

TO BAN OR NOT TO BAN? THE CHALLENGES TO UK LAW FROM THE ISLAMIC REVOLUTIONARY GUARD CORPS AND THE WAGNER GROUP

Ahmed Almutawa* and Clive Walker**

Abstract

The Iranian Islamic Revolutionary Guard Corps and the Wagner Group have engendered debates in several Western countries about how to deal in policy, law and practice with hostile activities originating from states and their proxies. Are they to be treated as terrorists and thereby subjected to extraordinary criminalisation and policing and executive measures? Or should they be hobbled through the application of financial sanctions as well as national security measures? These questions will be asked in the context of the UK which has adopted both approaches but not in a consistent manner. It is found that the policy stance of the UK Government is generally not to treat states as the potential subjects of UK terrorism legislation. This policy stance might be labelled 'non-ascription'. Arguments for and against are considered in each case.

Keywords: Terrorism, Proscription, Wagner Group, Islamic Revolutionary Guard Corps, Sanctions

1. INTRODUCTION

Attacks by hostile foreign states have gained notoriety in recent times.¹ In the case of the UK, which is the primary focus of this paper, previous episodes of proxy sponsorship² and rogue state interventions (such as by Libya)³ have now been augmented by prominent and repeated

* Durham Law School, Durham University, Ahmed.Almutawa@durham.ac.uk

** Professor Emeritus of Criminal Justice Studies, University of Leeds, law6cw@leeds.ac.uk

¹ China and Russia are accused of cyberattacks in many states: Center for Strategic & International Studies, Significant cyber incidents, <<https://www.csis.org/programs/strategic-technologies-program/significant-cyber-incidents>>, 2024. For the UK, see Joint Committee on the National Security Strategy, *A hostage to fortune: ransomware and UK national security* (2023-24 HC 194/HL 23), para.32 and *Government Response* (2023-24 HC 601/ HL 74) para.50. Physical attacks are alleged to include the murder of Hardeep Singh Nijjar in Canada: Tanya Mehra and Colin P. Clarke, *The India-Canada Rift* <<https://www.icct.nl/publication/india-canada-rift-sikh-extremism-and-rise-transnational-repression>>, 2023. Six Indian diplomats were expelled on 14 October 2024: <<https://www.canada.ca/en/global-affairs/news/2024/10/minister-joly-announces-expulsion-of-indian-diplomats-related-to-ongoing-investigation-on-violent-criminal-activity-linked-to-the-government-of-india.html>>.

² See Daniel Byman, *Deadly Connections: States that Sponsor Terrorism* (Cambridge University Press: Cambridge, 2005).

³ Libyan state actions include: the supply of weapons (House of Commons Northern Ireland Affairs Committee, *HM Government support for UK victims of IRA attacks that used Gaddafi-supplied Semtex and weapons* (2016–17 HC 49) and *Follow-up* (2017–19 HC 1723), the Libyan embassy murder of WPC Yvonne Fletcher in 1984

threats by various countries. Some of the most conspicuous derive from the (Iranian) Islamic Revolutionary Guard Corps (IRGC) and the (Russian) Wagner Group.

As for the former, the UK Government claims that: ‘Since the start of 2022, the UK has responded to more than 15 credible threats to kill or kidnap British or UK-based individuals by the Iranian regime’.⁴ In response, the banning of the IRGC as a terrorist group has repeatedly been debated in Parliament.⁵ Rather than proscribing the group, however, the UK Government has opted mainly for a financial sanctions-based approach. This reluctance to outlaw by proscription may largely be explained by diplomatic considerations around potential retaliation as well as the desire to maintain political contacts (such as about the conflicts in Gaza and Lebanon)⁶ and even cooperation (such as against ISIS).⁷

There has been less reticence regarding official action against the Wagner Group. The UK Government paper, *Integrated Review Refresh 2023*, promised that:⁸

‘We will also adopt a new approach to countering state threats below the threshold of armed conflict. ... As part of this new approach, we will use the full range of powers available to us – including considering our robust counter-terrorism powers, such as proscription – to tackle the threats we face from organisations such as the Wagner Group.’

However, official reaction was slow to emerge, not only because of diplomatic downsides, but also because of the foggy status of the Wagner Group. In addition, its external operations have not been conducted within the UK, so that its direct threat is lower than for the IRGC.

(*Mabrouk v Murray* [2022] EWCA Civ 960), and the Lockerbie airline bombing 1988 (Robert Shiels, ‘The Lockerbie aircraft bombing case and the final appeal’ (2021) 85 *Journal of Criminal Law* 302).

⁴ Foreign, Commonwealth & Development Office, ‘UK steps up action to tackle rising threat posed by Iran’, Press Release, 6 July 2023 <<https://www.gov.uk/government/news/uk-steps-up-action-to-tackle-rising-threat-posed-by-iran>>.

⁵ During 2024, see: Hansard (House of Commons) vol.748 col.23 15 April 2024; Hansard (House of Commons) vol.749 col.331WH 8 May 2024. For prior debates, see Eleanor Gadd, Claire Mills, and Antonia Garraway, *Iran’s Nuclear Programme* (House of Commons Library CDP-2022-0123: London, 2022) p.4; Philip Loft, *Iran Protests 2022* (House of Commons Library CBP9679 London, 2023) pp.29-31.

⁶ Hansard (House of Commons) vol.753 col.552 28 October 2024, David Lammy. For contrary previous views, see House of Commons Library, *Israel-Iran April 2024: UK and international response* (London: Research Briefing 10002, 2024) p.26.

⁷ See Ariane Tabatabai and Dina Esfandiary, ‘Cooperating with Iran to combat ISIS in Iraq’ (2017) 40 *Washington Quarterly* 129; Zeynab Malakoutikhah, ‘Iran: sponsoring or combating terrorism?’ (2020) 43 *Studies in Conflict & Terrorism* 913.

⁸ (CP 811: London, 2023) p.37.

The Wagner Group has been financially sanctioned in the UK (described later), but successive calls for proscription⁹ were resisted. The impetus was slowed by the need to take account of the Russian state actions in response to its armed rebellion in June 2023¹⁰ and then the death in an air crash of its leader, Yevgeny Prigozhin, in August 2023.¹¹ However, action then followed, and the UK proscription order against the Wagner Group was imposed on 14 September 2023.¹² That outcome is worthy of further examination and explanation – why ban this state-linked organisation alone and not others? Clarification of policy and law would be helpful since other states might be waiting in the wings to unleash in the UK their own versions of political violence.¹³

Rather than considering state terrorism as a broad phenomenon in contemporary times,¹⁴ this paper assumes that the IRGC and the Wagner Group can be categorised as ‘terrorists’ in the UK and probably elsewhere, at least for some of their purposes or actions. The task here is to analyse, based on these comparative case studies, how and why they have been treated in UK law, one as terrorist and one not, for the purpose of bans under UK anti-terrorism laws. This paper begins by considering the legislative proscription power before examining in greater detail the nature and actions of the IRGC and Wagner Group respectively. In each case, the application of the powers of proscription by the UK government is analysed. That application is found to be shaped by a policy of ‘non-ascription’, which is also outlined in the next section. The value of the policy is assessed in the context of these two case studies. There follows a brief consideration of the alternative responses. The paper concludes with the argument that, while proscription of either group would be technically possible under the law, it may not be the best policy having regard to the pertinent and worthwhile considerations embodied in the non-ascription policy which seeks to map a smarter path between rigid legalism and political expediency.

2. PROSCRIPTION IN UK LAW

⁹ See especially: House of Commons Foreign Affairs Committee, *Guns for Gold* (2022-23 HC 167) and *Government Response* (2022-23 HC 1914).

¹⁰ See Hansard (House of Commons) vol.735 col.37 26 June 2023, James Cleverly.

¹¹ BBC Online, ‘Wagner boss Prigozhin confirmed dead in plane crash – Moscow’ 27 August 2023 <<https://www.bbc.co.uk/news/world-europe-66632924>>.

¹² Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2023, SI 2023/1003.

¹³ See Intelligence and Security Committee, *Russia* (2019-21 HC 632) and *Government Response* (CP 275: London, 2020), *China* (2022-23 HC 1605) and *Government Response* (CP 929: London, 2023).

¹⁴ See Peter A. Sproat, ‘Can the state be terrorist?’ (1991) 14 *Terrorism* 19; David Claridge, ‘State terrorism? Applying a definitional model’ (1996) 8 *Terrorism & Political Violence* 47.

It lies beyond the purpose of this section to deliver an exhaustive analysis of UK proscription law,¹⁵ so the following discussion is confined to aspects relevant to the two groups under scrutiny. Proscription may be characterised as ‘a governance tool that furnishes the power to designate specific groups as terrorist in nature, making the group unlawful within the relevant jurisdiction’.¹⁶ In the UK, section 3(4) of the Terrorism Act 2000 affords the discretionary administrative power to proscribe any group which the Secretary of State ‘believes ... is concerned in terrorism’, based on an honest belief that the group currently participates in terrorist activity, is preparing to participate, is encouraging or promoting participation or ‘is otherwise concerned in terrorism’.¹⁷ This final and expansive condition has been constrained by the courts to require a sufficiently ‘[close and obvious] nexus’ between the group and terrorist activity, which is not satisfied by merely a ‘contingent intention to resort to terrorism in the future’.¹⁸ The issuance of any order is subject to parliamentary approval¹⁹ and may also be challenged after issuance by judicial review.²⁰

Through proscription is primarily a form of administrative deterrent warning, membership or association with a proscribed group is rendered criminal under section 11. Wider forms of criminal association may be triggered by supporting, or inviting support, for the proscribed group under section 12, even where the support consists of intangible supportive expressions.²¹ Under section 13, an offence arises where a person may be ‘reasonably’ suspected to be a member or supporter of the group because of the clothes or articles they wear, carry or display in public, or because of the publication of a linked image. Relatively few prosecutions have arisen.²² The offences, though broad, have been interpreted so as to

¹⁵ For which, see Clive Walker, *The Anti-Terrorism Legislation* (4th edition, Oxford University Press: Oxford, 2025) chap.2; Tim Legrand and Lee Jarvis, ‘Enemies of the state: proscription powers and their use in the United Kingdom’ (2014) 9(4) *British Politics* 450.

¹⁶ Ahmed Almutawa and Clive Walker, ‘Proscription by proxy: the banning of foreign groups’ [2021] *Public Law* 377, 378.

¹⁷ Terrorism Act 2000, s 3(5).

¹⁸ *Secretary of State for the Home Department v Lord Alton of Liverpool* [2008] EWCA Civ 443, [36-37]

¹⁹ See Lee Jarvis and Tim Legrand, ‘Legislating for otherness: proscription powers and parliamentary discourse’ (2016) 42 *Review of International Studies* 558; Clive Walker, “‘They haven’t gone away you know’”. The persistence of proscription and the problems of deproscription’ (2018) 30(2) *Terrorism and Political Violence* 236, 248.

²⁰ The specialist Proscribed Organisations Appeal Commission undertakes this task: s.5. For cases, see *Secretary of State for the Home Department v Lord Alton of Liverpool* [2008] EWCA Civ 443; *Arumugam and others v Secretary of State for the Home Department* (PC/06/2022, 21 June 2024).

²¹ *R v Choudary (Anjem)* [2016] EWCA Crim 1436, [50-55]

²² Between 2014-23 when hundreds of foreign fighters departed and returned from Islamic State, 55 persons were charged and 40 convicted: Clive Walker, *The Anti-Terrorism Legislation supra* n.15 Table 2.3.

comply with human rights requirements,²³ including non-retrospectivity (which means that some impetus for listing the Wagner Group has dissipated).²⁴

As a counterterrorism tool, proscription ‘operates through the logic of pre-crime’²⁵ and allows the pre-emptive use of the criminal law to disrupt and restrict terrorist activity by targeting the groups that provide the structure and capacity to threaten state or public interests. However, criminalisation is not the main thrust, nor is there much prospect that the group will actually be disbanded (an especially distant prospect for a state entity). Accordingly, proscription more often serves important political and symbolic functions²⁶ that express the condemnation of groups as terrorist organisations.²⁷ In this regard, proscription, as a ‘device of sovereignty and political control’,²⁸ may serve as an explicit and visible expression of ‘a government’s political stance on a conflict’ and may be utilised to influence international relations with other states, often by expressing support for allies in peril.²⁹ Proscription in the law of a liberal democratic state, such as the UK or the US, may also serve to enhance the legitimacy of policing or even military interventions.³⁰ However, at least as implemented in the UK, proscription has been criticised as a heavy-handed and blunt approach that ‘creates a crime from an individual’s “status” and imposes conspiratorial guilt through association,’³¹ without proof of any actual or preparatory acts of terrorism.³² As such, proscription interferes with freedoms of association and expression, though justification for bans will often be successfully sustained on grounds of national security and protection of the

²³ *Sheldrake v Director of Public Prosecutions; Attorney General’s Reference (No 4 of 2002)* [2004] UKHL 43; *R v Choudhary and Rahman* [2016] EWCA Crim 61.

²⁴ *R v Hundal; R v Dhaliwal* [2004] EWCA Crim 389.

²⁵ Marieke de Goede, ‘Proscription’s futures’ (2018) 30(2) *Terrorism and Political Violence* 336, 340.

²⁶ Minra El Masri and Brian J Phillips, ‘Threat perception, policy diffusion, and the logic of terrorist group designation’ (2024) 47 *Studies in Conflict & Terrorism* 838, 841.

²⁷ Ahmed Almutawa and Clive Walker, ‘Proscription by proxy: the banning of foreign groups’ *supra* n.16, 381.

²⁸ Tim Legrand, ‘Preserving sovereignty: crisis and the arc of British proscription pre- and post-9/11’ (2021) 14(4) *Critical Studies on Terrorism* 416, 417.

²⁹ Lee Jarvis and Tim Legrand, ‘The proscription or listing of terrorist organisations: understanding, assessment, and international comparisons’ (2018) 30(2) *Terrorism and Political Violence* 199, 207; Ahmed Almutawa and Clive Walker, ‘Proscription by proxy: the banning of foreign groups’ *supra* n.16.

³⁰ Brian J Phillips, ‘Foreign Terrorist Organization designation, international cooperation, and terrorism’ (2019) 45 *International Interactions* 316, 318.

³¹ Lee Jarvis and Tim Legrand, ‘Legislating for Otherness: Proscription powers and parliamentary discourse’, *supra* n.19, 562.

³² Tim Legrand and Lee Jarvis, ‘Enemies of the state: Proscription powers and their use in the United Kingdom’, *supra* n.15, 464; Clive Walker, “‘They haven’t gone away you know”. The persistence of proscription and the problems of deproscription’, *supra* n.19, 238.

public.³³ Furthermore, proscription has the ‘potential to be counter-productive’ by generally creating a sense of alienation or ‘otherness’,³⁴ by lacking accountability,³⁵ or, more specifically, by making it more difficult to negotiate peaceful solutions in a conflict situation involving a proscribed group.³⁶

Domestic security concerns were foremost during the many years when the UK proscription of Irish groups was the staple and when foreign allies were aloof or even hostile to enforcement action.³⁷ However, post-9/11, proscription mainly targets international groups with limited UK footprints but which have been condemned by an ally.³⁸ When the UK Secretary of State considers whether to proscribe a foreign or international group, the ‘Bassam criteria’ will be taken into account: ‘the nature and scale of the group’s activities’; ‘the specific threat’ to the UK, its interests and citizens, whether at home or abroad; the ‘extent of its presence in the UK; and the UK government’s ‘responsibility to support other members of the international community in the global fight against terrorism’.³⁹

Political factors will be highly relevant to the proscription of state sponsored groups, with proscription acting as ‘a [deterrent] warning to states of sanctions to come if support continues’.⁴⁰ By contrast, an intimate connection between the group and a foreign state may make proscription less likely where the UK government seeks to maintain pragmatic relationships with the controlling foreign country rather than treat it as a pariah. For example,

³³ See *Gündüz v Turkey*, App. no.59745/00, 2003-XI; *Parti Nationaliste Basque v France*, App. no.71251/01, 2007-II; *Herri Batasuna and Batasuna v Spain*, App. nos.25803/04, 25817/04, 30 June 2009; *Pwr v DPP* [2022] UKSC 2.

³⁴ Lee Jarvis and Tim Legrand, ‘Legislating for otherness: proscription powers and parliamentary discourse’, *supra* n.19, 563, 573.

³⁵ See Lee Jarvis and Tim Legrand, ‘Preaching to the converted: Parliament and the proscription ritual’ (2017) 65 *Political Studies* 947; Lee Jarvis and Tim Legrand, ‘I am somewhat puzzled’: Questions, audiences and securitization in the proscription of terrorist organizations (2017) 48 *Security Dialogue* 149; Lee Jarvis and Tim Legrand, *Banning them, Securing Us?* (Manchester University Press: Manchester, 2020).

³⁶ See Sophie Haspeslagh, ‘The mediation dilemma of (not) talking to terrorists’ (2020) 26(4) *Swiss Political Science Review* 506; Sophie Haspeslagh, ‘The linguistic ceasefire’: Negotiating in an age of proscription’ (2021) 52(4) *Security Dialogue* 361.

³⁷ One indicator was the refusal of extradition of terrorist suspects from Ireland or the US: Colm Campbell, ‘Extradition to Northern Ireland’ (1989) 52 *Modern Law Review* 585; Helen Delaney and Gerard Hogan, ‘Anglo-Irish extradition viewed from an Irish perspective’ [1993] *Public Law* 93.

³⁸ Chia-yi Lee and Yasutaka Tominaga, ‘The determinants of terrorist listing’ (2024) 68 *Journal of Conflict Resolution* 53, 63, 73. See also, Minra El Masri and Brian J Phillips, ‘Threat perception, policy diffusion, and the logic of terrorist group designation’ *supra* n.26.

³⁹ *Hansard* (House of Lords) vol.613, col.252, 16 May 2000, Lord Bassam.

⁴⁰ Rebecca H Best and Simanti Lahiri, ‘Hard choices, soft targets: Terror proscription and strategic targeting decisions of FTO’ (2021) 47 *International Interactions* 955, 972.

the reluctance to characterise Pakistan as a state sponsor of terrorism may have affected the long-delayed designation of the Haqqani Network.⁴¹

Despite its potential utility as a public symbol of condemnation, the practical efficacy of proscription has been questioned.⁴² The efficacy of proscription in regard to foreign and international groups necessarily depends on international cooperation, particularly involving the proscribed group's base country.⁴³ Lack of cooperation is inevitable for state-funded proxy organisations, such as the Wagner Group or the IRGC, compared to non-state transnational organisations such as Al Qa'ida or Islamic State. Accordingly, empirical research suggests that proscription is ineffective at constraining the violence of state sponsored groups.⁴⁴ International law support for proscription is also very limited. The international world order demands the use of domestic legal powers against terrorism, especially by reference to UN Security Resolutions 1373 (2001), 1624 (2005), 2178 (2014), and 2396 (2017)⁴⁵ but stops short of specifying the precise means beyond financial sanctions as under Resolutions 1267 (1999) and 1189 (2011). Proscription is not a required instrument of international law.

Moving on from the more legalistic intricacies, the Independent Reviewer of Terrorism Legislation ('IRTL' – Jonathan Hall KC) in his paper, *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription* (2023),⁴⁶ explains that the policy stance of the UK Government is not to treat states as the potential subjects of the UK terrorism legislation (or at least as potential subjects of powers of proscription and special criminal offences). This policy stance might be labelled 'non-ascription'. The UK

⁴¹ Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 2) Order 2015, SI 2015/959. See House of Lords Select Committee on International Relations and Defence, *The UK and Afghanistan* (2019-21 HL 208) paras.295, 362, 367. Proximate causes included the condemnation of the Haqqani network by the UN, Canada, and US in 2012 and 2013 as well as an attack on a British Embassy vehicle in November 2014 which killed a UK national: Explanatory Memorandum

(<https://www.legislation.gov.uk/ukxi/2015/959/pdfs/ukxiem_20150959_en.pdf>, 2015) paras.7.7, 7.9.

⁴² Tim Legrand and Lee Jarvis, 'Enemies of the state: Proscription powers and their use in the United Kingdom', *supra* n.15, 465; Lee Jarvis and Tim Legrand, 'The proscription or listing of terrorist organisations: understanding, assessment, and international comparisons', *supra* n.29, 200.

⁴³ Brian J Phillips, 'Foreign Terrorist Organization designation, international cooperation, and terrorism' (2019) 45(2) *International Interactions* 316, 324, 327.

⁴⁴ Rebecca H Best and Simanti Lahiri, 'Hard choices, soft targets: Terror proscription and strategic targeting decisions of FTO', *supra* n.40, 975, 977.

⁴⁵ See Counter-Terrorism Committee Executive Directorate (CTED), *Legal Issues* (<<https://www.un.org/securitycouncil/ctc/content/legal-issues>>).

⁴⁶ Independent Reviewer of Terrorism Legislation, *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription* (Home Office: London, 2023), paras.11, 16. (<<https://terrorismlegislationreviewer.independent.gov.uk/islamic-revolutionary-guard-corps-of-iran/>>).

Government has also avoided the ascription of the terrorism label under international law,⁴⁷ though it has made use of inter-state procedures such as referral to the Organisation for the Prohibition of Chemical Weapons following the Salisbury incidents in 2018 (described below).⁴⁸ The non-ascription policy has been voiced since the beginnings of the Terrorism Act 2000 when there was discussion of what was known at the time as the ‘Kosovo problem’ — the concern that British soldiers in ‘just’ or ‘noble’ conflicts abroad could be labelled as terrorists. The official retort relied on the ‘general principle in law that statutes do not bind the Crown unless by express provision or necessary implication’.⁴⁹ Since it is clear that the legal definition of terrorism can apply to state actors and that soldiers in Northern Ireland have been treated as falling under it,⁵⁰ a better approach might have been a more explicit statement about when force is ‘lawful’ under either domestic or international law, though the attempt to do so in relation to lethal drone strikes in Syria underline the complexity of that task in turn.⁵¹ If terrorism laws were to be applied to states and their agencies, then it would potentially become harder in legal terms to distinguish a ‘friend with failings’ from a true ‘foe’ or even an ‘ordinary decent foe’ from a ‘rogue foe’.

Bearing in mind the discretion afforded to sovereign states and the variable way it has been exercised in the UK, deeper legal and factual inquiries are required to make sense of this situation. In the following sections, the nature and activities of the IRGC and the Wagner Group will be discussed with a view to explaining their treatment in the UK law of proscription and the application of the non-ascription policy.

3 THE ISLAMIC REVOLUTIONARY GUARD CORPS AND PROSCRIPTION

⁴⁷ Ibid, para.15.

⁴⁸ OPCW, *Summary of the report on activities carried out in support of a request for technical assistance by the United Kingdom of Great Britain and Northern Ireland (Technical Assistance Visit Tav/03/18 and Tav/03b/18 “Amesbury Incident”)* (S/1671/2018, 4 September 2018). The same avenue was taken by Germany after the suspected poisoning of Russian citizen, Alexei Navalny, on 20 August 2020 in the Russian Federation: OPCW, *Summary of the report on activities carried out in support of a request for technical assistance by Germany (Technical Assistance Visit – TAV/01/20)* (S/1906/2020, 6 October 2020).

⁴⁹ Hansard (HL) vol.613, col.241 (16 May 2000), Lord Bach. See also *Re Lockerbie Air Disaster*, *The Times*, 20 May 1992 (CA).

⁵⁰ See further Lord Carlile, *The Definition of Terrorism* (Cm.7052: London, 2007) para.83.

⁵¹ Joint Committee on Human Rights, *The Government Policy on the Use of Drones for Targeted Killing* (2015-16 HL 141/HC 574) and Government Response (2016-17 HL 49/HC 747); Attorney General Jeremy Wright, *The Modern Law of Self Defence* (IISS: London, 2017); Intelligence and Security Committee, *Lethal Drone Strikes in Syria* (2016-17 HC 1152); Jeremy Wright, Attorney General’s Speech at International Institute for Strategic Studies

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583171/170111_Imminence_Speech_.pdf>, 2017.

3.1 The nature of the organisation

The IRGC is an Iranian military body which, in contrast with the Wagner Group, is unambiguously a state entity answerable to Iran's Supreme Leader.⁵² Established in 1979 following the Iranian revolution, it exists alongside, but separate from, other armed forces. Constitutional authority is conferred to guard the Revolution.⁵³ It is also tasked with facilitating the realisation of the Islamic Revolution, in part by 'supporting liberation movements' to bring justice and end oppression.⁵⁴ Because of its activities, the IRGC has been condemned as 'an oppressor at home and an exporter of violence abroad, whose members have been responsible for gross human rights violations'.⁵⁵

One of its branches, the Basij, whose role includes the suppression of social protests, was instrumental in organising and carrying out an attack in 2011 on the British Embassy in Tehran, as an expression of religious devotion and a threat to 'foreign powers that sought to destroy Iran and its Islamic system'.⁵⁶ Another branch is the Quds Force, which exports the Iranian revolution through regional and foreign policy, including covert and military operations and support for 'allied armed groups outside Iran'.⁵⁷ The Quds Force is said to provide the IRGC with 'an external terrorism capability'⁵⁸ which involves 'unconventional' methods, including foreign assassinations,⁵⁹ 'the funding of terror groups and the exploitation of sectarian tensions',⁶⁰ and the infliction of transnational repression on dissident targets.⁶¹ It

⁵² Independent Reviewer of Terrorism Legislation, *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription* *supra* n.46, 1.

⁵³ Constitution of the Islamic Republic of Iran (1979), art.150. See Alma Keshavarz, *The Iranian Revolutionary Guard Corps* (Bloomsbury: London, 2023).

⁵⁴ See Frederick Wehrey, Jerold D Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi and SR Bohandy, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corp* (RAND Corporation: Santa Monica, 2009), 21.

⁵⁵ Independent Reviewer of Terrorism Legislation, *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription*, *supra* n.46, 1.

⁵⁶ Afshon Ostovar, *Vanguard of the Imam: Religion, Politics, and Iran's Revolutionary Guards* (Oxford University Press: Oxford 2016), 2-3.

⁵⁷ *Ibid*, 6.

⁵⁸ Frederick Wehrey, Jerold D Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi and SR Bohandy, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corp*, *supra* n.54, 8.

⁵⁹ Mark Silinsky, 'Iran's Islamic Revolutionary Guard Corps: its similarities to the Soviet KGB and the German SS and Gestapo' (2020) 6(1) *Journal for Interdisciplinary Middle Eastern Studies* 5, 11-13.

⁶⁰ Editorial, *Goon squad: The hardliners* (1 November 2014) 413 *The Economist* 8.

⁶¹ See Council of Europe Parliamentary Assembly, *Transnational repression as a growing threat to the rule of law and human rights* (Doc.15787, 2023); Jonathan Hall, *Transnational Repression: What Planet are we on?* (<<https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2024/05/TNR-What-Planet.pdf>>, 2024).

has engaged in extensive operations in the Iraq, Palestine and Syria,⁶² and has supported the Houthis in Yemen, dissident Shiite groups in Bahrain,⁶³ Hezbollah in Lebanon, the Taliban in Afghanistan, and militias in Iraq.⁶⁴

In January 2020, US forces assassinated Qassem Soleimani, commander of the Quds Force and instigator of the 'Forward Defence' military strategy of confronting Iran's enemies outside Iran through an interlinked network of proxy militant groups.⁶⁵ Thereby, the US authorities reinforced its designation of the IRGC as a terrorist entity for financial sanctions purposes.⁶⁶ Subsequently, the Iran government reiterated its military strategy⁶⁷ and issued sanctions orders against US politicians and officials (including President Trump).⁶⁸

3.2 The application of proscription

Some view the UK Government as failing in its 'Duty to Protect' by reliance on limited financial sanctions (described later) rather than proscribing the entire activities of the IRGC.⁶⁹ The duty of governments to protect their citizens is a well-established principle that is said to require governments to impose proportionate counter-terrorism measures.⁷⁰ The duty can be

⁶² See Michael Wigginton et al, 'Al-Qods Force: Iran's weapon of choice to export terrorism' (2015) 10 *Journal of Policing, Intelligence and Counter Terrorism* 153; Zeynab Malakoutikhah, 'Iran: sponsoring or combating terrorism?', *supra* n.7; Ioan Pop and Mitchell D. Silber, 'Iran and Hezbollah's pre-operational modus operandi in the West' (2021) 44 *Studies in Conflict & Terrorism* 156.

⁶³ See, Ahmed Almutawa, 'Terrorism measures in Bahrain: proportionality and the interplay between security, civil liberties and political stability' (2018) 22(8) *The International Journal of Human Rights* 949.

⁶⁴ Mark David Luce, 'Islamic Revolutionary Guard Corps (IRGC)' in Jonathan K Zartman (ed) *Conflict in the Modern Middle East: An Encyclopedia of Civil War, Revolutions and Regime Change* (ABC-CLIO: Santa Barbara, 2020) 141, 142; Alex Vatanka, 'The Islamic Revolutionary Guard Corps of the 2020s', in Peter Bergen, Candace Rondeaux, Daniel Rothenberg and David Sterman (eds) *Understanding the New Proxy Wars* (C Hurst & Co: London, 2022) 269, 274-5.

⁶⁵ Working Group on Arbitrary Detention, *Opinion No. 70/2019 concerning Mohammed al Qahtani (United States of America)* (A/HRC/WGAD/2019/70); Special Rapporteur on extrajudicial, summary or arbitrary executions, *Targeted killings through armed drones and the case of Iranian General Qassem Soleimani* (A/HRC/44/38, 29 June 2020).

⁶⁶ In 2007, Soleimani had been included (along with the IRGC) under US Executive Order 13382 in the 'Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism'; the IRGC-Qods Force was also listed under E.O. 13224 for providing material support to the Taliban and other terrorist organizations (<<https://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>>).

⁶⁷ Alex Vatanka, 'The Islamic Revolutionary Guard Corps of the 2020s: Evaluating Iran's Proxy Warfare Strategy', in Peter Bergen, Candace Rondeaux, Daniel Rothenberg and David Sterman (eds) *Understanding the New Proxy Wars* (C Hurst & Co (Publishers) Ltd: London, 2022) 269, 270.

⁶⁸ 'Iran Sanctions Trump, U.S. Officials' 19 January 2021 <<https://iranprimer.usip.org/blog/2021/jan/19/iran-sanctions-trump-us-officials>>, and 'Iran Sanctions 51 Americans' 10 January 2022 <<https://iranprimer.usip.org/blog/2022/jan/10/iran-sanctions-51-americans>>.

⁶⁹ Elizabeth Samson, *A Duty to Protect: The Failure of UK Sanctions Against Iran and the Necessity of Proscribing the IRGC* (Henry Jackson Society: London 2023).

⁷⁰ Alex Conte, 'Anti-terrorism, The Charter, and international law' (2006) 11(2) *Review of Constitutional Studies* 80, 93; Sital Dhillon and Adam Mama-Rudd, 'Human rights and counter-terrorism' (2016) 4(2) *International Journal of Social Research Foundation* 1, 5.

viewed as embodied in human rights and the rule of law,⁷¹ and is acknowledged by the UK Government in its CONTEST counterterrorism strategy.⁷² The duty, however, does not determine the legal measures that must be implemented to fulfil the government's responsibility.

As for the potential benefits of proscription of the IRGC under the Terrorism Act 2000, the most direct effect would be to criminalise membership and support for the group (under sections 11 to 13). At least three limits to this criminalisation project must be anticipated.

First, proof of membership is often tenuous since most international proscribed groups reflect the relatively informal notion of 'leaderless jihad'.⁷³ Though this feature is not so applicable to the IRGC (or Wagner Group), membership charges have often remained elusive even for formal Irish paramilitary groups because of evidential shortfalls.⁷⁴

Second, one may doubt whether the state controllers will be deterred by the prospect of convictions. Those convicted can either be tolerated as 'casualties of war' or might even be utilised as further sites of conflict. An illustration occurred in Belgium with the conviction of Assadollah Assadi and others in 2021.⁷⁵ Here, an Iranian group (including Assadollah Assadi who was an Iranian diplomat in Austria) plotted to attack a meeting of the National Council of Resistance of Iran in France in 2018 which would have been attended by, *inter alia*, UK MPs. Assadi was sentenced to 20 years for attempted murder with terrorist intent and membership of a terrorist group (directed by the Iranian intelligence service rather than the IRGC).⁷⁶ His claims to diplomatic immunity were only applicable in Austria (and not France, Belgium or Germany, where he was arrested). However, Assadi was sent back to Iran in 2023 in exchange for Olivier Vandecasteele, a Belgian aid worker who had been sentenced to 40 years in Iran for espionage. This exchange followed the passage of a 2023 mutual legal

⁷¹ Clive Walker, 'Counterterrorism within the rule of law? Rhetoric and reality with special reference to the United Kingdom' (2021) 33(2) *Terrorism and Political Violence* 338, 343-6.

⁷² HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism* (CP 903: London, 2023), 24.

⁷³ See Marc Sageman, *Leaderless Jihad* (University of Pennsylvania Press: Pennsylvania, 2008).

⁷⁴ See Clive Walker, *The Anti-Terrorism Legislation*, *supra* n.15, Table 2.3.

⁷⁵ Dossier no. 20A003763, Court of First Instance Antwerp, Antwerp Division, 4 February 2021. See Ardavan M. Khoshnood and Arvin Khoshnood, 'The Islamic Republic of Iran's use of diplomats in its intelligence and terrorist operations against dissidents' (2024) 37 *International Journal of Intelligence and CounterIntelligence* 976.

⁷⁶ Belgium Penal Code, Articles 137, 139 and 140.

assistance treaty with Iran which had been approved amidst much controversy by the Belgian Constitutional Court.⁷⁷ On Assadi's return to Iran, the Ministry of Foreign Affairs commented that he had been a 'hostage' as a result of 'a theatrical, completely political and doctored court trial'.⁷⁸

A third limit raised by the Assadi case is the intervention of diplomatic immunity. The precise terms of the Vienna Convention on Diplomatic Relations 1961, article 31, were not met in that case, since he was not a recognised diplomatic agent in Belgium. It is also doubtful that members of the IRGC would be nominated or accepted as diplomats under articles 10 and 11 (still less Wagner Group members). Therefore, egregious actions by foreign state actors, even if not apparently privileged as diplomats, have generally resulted in expulsions from the UK rather than criminal proceedings.⁷⁹ However, an exceptional prosecution relates to Magomed Husejn Dovtaev, an Austrian citizen of Chechen origin, who allegedly entered the UK in February 2023 in order to attack the offices of the dissident broadcaster, Iran International, in Chiswick.⁸⁰ He was arrested after surveying the security arrangements outside the broadcaster's offices. The broadcaster was advised to relocate abroad but later returned to an alternative site, fortified at the public expense. Dovtaev was convicted of attempting to make a record for terrorist purposes (contrary to section 58 of the Terrorism Act 2000).⁸¹ The instigators of his actions were not revealed by the police, but the case may suggest that the more counter-measures are applied to state officers or agencies, the more reliance will be vested in private-sector proxies such as criminals.⁸²

In summary, the direct effect of criminalisation seems to confer limited prospects of advantage over more circumspect approaches. Thus, action could be taken to disrupt in 2015

⁷⁷ 36/2023 of March 3, 2023, ECLI:BE:GHCC:2023:ARR.036.

⁷⁸ 'Iran's Foreign Ministry spokesman says Iranian diplomat taken hostage in Europe to return home soon', 26 May 2023, <<https://en.mfa.ir/portal/newsview/720101/Irans-Foreign-Ministry-spokesman-says-Iranian-diplomat-taken-hostage-in-Europe-to-return-home-soon>>.

⁷⁹ See Clive Walker, *Terrorism and the Law* (Oxford University Press: Oxford, 2011) para.5.193.

⁸⁰ See Dipesh Gadhur, "'Iran has ordered an attack on your TV station and staff," the Met told us. 'We don't know how to stop it'; As an independent Iranian broadcaster reopens in Britain months after a terrorist scare, its workers are ready to run the gauntlet again' *The Sunday Times* 24 September 2023 pp.12, 13.

⁸¹ 20 December 2023 CCC, <<https://www.thelawpages.com/court-cases/court-case-search.php?click=submit&action=search&mode=3>>.

⁸² See Matthew Levitt and Sarah Boches, *Iranian External Operations in Europe: The Criminal Connection* (ICCT: The Hague, 2024).

an IRGC-supported Hezbollah bomb factory without the need to rely on proscription.⁸³ Similarly, action could be taken to thwart the alleged '15 credible threats to kill or kidnap British or UK-based individuals by the Iranian regime since the start of 2022', including 'Iran-based Mohammed Mehdi Mozayyani, a member of the Islamic Revolutionary Guard Corps who worked to conduct a lethal operation against Iranian dissidents'.⁸⁴

Following this negative assessment of the potential direct effects of proscription, perhaps the indirect effects might still make a ban worthwhile in the case of the IRGC. The principal indirect effect is symbolism – to convey the UK Government's own condemnation and its solidarity with allies. Some impact may also be sustained against the 'indoctrination' practices of the IRGC, as are alleged to take place in some mosques and religious schools.⁸⁵ However, several drawbacks to this symbolic argument for proscription must be weighed. One is that proscription will add little to existing statements of condemnation of the IRGC, such as have frequently been delivered in the UK Parliament. Secondly, the support which is being challenged is often not pitched specifically in terms of the IRGC but more generally relates to the doctrines of the Iranian Constitution 1979, the teachings of Imam Khomeini, and so on. Even the honouring of Soleimani, as a 'dedicated soldier of Islam' and for his 'martyrdom,' is not identical to support for the IRGC.⁸⁶

The next impediment to proscribing the IRGC might be that it is a state group; even so, no wording in the Terrorism Act 2000 explicitly precludes proscription of a state or state sponsored group.⁸⁷ Furthermore, state terrorism and state sponsorship of terrorism should be recognised as prohibited 'under general international law, in particular the prohibition of aggression, the prohibition of the use of force, and the principle of non-intervention'.⁸⁸ For example, under the UN Declaration on Friendly Relations (1970), 'No State shall organize,

⁸³ 'MEE and agencies, Hezbollah-linked bomb factory in London "kept hidden" from 2015: Report' *Middle East Eye*, 10 June 2019 <<https://www.middleeasteye.net/news/hezbollah-linked-bomb-factory-london-kept-hidden-2015-report>>.

⁸⁴ Hansard (House of Lords) vol.827 col.1609 21 February 2023 Lord Sharpe.

⁸⁵ See Paul Stott, *Tehran Calling* (Policy Exchange: London, 2024).

⁸⁶ Compare Kasra Aarabi, *Making the Case for the UK to Proscribe Iran's IRGC* (Tony Blair Institute for Global Change 2023) 10 <<https://www.institute.global/insights/geopolitics-and-security/making-case-uk-proscribe-irans-irgc>>.

⁸⁷ Clive Walker, 'Note on the Definition of Terrorism under the Terrorism Act 2000, Section 1, In the Light of the Salisbury Incident', in Max Hill QC (Independent Reviewer of Terrorism Legislation) *The Terrorism Acts in 2017* (Home Office: London, 2018) Annex 3 129, 136.

⁸⁸ Kimberley N Trapp, *State Responsibility for International Terrorism* (Oxford University Press: Oxford, 2011), 33.

assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State'.⁸⁹ This principle 'should be interpreted within the broader context of that principle as equally prohibiting state sponsorship or support of terrorist activities with general interventionist aims'.⁹⁰

Despite the international law against state sponsorship of terrorism, the proscription scheme under Terrorism Act 2000 was constructed with sub-state terrorist groups in mind, therefore, 'proscribing a State entity under the Terrorism Act 2000 would depart from consistent and decades long UK policy, and calls into question the definition of terrorism which, to date, has proven practical and effective'.⁹¹ One problem with highlighting that state terrorism can fall within the statutory definition of terrorism is that the statutory definition could become so broad that it could be applicable to activities of state military forces (including those of the UK) within armed conflict or other activities even if in compliance with international humanitarian law.⁹² The point was considered in *R (Islamic Human Rights Commission) v Civil Aviation Authority*,⁹³ where the claimants challenged the governmental and public authorities for allowing weapons to transit through British airports to Israel during its conflict with Hizballah in southern Lebanon in 2006. Ouseley J. viewed as 'a misconception' the implication that the Terrorism Act 2000, section 1(3), encompasses lawful acts of war.⁹⁴ However, in the light of *R v Gul*,⁹⁵ it might be more accurate to contend more narrowly that the supply of the weapons at issue was duly authorised as lawful (based on export controls and so on) rather than making the broader claim that involvement in armed conflict within the rules of international humanitarian law is always exempt from terrorism laws. In *R v Gul*, the UK Supreme Court concluded that section 1 is 'very wide' and can even forbid attacks on foreign regimes, whether friendly or not, subject only to the 'unattractive' safeguard of consent to prosecution by the Director of Public Prosecutions or Attorney General.⁹⁶ Yet, the Supreme Court admitted that this criticism is somewhat misplaced insofar as clearly stated

⁸⁹ UNGA A/Res/2625 (XXV), Principle 3.

⁹⁰ Kimberley N Trapp, *State Responsibility for International Terrorism*, *supra* n.88, 31.

⁹¹ Independent Reviewer of Terrorism Legislation, *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription*, *supra* n.46, 1.

⁹² *Ibid*, 2.

⁹³ [2006] EWHC 2465 (Admin).

⁹⁴ *Ibid*, para 44.

⁹⁵ [2014] UKSC 64. See Clive Walker, *The Anti-Terrorism Legislation*, *supra* n.15 para.1.40.

⁹⁶ *Ibid*, paras 26, 36. See Terrorism Act 2000, s.117; Terrorism Act 2006, s.19.

legislative intent favoured a wide definition, though the position was less strongly asserted for activities abroad.⁹⁷

Further discussion of whether ‘state terrorism’ can fall within the Terrorism Act 2000, section 1, was prompted by the alleged Russian state poisonings of Alexander Litvinenko in London (2006) and of Sergei and Yulia Skripal (and bystanders such as Dawn Sturgess) in Salisbury (2018).⁹⁸ The sophisticated chosen methodology of chemical weapons suggested not only an intent to kill individuals but also to terrify a wider section of the public (Russian dissidents in Europe), so the activity fell within the core concept of terrorism.⁹⁹ The Crown Prosecution Service laid charges in relation to the Salisbury attacks against Alexander Petrov and Ruslan Boshirov which included the Chemical Weapons Act 1996 but did not mention terrorism (or the murder of Dawn Sturgess).¹⁰⁰ By contrast, the Intelligence and Security Committee’s *Russia* report asserts terrorism in relation to both incidents.¹⁰¹ The Committee urged that the response to the Salisbury attack through expulsions and sanctions should not be a ‘high water mark’.¹⁰² The *Government Response*¹⁰³ revealed that it was working on legislation about ‘hostile state activity’ (considered below) but was unforthcoming about proscription.

With the policy of non-ascription in mind, the IRTL’s paper, *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription* (2023),¹⁰⁴ considers potential distinctions in terms of methods, impacts, or ideology but does not point to any bright line demarcation in relation to the IRGC. Yet, the breadth of the definition of terrorism and its potential application to armed conflict permitted under international law, even if recognised as unsatisfactorily broad in *R v Gul*, have not motivated successive governments (nor the

⁹⁷ Ibid, paras 38, 39, 57.

⁹⁸ See further Sir Robert Owen, *The Litvinenko Inquiry* (2015-2016 HC 695); Baroness Hallett, *Inquiry into the circumstances of Dawn Sturgess’ death in Salisbury on 8 July 2018* <<https://www.dawnsturgess.independent-inquiry.uk/>>.

⁹⁹ See Clive Walker, Note on the definition of terrorism under the Terrorism Act 2000, section 1, in the light of the Salisbury Incident, 2018, *supra* n.87. Compare Erin Pobjie, *Prohibited Force* (Cambridge University Press; Cambridge, 2024) pp.212-215.

¹⁰⁰ CPS, Statement –Salisbury 5 September 2018. The names are aliases assigned by Russian Military Intelligence Service (GRU), as recorded in their sanctions listings under the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019, SI 2019/618. Denis Sergeev (aka Sergey Fedotov), was charged in 2021 and then sanctioned: <<https://www.counterterrorism.police.uk/charges-authorized-against-third-suspect-in-salisbury-investigation/>>.

¹⁰¹ *Supra* n.13, paras.7, 13, 72, 76.

¹⁰² Ibid, para.136.

¹⁰³ Ibid.

¹⁰⁴ *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription*, *supra* n.46, paras.20-29.

IRTL)¹⁰⁵ to champion any legislative amendments. As for the specific case of the IRGC, the disadvantages of proscription might include: retaliation in the form of the designation of further British targets;¹⁰⁶ or the curtailment of the ability to engage diplomatically, including the closure of the British embassy; and the precedent created for the potential designation of other states, nominations for which might include UK allies including the US which has taken action against British citizens such as through detention at Guantánamo.¹⁰⁷

The problem of organisations involved in terrorism being linked to client states is not novel. Perhaps the closest recent precedent is the case of Hizballah. Historically, the UK Foreign Office opposed the banning of government-linked entities of Hizballah. Hizballah maintains both military and political wings, the latter taking part in elections and forming part of the government of Lebanon and having control over part of its territory. At the same time, Hizballah operates as the largest non-state military group in Lebanon, perhaps contrary to UN Security Council Resolutions 1559 and 1701, and has also conducted armed operations in Syria and against Israel. Hizballah's military External Security Organisation was proscribed in UK law in 2001. In 2008, the proscription was extended to include the whole of Hizballah's military apparatus, namely the Jihad Council and all the units reporting to it. However, it took until 2019 for the ban of the entire group to be ordered in the UK.¹⁰⁸ Up to then, the UK government policy of non-ascription of state-linked entities prevailed, and foreign policy interests within government preferred to keep channels open. However, those channels became less valuable by 2019. The lesson is that the policy of non-ascription to groups with state links is not sharply defined or applied but can flux. The policy has caused problems in other cases too, such as the Taliban and the Haqqani Network.¹⁰⁹

If qualms arise about the proscription under the Terrorism Act 2000 of state-linked groups, then one alternative response might be to pass distinct legislation about state (or state agency)

¹⁰⁵ *Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription*, *supra* n.46, para.34.

¹⁰⁶ Tom Tugendhat, Minister of State for Security, was listed in October 2022 along with others including GCHQ: 'Iranian Foreign Ministry's statement on sanctions against British institutions and individuals' <<https://en.mfa.gov.ir/portal/newsview/697020>>.

¹⁰⁷ See further Walker, C., 'Exporting human security in the cause of counter-terrorism' in Christophe Paulussen and Martin Scheinin, *Human Dignity and Human Security in Times of Terrorism* (Asser Press: The Hague, 2019).

¹⁰⁸ Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2019, SI 2019/406.

¹⁰⁹ See House of Lords Select Committee on International Relations and Defence, *The UK and Afghanistan* (2019-21 HL 218).

sponsors of terrorism. This device is present in US Federal law,¹¹⁰ with 28 USC section 1605A(h)(6) defining the term, ‘state sponsor of terrorism’, as meaning ‘a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 USC App. section 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 USC section 2371), section 40 of the Arms Export Control Act (22 USC section 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism’. As apparent in this definition, a melange of statutory sources is operative.¹¹¹ State sponsorship designation (which currently applies to Cuba, the Democratic People’s Republic of Korea, Iran, and Syria) is thereby a pathway for the imposition of financial sanctions, restriction on overseas aid and exports, travel restrictions, and the curtailment of sovereign immunity from suit. The latter has become prominent since the passage of the Justice for United States Victims of State Sponsored Terrorist Act 2016 (34 USC section 20144) (commonly called ‘JASTA’).¹¹²

Based on these US precedents, a UK-based state sponsor of terrorism legal scheme could garner some advantages. The procedures could be made distinct from those in the Terrorism Act 2000, including the removal of opportunities for states to raise objections (under sections 4 or 5). As in the US scheme, different consequences of proscription could be applied, with less emphasis on personalised liability (such as criminal conviction) and more on collective punishment. One might also devise different lists for different forms of state terrorism.¹¹³ These gains must, however, be balanced with disadvantages, some of which have been pointed out in relation to JASTA. These include uncertainties around the definition of ‘terrorism’ as applied to state agencies, the obstruction of public interest diplomacy by private financial claims, and the hampering of the delivery of humanitarian aid or the conduct of conflict resolution. On balance, other solutions beyond state proscription should be sought to the problem of the IRGC, as will be considered later.

¹¹⁰ There is also a version under the Canadian State Immunity Act 1985, s.6, as amended by the Safe Streets and Communities Act 2012, s.5. Iran and Syria are listed: SOR/2012-170. This designation is being challenged in the International Court of Justice: *Islamic Republic of Iran v. Canada*, Application 27 June 2023.

¹¹¹ See also the Justice for United States Victims of State Sponsored Terrorism Clarification Act 2019 (P.L. 116-69) and the Fairness for 9/11 Families Act 2022 (P.L. 117-328).

¹¹² Lisa Ann Johnson, ‘JASTA Say No: The practical and constitutional deficiencies of the Justice against Sponsors of Terrorism Act’ (2018) 86 *George Washington Law Review* 231; Jack V. Hoover, ‘The case for reforming JASTA’ (2022-2023) 63 *Virginia Journal of International Law* 251.

¹¹³ Daniel Byman, ‘Understanding, and misunderstanding, state sponsorship of terrorism’ (2022) 45 *Studies in Conflict & Terrorism* 1031.

4. THE WAGNER GROUP AND PROSCRIPTION

4.1 *The nature of the organisation*

The Wagner Group ‘emerged during the 2014 invasion of Ukraine’¹¹⁴ and since became the most renowned Russian Private Military and Security Company (PMSC).¹¹⁵ PMSCs may be characterised as ‘essentially business organisations that trade in professional services intricately linked to warfare ... [including] combat operations, strategic planning, intelligence, risk assessment, operational support, training and technical skills’.¹¹⁶

PMSCs are particularly controversial when utilised as an instrument of foreign policy since, in that context, they may allow the state to circumvent controls on the use of force abroad and to avoid responsibility for unlawful conduct.¹¹⁷ This usage is condemned as a recurrent feature of the Russian deployment of PMSCs, but the US and UK Governments have also relied upon PMSCs in foreign settings. Deployments in post-colonial African conflicts led to the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries 1989,¹¹⁸ but that instrument has been ratified by just 37 state parties (not including Russia, the US, or the UK which views it as lacking clarity).¹¹⁹ Instead, there prevails a ‘market model of accountability’ that relies on self-regulatory codes of practice.¹²⁰ For example, 58 states (including the UK and US but not Russia) support the Montreux Document 2008, which is a statement produced by the Government of Switzerland and the International Committee of the Red Cross to provide guidance on states’ international legal

¹¹⁴ Paul Fraioli, ‘Russia’s use of its private military companies’ (2020) 26(10) *Strategic Comments* 39, i.

¹¹⁵ Kimberly Marten, ‘Russia’s use of semi-state security forces: the case of the Wagner Group’ (2019) 35 *Post-Soviet Affairs* 181; Andrew S Bowen, *Russian Private Military Companies (PMCs)* (Congressional Research Service Report IF11650: Washington DC, 2020).

¹¹⁶ Mark Fulloon, ‘Non-state actor: defining private military companies’ (2015) 37(2) *Strategic Review for South Africa* 29.

¹¹⁷ José L Gómez del Prado, ‘Impact on human rights of a new non-state actor: Private Military and Security Companies’ (2011) 18(1) *Brown Journal of World Affairs* 151, 152. See also: Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press: Ithaca, 2003); Simon Chesterman and Chia Lehnardt (eds), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford University Press: Oxford, 2007); James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford University Press: Oxford 2014); Frauke Renz, *State Responsibility and New Trends in the Privatisation of Warfare* (Edward Elgar: Cheltenham 2020).

¹¹⁸ UNTS vol.2163, p.75. See José L. Gómez del Prado, ‘The ineffectiveness of the current definition of a “mercenary” in international humanitarian and criminal law’ in Helena Torroja (ed), *Public International Law and Human Rights Violations by Private Military and Security Companies* (Springer: Cham, 2017).

¹¹⁹ *Government Response*, *supra* n.9, paras.40, 41.

¹²⁰ Clive Walker and Dave Whyte, ‘Contracting out war? Private military companies law and regulation in the United Kingdom’ (2005) 54 *International and Comparative Law Quarterly* 651, 687.

obligations and to ‘recommend good practices’ regarding the use of PMSCs.¹²¹ Furthermore, the Code of Conduct for Private Security Service Providers was issued in 2013 by the International Code of Conduct Association, though the Wagner Group is not amongst the 600 adherents.¹²² In 2010, Russia favoured the establishment of a UN Human Rights Council working group to consider a more effective international regulatory framework for PMSCs.¹²³ A second incarnation of the Intergovernmental Working Group emerged in 2017,¹²⁴ but the framework remains in draft.¹²⁵ These initiatives reflect international concern about PMSCs but also the reluctance to curtail sovereign powers and therefore a persistent belief, at least held by the UK Government, in ‘the positive impact of voluntary regulations on PMSCs’.¹²⁶

While the operation of PMSCs has long been depicted as problematic, these anxieties are heightened regarding the Russian use of PMSCs and the Wagner Group in particular. PMSCs offer greater flexibility and lower cost than using sovereign armed forces.¹²⁷ They also minimise ‘political exposure’¹²⁸ by allowing deniability.¹²⁹ As a result, Russian PMSCs have appeared in ‘as many as 30 countries’, including Ukraine, Syria, and various parts of Africa.¹³⁰

The legal status of the Wagner Group is obscure and fluid. PMSCs are supposedly contrary to the Russian Constitution and Criminal Code,¹³¹ yet the Wagner Group has operated with the

¹²¹ International Committee of the Red Cross and the Swiss Federal Department of Foreign Affairs, The Montreux Document 2009 <<https://www.montreuxdocument.org/about/montreux-document.html>>. See further *Government Response*, *supra* n.9, paras.47, 48.

¹²² ICoCA, The Code <<https://icoca.ch/the-code/>>. See further *Government Response* (2022-23 HC 1914) paras.49.

¹²³ UNGA, Resolution adopted by the Human Rights Council, (2010) A/HRC/RES/15/26.

¹²⁴ A/HRC/RES/36/11, 28 September 2017.

¹²⁵ *Government Response*, *supra* n.9, paras.42, 43; UN Human Rights Council, Open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies (2023) <[https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1#:~:text=In%20early%20October%202022%2C%20the,a%20clean%20and%20track%20version](https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1#:~:text=In%20early%20October%202022%2C%20the,a%20clean%20and%20track%20version>https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1#:~:text=In%20early%20October%202022%2C%20the,a%20clean%20and%20track%20version)>.

¹²⁶ *Government Response*, *supra* n.9, para.51.

¹²⁷ Paul Fraioli, ‘Russia’s use of its private military companies’, *supra* n.114.

¹²⁸ Clive Walker and Dave Whyte, ‘Contracting out war? Private military companies law and regulation in the United Kingdom’, *supra* n.120, 660.

¹²⁹ Andrew S Bowen, *Russian Private Military Companies (PMCs)* (Congressional Research Service Report IF11650: Washington DC, 2020). See also, Frauke Renz, *State Responsibility and New Trends in the Privatisation of Warfare* *supra* n.117, 3.

¹³⁰ Paul Fraioli, ‘Russia’s use of its private military companies’, *supra* n.114.

¹³¹ See Russian Federal Constitution 1993, Articles 13.5, 71.1. The Russian Federation Criminal Code No.63-FZ, 13 June 1996, Article 359 forbids mercenarism. Article 208 forbids ‘Organization of an Illegal Armed Formation, or Participation in It’.

title of a private military company under its erstwhile head, Yevgeny Prigozhin.¹³² Thus, it might be understood as a hybrid mechanism:¹³³ its nature may be military or security; it is private sector but involves ‘close ties’ to Russian intelligence,¹³⁴ ‘extensive military support’ by the Russian Government,¹³⁵ and even recognition in a 2023 law which allows all participants in the ‘special military operation’ in Ukraine to qualify as official combat veterans.¹³⁶ Overall, PMSCs have been characterised by Russian President Putin as ‘a tool for the realisation of national interests without the direct participation of the state’.¹³⁷ This characterisation of a public-private connection came to be queried following the very visible challenge to state authority by the Wagner Group when it briefly mutinied in late June 2023 and the alleged response in the form of the fatal state sabotage of Prigozhin’s aircraft in August 2023, as described earlier. Nevertheless, most of its interventions seem to be sanctioned by the Kremlin,¹³⁸ so it operates as a ‘non-official and unconventional’ paramilitary tool for the Kremlin in the service of Russian foreign policy.¹³⁹ Its proximity to the state has been underlined by the issuance of a decree following the death of Prigozhin which requires all employees of Russian PMSCs to take an oath of allegiance to the Russian state.¹⁴⁰ Likewise, the House of Commons Foreign Affairs Committee characterised the Wagner Group as an unconventional and illegal PMSC used as a ‘malign’ proxy for the benefit of Russian foreign policy.¹⁴¹ Therefore, the Committee recommended that the Government should ‘urgently proscribe the Wagner Network as a terrorist organisation’.¹⁴²

Aside from whether the application of proscription would be beneficial or not, that pathway calls into question whether the Wagner Group can be distinguished from UK and other

¹³² The ‘PMC Wagner Center’ was recorded in the Unified State Register of Legal Entities on 27 December 2022 as a non-public joint stock company: BBC, ‘Prigozhin “legalized” the name of the Wagner PMC’ <<https://www.bbc.com/russian/features-64304032>> 17 January 2023.

¹³³ Sandor Fabian, ‘The Russian hybrid warfare strategy – neither Russian nor strategy’ (2019) 35 *Defense & Security Analysis* 308; Maxim A. Suchkov, ‘Whose hybrid warfare? How “the hybrid warfare” concept shapes Russian discourse, military, and political practice’ (2021) 32 *Small Wars & Insurgencies* 415.

¹³⁴ Paul Fraioli, ‘Russia’s use of its private military companies’, *supra* n.114.

¹³⁵ House of Commons Foreign Affairs Committee, *Guns for Gold*, *supra* n.9, 8.

¹³⁶ Decree 640 of 25 August 2023. Decree 690 of 30 September 2022 (as amended) allows for the acquisition of citizenship.

¹³⁷ Paul Fraioli, ‘Russia’s use of its private military companies’, *supra* n.114.

¹³⁸ House of Commons Foreign Affairs Committee, *Guns for Gold*, *supra* n.9, 6, 18.

¹³⁹ Theo Neethling, ‘Russian para-military operations in Africa: The Wagner Group as a de facto foreign policy instrument’ (2023) 51(1) *Scientia Militaria* 1, 4. See also Elena Pokalova, ‘The Wagner Group in Africa: Russia’s Quasi-State Agent of Influence’ (2023) *Studies in Conflict & Terrorism*, DOI: 10.1080/1057610X.2023.2231642, 4-5.

¹⁴⁰ Decree 639 of 25 August 2023.

¹⁴¹ House of Commons Foreign Affairs Committee, *Guns for Gold*, *supra* n.9, 6.

¹⁴² *Ibid*, 4.

Western PMSCs without resort to untenable distinctions or patent hypocrisy. It has been suggested that Russian PMSCs are distinguishable because they participate in direct combat, while the UK and US PMSCs ‘focus on logistics and support’.¹⁴³ In this way, the Wagner Group can be depicted as directly responsible for ‘grave human rights violations’ and war crimes.¹⁴⁴ Three responses may be offered. First, the distinction between ‘direct combat’ and ‘logistics and support’ is not clean-cut. Second, as already indicated, grave abuses of local and international laws by UK PMSCs have been alleged, for instance, in Sierra Leone¹⁴⁵ and Sri Lanka.¹⁴⁶ Yet, successive UK governments have remained reluctant to regulate further in this field,¹⁴⁷ despite the Foreign and Commonwealth Office’s Green Paper in 2002, *Private Military Companies: options for regulation*,¹⁴⁸ and promptings from the UN Working Group on the Use of Mercenaries, in its report of the *Visit to the UK 2008*.¹⁴⁹ As a result, accusations of double standards could arise if the terrorism legislation were to be invoked against the Wagner Group. Third, engagement in direct combat, even where this includes war crimes, does not necessarily transform a PMSC into a terrorist group. No conclusion will be reached here as to whether the Wagner Group is wholly exceptional and distinct from Western PMSCs in terms of its breaches of national or international law.¹⁵⁰ Proof of such a distinction awaits the gathering of evidence from combat zones in Ukraine and the Sahel.¹⁵¹ Whether it is availing for the Wagner Group to be characterised as a terrorist group under UK law will now be considered.

4.2 The application of proscription

¹⁴³ Andrew S Bowen, *Russian Private Military Companies (PMCs)* (Congressional Research Service Report IF11650: Washington DC, 2020), 1.

¹⁴⁴ House of Commons Foreign Affairs Committee, *Guns for Gold*, *supra* n.9, 21-23.

¹⁴⁵ House of Commons Foreign Affairs Committee, *Sierra Leone* (1998-99 HC 116). See also (Diplock) *Report of the Committee of Privy Counsellors Appointed to Inquire into the Recruitment of Mercenaries* (Cmnd 6569: London, 1976).

¹⁴⁶ See Phil Miller, *Keenie Meenie: The British Mercenaries Who got away with War Crimes* (Pluto Press: London, 2020).

¹⁴⁷ See House of Commons Foreign Affairs Committee, *Private Military Companies* (2001-02 HC 922); Hin-Yan Liu, *Law's Impunity: responsibility and the modern private military company* (Hart Publishing: Oxford, 2017); George Andreopoulos and John Kleinig (eds), *Private Military and Security Companies (PMSCs) and the Quest for Accountability* (Routledge: Abingdon, 2019); Katerina Galai, *Regulating Private Military Companies: Conflicts of Law, History and Governance* (Routledge: Abingdon, 2019).

¹⁴⁸ See Foreign Office, *Private Military Companies: Options for Regulation* (2001-02 HC 577).

¹⁴⁹ A/HRC/10/14/Add.2, 2009.

¹⁵⁰ Andreas Heinemann-Grüder, ‘Russia’s State-Sponsored Killers: The Wagner Group’ (2022) No 290 *Russian Analytical Digest* 2, 4.

¹⁵¹ Tanya Mehra and Méryl Demuynck, *Raising the Stakes against the Wagner: From Mercenaries to a Designated Terrorist Group?* (International Centre for Counter-Terrorism: The Hague, 2023) <<https://www.icct.nl/publication/raising-stakes-against-wagner-group-mercenaries-designated-terrorist-group>>.

Following the publication of the House of Commons Foreign Affairs Select Committee's report, *Guns for Gold*, at the end of July 2023,¹⁵² a proscription order was issued immediately following the Parliamentary summer recess in early September. The timing suggests that this step was primarily driven by political factors - to assuage the domestic critics - but also influenced by external factual factors, given that the power of the Wagner Group and its linkage to the Russian state had waned after the death of its leader. Both factors allowed for a further calibration of the non-ascription policy. Thus, no essentialist set of attributes which are requisite for proscription can be found by forensic examination of the activities, structures, or affiliations of a candidate organisation for proscription. Instead, in the case of the Wagner Group, political calculations and factual circumstances both became more fluid, while legal requirements and possibilities remained constant.

The statutory instrument which imposed proscription¹⁵³ was supported in Parliament on all sides.¹⁵⁴ The UK Government Home Office argued forthrightly that 'They are terrorists, plain and simple ...', though the Bassam criteria were also called in aid in terms of the nature and scale of their activities, the threat to British citizens overseas, and the need to support international comity.¹⁵⁵ A little more substance was imparted in the Explanatory Memorandum which referenced serious violence in Ukraine to advance the Russian political cause and intimidate opponents as well as activities in Africa.¹⁵⁶

The most direct threat to British citizens from the Wagner Group arises overseas only and relates to those who travel to fight in the Ukraine. Though the organisation has physical recruitment centres¹⁵⁷ and is more welcoming of foreign recruitment than the IRGC (which prefers the model of foreign proxies),¹⁵⁸ few British foreign fighters have joined the Russian cause in Ukraine, and the sole reported prosecution, in *R v Piotr Kucharski*, was for

¹⁵² *Supra* n.9. The grounds for proscription are given in the *Government Response*, *supra* n.9, paras.20-22. Other forms of disruption are at paras.33-35.

¹⁵³ Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2023, SI 2023/1003.

¹⁵⁴ See Hansard (House of Commons) vol.737 col.955 13 September 2023; Hansard (House of Lords) vol.832 col.1121 14 September 2023.

¹⁵⁵ <<https://www.gov.uk/government/news/russian-wagner-group-declared-terrorists>> 6 September 2023.

¹⁵⁶ <https://www.legislation.gov.uk/ukxi/2023/1003/pdfs/ukxiem_20231003_en_001.pdf>, paras. 7.5, 7.6, 7.7.

¹⁵⁷ *Moscow Times*, 'Russia's Wagner Group Opens Dozens of Recruitment Centers' 10 March 2023, <<https://www.themoscowtimes.com/2023/03/10/russias-wagner-group-opens-dozens-of-recruitment-centers-a80450>>.

¹⁵⁸ See 'IRGC blocks the enemy's infiltration' 16 September 2015, <<https://english.khamenei.ir/news/2155/IRGC-blocks-the-enemy-s-infiltration>>; Iran International, 'Iran launches office in Syria's Hasakah to recruit militia' 17 March 2023, <<https://www.iranintl.com/en/202303176497>>.

profession of, rather than actual, membership.¹⁵⁹ In addition, in *R v Benjamin Stimson*,¹⁶⁰ the defendant pleaded guilty to a charge of preparation of terrorism under the Terrorism Act 2006, section 5, after he had joined a pro-Russian militia in Ukraine. He did not actually fire weapons but had assisted those that did. Judge David Stockdale pronounced that ‘You ultimately did no physical harm to anyone but you assisted the militia by your presence and your involvement, and you will have given a lead to others. I accept you do not hold extremist views and you have expressed your regret for your actions.’ He was sentenced to 5 years 4 months. Another supporter of Russian military intervention is Graham William Phillips, a video blogger who produced and published media content that supports and promotes actions and policies which are said to destabilise Ukraine and undermine or threaten the territorial integrity, sovereignty, or independence of Ukraine. He has been subjected to sanctions listing.¹⁶¹ The case illustrates that proscription powers are not alone in empowering the state to act against individuals who espouse the ‘wrong’ side.

More prevalent are those UK residents who have enlisted for the Ukrainian cause, with involvement in the extreme right wing Azov Battalion (a unit of the National Guard) and its defence of Mariupol often highlighted.¹⁶² Shortly after the Russian invasion, a Ukrainian Presidential decree created the International Legion for the Territorial Defence of Ukraine, with an official invitation to (foreign) volunteers to enlist.¹⁶³ It is reckoned that around 20 joined up from the UK, mainly ex-soldiers.¹⁶⁴ In contrast to the hostile treatment of those who joined Islamic State, the then Foreign Secretary of State, Liz Truss, declared that she would not oppose British citizens travelling to Ukraine to fight Russians.¹⁶⁵ The

¹⁵⁹ <<https://www.counterterrorism.police.uk/hertfordshire-man-admits-wagner-group-claims/>>, 23 August 2024.

¹⁶⁰ Manchester Crown Court, 14 July 2017.

¹⁶¹ HM Treasury, Designation of 26 July 2022 under Russia (Sanctions) (EU Exit) Regulations 2019 SI 2019/855; *Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] EWHC 32 (Admin).

¹⁶² Andreas Umland, ‘Irregular militias and radical nationalism in Post-Euromaidan Ukraine’ in Jeffrey Kaplan (ed.), *The 21st Century Cold War* (Routledge: Abingdon, 2020)

¹⁶³ <<https://ildu.com.ua/>>; <<https://www.president.gov.ua/en/news/zvernennya-do-gromadyan-inozemnih-derzhav-yaki-pragnut-dopom-73213>>.

¹⁶⁴ Up to 20,000 foreigners may have enlisted in total: Tanya Mehra and Abigail Thorley, *Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict* (ICCT: The Hague 2022); Kacper Rekawek, ‘A Trickle, not a flood’ (2022) 15.6 *CTC Sentinel* 6; Khalil Mutallimzada and Kristian Steiner, ‘Fighters’ motivations for joining extremist groups: Investigating the attractiveness of the Right Sector’s Volunteer Ukrainian Corps,’ (2023) 8 *European Journal of International Security* 47; Christian Kaunert et al, ‘Far-right foreign fighters and Ukraine: A blind spot for the European Union?’ (2023) 14 *New Journal of European Criminal Law* 247.

¹⁶⁵ *The Times* 28 February 2022 p.7.

announcement was quickly contradicted by the Defence Secretary of State, Ben Wallace.¹⁶⁶ Aiden Aslin and Shaun Pinner were sentenced to death for training with a view to terrorism by a court in the Donetsk People's Republic but were later released in a prisoner swap.¹⁶⁷

The appropriateness of the proscription of the Wagner Group is less problematic than the IRGC from a policy perspective. By the time of its proscription, the Wagner Group could be viewed as distinct from the state, even though it still mostly operates at the behest of, and subject to material support or condonation from the Russian state. Therefore, its ban presents a lesser challenge to the non-ascription policy, as revealed during the proscription debates when it was suggested that the order might later be reviewed if the Wagner Group ever merged with the Russian military.¹⁶⁸ In this way, proscription could be wielded when it became politically and factually possible to assert by law that the Wagner Group should no longer exist, whereas less detached appurtenances of the Russian state remain categorised as sovereign attributes which might trigger legal action against their behaviour but not against their existence.¹⁶⁹

Whilst no fundamental objection thus arises, proscription might be still contested on grounds of other policies and factors. As mentioned previously, proscription cannot realistically attain the disbandment of this foreign state sponsored entity which barely falls within UK jurisdictional clout. So, the instrument bears more significance symbolically as a form of condemnation which cannot be achieved, unlike in the case of the IRGC,¹⁷⁰ through diplomatic means. That level of condemnation may also trigger the positive practical effects of making it less attractive as a PMSC in the eyes of would-be fighters.¹⁷¹ Negative effects

¹⁶⁶ Eleanor Langford, 'Ben Wallace says Liz Truss was wrong to back Brits fighting in Ukraine' *Politics Home* 28 February 2023 <<https://www.politicshome.com/news/article/ben-wallace-says-liz-truss-was-wrong-to-back-brits-fighting-in-ukraine>>.

¹⁶⁷ Emma Vardy and Frank Gardner, 'Britons held by Russian forces in Ukraine released' BBC Online <<https://www.bbc.co.uk/news/uk-62988234>>.

¹⁶⁸ Hansard (House of Lords) vol.832 col.1129 14 September 2023, Lord Sharpe.

¹⁶⁹ Jonathan Hall, 'Iran guards "shouldn't be treated as a terror group"' *The Times*, 20 September 2023, <<https://www.thetimes.co.uk/article/iran-guards-shouldn-t-be-treated-as-a-terror-group-jzv8mngmz>>.

¹⁷⁰ See in recent times: Foreign, Commonwealth & Development Office, Iranian Ambassador to UK summoned: MV Mercer Street attack 2 August 2021, <<https://www.gov.uk/government/news/iranian-ambassador-to-uk-summoned-mv-merc-street-attack>>; Foreign Secretary summons Iranian diplomat over continued threat to UK-based journalists 20 February 2023, <<https://www.gov.uk/government/news/foreign-secretary-summons-iranian-diplomat-over-continued-threat-to-uk-based-journalists>>.

¹⁷¹ Tanya Mehra and Meryl Demuynck, *Raising the Stakes against the Wagner: From Mercenaries to a Designated Terrorist Group?* *supra* n.151. See also, Brian J Philips, 'Wagner Group: what would it mean for the UK to designate Putin's private army a "terrorist organisation"' (12 May 2023) *The Conversation* <<https://theconversation.com/wagner-group-what-it-would-mean-for-the-uk-to-designate-putins-private-army-a-terrorist-organisation-205521>>.

have already been considered, including the curtailment of the UK's prospects of negotiating with Russia or its agents who might, for example, have detained British citizens.¹⁷²

As well as policy and practice doubts, legal objections might be raised. First, a narrow legal objection is that some members of the Wagner Group could be viewed as having been coerced, even if not to the degree required for the criminal defence of duress. Thus, Russian legislation was passed to allow prisoners to join on terms that they will receive a pardon after service of a specified period.¹⁷³ These circumstances are not applicable to British recruits but could be considered at sentencing.¹⁷⁴ The second more fundamental legal objection is that, as a commercial company motivated by financial gain and economic considerations, the Wagner Group's constitution and actions may fall beyond the legal definition of terrorism under the Terrorism Act 2000. Under section 1(c), to fall within the definition of terrorism, the Group's activities must be 'for the purpose of advancing a political, religious, racial or ideological cause'. The Wagner Group's commercial motivation and absence of any 'coherent political agenda' might not satisfy this requirement.¹⁷⁵ However, section 1(c) does not specify that the political purpose must be directly or immediately connected to the person or group making the threat or carrying out the action. Thus, it may be broad enough to include commercial entities (including banks)¹⁷⁶ which act on behalf of a state to further hostile purposes.

The disparate treatment of the Wagner Group and IRGC was a nagging criticism during the Parliamentary debates about the proscription order relating to the former.¹⁷⁷ Explanations have already been provided, but one other divining factor, a coincidence of timing, may have been the ongoing negotiation between the US (and possibly the UK) and Iran over the release of five prisoners (one with British citizenship – Morad Tahbaz) on the 18 September 2023, in other words, just days after the Wagner Group order.¹⁷⁸ One might suppose that the

¹⁷² House of Commons Foreign Affairs Committee, *Guns for Gold*, *supra* n.9, 42.

¹⁷³ Federal Law of June 24, 2023, No. 270-FZ. See James Pattison, 'Ukraine, Wagner, and Russia's convict-soldiers' (2024) 38 *Ethics & International Affairs* 17.

¹⁷⁴ In the case of the IRGC, Iranian men are subject to conscription but not necessarily to that branch of the armed forces: Saeid Golkar and Kasra Aarabi, 'Conscription is not an excuse for Iran's Revolutionary Guard' *Foreign Policy* 30 January 2023, <<https://foreignpolicy.com/2023/01/30/iran-revolutionary-guard-terrorism-military-conscription/>>.

¹⁷⁵ See, Elena Pokalova, *The Problem with Designating the Wagner Group as a Terrorist Organisation* (9 August 2023) Modern War Institute <<https://mwi.westpoint.edu/the-problem-with-designating-the-wagner-group-as-a-terrorist-organization/>>.

¹⁷⁶ See, under the Counter Terrorism Act 2008, Pt.V, *Bank Mellat v HM Treasury* [2013] UKSC 39.

¹⁷⁷ See especially Hansard (House of Commons) vol.737 col.960 13 September 2023, Liam Fox.

¹⁷⁸ Antony J. Blinken, 'On Iran's release of unjustly detained U.S. citizens' (US Department of State, 18 September 2023, <<https://www.state.gov/on-irans-release-of-unjustly-detained-u-s-citizens/>>.

negotiations would have been sorely tested by the issuance of an IRGC ban. However, deeper causes seem more important since the non-proscription stance in regard to the IRGC has persisted even after the Gaza conflict began on 7 October 2023 and even though the UK Foreign Secretary blamed Iran as the ‘long-term funder and supporter’ of Hamas.¹⁷⁹

In summary, proscription can more coherently be applied to the Wagner Group than the IRGC. However, the gains are far from evident, and, not surprisingly, no prosecution or other enforcement action has arisen after proscription

5. ALTERNATIVES TO PROSCRIPTION

The objective of this paper is to consider the applicability and implications of proscription powers, so no more than an outline will be given here of alternative resolutions. The US model of a state sponsorship law has already been considered.

The most prominent legal response to date to the IRGC and Wagner Group has been financial sanctions. This mechanism does not incur the same non-ascription policy objections as proscription because financial sanctions were designed with states as their prime target,¹⁸⁰ though the device is nowadays more commonly applied in the field of terrorism against non-state individuals and entities. The transition was marked by UNSCR 1267 of 15 October 1999 (as amended by UNSCR 1333, 1988, and 1989) regarding the Taliban and al Qa’ida, with equivalents for Islamic State (UNSCR 2170 of 15 August 2014, as amended).¹⁸¹ The UN also encourages states to adopt their own autonomous lists under the UNSCR 1373 of 28 September 2001, and so extensive UK sanctions regimes can be found based on the Sanctions and Anti Money Laundering Act 2018.¹⁸²

The sanctions powers have been invoked repeatedly in the UK against the IRGC and the Wagner Group both as entities and in regard to their leading officers. These listings add to

¹⁷⁹ Hansard (House of Commons) vol.738 col.715 24 October 2023, James Cleverly.

¹⁸⁰ Enrico Carisch, *The Evolution of UN Sanctions* (Springer: Cham, 2017).

¹⁸¹ See Colin King et al. (eds.), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave MacMillan: London, 2018) vol.II; Gavin Sullivan, *The Law of the List* (Cambridge University Press: Cambridge, 2020).

¹⁸² Richard Gordon et al, *Sanctions Law* (Oxford University Press: Oxford, 2018); Hugo Lodge, *Blackstone's Guide to the Sanctions and Anti-Money Laundering Act 2018* (Oxford University Press: Oxford, 2020).

earlier listings arising from the Litvinenko¹⁸³ and Salisbury¹⁸⁴ attacks. Several different regimes have been relied upon as the basis for the listings against the IRGC¹⁸⁵ and the Wagner Group.¹⁸⁶ Current listings include: the Islamic Revolutionary Guard Corps (IRGC) Qods Force now under the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019,¹⁸⁷ but first listed in 2010. The IRGC is also listed under the Syria (Sanctions) (EU Exit) Regulations 2019,¹⁸⁸ (first listed in 2011), and various IRGC officials have been listed under the Iran (Sanctions) Regulations 2023 for human rights abuses.¹⁸⁹ The Directorate for Internal Security of the Iranian Ministry of Intelligence and Security and its Director General were designated in 2020 under the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 for the foiled terrorist attack on Iranian exiles in France in 2018.¹⁹⁰ The Quds Force Unit 840 and several members, all linked to plots against Iran International, were sanctioned (on 29 January 2024) under the Iran (Sanctions) Regulations 2023.¹⁹¹ Likewise, the Wagner Group falls within the Russia (Sanctions) (EU Exit) Regulations 2019 (first listed on 24 March 2022).¹⁹² Prigozhin was listed in 2020 because of the Wagner Group's activities in Libya.¹⁹³ Overall, these financial sanctions powers were estimated by Prime Minister Rishi Sunak to be sufficient to deliver a sufficient alternative to proscription.¹⁹⁴ Notably, sanctions but not proscription have been applied to Redut, another Russian PMC which has rivalled and

¹⁸³ Dmitry Vadimovich Kovtun and Andrey Konstantinovich Lugovoy under the Global Human Rights Sanctions Regulations 2020 SI 2020/680, First Listed on: 13/01/2022, Last Updated: 17/01/2022. An earlier order was made (SI 2016/67) under ss.4 and 14 of and Schedule 3 to the Anti-terrorism, Crime and Security Act 2001. President Putin is not listed even though named as probably responsible by Sir Robert Owen, *The Litvinenko Inquiry* (2015-16 HC 695) chap.12.

¹⁸⁴ Anatoliy Vladimirovich Chepiga; Igor Olegovich Kostyukov; Alexander Yevgeniyevich Mishkin; Vladimir Stepanovich Alexseyev under the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019 SI 2019/618 (first listed on: 21/01/2019). Later listed in 2021 were Vladimir Mikhailovich Bogdanov, Kirill Vasilyev, and Alexei Semenovich Sedov. Listings also include the Federal State Unitary Enterprise State Scientific Research Institute for Organic Chemistry and Technology (GOSNIIKOHT), made under the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019, SI 2019/618 (first listed on: 15/10/2020).

¹⁸⁵ See House of Commons Foreign Affairs Committee, *No Prosperity without Justice: the UK's relationship with Iran* (2019–21 HC 415) pp.18, 24; Eleanor Gadd, Claire Mills, and Antonia Garraway, *Iran's nuclear programme* (House of Commons Library CDP-2022-0123: London, 2022) p.4; Philip Loft, *Iran protests 2022: Human rights and international response* (House of Commons Library CBP9679: London, 2023) pp.29-31.

¹⁸⁶ See Claire Mills, *Sanctions against Russia* (House of Commons Library 9481: London, 16 February 2023).

¹⁸⁷ SI 2019/461.

¹⁸⁸ SI 2019/792.

¹⁸⁹ SI 2023/1314.

¹⁹⁰ SI 2019/573, CTI0008, CTI0028.

¹⁹¹ SI 2023/1314, repealing the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (SI 2019/134).

¹⁹² SI 2019/855. For an outline of sanctions, see *Government Response*, *supra* n.8 paras.12-19.

¹⁹³ Libya (Sanctions) (EU Exit) Regulations 2020 (SI 2020/1665).

¹⁹⁴ Hansard (House of Commons) vol.748 col.30, 15 April 2024.

to some extent supplanted the Wagner Group but crucially remains closely tied to the Russian state.¹⁹⁵

Next the absence of proscription does not rule out other special terrorism criminal offences, and non-ascription may apply with less cogency to legal actions against individuals, especially if perpetrated by British-based individuals rather than foreign entities and officials. Thus, preparations to engage in any relationship with a hostile group might be the offence of preparation under section 5 of the Terrorism Act 2006. Various other offences of relevance might be found in Parts III (financing) and VI (weapons training and incitement) of the Terrorism Act 2000.¹⁹⁶ The Terrorism Act 2006 includes not only sections 1 and 2 (relating to encouragement) but also sections 6 and 8 (travel for terrorism training). Beyond terrorism crimes is the possibility of resort to crimes of universal jurisdiction. A multilateral Atrocity Crimes Advisory Group (ACA) was set up in 2022 in conjunction with the EU and US to support the War Crimes Units of the Office of the Prosecutor General of Ukraine (OPG) in its investigation and prosecution of conflict-related crimes.¹⁹⁷

Aside from the terrorism legislation, two other branches of law are potentially being worthy of consideration against bodies such as the IRGC and the Wagner Group. First, private sector military adventures can be regulated by the UK's Foreign Enlistment Act 1870,¹⁹⁸ section 4:

‘If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid, he shall be guilty of an offence...’

¹⁹⁵ Financial Sanctions Notice, <https://assets.publishing.service.gov.uk/media/65d729912ab2b300117596d9/Notice_Russia_220224.pdf>, 22 February 2024, under the Russia (Sanctions) (EU Exit) Regulations 2019, SI 2019/855. See Thijs Cremers and Han Bouwmeester, 'Russian commercial warriors on the battlefield' in Sebastiaan Rietjens et al, *Reflections on the Russia-Ukraine War* (Leiden University Press: Leiden, 2024).

¹⁹⁶ See Clive Walker, *A Guide to the Anti-Terrorism Legislation*, *supra* n.15, chaps.3, 6.

¹⁹⁷ <<https://www.gov.uk/government/news/joint-statement-eu-us-and-uk-establish-atrocity-crimes-advisory-group-aca-for-ukraine>>. See further *Government Response*, *supra* n.9, para.45.

¹⁹⁸ See Nir Arielli, Gabriela A. Frei, and Inge Van Hulle, 'The Foreign Enlistment Act, international law, and British politics, 1819–2014' (2016) 38 *International History Review* 636.

'Foreign state' includes under section 30 any foreign prince, colony, province or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government. It is also an offence under section 5, to induce another to go abroad in order to accept any military commission or engagement.

The 1870 Act served the purpose of demonstrating official adherence to the principles of state recognition, non-intervention, and neutrality;¹⁹⁹ one might further venture that it reflected the bureaucratisation of war and hostility to private military or diplomatic initiative.²⁰⁰ There has never been a successful prosecution in connection with illegal enlistment or recruitment. The (Diplock) *Report of the Committee of Privy Counsellors appointed to inquire into the recruitment of mercenaries*²⁰¹ reported in 1976 that there were 'so many doubts as to make this part of the Act unsuitable, in our opinion, to continue to be used as a penal statute'. The *Diplock Report* called for repeal rather than any new enlistment offence, citing undue restrictions on liberty and difficulties of proof.²⁰² Subsequent reports have been equally dismissive of the 1870 Act.²⁰³ A subsequent Parliamentary attempt at reform in 2014²⁰⁴ was rebuffed by a Home Office Minister who pointed to viable alternatives, including offences in the terrorism legislation.²⁰⁵

Finally, consideration may be given to the National Security Act 2023²⁰⁶ which addresses 'foreign power threat activity' and is linked to new forms of investigations, powers, and offences. No further power to proscribe is granted, but those acting on behalf of other state interests can be subjected to State Threats Prevention and Investigation Measures (STPIMs), which allow for restrictions on associations, access to financial services, or the use of electronic communications devices. In addition, the Foreign Influence Registration Scheme (FIRS) requires the registration of arrangements to carry out political influence activities in

¹⁹⁹ Ibid, 651.

²⁰⁰ See Maartje Abbenhuis, *An Age of Neutrals, Great Power Politics, 1815-1914* (Cambridge, 2014).

²⁰¹ (Cmnd 6569: London, 1976) para.34.

²⁰² Ibid, paras.41, 42.

²⁰³ House of Commons Foreign Affairs Committee, *Sierra Leone*, *supra* n.145, para.92; Foreign Office, *Private Military Companies: Options for Regulation*, *supra* n.148, para.61.

²⁰⁴ Hansard (House of Lords) vol.751, cols.214-19, Lord Marlesford.

²⁰⁵ Ibid, col.217, Lord Taylor.

²⁰⁶ Home Office, *Legislation to Counter State Threats (Hostile State Activity): Government Consultation* (<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986013/Consultation_Document_-_Legislation_to_Counter_State_Threats.pdf>, 2021.

the UK at the direction of a foreign power. The 'enhanced tier' under sections 65 and 66 empowers the Secretary of State to require registration of specified activities for specified countries or foreign government-controlled entities where necessary to protect the safety or interests of the UK. Persons in arrangements with foreign powers are affected rather than the foreign powers themselves, but such contacts will be discouraged even though not banned as such. Thus, a 'soft' proscription arises for individuals rather than groups. Nevertheless, in so far as activities on behalf of the IRGC or the Wagner Group occurred in the UK, those individuals found responsible could be subjected to this 'proscription like power'.²⁰⁷ The national security pathway would bear the advantage of being expressly envisaged as a code against states and state agents and so circumvents the policy of non-ascription. However, the sensitivities of enforcement remain, and it is notable that no date has yet been set for bringing STPIMs into force.

6. CONCLUSIONS

This paper has considered the UK Government's stances in relation to the proscription as terrorist organisations of the IRGC and the Wagner Group. While both groups could be characterised as terrorist organisations within the Terrorist Act 2000, it may nevertheless be inappropriate to apply proscription. In both cases the main justification for proscription would be its symbolic value rather than any more pragmatic impact. So far, the Wagner Group alone has been proscribed, with less damage to the policy of non-ascription but still raising questions about consistency of treatment and criticisms of hypocrisy and political posturing. One might predict that the proscription of the Wagner Group will trigger campaigns and pressure for more orders against other state-related agencies, not least the IRGC. In the light of the identified gains and losses, it would generally be better for the threat posed by state-linked groups to be managed through sanctions and counterintelligence. Whilst its motives for hesitation may be self-serving, the UK government is rightly cautious about opening the path to the proscription of states and their agencies and so is right to adhere to the policy of non-ascription in most situations. However, the non-ascription policy may not suit all other countries and may not even suit the UK state in some circumstances. Thus, the UK State claims some attributes of a leading world power²⁰⁸ and thus wishes to exert

²⁰⁷ Hansard (House of Commons) vol.737 col.966 13 September 2023, Suella Braverman.

²⁰⁸ See *Global Britain in a Competitive Age* (CP 403: London, 2021) p.11.

influence and alliances on a scale beyond the capabilities or interests of many other countries which therefore may be less concerned about open channels and so on. Conversely, the UK State may apply a more strident and less hesitant stance where international backing emerges such as through UN sanctions or corresponding proscription regimes of allies. But proscription is not a precept of international law, and so the default stance is likely to remain non-ascription and a preference for instruments such as diplomacy and financial sanctions which relate to behaviour modification rather than outlawry.

Reflecting more broadly than the two case studies, proscription has been shown to be dependent on complex circumstances and politics and not just law. As operated in the UK, it is not a dispositive concept with a State/non-State bright line but seeks to map a smarter path between rigid legalism and political expediency. The discretion to apply proscription orders is, not by chance, placed first and foremost in the hands of a government minister and not a judge. Yet, there are rules around UK proscription laws which haul back the device from becoming a matter of crude political expediency. The Minister's decision is, as specified in the Terrorism Act 2000, subjected to parliamentary and, exceptionally, judicial scrutiny, and the knowledge that these forms of oversight are applicable helps to ensure that a degree of care is taken to build some defensible objectivity into the process. Added to these forms of specified oversight is the self-denying ordinance of the non-ascription policy which further confines the resort to proscription and may be especially significant because most orders relate to foreign, rather than domestic, organisations. As illustrated by the hesitation around the cases of the IRGC and the Wagner Group, even proscription-related criminal offences have not become entirely a political plaything in the UK. Conversely, the relative absence of some of these safeguards may lead to different applications of proscription in more authoritarian jurisdictions where there is too often a tendency to apply proscription bans with greater political fervour.²⁰⁹

²⁰⁹ See Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Report* (A/HRC/55/48, 2024) para.10.



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