the threat.

3.2 The European Context and the Data Retention Directive

Norway is the country outside the EU with the closest relationship with the Union countries in justice- and police areas. Norway has been an associate Member of Europol since 2002, which is the main organ for police collaboration across European borders.⁶⁸ The main purpose of the Europol collaboration was initially to strengthen and coordinate the cross-border cooperation in combating organized crimes, but since 2001 it has had a central role in the fight against terrorism. The unit has personal files that contain more than 60 forms of information, including sensitive information such as religious beliefs and sexual

⁶⁶ Ministry of Justice and Public Security, 2002

⁶⁷ Ibid: [Author's Translation]

⁶⁸ Hammerlin, 2009:55

preferences.⁶⁹ Another important collaboration Norway had sought adherence to, is the so-called Prüm-Treaty. The agreement - which is referred to as Schengen III - aims to strengthen cooperation on combating terrorism, organized crime and illegal immigration and gives Member States access to each other's DNA-, picture-, and fingerprint records and databases of the registration plates of vehicles.⁷⁰ Furthermore, Norway participates in the Eurojust-unit (cooperation between Member States' prosecution and judicial powers) and the Schengen-collaboration (common border control). The justice-political collaboration with the EU has so far been the most important push factor for Norwegian counter-terrorism policies.

The EU adopted in March 2006 a new Data Retention Directive (DRD), in response to the terrorist attacks in Madrid in 2004 and London 2005.⁷¹ The Directive created a common framework for storing telecommunications and Internet data within the EU. Essentially, this included whom people contact by email and phone, at what time and the call durations. Cellphone data also included locational data and which base stations the cell phones are connected to. Furthermore, the Directive required storing names and addresses associated with IP addresses, and recordings of when there had been an Internet connection. The time frame of how long the data would be stored would individually be decided by each Member State, within limits between six months and two years. The Directive declared that the stored data was to be used to combat "serious crime." However, which offenses fall under this category was not specified, and could, therefore, be decided by each Member State. Member States were free to decide which government authorities had access to the data, but the Directive required that each State pointed out an independent body to monitor its use.⁷²

The Directive was treated as part of the EU internal market. This made it relevant to the EEA, and, accordingly, a directive which Norway had to decide on, as an EEA Member. In April 2011, the Norwegian Labor Party and the Conservative party secured a majority vote for the Data Retention Directive in Parliament, with 89 against 80 votes.⁷³ While the Directive was adopted in Norway in 2011, the ECtHR ruled the Directive invalid on April 8th, 2014, because it was contrary to the EU's fundamental rights.⁷⁴ Nevertheless, it is highly relevant

⁶⁹ Ibid.

⁷⁰ Hammerlin, 2009:56; Borgvad, 2007:19

⁷¹ Hammerlin, 2011:27-28

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Thon, 2014:110

for discussion, as it illustrated the lengths of which the Norwegian government, in the majority, was willing to go in the name of national security.

The Directive was the most far-reaching surveillance measure taken in Norway since World War II. It included tracking who Norwegian citizens were in contact with by phone and e-mail, which in practice means their social networks, and storage of localization data, which make it possible to identify patterns of movement. However, it was not envisioned that the data would be freely available to the police and authorities. They were only supposed to be extracted on suspicion of serious offenses. Even so, it is worth noting that all privacy authorities in the countries covered by the directive, as well as the EU's data protection authorities, labeled it as a violation of the ECHR and said that it represented a dramatic impact on citizens' privacy and freedom of communication.⁷⁵

The backdrop for the DRD was, evidently, an ever-closer coordination of surveillance and investigation work in Europe, where information was collected in large searchable databases and police and intelligence cooperation intensified. The Directive was a true product of the sharpened terror alert, introduced in the aftermath of the terrorist attacks in New York, London, and Madrid. The ECtHR, among other things, emphasized that the Directive gravely interfere with citizens' fundamental right to respect for their privacy and the protection of their personal data. In the proportionality assessment, they emphasized that the Directive cover storage of all types of traffic data, without any differentiation in limitation, in light of the Directive's purpose which was to combat serious crime.⁷⁶

The Norwegian Data Inspectorate (NDI) engaged itself strongly against the DRD and claimed that it constituted a violation of former liberal law principles and traditions. The Inspectorate's director, Georg Apenes, called it "totalitarian fanaticism"⁷⁷ and pointed to the fact that all privacy authorities in the countries covered by it saw the scheme as a violation of ECHR Article 8, concerning the right to a respected private sphere. The Directive at their end, however, pointed out that the objective of Article 8 can be waived when necessary to

⁷⁵ Hammerlin, 2011:27-28

⁷⁶ Thon, 2014:111

⁷⁷ Hammerlin, 2009:47

safeguard national security, and that the DRD was a needed and effective investigative mean of combating organized crime and terrorism.⁷⁸

Additionally, it is interesting to note that according to the NDI's Privacy Survey for 2008, many did not have knowledge of what the DRD entailed. Nearly half of the Norwegians surveyed - 46 percent - had not even heard of the Directive.⁷⁹ This in itself is concerning, as it indicated that the population that the Directive aimed at protecting felt little ownership over the laws implemented, which would have demonstrated a transparent and just democratic process. In a liberal State, laws need to be predictable and transparent to be legitimate. Citizens must be able to understand their laws to use their freedoms to the fullest. In the words of liberalist John Locke: "...he is presumed to know how far that law is to be his guide, and how far he may use his freedom, and so he comes to have that freedom."⁸⁰ In other words, if the people do not know their laws, they cannot predict their legal position. When the ECtHR ruled the Directive invalid, it was one of the few times individuals' rights have trumped implemented security measures.

3.3 Continuous European and American Influences

Even though the DRD was eventually ruled invalid, it was only one of many developments happening in the security arena in the 21st century in Europe. The political security cooperation between the United States and Europe in the fight against terrorism became rigorously strengthened, especially after the terrorist attacks in Madrid and London in 2004 and 2005. In the new provisions in the Norwegian Penal Code introduced in 2005, the government changed the law from a passive to a more active follow-up of international commitments against terrorism by introducing a separate chapter, Chapter 18, with specialized penalties for terrorist acts and terrorist-related acts. The (new) Norwegian Penal Code, which repealed the Norwegian Penal Code of 1902, was fully enforced 1 October 2015.⁸¹ The government emphasized that the scope and the complexity of the obligations, as well as the desire to implement the obligations in a clear and loyal manner, form the basis for the enactment.⁸²

⁷⁸ Hammerlin, 2009:47

⁷⁹ Hammerlin, 2009:48; Personvernundersøkelsen 2008:6

⁸⁰ Locke, 2005:20

⁸¹ Straffeloven [Norwegian Penal Code] 2005, last ed. 01.01.17

⁸² Ot.prp. nr. 8 (2007-2008):107; Nordenhaug & Engene, 2008:89

Furthermore, in February 2008, the Norwegian parliament ratified new changes in the Penal Code with a separate chapter on terrorist actions, §147 c, pushing even further in a pre-active direction.⁸³ This provision targeted more specifically solicitation and recruitment to terrorist activities. The Norwegian government itself expressed again that these adopted laws were not due to changes in the security situation at home, but rather because they wished to abide by the international obligations bestowed from the CoE's Convention on Prevention of Terrorism.⁸⁴ Clearly, the close security-political ties between the USA and the EU have accordingly had indirect impacts on Norway.

In some cases, the influence from Washington has also been more direct. When the Norwegian Terrorism Act was re-processed in 2007, 138 pages were translated, sent to Washington and analyzed by experts, who then gave Ambassador Benson K. Whitney suggestions for improvement. The US Embassy then sent detailed input to the Norwegian Attorney General, Knut Storberget.⁸⁵ Historically, Norway has had close security-political collaborations with the USA, and it is known that Norway has had agreements on information exchange, among other things about Norwegian's political affiliations, when applying for U.S. visas.⁸⁶ How much information the Norwegian government shares today is, however, unknown.

In general, all these changes in different legislations highlight the comprehensiveness and complexity of counter-terrorism development in Norway. Looking more broadly, 9/11 resulted in various terrorism-prevention measures implemented in law, particularly in 2002,⁸⁷ 2005,⁸⁸ and 2008.⁸⁹ In general terms, these laws constituted changes that included sharpened penalties for terrorist acts, prohibiting financing of terrorist activities, banning preparation of terrorist acts by conspiring with others, further criminalization of providing training in methods that could be used in terrorist acts, and, lastly, increased leeway for usage of surveillance methods. What all of them have in common is the purpose of punishing the planning and execution of terrorist acts. The stage at which punishment can be incurred is

⁸³ Hammerlin, 2009:55; Nordenhaug & Engene 2008:126-27

⁸⁴ Hammerlin, 2014:70; Nordenhaug, Aftenposten 01.05.07; Nordenhaug & Engene, VG 01.05.07

⁸⁵ NRK, 01.09.07 «USA vil skjerpe norsk terrorlovgivning»

⁸⁶ Hammerlin, 2014:70

⁸⁷ Ot.prp nr 61 (2001-2002)

⁸⁸ Ot.prp nr. 60 (2004-2005)

⁸⁹ Ot.prp nr. 8 (2007-2008)

thus moved to an earlier stage of the planning phase.⁹⁰ The challenges of this development will be discussed in the following chapter four. More and more it is evident that information about who people are, what they do, where they are and who they are in contact with is being stored. In other words, control of the social and personal spheres is increasing with implemented surveillance and security measures.⁹¹

3.4 22 July Terrorist Attacks

22 July 2011, hereby referred to as 22/7, is a date firmly imprinted in the collective memories of residents of Norway. On that day, every person in the country, as well as Norwegians traveling and living abroad, experienced a tragedy unparalleled in its scope and impact on both individual lives and national psyche. Until this date, Norway lived under a sense of immunity from the type of violence and mass destruction other countries have had to endure. That Norway would be the site of the most lethal terrorist attack on European soil since the train bombs in March 2004, was something that few had imagined. Since the suicide bombs in London in 2005, Europe had been sheltered from major terrorist attacks.

Two attacks happened on 22/7, the first being a car bomb placed outside the Government complex in Oslo. The explosion that followed killed eight people and wounded several others. The second attack occurred less than two hours later on Utøya island, where AUF, the ruling Norwegian Labor party's youth division, held their annual summer camp. A gunman dressed in an authentic police uniform gained access to the island, and opened fire at the participants, killing 69 of them.

To clarify its extent, the annual murder rate in Norway is about 30.⁹² When 77 people are killed in Norway in one day that is more than twice the annual rate in one day, which is a huge shock for a society like Norway. There had not been a terrorist event of this scale on Norwegian soil since World War II. Its magnitude and consequences and the combination of what the perpetrator did can characterize this as a Black Swan event for Norway.

The challenge of responding properly to the attack lies in the impossibility of predicting Black Swans. Following the global trend, when a terrorist attack occurs, changes in national legislation and security policy happens. This was also the case for Norway. A significant

⁹⁰ Thon, 2014:110

⁹¹ Hammerlin, 2011:30.

⁹² SSB, 06.03.17

example was the Norwegian Terrorist Act. As formerly stated, in the last paragraph of §147a, the 2002 version stated: “Any person who plans or prepares such terrorist acts as are mentioned in the first paragraph, *by conspiring with another person* for the purpose of committing such an act, shall be liable to imprisonment for a term not exceeding 12 years.”(Emphasis added)⁹³ The Norwegian State had criminalized acts that are conspired, which was not very controversial to do. The terrorist attack in Norway changed this. The perpetrator, Breivik, was a solo terrorist: he did not conspire with others. Thus, according to the 2002 version, had Breivik been caught while he was planning and preparing the attacks he could not be punished under the Terrorist Act, as he did not conspire with someone. This, naturally, caused an outcry and demand for change.

The changes, enacted in 2013 and what it looks like today states that “Any person, with the intent to commit an offense mentioned in the first or second paragraph, who undertake actions that facilitate and point towards the implementation (of the act), will be punishable for the attempt.”⁹⁴ With this formulation, the concept of *attempt* is pulled in on the preparatory stage of a terrorist attack. In 2002, this formulation would be unthinkable and met with huge resistance, according to Professor Lomell.⁹⁵ With this, Norway has a very broad definition, covering *any person with intent to commit*.

After the attack, a Commission was put together to investigate the events. Central to the Gjørvi Commission was to examine whether the attacks could have been prevented:

“With this report, the 22 July Commission concludes its review of the terrorist attacks on the Government Complex and on the Labour Party Youth camp on Utøya Island. Every day for a whole year, we have worked together to find the answers to three key questions: What happened on 22 July? Why did it happen? *How could our society have let this happen?* (Emphasis added).”⁹⁶

⁹³ §147a of the Norwegian Penal Code, 2002 [H. Lomell translation]

⁹⁴ §147a of the Norwegian Penal Code, 2013 [H. Lomell translation]

⁹⁵ Lomell, 2014:51

⁹⁶ NOU 2012: 14

The last question, in contrast to the two first, is quite rhetorical and contains an adamant message: this attack could have been prevented. In the words of Professor Lomell, implied in the question the Gjørv Commission asks, society could have stopped it. “We *knew* that it was going to happen, and yet we let it happen. Somebody let this happen!”⁹⁷

To answer their questions, the Commission “concentrated on investigating the attacks of 22 July, the reasons why the tragedy could take place and how it was handled.”⁹⁸ To do this, the Commission decided to “document the determining events prior to 22 July and the events that day in as much detail and transparency as possible. At the same time, one has not hesitated to ask: Would the outcome have been significantly different under marginally different circumstances?”⁹⁹

Part V of the report examines the ability to prevent and protect against attacks. This is a critical part of the discussion; what can one do to protect against future occurrences?

“We compare the perpetrator’s preparations with the central barriers that society has set up to prevent attacks. Here we discuss the work of the Police Security Service (PST) to detect preparations for terrorism. Could the perpetrator’s plans have been thwarted? We look at society’s weapons and explosive controls before we address the security work at the Government Complex.”¹⁰⁰

However, despite their question on how society let this happened, the Commission decided to not look into society’s efforts of preventing the attack. “We have foregone issues related to the perpetrator’s motive, childhood, and state of health, and we have not explored the measures society puts in place for the early prevention of radicalization.”¹⁰¹ As these kinds of prevention mechanisms are not something they are interested in, it is possible to make the claim that Norway is joining in on the trend of viewing these former ways of prevention, as more ‘soft’ than hard policies, which the Commission decided to look at.

⁹⁷ Lomell, 2014:39

⁹⁸ NOU 2012: 14, p.13

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ NOU 2012: 14, p.14

The Commission made six conclusions, three of which are of importance to the perspective on whether terrorist attacks can be prevented. They stated:¹⁰²

- 1) “The attack on the Government Complex on the 22 July *could have been prevented* through effective implementation of already adopted security measures. (Emphasis added)”
- 2) “The authorities’ ability to protect the people at Utøya *failed*. A faster police response was realistically possible. The perpetrator could have been stopped earlier. (Emphasis added)”
- 3) “With better ways of working and a broader focus, the Police Security Service *could have become aware of the perpetrator prior to 22 July*. Notwithstanding, the Commission has no grounds for contending that the Police Security Service could and should have averted the attacks. (Emphasis added)”

The first conclusion, stating that the attack on the Government complex could have been prevented, is justified by criticizing the security measures of the municipalities and central government, especially those that had already been adopted but due to slow implementation were not in place, such as physical barriers at the Government complex. As such, the conclusion states that if these measures had been implemented, the attack could have been prevented. While the conclusion is not wrong, it is still questionable as to whether it is really true.¹⁰³ Their conclusion follows the idea that one can protect oneself from terrorism through physical security measures. However, terrorists are not passive respondents: they are reflective and rational, and they adapt. It is highly questionable to presume that had there been a road-block or physical security barrier at the Government complex, the terrorist would simply go home and not do the attack. Most likely, his target would have been a different one, but this one does not know. This underlines the importance of understanding that security measures cannot protect people 100 percent. While the Commission made the above conclusion, they still expressed that they realize that Norwegians live in a risk society, where one cannot expect the authorities to protect from everything: “the Commission realizes that,

¹⁰² NOU 2012: 14, p.15

¹⁰³ Lomell, UiO, 17.09.2015

among other things, the democratic costs associated with systems aiming at eliminating any risk of terrorist attacks are too high. We must live with a certain risk.”¹⁰⁴

The second conclusion claiming that the protection of people at Utøya failed, tells something about the Commission’s view on the level of responsibility that the authorities, the police, in particular, has on protecting Norwegians from serious crime and terrorism. They base their conclusion on the fact that human errors, communication, failures and system failures prevented the police from reaching the island sooner and thus preventing Breivik from doing what he did. From a Black Swan perspective, it is difficult not to argue that such claims fall victim of the retrospective distortion. In the words of Helge Renå, the Commission’s retrospective outlook, with post-knowledge of what took place, becomes pre-knowledge in parts of their evaluation of the events.¹⁰⁵ In the middle of the chaos of the attack, without the benefit of prospective predictability, it is impossible not to make any mistakes. Normal police work is quite mundane, and the magnitude of this event was not something they were prepared for, and nor could they be as nothing like it had ever occurred before, making it impossible to predict.

The last conclusion is somewhat mixed; on the one hand, the PST could have become aware of the perpetrator before the attacks, but on the other, there is no reason to criticize the PST for not having averted the attacks. The first part of the conclusion is because the PST had found Breivik’s name on a surveillance list covering illegal purchasing and selling of explosives and chemicals. His name was there, but so were the names of 40 other Norwegians.¹⁰⁶ This illustrates the difficulties the police encounters when investigating possible future-oriented crimes at a preparatory stage: how does one differentiate and distinguish those that are planning an attack from those who do not, but are doing the same things?¹⁰⁷ It is much easier in retrospect to point to the facts and establish a chain of events, than being at the preceding stage and predict what will happen in the future.

The combination of what Breivik did can be characterized as a Black Swan event: it had never happened before, it carried an extreme impact and carried retrospective predictability. The Commission’s criticism misses the point of recognizing that this was, in fact, a Black Swan

¹⁰⁴ NOU 2012:14:450

¹⁰⁵ Renå, 2016

¹⁰⁶ PST, 13.12.11: «Redgjørelse til justisdepartementet vedrørende Global Shield»

¹⁰⁷ Husabø, 2003:104

event, and how difficult Black Swans are to predict. The Commission does, however, note that “there is a reason to emphasize that it cannot be expected that in an extraordinary event like this one, everything runs smoothly without miscalculations.”¹⁰⁸

Prime Minister Erna Solberg stated in 2013 “the Government will take steps to ensure that Norway is better equipped to meet future crises. The Gjørsv Commission’s report and the police analysis provide a good starting point for the work that needs to be done.”¹⁰⁹ Furthermore, in 2014, Solberg’s words were reiterated, and the government made the following statement on their Government website:

“The Government will ensure that the country is equipped to respond effectively to future crises. The Gjørsv Commission’s report and the police analysis identified a number of serious shortcomings. The Government will, therefore, step up efforts to strengthen security and emergency preparedness. Our ability to respond effectively must be restored. This will lay the foundations for a more secure society.”¹¹⁰

Consequently, several new changes were adopted and implemented. *The Ministry of Justice* changed to be named *the Ministry of Justice and Public Security*, emphasizing a strengthened focus on security. New physical barriers were put up to secure government buildings. Additionally, the Penal Code was, as mentioned, changed to also cover solo terrorists in 2013. These are good examples of how counter-terrorist measures are trying to accommodate and possibly prevent the last attack. They are also relevant examples of policy and legislation implemented due to 22/7, while the discussion must begin with how far it is reasonable to go to protect from possible terrorist acts in the future with the awareness that Norway has already been in a period of extensive changes since 9/11.¹¹¹ Norway did not start from scratch but had already well-developed and comprehensive laws that dealt with terrorism, before 22/7.

Notably, the Gjørsv Commission did not support the suggestive changes to the Penal Code in 2013. On the contrary, they expressed skepticism towards changes that would punish actions

¹⁰⁸ NOU 2012: 14:110 [Author’s Translation]

¹⁰⁹ Solberg, 18.10.13

¹¹⁰ Ministry of Justice and Public Security, 12.13.14: «Security in day-to-day life and better emergency preparedness»

¹¹¹ Wessel-Aas, 2012

out of tune with Norwegian legal traditions.¹¹² They went as far as saying, “the danger of erroneous convictions will be obvious with this type of legislation.”¹¹³ The government decided, however, not to follow their advice.

3.5 Newer Developments in Norwegian Counter-Terrorism Measures

The Norwegian Government announced a series of measures to ward off and reveal terrorism in *Meld.St. 21 (2012-2013)*, as a follow-up to the Gjørv Commission’s report. The Ministry of Justice and Public Security henceforth developed Proposition 131L (2012-2013), which included legislative proposals for further and wider criminalization of preparatory actions in the Penal Code. The purpose was to “facilitate the protection of society against terrorist acts, thereby safeguarding the safety of the community and the safety of individuals.”¹¹⁴ Additionally, a new proposition regarding amendments to the Criminal Procedure Act was also introduced in 2013.¹¹⁵ This was to strengthen the police and prosecutor's ability to protect sources and informants.

Furthermore, Proposition 68L came in 2015-2016, which proposed that the police be granted “extended access to use coercive methods in investigating, delisting and preventing serious offenses. The expansion includes communication control, search, surveillance, technical tracking, camera surveillance and coercive methods for preventive and protective purposes.”¹¹⁶ In this regard, Anders Anundsen, former Minister of Justice and Public Security, announced in a press release that “changes in crime and threat levels suggests that the police's access to using hidden police methods needs to be expanded. Lack of access to methods should not stand in the way of the clearance or prevention of serious criminal acts.”¹¹⁷

This development did, however, not go unnoticed, and several prominent defense lawyers were quoted in *Aftenposten* in May 2016, stating that the Government’s proposal was a powerful intervention against individual’s private sphere.¹¹⁸ Minister Anundsen responded to the criticism by releasing a new press release that stated: “I would emphasize that police

¹¹² NOU 2012:14:392

¹¹³ Ibid.

¹¹⁴ Prop. 131 L (2012-2013):7 [Author’s translation]

¹¹⁵ Prop. 147 L (2012–2013)

¹¹⁶ Prop. 68 L (2015-2016) [Author’s translation]

¹¹⁷ Ministry of Justice and Public Security, 11.03.16: «*Bedre metoder i kampen mot alvorlig kriminalitet*»

¹¹⁸ *Aftenposten*, Last ed.23.02.17: «*Slik blir politiets nye overvåkningshverdag*»

methods should not be addressed towards *most people*. The methods should be used towards persons there are reasons to suspect for serious offenses. Thus, the Government's proposal is the opposite of mass monitoring and uncontrolled intervention in people's privacy, as Aftenposten's article would suggest" (Emphasis added).¹¹⁹ He continues; "With this proposal, the Government believes that it has managed to maintain the difficult balance between balancing society's need for security against the suspect's right to privacy." Nevertheless, the new propositions all suggest moving the center of balance between security and individual's rights, in favor of more security and surveillance. In addition, the measures emphasize the importance of intervening *before* the criminal act takes place.

4 From an Old to a New Protective Paradigm

In addition to the changing international conditions, it is evident that the most significant changes in Norwegian counter-terrorism measures have been the increasing criminalization of preparatory actions – that is, actions perceived as preparation for future criminal acts, which has not yet been attempted. The penal code paragraphs from 2005, §147a and §147b, and §147c from 2008 are good illustrations of this.¹²⁰ This is a significant shift because it has major implications for both which actions incur punishment and cause further interference in people's privacy.

In traditional criminal law rhetoric, henceforth referred to as the *old protective paradigm*,¹²¹ prevention was seen as an *alternative* to punishment. Crimes were punished after they had been committed or at least attempted, but it is always better to prevent people from committing crimes at all. In the words of Johs Andenæs, there has been a clear distinction between the three stages in the realization of a criminal offence: the non-punishable preparation, the punishable attempt and the actual criminal offence.¹²² One could say that the old paradigm is interventionist, but not coercive: there is no punishment before the offense or at least its attempt.¹²³ The *new protective paradigm* is blurring the border between prevention and punishment. Counter-terrorist measures are expanding criminal law into the preventive realm.

¹¹⁹ Ministry of Justice and Public Security, 27.05.16: «Overvåkningen skal ikke rettes mot folk flest»

¹²⁰ Wessel-Aas, 2012:117

¹²¹ The terminology of an *old and a new paradigm* was introduced [to me] by Heidi Lomell 17.09.2015

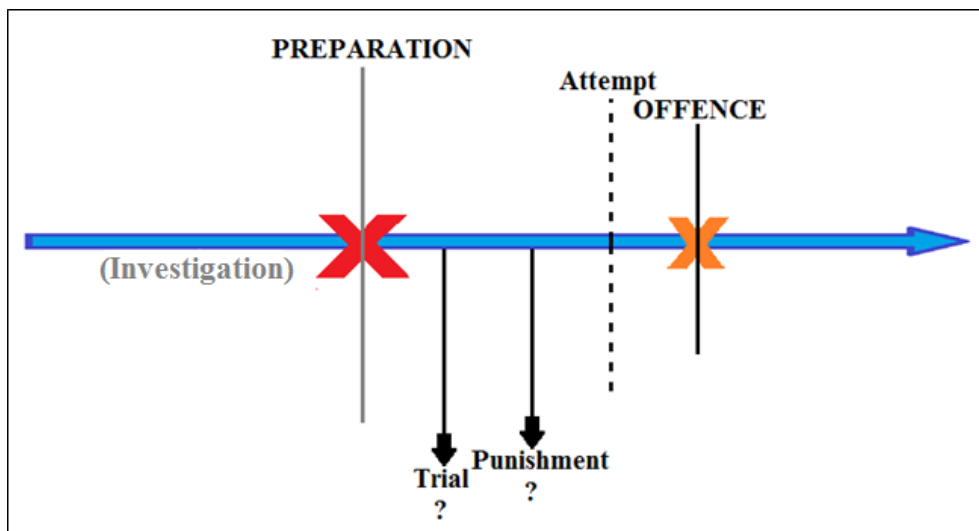
¹²² Andenæs, 2004:345

¹²³ Lomell, UiO: 17.09.2015

4.1 Pre-active Criminal Law and the Criminalization of Preparatory Acts

A central formulation relevant for the notion of a new paradigm is the concept of *pre-active* criminal law. Preparatory acts were the origin of the expression, popularized by Professor Erling Johannes Husabø from the University of Bergen in 2003.¹²⁴ The prefix “pre” indicates a state that is at the beginning of another state and is thus more focused on subsequent actions in a chain of events. The term is applied to measures aimed at avoiding dangerous or harmful actions at an early stage.¹²⁵ Criminal justice is traditionally *re-active*, meaning it focuses on already committed criminal offenses.¹²⁶ Consequently, the pre-active criminal law outlook alters both the criminal law and the nature of prevention. The aim of a ‘pre-active’ punishment in connection with terrorism is to stop terrorists before they perform their actions by criminalizing their preparatory actions.

A direct effect of 9/11 is that many States have criminalized ‘preparation of terrorist acts,’ which is extremely complicated and criticized by criminologists. Because how and when can one impose liability at the preliminary stage? At what point on a timeline leading up to a crime can one impose liability?¹²⁷ The below graph, designed by criminologist and Professor Heidi Lomell, illustrates this dilemma.¹²⁸ While an act in and of itself is not criminal, if the conduct is directed at subsequent wrongdoing, then it is prohibited. As an example, buying fertilizer in and of itself is not illegal, but buying fertilizer to build a bomb is illegal.



¹²⁴ Husabø, 2003

¹²⁵ Lomell, 2011:86; Haugland 2004:12

¹²⁶ Husabø 2003: 99

¹²⁷ Ibid.

¹²⁸ [Author’s recreation after lecture with H. Lomell, UiO:17.09.15]

The criminalization of preparatory acts changes the perimeters of what is considered to be a criminal offense. The main dilemma is the balancing between setting the limit as early as possible – to ward off the actual primary offense – while simultaneously trying to hold the standards for imposing criminal liability high until the future-oriented event has been established and can be proven. On the one hand, the desire to prevent pulls in the direction of setting the time of punishment as early as possible. On the other hand, the desire to prove the perpetrator's intention on the most solid foundation, to get as many convictions as possible – and to ensure that no convictions are mistaken – draws in the direction of setting the time of punishment as late as possible.¹²⁹

There are reasons why preparatory acts have previously not been criminalized: they have not been found sufficiently worthy of imposing liability and punishment because they are too far away from the completion of the act. In the old paradigm, investigation normally starts after the crime is committed. In the new paradigm, if the authorities are suspecting a person is preparing for a criminal act, they will have to be arrested at that stage. Accordingly, the prosecution in court will be for ‘preparing with intent to commit an offense’ – a future-oriented intent.¹³⁰ The aim being that by arresting and bringing them to justice, one will prevent the offense from taking place. It follows much the same logic as being precautionous: one rather wants to be safe, than sorry. As terrorism is such a grave threat to society and civilization, one cannot afford the luxury of regular criminal law – of waiting until being convinced beyond reasonable doubt – what is going to happen.

4.2 Terrorist-Intention rather than Terrorist-Commitment

The 2007-2008 amendments to the penal provisions on terrorist acts and terrorist related activities in the Norwegian Terrorist Act were important examples of the Norwegian developments in criminalizing preparatory acts.¹³¹ In addition to the separate chapter on terrorism in the Penal Code, this reflects the development where terrorism is increasingly considered a threat to Norwegian security and need to be prevented. This was clearly stated in the government's white paper no. 22, which proclaimed that:

¹²⁹ Lomell, 2011:93

¹³⁰ Ibid.

¹³¹ Innst. O. nr. 29 (2007–2008); Ot.prp. nr. 8 (2007–2008)

“The new provision contains more specialized and explicit penalties that make criminal liability for terrorist acts and, not least, terror-related actions more visible. The definition of terrorism is somewhat narrowed by the fact that terrorist-commitment (*terrorforsett*) has been replaced with terrorist-intention (*terrorhensikt*). Terrorist-intention reflects that the goal of the terrorist act is to create chaos, fear or to influence decisions.”¹³²

The new provision contained more specific and explicit penalties that made criminal liability for terrorist acts and, not least, terror-related actions more visible. By replacing the wording of terrorist-commitment with terrorist-intention, they sought to capture the aim of the terrorist act by using fear as a means of pressure.¹³³ Such a subjective perception of criminal liability is a typical feature of the new paradigm.¹³⁴ Terrorist-related actions are referred to as acts relating to the terrorist act itself, such as recruitment to terrorist acts, training, or illegal trading with highly dangerous substances that are particularly suitable for use in terrorist acts, such as nuclear and radioactive material. In total, this development is important to note as the criminalization of preparatory acts marks the most significant distinction for the legal basis before and after 9/11 in the Norwegian fight against terrorism.

In the government’s *strategy for prevention* from 2009, the government highlighted that “Too much of society’s efforts are about remedying injuries and problems that have already occurred. We must prevent more to repair less.”¹³⁵ The government would, therefore “place more emphasis on preventive activities. In addition to the efforts to cure, relieve and repair, the [Norwegian] society must run a more conscious and active business to ward off, facilitate and assist before any problems arise.”¹³⁶ This falls in line with their counter-terrorism strategies. The new paradigm, focused on prevention, was also defended by the former head of the PST, Jørn Holme, back in 2005:

¹³² St.meld. nr. 22, (2007-2008):33, [Author’s Translation]

¹³³ Nordenhaug & Engene, 2008:116

¹³⁴ Ibid.

¹³⁵ *Regjeringens Strategi for forebygging*, 2009:6, [Author’s Translation]

¹³⁶ Ibid.:7 [Author’s Translation]

"The most important thing is to prevent, to eradicate terrorist milieus before anything happens. [...] Today we can wiretap and listen to phone calls when there is 51 percent probability that the suspect has committed serious criminal acts. What we unfortunately need are methods that ensure we catch the terrorist while planning - long before he reaches the goal. Give us all the most stringent conditions of the world, but let's stop him before it is too late."¹³⁷

Faced with terrorism as a threat, the most important thing is to prevent the disaster from happening – to stop the terrorists at the planning stage. Waiting until one is convinced beyond a reasonable doubt may be too late. In this new paradigm, it becomes clear that giving the defendant the benefit of the doubt can be a gamble of life of innocent (but currently only potential) victims, according to Professor Lomell. Prevention becomes an imperative. This precautionary principle introduces an action simulation before the situation arises. If one waits too long, the disaster or damage may already have occurred. After the action is committed, it is "too late." The uncertainty and doubts that may exist concerning whether plans and preparations will end in an accomplished wrongdoing, the potential victims - or community security - must be benefited, not the potential perpetrators. It is not overrated to say that the innocence premise is put under pressure when the criminal law becomes pre-active in this way.¹³⁸

4.3 Pre-active Criminal Law and the Presumption of Innocence

In criminal law, there are two types of errors that can occur: a false positive (i.e. convicting an innocent person) and a false negative (acquitting a guilty person). These errors are in tension, as reducing one typically results in increasing the other.¹³⁹ Thus, based on their respective costs, a sound criminal justice policy entails striking an acceptable trade-off between the two types. When criminal law becomes pre-active, it raises the concern for false positives: intervening in suspected preparation is potentially arresting people who have broken no law. This is challenging, as traditionally the benefit of the doubt has been on the part of the defendant: punishing one innocent person is worse than letting guilty people walk. However, with terrorism, the potential harms are so grave that the democratic society is willing to compromise its values in making sure potential terrorists do not walk free.

¹³⁷ Holme, 2005:Cited in Jacobsen, 2009:100, [Author's Translation]

¹³⁸ Lomell, 2011:92

¹³⁹ Laudan, 2008:282

The innocence premise says that everybody is considered innocent until the opposite is proven.¹⁴⁰ As mentioned, traditional reactive criminal justice enforcement is offense based. Through investigation, one seeks to find the right perpetrator of the crime committed. The misconduct of convicting innocent people (false positives) is worse than letting guilty people (false negatives) walk. In a liberal democratic State like Norway, false positives are the biggest threat. That is why the principle that any reasonable doubt will benefit the accused exists, and that it is better for nine guilty to walk free than to convict an innocent person.¹⁴¹ The pre-active approach flips this principle on its head. Trying to minimize the number of false negatives becomes more important than keeping the number of false positives low.¹⁴² This mentality will undoubtedly lead to more false positives – that more innocents are convicted – according to Lomell.¹⁴³ Turning such an important rule of law on its head is significant as the benefit of the doubt is no longer to the benefit of the accused, but rather the potential victims and the community security.

To punish anyone for a crime they have not committed is by most considered synonymous with punishing innocent people - an unacceptable practice in a State with the rule of law. If formulated differently, however, punishing someone for a crime they have not committed *yet*, many consider the situation differently.¹⁴⁴ Fewer would have problems with such practices because the wording creates an action series that establishes the offense as a future action. “The little word “yet” creates an impression of future certainty as well as the inevitability of what will happen if the authorities do not intervene,” according to Lomell.¹⁴⁵ However, how can one know, beyond any reasonable doubt, on the basis of preparatory actions and the intentions at this stage, that the future primary action will be committed unless it is stopped? This is one of several general issues and questions that need to be raised and addressed regarding the new paradigm of pre-active criminal law.¹⁴⁶

¹⁴⁰ ECHR, Art. 6(2)

¹⁴¹ Halvorsen, 2004 in Lomell, 2011

¹⁴² Ericson, 2007

¹⁴³ Lomell, 2011:92

¹⁴⁴ Farmer, 2010 in Lomell 2011: 92

¹⁴⁵ Ibid.

¹⁴⁶ Haugland, 2004:16; Husabø, 2003:104

4.4 Concerns with Criminalizing Pre-crime Activities

A pre-active direction of criminal law affects the principles of the rule of law and the design and governing of the rules.¹⁴⁷ First, as previously mentioned, the innocence premise is challenged from a pre-active perspective. The starting point of criminal cases is the burden of proof, which lies with the persecution authority, while the suspect will have an interest in showing proofs of his/her innocence. If criminal liability is subjected to discretion, the possibility of showing such proof of innocence will become more difficult.¹⁴⁸ The innocence premise is also particularly threatened if sanctions happen on the basis of suspicion.

Secondly, the legitimacy principle has clear authority in criminal law. Actions that lie at the early stages of a criminal offense that is desired to be avoided may often be such that they do not significantly differ from other legal activities. Again, the example of buying fertilizer – buying it in itself is not illegal, but buying with the intent to build a bomb is illegal. One way of addressing the problem is then to subject the criminal responsibility by focusing on the perpetrator's intention, instead of the external action, in this case buying fertilizer. If the pre-active provisions are to affect actions at the initial stages of the upcoming offense, they must be given a design that makes them sufficiently effective for this purpose.¹⁴⁹ At the same time, the citizen must have the opportunity to pre-calculate his legal position.

Thirdly, the new paradigm raises issues surrounding the principle of distribution of power, particularly regulating the executive powers, primarily the police and the means of control they have at their disposal. In 2005, the PST got their powers expanded, so that there was no longer a demand for suspicion of terrorist activities, to be allowed to initiate investigations.¹⁵⁰ Through § 17d of the Police Act, the PST are allowed to use methods such as secret interception *without* suspicion, as long as there is "reason to investigate" if anybody is preparing an act that could be a preparation for a terrorist act.¹⁵¹ Even further, while the DRD was legal, PST could use it if they believed there was a reason to investigate whether a person was planning a terrorist act.¹⁵² As a database created with information on the population's network and patterns of movement, in the event of being valuable in *future* investigation of

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Wessel-Aas 2012

¹⁵¹ Norwegian Penal Code 2005, § 147 a, fourth paragraph

¹⁵² Wessel-Aas, 2012

criminal offenses, it is apparent that this challenges the innocence premise. Even though it was eventually ruled unconstitutional, it emphasizes that the Norwegian authorities consider the graveness of terrorism to be so actual and severe that *preparation for preparation* could be affected by the executive control unit.¹⁵³

In 2008, a Legislative Control Committee was appointed by Royal Decree to evaluate the Norwegian police's use of hidden coercive methods and the processing of information in criminal matters.¹⁵⁴ Their report was handed to the Ministry of Justice and Public Security in 2009.¹⁵⁵ The Ministry's goal was that innocent people would in the least extent be affected by the police's coercive use, but the evaluation suggested, among other things, that this is not always the case. The Committee therefore proposed several suggestions to improve the protection of third parties' interests.¹⁵⁶ A majority of the Committee Members also concluded that the access to using surveillance in private homes for preventive purposes was in violation of §102 of the Constitution, which prohibits home surveillance in cases other than criminal cases, and henceforth proposed changes to the Police Act § 17d and the Criminal Procedure Act § 222d.¹⁵⁷

The Norwegian police have a duty to protect Norwegian citizens, not only by imprisonment, but also through prevention. Article 1 of the Police Act states that "the police shall, through preventive, enforcement and supportive activities, be a part of society's overall efforts to promote and consolidate citizens' legal certainty, security and general welfare of others."¹⁵⁸ Compared to other Western States, Norway has focused heavily on targeted measures, by strengthening intelligence and PST. Norway has also chosen a more preventive profile, for example by reaching out to radicalized environments considered to develop into an even more dangerous direction, at an early stage.¹⁵⁹

¹⁵³ Ibid.

¹⁵⁴ Ministry of Justice and Public Security: Legislative Control Committee, 26.06.09

¹⁵⁵ NOU 2009:15

¹⁵⁶ Ministry of Justice and Public Security, 26.06.09: «*Bruk av inngrepene etterforskningsmetoder*»

¹⁵⁷ Ibid.

¹⁵⁸ Police Act § 1, [Author's Translation]

¹⁵⁹ Hammerlin, 2014:73

It is common to distinguish between police proactive and reactive work tasks. Looking back at the graph by Professor Lomell, proactive tasks are measures taken to prevent criminal offenses being committed, including everything from information, attitude campaigns, crime prevention, interdisciplinary cooperation and various preventive measures. Reactive tasks represent actions that have been taken after a criminal offense has occurred, primarily investigation and redress.¹⁶⁰ However, moving into a pre-active realm, these two intercept; investigation, interception and potential punishment happens *before* the actual unwanted criminal offense has taken place.

The distinction between the police's proactive and reactive activities has an impact on what rule of law is applicable. Rules on investigation are provided in the Criminal Procedure Act, while rules on police preventive activities are contained in the Police Act.¹⁶¹ The distinction also has significance concerning who is the responsible authority. The Ministry of Justice and Public Security is in charge of the preventive business, as the senior management of the police, while the Prosecution office with *Riksadvokaten* is responsible for the investigation. For the police's preventive activities, the Police Act and the Public Administration Act initially apply. In investigation, the Criminal Procedure Act usually applies. In general, it can be said that the police cannot use the same intervention methods for prevention as well as for investigations. This is because when the police are carrying out investigations, they have access to coercive methods laid out in the Penal Code. Because of this, "legal security guarantees are generally stronger at the stage of investigation than at the stage of prevention."¹⁶²

Referring to the illustrative graph, distinguishing between prevention and investigation, everything the police does to try to prevent the offense *before* it takes place, is considered prevention, while what the police does *after* the offense is considered investigation. In other words, the boundary between prevention and investigation is the time of the offense or at least the attempt. Actions that have taken place before the attempt have formerly been considered to be taking place too far away from the actual offense or attempt to carry criminal liability. The preparatory act may have been committed long before the perpetrator has determined whether or not s/he will commit the offense. Even if the perpetrator has decided to commit the

¹⁶⁰ Lomell, 2011:79

¹⁶¹ Lomell, 2011:84, Haugland, 2004:73

¹⁶² Lomell, 2011:84; Haugland 2004:73

offense, the likelihood that s/he will change his or her mind is greater than at the point when the offense is attempted.¹⁶³ As a result, what is punishable is significantly expanded in the new paradigm.

For the Norwegian police, this means that a significantly larger part of their work is to be considered investigation, as the expansion includes looking into whether a crime is being committed. This also provides the police with increased access to many investigation- and coercive methods that would otherwise only be available at the traditional investigation stage, after the crime has been committed.¹⁶⁴ When investigating preparatory actions, the police needs to look to the future to establish a future event. This means that they need to assume that the perpetrator's intentions at the preparatory stage will remain the same throughout all the phases that remain before any major action takes place.¹⁶⁵ With such a logic at play, the moral reflection that characterizes humans must be ruled out. That the potential perpetrator will change his or her mind or be persuaded to abstain from the wrongdoing cannot be taken into account. One can, therefore, say that respect for the individual's moral autonomy is weakened by such pre-active criminal law. The question is whether a liberal democratic State like Norway would want a criminal law in which there is no room for a change of mind and better thinking. When one interferes at the preparatory stage, this nuance will disappear.¹⁶⁶

The pre-active paradigm works perfectly as long as only guilty people are stopped and punished before they get the chance to harm people, but the reality is that it is inevitable that false positives will also appear. Additionally, the pre-active paradigm requires a perfect system of control mechanisms, but in truth, a lower threshold for interventions and further penalties increases the risk of wrongdoings and abuse of the coercive methods made available to the investigators.¹⁶⁷

Lastly, to be further discussed in the following chapter is the concern for the balancing of security measures with the interference this entails for Norwegians' private sphere. When the focus is on preventing actions that have not yet been committed, intervention must occur at an earlier time, and then often with a lower threshold of intervention. The potential danger of

¹⁶³ Andenæs, 2004:347

¹⁶⁴ Myhrer, 2015:38

¹⁶⁵ Jacobsen, 2009

¹⁶⁶ Lomell, 2011:94; Husabø, 1999

¹⁶⁷ Haugland, 2004:16-17

undermining and controlling law-abiding citizens increases, and it raises questions about how far Norway as a society is willing to go, for the sake of common security.¹⁶⁸

5 Balancing Security Needs with the Rights of Individuals

In close connection with the concern for the control mechanisms, the new pre-active paradigm threatens Norwegians' Privacy Policy and interfere with Norwegians' private sphere. Security and liberal values are two foundational aspects of Norwegian society. These two are in constant tension: how does one protect the liberal, liberally? This liberal dilemma is complex: one wants to keep an open, transparent and democratic State with the rule of law, while simultaneously make sure it is safe. It is essential for a liberal democracy to have a space for its citizens where the State does not interfere, but without basic security, there is no society to protect. There needs to be a balance to protect the values the Norwegian society holds dear. Nevertheless, we live in the age of terrorism, and we have to defeat terrorism, but where does one draw the line in the attempt?

5.1 A Surveillance Society

As a lack of security often comes as criticism in the aftermath of a terrorist attack, it is natural that the government's response to the criticism is to implement new laws and increase surveillance measures to raise the level of protection and forestall a new attack. In the aftermath, the political need to demonstrate that they take terrorism very seriously by implementing new security measures is hardly any difficult to understand. If an attack happens, the political authorities are the target of criticism, and it is thus far more attractive to do too much than too little. A survey made by Norstat in 2007 showed that three out of four Norwegians accept more surveillance and monitoring if it makes society safer.¹⁶⁹ After an attack societies, including democratic ones, are more likely to alter their view on monitoring, and accepting it with a lower degree of skepticism.¹⁷⁰ This also held true for Norway after 22/7.¹⁷¹ Notably, the possibility to control and use surveillance is completely different today compared to just 10 or 20 years ago. We leave electronic tracks in almost everything we do. A Norwegian Civil Protection Commission was put together in 2007, with a mandate to

¹⁶⁸ Ibid:16

¹⁶⁹ Hammerlin, 2014:93; Lund, 2010:75

¹⁷⁰ Hausken, 2014

¹⁷¹ Thon, 2014:120

elaborate on the challenges Privacy Policy faces in Norway.¹⁷² A big emphasis in their report published in 2009 was on the challenges faced with the technological development. For the first time in history, there is a technological possibility of creating a society that can be reasonably described as being under complete surveillance.¹⁷³

As long as measures taken by the authorities are intended at preventing terrorism, they can count on high levels of support in the population. A survey made in 2006 suggested that 51 percent of the Norwegian population believe the authorities have the right to keep people in custody as long as they deem necessary, without placing them in front of a court, if the authorities have a suspicion that a terrorist attack is imminent.¹⁷⁴ The figures are even higher when it comes to random street search (55 percent) and phone interception (83 percent), given the same circumstances.¹⁷⁵ In contrast to this, 86 percent stated that the worst mistake a legal system can make is to convict an innocent person. This shows how fear of terrorism makes people willing to waive basic legal rights.

The logic follows that you are safe unless you have something to hide. However, this perception is distorted, because it preconditions an infallible legal system where only guilty people are convicted. It also excludes "unfaithful servants," with other political or personal agendas, and the possible abuse of information by authorities or others.¹⁷⁶ Therefore, the argument that you have nothing to fear unless you have something to hide must be rewritten:

“You have nothing to fear, as long as innocent people are never convicted. In addition, all information stored is correct, the data is only retrieved in accordance with current policies and guidelines, and no one with access to the data – with or without overlays – leak them to outside parties. Additionally, computer systems are fully secured, authorities adhere to the laws and regulations established and never fall into the temptation to use their extended powers for other purposes.”¹⁷⁷

¹⁷² Meyer, 2009:10; NOU 2009: 1

¹⁷³ Hammerlin. 2011:15

¹⁷⁴ Nordenhaug & Engene, 2008:151; NSD, 2006

¹⁷⁵ Ibid.

¹⁷⁶ Hammerlin, 2011:76

¹⁷⁷ Hammerlin, 2011:77-78, [Author's Translation]

Then one has nothing to fear. Surveillance mechanisms are used by humans, with all the autonomous details this entails, meaning that it is impossible for us as humans to be completely value- and perspective neutral and that information is viewed as neutral, and complete. This also means that a level of subjectivity will affect who is under surveillance.¹⁷⁸

When society is pushed in a direction of more surveillance, it is important to have the proper protective mechanisms in place, making sure that the implemented measures are foreseeable, proportionate, and provide safeguards against abuses. Without questioning what is happening, there is a risk of losing the ownership Norwegian citizens should have to the laws implemented to protect them. To prevent such collateral damage, in addition to public criticism, the legal system restricts permissible limitations on human rights, such as privacy and freedom of expression.¹⁷⁹

5.2 Trust in the Norwegian Authorities

As formerly mentioned, the most restrictive and intrusive measures in privacy policy must be authorized by formal law, ratified by the Norwegian Parliament. This is necessary to ensure the predictability and proportionality of the measure, required in a democratic process.¹⁸⁰ The principle of proportionality entails that the State has to justify its measures and defend how the interference corresponds to the pressing social need and how the measure will be suitable to achieve the sought aim.¹⁸¹ The courts have a serious job in evaluating whether the method is the least intrusive, most effective and whether the offense is of sufficient gravity to justify the measure.¹⁸² In a judgment in 1978, the ECtHR evaluated the German system of secret wire-tapping and whether it conformed to Article 8 of the ECHR. They concluded by saying that:

“the Court stresses that this does not mean that the contracting states enjoy an unlimited discretion to subject persons within their jurisdiction to secret surveillance. The Court, being aware of the danger such law poses of undermining or even destroying democracy on the ground of defending it,

¹⁷⁸ Lomell, 2011:104

¹⁷⁹ Krieger, 2004:52

¹⁸⁰ Thon, 2014:105

¹⁸¹ Krieger, 2014:61; ECtHR, 07.12.76

¹⁸² *Ibid.*:62

affirms that the constructing states may not, in the struggle against espionage and terrorism, adopt whatever measures they deem appropriate.”¹⁸³

Although written 39 years ago, this statement is still a guide on these issues today, also in a Norwegian context, a State party to the Convention since 1951.¹⁸⁴ It would be an appalling victory for terrorist groups to undermine the structures upholding democracy, such as the rule of law and the protection of fundamental rights and freedoms.¹⁸⁵ In other words, terrorism may perhaps never destroy democratic regimes, but terrorism could potentially help democratic regimes eradicate themselves: if the process of implementing measures aimed at preventing terrorism are not assessed through the proper channels and kept open in the public debate, step-by-step the new measures limits the rights that are vital for a thriving democracy.¹⁸⁶ In the words of Anders Romarheim, a Norwegian expert on terrorism:

“If one adopts stricter laws right after a terrorist attack when the feelings are strong, and the pressure is high, the risk is that security trumps freedom. The security measures can easily become an evil spiral that breaks down trust, and the demand for even more security will always come each time it turns out that [society] is still not safe.”¹⁸⁷

This thinking is precisely along the lines of Taleb’s Black Swan theory, and the dangers of our limited abilities to protect ourselves from unknown unknowns.

Norwegians have a high level of trust in their authorities. The State is seen as an extension of society, rather than an opponent, and central institutions are less dominated by economic and cultural elites.¹⁸⁸ The Institute of Social Research examined trust in institutions before and after the terrorist attack in Norway, and they found that after the attacks the trust level towards the government, parliament, and administration, was at the same level as before the terrorist attacks. However, the confidence in the authorities’ ability to prevent terror dropped from 48 percent in August 2011 to 27 percent in August 2012. The proportion of people being afraid

¹⁸³ Walter, 2004:73. ECtHR, *Klass and others v. Germany*, Series no. 28, para. 49

¹⁸⁴ CoE, ECHR, Entry into Force 03.09.53

¹⁸⁵ Walter, 2004:74

¹⁸⁶ Hagtvet, NRK 29.03.16

¹⁸⁷ Romarheim, NRK Radio 22.03.16, Dagsnytt 18 [Author’s Translation]

¹⁸⁸ Institutt for Samfunnsforskning, 2012:18

of new attacks in Norway also somewhat increased.¹⁸⁹ There is also a correlation between those who have ‘a high level of concern’ for terrorism and the willingness to accept more surveillance.¹⁹⁰ 72 percent wanted the authorities to monitor the Internet to prevent serious crime, while only 49 percent supported this view before the terrorist attacks.¹⁹¹ Additionally, only one in five was against more control and monitoring if it could provide increased protection against terrorism.

Nevertheless, even in a well-functioning democratic State like Norway, it is problematic to uncritically trust the State. In the words of Bjørn Stærk, the State is not a ‘metric’ for good: Scandinavians, in particular, are vulnerable to the idea that the State is ‘kind’ because it does many good things.¹⁹² However, kindness is extraordinary. It is something you get that you are not entitled to because someone is compassionate with you. The State has no compassion. At its best, it is good at enforcing laws, prohibitions, and rights, and balancing budgets, through bureaucracy and policing. “The welfare State is not ‘good’; it is a good replacement for goodness.”¹⁹³ In light of this, it is important to safeguard the rights used to challenge authority and keep them in checks, such as a strong judicial system and citizens’ freedom of speech and freedom of assembly.

5.3 Freedom of Expression

It is clear, given all the changes that have happened to counter terrorism in Norway post 9/11, that the limits for monitoring and intervening in the private sphere have been pushed step-by-step. These changes are also hard to retract once they have been implemented.¹⁹⁴ The right to freedom of expression is enshrined in Article 10 of the ECHR. Enjoying the freedom of speech, and other rights protected in the ECHR, such as freedom of assembly and religion, is hard to imagine without an accompanying right to privacy. Individuals need to be allowed to be alone with their thoughts, but also to be free to share their thoughts with whom they chose, without being subjected to the potential critical eye of the State.¹⁹⁵

¹⁸⁹ Ibid.

¹⁹⁰ Thon, 2014:120

¹⁹¹ Institutt for Samfunnsforskning, 2012:18

¹⁹² Stærk, Aftenposten, 01.09.15

¹⁹³ Ibid.

¹⁹⁴ MR-Forum, 10.05.2016

¹⁹⁵ Goold, 2010:43

Experts fear that increased surveillance will have a ‘cooling effect’ on citizens’ willingness to participate in the public debate.¹⁹⁶ The question is whether citizens start to act differently than they otherwise would have done if they fear they are being monitored. Surveillance can undermine the trust in government agencies and in return discourage people from expressing themselves freely or disclose private information. Privacy therefore also has an important public value. These freedoms and rights were not created as pretentious words viewed as something with historic value. They have a concrete political function and are there to protect those who choose to participate in the society forming process. They represent values that must be continuously protected, respected and cultivated to have a well-functioning democracy. The liberal conception of freedom includes privacy, press, and protest, and opinion exchange is democracy’s oxygen.

This also includes unpopular opinions. The core of democracy is to ensure the breadth of the social and political public debates. An open power struggle between different perspectives and ideologies, with the aim of drawing society in different directions, is the essence of which democracy is built upon and relies on. While speech may instigate violent action, the freedom of expression can also work as an outlet for aggression, which in return can decrease violence. It is not illegal to hold extreme opinions; it is important to recognize that they exist and that they will not disappear by being deemed illegal. However, that does not mean that they should be accepted, but rather that they should be fought openly, within the framework of the liberal democracy.¹⁹⁷ Free flow of information is an important mean to guarantee the people’s right to know what their government acts fairly, lawfully, and accurately.¹⁹⁸

Norwegians, of course, can still demonstrate and write critical articles in the papers. There is freedom of the press, opinions are not censored, and political dissidents are not imprisoned or pursued. Even so, all limitations on these rights reestablish the balance between freedom and security in favor of security. Even if today’s Norwegian democracy is not particularly threatened, it is necessary to implement laws that are proportionate and sets limits for when times can be worse.¹⁹⁹

¹⁹⁶ Krieger, 2004:52

¹⁹⁷ Hammerlin, 2011:88

¹⁹⁸ Krieger, 2004:69

¹⁹⁹ Svendsen, 2010:18

5.4 Have the New Laws and Measures Prevented Terrorism?

There have been a few cases in Norwegian courts for terrorist-related activities in recent times.²⁰⁰ In particular was the first case in 2008, described as *Terrorsaken* (the terrorist plot). Three men were charged with terrorist planning, and two of the defendants were subjected to serious interference of their privacy by PST, by intercepting their private rooms. However this did not lead to any public debate about the methods, and none of the three accused were later convicted of terrorism.²⁰¹ In June 2016, three men were sentenced for violations of paragraph 147d of the Penal Code.²⁰² Additionally, two men were sentenced for conspiring to commit terrorism in August 2016.²⁰³ Both cases were concerning terrorist activities committed in Syria.

The perception of how imminent the threat of terrorism is to the individual can be argued to be overrated. Terrorism in Western Europe is a less frequent phenomenon today than it has been in the past, and terrorism is a low-frequent phenomenon.²⁰⁴ In the PSTs threat assessments, they normally emphasize that the likeliness of an individual being a victim of terrorism is very low and that Norway has so far not been hit by right-wing or Islamic extremism as other European States have endured.²⁰⁵ Even so, the perception of how imminent the dangers of terrorism are, especially with recent attacks in France, Germany, Russia, and Sweden, is staggering. The PST went as far as claiming that it is “likely that Norway will be exposed to a terrorist attack over the next two months” in early April this year.²⁰⁶ The PST accordingly raised the threat level of terrorism, and major cities like Oslo and Bergen consequently have taken extra precautions in the preparations for this year’s Constitutional Day celebrations on 17 May.²⁰⁷

The perception of the dangers of terrorism affects the amount of resources given to security measures to prevent them. The police’s budget is increasing every year, and in 2017, their

²⁰⁰ Two famous examples: *Terrorsaken*, Aftenposten 31.03.08 «*Terrorsaken er i gang i Oslo tingrett*»; *Mulla Krekar* NRK 06.12.12 «*acquitted for incitement to terrorism*»

²⁰¹ Meyer, 2009:14-15

²⁰² NRK 28.06.16: «*Tre menn dømt i Høyesterett for IS-Støtte*»

²⁰³ NRK 03.08.16: «*To menn dømt for terrorvirksomhet*»

²⁰⁴ Statista, 07.2016; Hammerlin, 2009:177

²⁰⁵ PST, 2017

²⁰⁶ NRK 09.04.17: «*PST: Sannsynlig med terrorangrep i Norge de neste to månedene*»

²⁰⁷ NRK 04.05.17: «*Flere politifolk og vektere skal gjøre 17. mai-feiringen trygg*»;

BT 04.05.17: «*Tunge kjøretøy blir forbudt i hovedprosesjonen på 17 mai*»

budget was at a record high.²⁰⁸ It is always sensible to question whether new security measures are the most efficient way of confronting terrorist threats.²⁰⁹ The money used for security measures are the same money spent on socially beneficial purposes. Even a rich nation like Norway does not have unlimited funds. However, the critical voices, objections, and resistance to these developments are few.²¹⁰ The fear of being subjected to an act of terrorism causes few to react to the measures.²¹¹ Nevertheless, the reality is that Norwegian society has an unlimited potential terrorist targets. It is, as the Black Swan theory would support, impossible to safeguard all of them.

5.5 Fear, Terrorism and the Media

It is a clear political task to provide a realistic representation of the threat level as well as the authority's ability to protect the population. Fear impacts people's quality of life, as well as playing on people's fear can easily legitimize increased monitoring and control, fronted by 'a high level of concern.'²¹² In a poll made in January 2016, 43.2 percent of the Norwegian participants feared terrorist attacks.²¹³ In March this year, 42 percent of Norwegians in a poll believed a terrorist attack in Norway in 2017 is likely.²¹⁴ Most people live in a fear-climate that is not rooted in reality and real risk. Terrorism is a low-frequent phenomenon, emphasized by PST's threat assessments,²¹⁵ and the number of people killed from terrorism is far lower than for example car accidents, fires or even lightning strikes.²¹⁶

The mismatch between real risk and the level of fear can be explained in two ways. Firstly, the threat of terrorism feels uncontrollable and represents an attack on the very form of society itself, regardless of whether the attacks leave many or few killed. If a person has an irrational fear of shark attacks s/he can avoid swimming in the ocean, while the fear of

²⁰⁸ Politiet, 2016; Statsbudsjettet, 2017

²⁰⁹ Hammerlin, 2014:117

²¹⁰ Hammerlin, 2009:177; Lund: 2010:75

²¹¹ Meyer, 2009:10

²¹² Thon, 2014:120

²¹³ VG, 17.01.16: «Flere frykter norsk terrorangrep»

²¹⁴ YouGov, 2017

²¹⁵ PST, 2017

²¹⁶ Hammerlin, 2009:177

terrorism is different because it can happen anywhere and is perceived as an attack on everyone, which makes them extremely hard to predict.²¹⁷

Secondly, the media's presentation of the threat of terrorism help fuel the fear.²¹⁸ The media, such as television, the Internet, tabloids, and newspapers, play an important role in reaching the public with information, knowledge, and debate. Spectacular violence satisfies people's need for drama, which again makes it an important part of the media's repertoire.²¹⁹ Terrorism and media have inevitably a symbiotic relationship: terrorists depend on the publicity potential of the media to reach their audience, and the media benefits from the sensational news.²²⁰ The media is not the cause of terrorism, but the modern media technology has a marketing effect that is attractive to terrorists. In the words of former British Prime Minister Margaret Thatcher: "media provides the oxygen of publicity on which terrorists depend."²²¹ It is a paradox that the greater the focus is on terrorism, the greater terrorism is viewed as an attractive tool for potential terrorists.

Among international experts attending a seminar by the Norwegian Defense Research Establishment (FFI), it was a broad consensus that people's *fear* of terrorists, in particular regarding the use of weapons of mass-destruction, was the greatest weapon the terrorists had.²²² To reemphasize: the aim of terrorism as a strategy is to create a state of fear and use it to achieve political benefits. However, the effect will always depend on the response and reaction by the society affected. If the society affected does not respond, or responds differently than what the terrorists intended, they do not achieve their goals.²²³ Terrorism expert Joakim Hammerlin stresses that this is perhaps a too simple of an answer, as it is difficult to simply refrain from reacting with fear to terrorism.²²⁴ However, so far, it is little doubt that terrorists have succeeded in their strategies, all over Europe, and Norway included. In the attempt to combat terrorism, the democratic costs are high, and Norwegians have been

²¹⁷ Ibid.

²¹⁸ Lund, 2010:75

²¹⁹ Ibid.

²²⁰ Wilkinson, 1997:150-152

²²¹ Krieger, 2004:63

²²² Hammerlin, 2009:173; FFI 13.10.2004

²²³ Hammerlin, 2014:143

²²⁴ Ibid.

willing to pay that price in anticipation of getting increased safety, even if it is debatable whether the Norwegian society has become any safer.²²⁵

Hammerlin emphasizes that to avoid a distorted perception of the threat of terrorism, it is important that the media recognize their social responsibility of presenting a proportionate presentation of the dangers, in addition to having politicians with a clear message, who dare to stand up for the basic values the Norwegian democracy are founded and depended upon. In this regard, the Norwegian political and public response to the 22/7 tragedy, with emphasis on solidarity, unity and protecting democracy, was admirable.²²⁶

5.6 A (Human) Right to Security?

Giving a truthful perception of the dangers of terrorism is extremely important in two ways. The first is the accuracy of the threat level, as discussed above, the second is the realistic possibility to prevent them, and thus the level of security that can realistically be demanded from States. The Black Swan theory would argue the importance of providing a realistic perception of how some things are unimaginable before they occur, and thus are impossible to predict, and henceforth impossible to prevent. It was illustrated in the conclusion by the Gjørsv Commission, claiming that the protection of the people at Utøya failed, that there lies an expectation in the level of protection that can be demanded from the State.

As mentioned, Norway partakes in different international conventions on human rights, including the ICCPR and the ECHR, which protect the right to life and security.²²⁷ These require the Member States to ‘respect, protect and fulfill’ certain obligations towards their citizens.²²⁸ This entails that a State has a responsibility to primarily not interfere or limit the enjoyment of a right when there has been no violation (respect), to secure individuals or groups against human rights abuses, such as by other individuals (protect), and lastly to take positive action to facilitate the enjoyment of basic human rights (fulfill).²²⁹ All of these demonstrate that the State’s duty is beyond simply implementing regulations: the government is also responsible for providing the environment in which these rights can be exercised.

²²⁵ Lund, 2010:75

²²⁶ Hammerlin, 2014:117

²²⁷ ICCPR, Art. 3, ECHR Art. 6

²²⁸ Eide, 2012

²²⁹ Ibid.

Traditionally speaking, the human rights have been there to protect citizens *from* the Government, while the new protective paradigm highlights the shift where citizens seek protection *by* the State against terrorists or offenders, or potential terrorists or offenders.²³⁰ The expectation lies in the desire to prevent terrorism, and thus have the willingness to give up rights to obtain it. In general, the graver the threat is to fundamental rights, the greater the responsibility of the duty bearer, meaning the State. The complexity of the issue, however, includes the fact that the State also has a responsibility to protect the rights of those at risk of becoming terrorists, as the human rights cover all individuals. The rights also belong to innocent third parties, such as a terrorist's spouse or children.²³¹

In many ways, counter-terrorism measures are on the borderline between criminal justice and security practices. Moving criminal law into the field of security politics has implications because there is a different logic at play.²³² In security-politics, security practices “aim to act on threats that are unknown and recognized to be unknowable, yet deemed potentially catastrophic, requiring security intervention at the earliest possible stage.”²³³ However, if security is to be taken to such dramatic lengths, it is hard to avoid that the enhancement of rights of some, like potential terrorist victims, is provided without removing the rights of others, such as potential terrorists. In light of Bush's ‘War on Terror’ rhetoric, the war metaphor constructs the terrorists as the *enemy*, which has consequences for their protection. While criminal justice policies have the ideal of an impartial (“blind justice”), security practices and military action are more openly partial (“enemies”); *we* are defending ourselves against *them*, the enemy.²³⁴ This is consequently also essential for the Norwegian State to be able to maintain equilibrium between rights given to all. Moreover, this is even harder when the expectation is raised to the level where the Government is expected to prevent terrorist acts before they occur, as expressed by the Gjørsv Commission.

²³⁰ Lomell, UiO, 17.09.2015

²³¹ Meyer, 2009:28

²³² Ibid.

²³³ Goede et.al., 2014:412

²³⁴ Lomell, UiO, 17.09.2015

6 Conclusion

The basic questions to handle in the future are not just about how to prevent and protect the society from terrorist attacks, but also about how one should deal with and learn to live with terrorism as a risk. It is impossible for a society to be 100 percent secure from terrorism, and one can never rule out the possibility of a Black Swan attack. In attempting to do so, there is a significant risk of losing the open and democratic society one wishes to protect. “Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety” is a famous quote by Benjamin Franklin.

Norway has implemented many changes to their Criminal Code to counter-terrorism post 9/11, and even more after 22/7. The most significant development is how the criminal law is shifting in a pre-active direction, which increasingly challenges the protection of individual’s rights. Most of the changes have clearly been to conform to close allies, without the threat level in Norway having changed much. It might sound cynical to operate with anything other than a zero-vision on terrorism, but it always needs to be kept in mind that such a vision also comes with a price. One can limit the risks of terrorist attacks through security measures, but the effectiveness of the measures need to be weighed against the cost it implies concerning lost rights and freedoms of Norway’s individuals.

Table of reference

International Treaties and Statues

ECHR	The European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, 4 November 1950
ICCPR	International Covenant on Civil and Political Rights Adopted 16 December 1966, United Nations, entered into force 23 March 1976
The Terrorist Financing Convention	International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999. Retrieved from: http://www.un.org/law/cod/finterr.htm [Accessed 12 May 2017]

List of Judgements

ECtHR	<i>Klass and others v. Germany</i> , Series no. 28, para. 49, Judgement of 6 September 1978
ECtHR	<i>Handyside v. United Kingdom</i> , Series A no. 24, para 48, Judgement of 7 December 1976

Norwegial Law

Grunnloven [Norwegian Constitution]	<i>Kongerike Norges Grunnlov</i> , 17. May 1815, last edited 24 May 2016
Politi-loven [The Police Act]	<i>Lov om politiet (politi-loven)</i> , 4 August 1995, last edited 27 January 2017
Straffeprosessloven [Criminal Procedure Act]	<i>Lov om rettergangsmåten i straffesaker (Straffeprosessloven)</i> , 22 May 1981, last edited 18 April 2017
Straffeloven 1902 [Norwegian Penal Code 1902]	<i>Almindelig borgerlig Straffelov (Straffeloven)</i> , 22 May 1902, last edited/absolved 1 October 2015
Straffeloven 2005	<i>Lov om straff (straffeloven)</i> , 20 May 2005, last edited 1

[Norwegian Penal Code January 2017
2005]

Norwegian Official Documents

- Innst. O. nr. 29 (2007-2008) *Innstilling fra justiskomiteen om lov om endringer i straffeloven 20. mai 2005 nr. 28 mv. (skjerpene og formildende omstendigheter, folkemord, rikets selvstendighet, terrorhandlinger, ro, orden og sikkerhet, og offentlig myndighet)*, Justiskomiteen [Justice Committee], 05 February, 2008.
- Innst. O. nr. 70 (2001-2002) *Lov om endringer i straffeloven og straffeprosessloven mv. (lovtiltak mot terrorisme - gjennomføring av FN-konvensjonen 9. desember 1999 om bekjempelse av finansiering av terrorisme og FNs sikkerhetsråds resolusjon 1373 28. september 2001)*. Ministry of Justice and Public Security, 28 June 2002.
- NOU 2003: 18 *Rikets sikkerhet*, [Investigation from a Committee under the Criminal Law Commission appointed by Royal Decree 21 December 2001], Ministry of Justice and Public Security, 20 June 2003
- NOU 2009: 1 *Individ og integritet — Personvern i det digitale samfunnet*, [Investigation from the Civil Protection Commission appointed by Royal Decree on May 25, 2007], Issued to the Ministry of Renewal- and Administration January 13, 2009.
- NOU 2009: 15 *Skjult informasjon – åpen kontroll*
[The Legislative Control Committee's Evaluation on Legislation on Police's Use of Coercive Methods and Processing of Information in Criminal Matters]
Appointed by Royal Decree on 15 February 2008. Issued to the Ministry of Justice and Public Security on 26 June 2009.

- NOU 2012: 14 *Rapport fra 22. juli-kommisjonen*, [Appointed by Royal Decree on 12 August 2011 to review and extract lessons from the attacks on the government quarter and Utøya on July 22, 2011.], Issued to the Prime Minister 13 August 2012
- Ot.prp nr. 8 (2007-2008) *Om lov om endringer i straffeloven 20. mai 2005 nr. 28 mv. (skjerpene og formildende omstendigheter, folkemord, rikets selvstendighet, terrorhandlinger, ro, orden og sikkerhet, og offentlig myndighet)* Ministry of Justice and Public Security, 9 November 2007.
- Ot.prp nr. 60 (2004-2005) *Om lov om endringer i straffeprosessloven og politiloven (romavlytting og bruk av tvangsmidler for å forhindre alvorlig kriminalitet)* Ministry of Justice and Public Security, 18 March 2005.
- Ot.prp nr 61 (2001-2002) *Om lov om endringer i straffeloven og straffeprosessloven mv. (lovtiltak mot terrorisme - gjennomføring av FN-konvensjonen 9. desember 1999 om bekjempelse av finansiering av terrorisme og FNs sikkerhetsråds resolusjon 1373 28. september 2001)*, Ministry of Justice and Public Security, 12 April 2002.
- Ot.prp. nr 90 (2003-2004) *Om lov om straff (straffeloven)*, Ministry of Justice and Public Security, 02 July 2004.
- Meld. St. 21 (2012-2013) *Terrorberedskap — Oppfølging av NOU 2012: 14 Rapport fra 22. juli-kommisjonen* Ministry of Justice and Public Security, 20 March 2013 (Regjeringen Stoltenberg II)
- St.meld. nr. 22 (2007-2008) *Samfunnsikkerhet — Samvirke og samordning*, Ministry of Justice and Public Security, 09 May 2008.
- St.meld. nr. 42 (2004-2005) *Politiets rolle og oppgaver*, Ministry of Justice and Public Security, 24 June 2005.

- Prop. 68 L (2015-2016) *Endringer i straffeprosessloven mv. (skjulte tvangsmidler)*
Recommendation from the Ministry of Justice and Public Security 11 March 2016, approved by the Cabinet the same day. (Regjeringen Solberg)
- Prop. 131 L (2012-2013) Endringer i straffeloven 1902 og straffeloven 2005 mv. (forberedelse av terror m.m.) Recommendation from the Ministry of Justice and Public Security 7 May 2013, approved by the Cabinet the same day. (Regjeringen Stoltenberg II)
- Prop. 147 L (2012–2013) Endringer i straffeprosessloven mv. (behandling og beskyttelse av informasjon) Recommendation from the Ministry of Justice and Public Security 7 May 2013, approved by the Cabinet the same day. (Regjeringen Stoltenberg II)

Norwegian Official Statements and Reports

- Departementene, «*Forebyggingsstrategi*» Regjeringens strategi for forebygging 2009
<https://www.regjeringen.no/globalassets/upload/jd/vedlegg/rapporter/forebyggingstrategi.pdf> [Accessed 12 May 2016]
- Husabø, E.J (2012) *Grenser for kriminalisering av førebuingshandlingar mot terrorisme og bruk av skjulte tvangsmindlar mot terrorisme i ein demokratisk rettsstat*
Notat 6/12 22 Juli Kommisjonen.
https://www.regjeringen.no/html/smk/22julikommisjonen/22JULIKOMMISJONEN_NO/CONTENT/DOWNLOAD/214/1692/VERSION/2/FILE/NOTAT_6_HUSABO_GRENSER_FOR_.PDF [Accessed 14 May 2016]
- Ministry of Justice and Public Security, 05.04.02 «Trusselvurdering og prioriteringer for Politiets sikkerhetstjeneste for år 2002»
<https://www.regjeringen.no/no/dokumenter/trusselvurdering-for-politiets-sikkerhet/id105701/> [Accessed 14 May 2016]
- Ministry of Justice and Public Security, 26.06.09: «*Bruk av inngripende etterforskningsmetoder*» <https://www.regjeringen.no/no/aktuelt/bruk-av-inngripende-etterforskningsmetod/id570273/> [Accessed 12 May 2016]

- Ministry of Justice and Public Security, 12.13.14 «*Security in day-to-day life and better emergency preparedness*» <https://www.regjeringen.no/en/topics/law-and-order/innsikt/trygghet-i-hverdagen-og-styrket-beredskap/id2006113/> [Accessed 14 May 2016]
- Ministry of Justice and Public Security 11.03.16 «*Bedre metoder i kampen mot alvorlig kriminalitet*» <https://www.regjeringen.no/no/aktuelt/bedre-metoder-i-kampen-mot-alvorlig-kriminalitet/id2479553/> [Accessed 12 May 2016]
- Ministry of Justice and Public Security, 27.05.16: «*Overvåkingen skal ikke rettes mot folk flest*» <https://www.regjeringen.no/no/aktuelt/overvakingen-skal-ikke-rettes-mot-folk-flest/id2501864/> [Accessed 12 May 2016]
- Politiet, 06.10.16, «*Statsbudsjettet for 2017*» https://www.politi.no/nyhet_16346.xml [Accessed 15 May 2016]
- PST, 13.12.11: «*Redgjørelse til justisdepartementet vedrørende Global Shield*» <http://www.pst.no/media/pressemeldinger/global-shield/> [Accessed 12 May 2016]
- PST, 01.02.17 «*Trusselvurdering 2017*» <http://www.pst.no/media/utgivelser/trusselvurdering-2017/>[Accessed 12 May 2016]
- Solberg, E. 11.05.13, «*The Solberg Government's inaugural address to the Storting 18 October 2013*» <https://www.regjeringen.no/en/aktuelt/the-solberg-governments-inaugural-address/id744122/> [Accessed 12 May 2016]
- Statsbudsjettet, 2017 «*Statsbudsjettet på 1-2-3*» <http://www.statsbudsjettet.no/Statsbudsjettet-2017/Artikler/Statsbudsjett-pa-1-2-3/> [Accessed 12 May 2016]

Reports

- Datatilsynet, (2008) *Personvernundersøkelsen 2008*. Oslo:Datatilsynet
<https://www.datatilsynet.no/Om-Datatilsynet/rapporter-og-utredninger/2004-2014/Personvernundersokelser/Personvernundersokelsen-20081/> [Accessed 12 May 2016]
- Det norske menneskerettighetshuset: *Menneskerettigheter i klemme*, 2002

Institutt for Samfunnsforskning, 2012:18 *Tillit før og etter terroren*
[http://www.samfunnsforskning.no/Publikasjoner/Kronikker-og-andre-artikler/2012/2012-018/\(language\)/nor-NO](http://www.samfunnsforskning.no/Publikasjoner/Kronikker-og-andre-artikler/2012/2012-018/(language)/nor-NO) / [Accessed 12 May 2016]

SSB 06.03.17 *Sosiale forhold og kriminalitet*
<https://www.ssb.no/sosiale-forhold-og-kriminalitet/statistikker/lovbrudda/aar/2017-03-06?fane=tabell&sort=nummer&tabell=297023> / [Accessed 12 May 2016]

UNDP (2016) *Human Development Report*
http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf /
[Accessed 10 May 2016]

Literature

Andenæs, J (2004) *Alminnelig strafferett* Red. M. Matningsdal og G.F. Rieber-Mohn. 3rd Ed.
Oslo: Universitetsforlaget

Beddard, Ralph (1999) *Duties of Individuals under International and Regional Human Rights Instruments*, *The International Journal of Human Rights*, 3:4, 30-48

Burchill, S & et.al (2009) *Theories of International Relations*, 4th.ed, Palgrave Macmillan
Correa, C (2012) *Black Swan Theory: We know absolutely nothing & the finding of atypical events optimization-method* Mexico: AXA Senior Actuary

Dinstein, Y (1981) *The Right to Life, Physical Integrity and Liberty*, in Henkin (ed.),
International Bill of Rights Columbia University Press, New York

Duffy, H (2005), *The 'War on Terror' and the Framework of International Law*, Cambridge
University Press, New York

Ericson, R (2007) *Crime in an insecure world*. Cambridge: Polity Press

Fierke, K.M (2007) *Critical Approaches to International Security*, Cambridge: Polity Press

Gisle, J (2007) *Jusleksikon*, Kunnskapsforlaget

Goede, M, de, Stephanie Simon and Marijn Hoitink (2014) *Performing preemption in Security Dialogue*, vol. 45(5) (pp. 411-422). SAGE Journals

Goold, B (2010) *How much surveillance is too much?* in «Overvåking i en Rettsstat» D.W.
Wiese Schartum ed. Fagbokforlaget

Hausken, L (2014) *Fra terror til Overvåking*, ed. L. Hausken p. 11-36. Vidarforlaget AS

- Hammerlin, J (2011) *Terror og Demokrati: Fra 11 september til 22 juli* Oslo: Forlaget Manifest
- Hammerlin, J. (2014) *Tillitt og Kontroll* in «Fra terror til overvåkning» ed. L. Hausken, Vidarforlaget AS
- Hammerlin, J (2009) *Terrorindustrien* Oslo: Forlaget Manifest
- Haugland, G.S. (2004): *Våpen- og knivforbundet, En fremstilling og vurdering av bakgrunnen for, innholdet i og håndhevingen av våpen- og knivforbundet på offentlig sted* Bergen: Fagforlaget
- Hoffman, B (2002) *Rethinking Terrorism and Counterterrorism Since 9/11*, Studies in Conflict and Terrorism, 25:5, p.303-316
- Hoffmann, J.F. (2014) *Forventninger til PST* in «Fra terror til overvåkning» ed. L. Hausken, Vidarforlaget AS
- Howell, J, & et. al. (2008), *The Backlash against Civil Society in the Wake of the Long 'War on Terror', Development in Practice*, Taylor & Francis, Ltd. Oxfam GB , Vol. 18, No. 1, pp. 82-93
- Husabø, E.J (2003) *Pre-aktiv strafferett*, Tidsskrift for strafferett
- Husabø, E.J (2004) *Strafferetten og kampen mot terrorismen*, in Nordisk Tidsskrift for Kriminalvidenskap, p.180-194
- Husabø, E.J.(1999), *Straffeansvarets periferi. Medvirkning, forsøk, førebuing*. Bergen: Universitetsforlaget.
- Jacobsen, J. (2009) *Fragment til forståing av den rettstatlege strafferetten*. Bergen: Fagbokforlaget
- Jenkins, B (1974) *International Terrorism: A New Kind of Warfare* California: The Rand Paper Series
- Kaplan, J (2011) *The New/Old Terrorism* Phi Kappa Phi Forum
- Krieger, H. (2004) *Limitations on Privacy, Freedom of Press, Opinion and Assembly as a means of fighting terrorism* in «Terrorism as a challenge for National and international law: Security versus Liberty?» Ed. C. Walter Springer: Germany:

- Laudan, L (2008) *The Elementary Epistemistic Arithmetic of Criminal Justice* University of Texas School of Law
- Lomell, H (2014) «Fra terror til overvåkning» ed. L. Hausken, Vidarforlaget AS
- Lomell, H (2011) *Bedre føre var? Menneskerettslige konsekvenser av en pre-aktiv strafferett* in «...Men er det rett? Om politiet og Menneskerettighetene» Forskningskonferansen 2011. Politihøgskolen, Oslo
- Lund, K (2010) *Nedbyggingen av den liberale rettsstat* in «Til forsvar for personvernet» (ed. Kristin Clemet og John O. Egeland) Universitetsforlaget
- Locke, J (2005) *Second Treatise of Government* Ed. J. Bennett, Cambridge University Press
- Meyer, S. (2009) *Ingen fare for den med god samvittighet?* Oslo: Cappelen Damm
- Myhrer, T.G (2015) ... *Dø Om Så Det Gjelder? - De Rettslige Rammer for Den Individuelle Handleplikten Ved Farlige Politioperasjoner.* Nordisk politiforskning2(01): 34–72.
- Nordenhaug, I & Engene, J.O. (2008) *Norge i kamp mot terrorisme* Oslo:Universitetsforlaget
- Rehman, J (2010) *International Human Rights Law*, 2nd edition, Pearson's Education Limited.
- Rutzen, D (2015) *Civil Society under Assault* Journal of Democracy, Johns Hopkins University Press, Volume 26, Number 4
- Sejersted, F (2001) *Demokrati og rettsstat*, Pax Forlag A/S
- Svendsen, L (2010) *Hvorfor personvern?* in «Til forsvar for personvernet» (ed. Kristin Clemet og John O. Egeland) Universitetsforlaget
- Taleb, N. (2007) *The Black Swan: The Impact of the Highly Improbable* 1st Ed. Random House Trade
- Thon, B.E (2014) *Personvern i en Brytningstid* in «terror til overvåkning» ed. Hansken, Liv Vidarforlaget 2014
- Walter, C (2004) *Defining Terrorim in National and Internaitonal Law* in «Terrorism as a Challenge for National and International Law: Security versus Liberty?», Springer: Germany

Wessel-Aas, J (2012) *Krigen mot terror og den norske rettsstaten* in «Fokus: ti år mot terror - Skandinavia i endring» Internasjonal Politikk, Årgang 70 No 1. 2012. Universitetsforlaget

Wessel-Aas, J (2011) *Kan ideen om den liberale, demokratiske rettsstat overleve hvis samfunnsvern blir politikkenes overordnede mål?* in «Tidsskrift for strafferett – 10 år jubileumsnr» Tidsskrift for Strafferett

Wilkinson, P (1997) *The media and terrorism: a reassessment* Terrorism and Political Violence, Vol. 9, Issue 2

Weblinks

Aftenposten 31.03.08 «*Terrorsaken er i gang i Oslo tingrett*»
<http://www.aftenposten.no/norge/Terrorsaken-er-i-gang-i-Oslo-tingrett-305292b.html> [Accessed 12 May 2017]

Appleyard, B 19.07.09 «*Books that helped change the world*» The Sunday Times
<https://www.thetimes.co.uk/article/books-that-helped-to-change-the-world-qbhxgvg2kwh> [Accessed 13 May 2017]

Bergens Tidene, 04.05.17, «*Tunge kjøretøy blir forbudt i hovedprosesjonen på 17 mai*»
<http://www.bt.no/nyheter/lokalt/Tunge-kjoretoy-bli-forbudt-i-hovedprosesjonen-pa-17-mai-334073b.html> [Accessed 12 May 2017]

Borgvad (2007), «*Fælles registre skal opsnappe terrorplaner*» Dagbladet 09.12.2008
<https://www.information.dk/udland/2008/12/faelles-registre-opsnappe-terrorplaner> [Accessed 17 November 2016]

Burkeman, O. 28.04.07 «*Days that shook the world*» The Guardian,
<https://www.theguardian.com/books/2007/apr/28/society> [Accessed 17 November 2016]

Eide, A (2012) «*Intervention by Asbjørn Eide at the Fifth Session of the Forum on Minority Issues*» The Fifth Session of the Forum on Minority Issues, OHCHR
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session5/Statements/ItemII/2.%20MinorityforumGenevepresentationAsbjornEide.pdf>

Hagtvet, B 29.03.16 *Torp: NRK Nyheter* <https://tv.nrk.no/serie/torp/NNFA52032216/29-03-2016> [Accessed 12 May 2017]

Legatum Prosperity Index, (2016) <http://www.prosperity.com/#!/country/NOR> [Accessed 13 May 2017]

- Nordenhaug, I 02.05.07 «*Nye tiltak mot terrorisme*», Aftenposten
<http://www.aftenposten.no/meninger/debatt/Nye-tiltak-mot-terrorisme-355884b.html> [Accessed 12 May 2017]
- Nordenhaug, I, & J.O. Engene 01.05.07 «*USA vil skjerpe norsk terrorlovgivning*», VG
<http://www.vg.no/nyheter/innenriks/usa-vil-skjerpe-norsk-terrorlovgivning/a/160961/> [Accessed 10 May 2017]
- NRK, 01.09.07 «*USA vil skjerpe norsk terrorlovgivning*» <https://www.nrk.no/urix/usa-vil-skjerpe-norsk-terrorlov-1.3351235> [Accessed 12 May 2017]
- NRK, 06.12.12, «*Mulla Krekar dømt for trusler, men frikjent for terror*»
<https://www.nrk.no/norge/mulla-krekar-domt-for-trusler-1.9709288> [Accessed 12 May 2017]
- NRK 28.06.16: «*Tre menn dømt i Høyesterett for IS-Støtte*» <https://www.nrk.no/norge/tre-menn-domt-i-hoyesterett-for-is-stotte-1.13018991> [Accessed 12 May 2017]
- NRK, 03.08.16 «*To menn dømt for terrorvirksomhet*» <https://www.nrk.no/nyheter/to-menn-domt-for-terrorvirksomhet-1.13070647> [Accessed 12 May 2016]
- NRK, 04.05.17 «*Flere politifolk og vektere skal gjøre 17 mai feiringen trygg*»
<https://www.nrk.no/ostlandssendingen/flere-politifolk-og-vektere-skal-gjore-17-mai-feiringen-trygg-1.13497881> [Accessed 12 May 2016] Romarheim, A
 22.03.16 NRK Radio Dagsnytt 18 NRK Radio
<https://radio.nrk.no/serie/dagsnytt-atten/NMAG03005716/22-03-2016> [Accessed 10 May 2017]
- NRK, 09.04.17 «*PST: Sannsynlig med et terrorangrep de neste to månedene*»
https://www.nrk.no/norge/pst_-sannsynlig-med-terrorangrep-i-norge-de-neste-to-manedene-1.13468445 NRK 09.04.17 [Accessed 12 May 2017]
- Renå, H 21.05.16 «*Ressursene som ikke fant hverandre?*» Politiforum
<http://politiforum.no/no/meninger/kronikker/2016/Ressursene+som+ikke+fant+hverandre%3F.d25-T2JrQZv.ips> [Accessed 15 May 2017]
- Rumfeld, D 12.02. 02 «*Unknown knowns and unknown unknowns*»
<https://www.youtube.com/watch?v=GiPe1OiKQuk> [Accessed 12 May 2017]
- Statista, 07.16, «*Terrorist attack victims in Western Europe*»
<https://www.statista.com/chart/4554/terrorist-attack-victims-in-western-europe/>
 [Accessed 12 May 2017]

Stærk, B 01.09.15, «*Falsk og Ekte Godhet i Flyktningsspørsmålet*» Aftenposten,
<http://www.aftenposten.no/meninger/kronikker/Falsk-og-ekte-godhet-i-flyktningsspørsmålet--Bjorn-Stark-8146406.html> [Accessed 13 May 2017]

The Huffington Post 17.12.12 «*Did you know it all along?*»
http://www.huffingtonpost.com/neal-roese/did-you-know-it-all-along_b_1973985.html [Accessed 12 May 2017]

The New York Times, 08.09.11 «*One 9/11 Tally*»
http://www.nytimes.com/interactive/2011/09/08/us/sept-11-reckoning/cost-graphic.html?_r=0 [Accessed 12 May 2017]

VG, 17.01.16: «*Flere frykter norsk terrorangrep*»
<http://www.vg.no/nyheter/innenriks/terrorisme/flere-frykter-norsk-terrorangrep/a/23597610/> [Accessed 12 May 2017]

YouGov, 23.03.17 «*Many People Expect Terrorist Attacks in 2017*» Statista,
<https://www.statista.com/chart/8638/many-people-expect-terrorist-attacks-in-2017/> [Accessed 12 May 2017]

Forums and Lectures

Lomell, H UiO: 17.09.15 and 24.09.15, Class JUS5503 “Counter-terrorism and Human Rights”

MR-Forum 10.05.16, ‘*Terror og Rettsstaten*’ Participants: Sveinung Rotevatn (SV), Jon Wessel-Aas (Lawyer), Jon Fitje Hoffmann (PST):
<https://morgenbladet.no/hendelse/menneskerettighetsforum-terror-og-rettsstaten>