Institution: UNIVERSITY OF BIRMINGHAM

Unit of Assessment: D32 Philosophy

Title of case study: Influencing Detection Technologies, Counter Terrorism, Ethics and Human Rights

1. Summary of the impact (indicative maximum 100 words)

University of Birmingham research for the DETECTER project identified legal and moral standards that detection technologies in counter-terrorism must meet in relation to privacy, discrimination and criminal justice. The project surveyed current and foreseeable applications of detection technologies, and explored their implications for human rights and ethics. The impact was achieved by a series of meetings held under Chatham House rules bringing together technology developers, counter-terrorism police, intelligence and policy makers with a network of ethicists, lawyers and NGO representatives. **Advice was offered to policy makers** on how to take counter-terrorism measures that protect both the security of European citizens and their human rights. This advice **influenced the preparation of professional codes of conduct** for users and developers of counter-terrorism and border-control technologies, **informed review and authorization of surveillance applications** by police officers, and **contributed to the implementation of privacy solutions in the development of new products used in detection** (e.g. body scanners).

2. Underpinning research (indicative maximum 500 words)

Where the research was carried out.
The DETECTER project was a Collaborative Research Project funded by the European Union Framework Seven Security Programme running from December 2008 until December 2011. Research conducted as part of the project concerned the ethical and legal implications of detection technology in counter-terrorism. The University of Birmingham led the project, and carried out the work in philosophical ethics which formed the foundation for the project. Key researchers based at the University of Birmingham were Professor Tom Sorell, then director of the Centre for the Study of Global Ethics, and Dr John Guelke, Research Fellow. A key partner in the project was Professor Martin Scheinin of the European University Institute, who worked on the legal norms of counter-terrorism and whose research informed the legal framework to be developed as part of the project. During the span of the project he has also held a mandate as the United Nations first Special Rapporteur on Human Rights and Counter-Terrorism. Partner institutions included the European University Institute in Florence, the University of Zurich, the Raoul Wallenberg Institute in Lund, the Norwegian Centre for Human Rights in Oslo, Abo Akademi University and the Danish Centre for Human Rights in Copenhagen.

Which issues were examined as part of the DETECTER project:

- the ethical risks of preventive counter-terrorism policing, including through use of profiling;
- the human rights implications of unilateral exceptions to international law and of pre-screening immigration controls involving detection technologies;
- the legal implications of data-mining in counter-terrorism;
- the legal possibilities for better regulation of surplus information gathered in the context of Internet monitoring for counter-terrorism purposes;
- the strengths and weaknesses of current monitoring mechanisms for counter-terrorism;
- the human rights risks and privacy implications of location-tracking technologies.

What researchers at the University of Birmingham achieved:

- they defined the position of liberal theory on the value of privacy;
- they analysed the circumstances under which intrusive surveillance and profiling techniques such as data mining may be permissible;
- they evaluated further 'moral risks' involved in the use of detection technologies beyond intrusion, such as the creation and multiplication of errors leading to false arrest or other

injustice, discrimination, damage to trust in the police and the so-called 'chilling effect'
- they assessed the compatibility of liberal theory with policing that is preventive rather than reactive;
- they established the extent to which surveillance and profiling should be considered forms of 'preventive policing'.

Project outputs

Outputs included **four scholarly publications** which addressed the issues listed above.

R1 addressed the permissibility of preventive policies, and in particular secret infiltrations of criminal groups leading to arrests before a crime is committed.
R2 discussed the possible moral costs of detection technologies, where the line between rigorous investigation of every possibility and counterproductively alienating the public may be a fine one indeed, especially when some of the risks of counter-terrorism are being taken for no significant benefit to public safety.
R3 reviewed intrusion, error, weakening of trust and 'the chilling effect' as moral costs of detection technologies and argued that the best technologies for avoiding the erosion of trust in authorities and chilling of political activity are those which are regarded as unintrusive, narrowly focussed on information directly related to the prevention of violent crime and unlikely to result in enduring false suspicion.
R4 assessed descriptive and predictive profiling, and argued that the extent to which privacy is invaded should be proportionate to both the relevance of the evidence and the gravity of the harm prevented.
R5 reviewed the position of liberal theory on investigation measures taken in preventive policing. Recommendaton Rec (2005) 10 of the Committee of Ministers of the Council of Europe suggests that the least intrusive special investigation measures should be used, if at all, only when the prevention or prosecution of serious crime requires it, and not in a way that conflicts with the right of anyone arrested to a fair trial. The principles reflect legal privacy protections under European Convention on Human Rights, Article 8, and Convention 108. It was argued that liberal theory supports the approach of Rec (2005) 10 by permitting the use of special investigative techniques in preventive policing if the crime that these techniques are intended to prevent is very serious, e.g. a terrorist attack. In particular, liberal theory permits the use of secret surveillance, if the choice of targets for the surveillance is evidence-based.

Outputs also included **ten reports (quarterly updates) to the European Commission** on new surveillance technologies. The ten updates have surveyed developments in surveillance technology across Europe, including new products coming to market as well as reporting on the changes to regulation in national legislatures and uses by national governments. The updates have also employed a taxonomy of different moral risks raised by the range of technologies considered.

3. References to the research (indicative maximum of six references)

Details of research grant:
DETECTER (Detection Technologies, Counter-Terrorism, Ethics and Human Rights). Framework Programme 7 Security Funding. PI Tom Sorell, Grant value €1,800,000.

Articles written by University of Birmingham researchers involved in DETECTER:

R1) Sorell T (2011), 'Preventive Policing, Surveillance, and European Counter-Terrorism', *Criminal Justice Ethics* 30, 1, pp. 1-22 **[DOI: 10.1080/0731129X.2011.559057]**

Articles written by University of Birmingham researchers and published on the DETECTER website **[available at: http://www.detecter.bham.ac.uk/documents.html]**:

R2) Guelke J (2011), 'Taking Moral Risks given Analysis of What's Wrong with Terrorism'.
R3) Sorell T and Guelke J (2010), 'The Moral Risks of Detection Technology'.
R4) Sorell T and Guelke J (2010), 'The Moral Risks of Profiling in Counter-Terrorism'.
R5) Sorell T (2009), 'The Moral Risks of Preventive Policing'.

A widely disseminated **Lessons Learned** document was also drafted by Sorell incorporating policy recommendations and responses to the criticism made by counter-terrorism policy makers,

technology users and developers.

4. Details of the impact (indicative maximum 750 words)

Impact has been achieved through six, two-day mini-conferences organised and coordinated by researchers at the University of Birmingham, and located at one of the partner institutions (Birmingham May 2009, Florence February 2010, Zurich June 2010, Lund November 2010, Oslo February 2011 and Abo May 2011). Each of these consisted of (1) open meetings attended by interested parties (including journalists, civil society and community representatives), and (2) closed meetings (under Chatham House rules to facilitate as much frank and open exchange of views as possible) between networks of ethicists and human rights lawyers, representatives from NGOs, technology developers and companies and their end users in counter terrorism police and intelligence services. Where feasible, there was substantial overlap between participants at the open and closed meetings.

The aim of the open meetings was to promote public discussion of specific themes of the project – for example profiling and data mining at the meeting in Zurich, and law and ethics of border security in Abo. They included presentations from Privacy International, the Royal United Services Institute, a Norwegian Public Prosecutor, a former head of GCHQ (British Military Intelligence) and the serving head of SAPO (Swedish Security Service). The aim of the closed meetings was to provide technology developers, counter-terrorism police and intelligence with direct feedback from lawyers and ethicists on the viability and ethics of their work (informed by current developments and research in the field).

At the closed meetings, participants included:

- technology developers (representatives from private technology producing companies)
- end users from counter terrorism policing and intelligence
- representatives from NGOs and European Human Rights organisations
- academics from the research projects also funded by the same European Commission Framework 7 programme
- policy makers from European institutions (representatives from FRONTEX, the European Union External Borders Agency and the Office of the European Data Protection Supervisor).

University of Birmingham research fed directly into these meetings. Specifically:

- research carried out for 'The Moral Risks of Preventive Policing' (which eventuated in the paper for Criminal justice Ethics') contributed to the advice given in the 5 meetings which took place after July 2009;
- research resulting in 'The Moral Risks of Detection Technology' contributed to the four meetings which took place after May 2010;
- research carried out for 'Taking Moral Risks given Analysis of What's Wrong with Terrorism' contributed to the two meetings which took place after January 2011.

Reports of each of these meetings have been written up as deliverables for the Commission by University of Birmingham researchers, and all deliverables have been publicised via the DETECTER blog, uploaded to the public website and since March 2011 they have also been sent to the DETECTER mailing list consisting of more than 60 technology developers, academics and policy makers.

Stakeholders were particularly receptive to University of Birmingham recommendations about the ethical use of counter-terrorism and border-control technologies (justified in outputs R1 and R3 and detailed in the Lesson Learned document) due to the recent implementation of the Lisbon Treaty which made the respect of human rights legally binding for EU institutions. By raising awareness about the ethical issues emerging in these contexts and providing clear recommendations, University of Birmingham research (see R2-R4 above) contributed to:

- **the creation of ethically informed and ethically sound professional codes of conduct** for the use of counter-terrorism and border-control technology (e.g., in the case of FRONTEX see source 2 below);
- **knowledge of possible infringement of human rights** that police officers require when

using such technology and reviewing and authorising surveillance applications (source 2).

As a result of the closed meetings described above, organised and coordinated by the University of Birmingham, the project promoted exchange of ideas between different users, and **significantly enhanced the participants' understanding and appreciation** of the ethics of counter-terrorism technology and measures (sources 1-4). The long-term impact of the research, however, is likely to be much broader. University of Birmingham research not only has informed the use and review of *existing* counter-terrorism technologies, but will also **inform the design of new technologies**. At the meetings, technology developers were able to obtain direct feedback on their products from end users (the counter-terrorism professionals) and from researchers, and the **suggestions made contributed to the implementation of privacy solutions in developers' products**. For instance, one attendee attests: 'this forum did contribute to the evolution of our privacy solution during the further development of our... product' (source 4). It is also hoped therefore, that future products will be more likely to respond to the needs of users without compromising the rights of targets in counter-terrorism units.

The final project conference organised by the University of Birmingham was held in Brussels in September 2011. The research findings were shared more widely than in the user groups, to representatives from EU member states, IBM and GCHQ and MEPs (70 participants). At the conference a series of policy recommendations were made by DETECTER regarding, for instance, thresholds for authorising surveillance, reliance on automated profiles and the use of watch-lists. Participants were able to debate and provide feedback on these recommendations – such feedback was taken into account before the recommendations were published following the conference. Research by DETECTER is specifically mentioned in the current FP7 Security Call as work that future proposals should take account of (source 5).

5. Sources to corroborate the impact (indicative maximum of 10 references)

[1] Factual statement provided by former member of West Midlands Counter Terrorism Unit, attendee.
[2] Factual statement provided by Principal Research Officer of Research & Development Unit to FRONTEX (the External Borders Agency), attendee.
[3] Factual statement provided by Managing Director, Epic (CT), attendee.
[4] Factual statement provided by Director - Product Management, Smiths Detection, attendee.
[5] Topic SEC-2013.6.5-1 Synthesis of results and reviewing of ethics, legal and justice activities in Security research in FP7 http://ec.europa.eu/research/participants/portalplus/static/docs/calls/fp7/common/32768-annex_13_to_the_decision_security_for_cap_en.pdf