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DOI
10.1093/ips/olaa006

Publication date
2020

Document Version
Final published version

Published in
International Political Sociology

International Political Sociology (2020) **14**, 382–398

Unfolding the Past, Proving the Present: Social Media Evidence in Terrorism Finance Court Cases

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During terrorism trials, social media activities such as tweeting, Facebook posts, and WhatsApp conversations have become an essential part of the evidence presented. Amidst the complexity of prosecuting crimes with limited possibilities for criminal investigations and evidence collection, social media interactions can provide valuable information to reconstruct events that occurred there-and-then, to prosecute in the here-and-now. This paper follows social media objects as evidentiary objects in different court judgments to research how security practices and knowledge interact with legal practices in the court room. I build on the notion of the folding object as described by Bruno Latour and Amade M'charek to research the practices and arguments of the judges through which they unfold some of the histories, interpretations, and politics inside the object as reliable evidence. This concept allows for an in-depth examination of how histories are entangled in the presentation of an evidentiary object and how these references to histories are made (in)visible during legal discussions on security and terrorism. The paper therefore contributes to the field of critical security studies by focusing on how security practices are mediated in the everyday legal settings of domestic court rooms.

On July 20, 2017,[1] the court in The Hague declared a young man, Nour,[2] legally dead and the allegations presented against him by the prosecutor inadmissible. The case of Nour is special because there was no certificate of his death nor proof that he was no longer alive. The prosecutor argued that in August 2014 Nour had traveled to Iraq with the intention of joining the Islamic State (IS).[3] In February 2015, different messages on social media suggested that Nour had died as a suicide bomber in Falluja. During the case, Nour's lawyer presented evidence showing that he had made a farewell video in which he spoke about dying as a martyr, which was posted and circulated online. In February 2015, Nour stopped sending messages through WhatsApp and using his Twitter account, and no online communicative activities have been registered since. The court accepted this as evidence that Nour was probably no longer alive.[4] Earlier, in a very similar case of a Dutch

[1] Court of The Hague, July 20, 2016, ECLI:NL:RBDHA:2016:8247, accessed October 22, 2018, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:8247.

[2] Nour is a pseudonym; the full name of the defendant is anonymized.

[3] Court of The Hague, July 20, 2016, 3.3.1, "Het oordeel van de rechtbank" [The judgment of the court].

[4] Court of The Hague, July 20, 2016, 4, "De beslissing."

Anwar, Tasniem (2020) Unfolding the Past, Proving the Present: Social Media Evidence in Terrorism Finance Court Cases. *International Political Sociology*, doi: 10.1093/ips/olaa006
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foreign fighter, the court[5] had refused to declare the defendant dead, arguing that "pictures and other footage online are not sufficient evidence that the defendant has deceased."[6] During one of the sessions of the trial, the father of the defendant presented pictures and short videos of the funeral of his son, which he had received through WhatsApp messages, to prove to the court that his son had indeed died in Syria. The court ruled that the source and authenticity of the material were not objectively verifiable and that (in)activity on social media was not sufficient evidence to declare his son dead. The (legal) question of whether foreign fighters have died is important for further prosecutions against them for terrorist actions, as well as for monitoring processes by national and international intelligence services.

These cases illustrate two important developments in current court cases concerning terrorist crimes. Amidst the complexity of prosecuting crimes that take place in an extrajudicial conflict area with limited possibilities for criminal investigation, social media activities have become increasingly important in terrorism court cases (FATF 2018, 37). Communication through social media platforms can provide valuable information on events that occurred there-and-then, to prosecute in the here-and-now. Equally important, it shows that the collection, evaluation, and interpretation of this material is not a straightforward process and presents legal professionals and researchers with new legal questions and dilemmas to which there is not yet an unambiguous answer (Van Veghel, Minks, and Janssens 2016). For example, what does it mean to bring this new material in front of the court, and what might be the possible legal and political implications? How do these technologies, in the form of social media, become such essential legal objects to prove terrorist offenses? How can we understand the role of WhatsApp messages, Facebook posts, or Tweets as evidence in the legal response against terrorism? In this paper, I ask these questions both to gain a better understanding of evidence and terrorism court cases and, more importantly, to elaborate on how these social media messages allow us to research the intersection of law, international security, and technology.

What is at stake here is both paying attention to social media evidence as an international legal object and making explicit the power and political agency it entails. Contributions on security and counterterrorism law have focused mainly on the preemptive character of the law (McCulloch and Carlton 2006; De Goede and De Graaf 2013) and the politics of exceptionality and normality in counterterrorism lawmaking (Neal 2012; Sullivan and De Goede 2013; Opitz and Tellmann 2014). This paper builds on the literature that seeks to understand the intersection between international law and security and aims to open a new space for researching intersections of law and security through the analysis of legal objects. Within legal studies, this focus on materiality has recently gained more attention (Pottage 2012; McGee 2015; Hohmann 2018). Researching international law's objects, in this case social media objects, shifts the focus from understanding law as abstract rules to understanding how law's authority is enacted through objects and practices (Hohmann 2018, 32). By studying terrorism trials, I aim to connect these debates on legal materiality to the literature on international security. The Dutch court case illustrates how these trials not only require knowledge on domestic regulations but enact knowledge on transnational security issues outside national borders. I aim to further the discussion within international political sociology (IPS) on law as a transnational practice by taking the legal materiality of these trials as the empirical focus. This approach opens new avenues for researching how international security knowledge is mobilized in legal practices and the introduction of new technology as evidence in terrorism trials.

[5] Court of The Hague, June 21, 2017, ECLI:NL:GHDHA:2017:2031.

[6] Court of The Hague, June 21, 2017, 5.1. Verklaring van (een rechtsvermoeden van) overlijden [Declaration of (a legal presumption of) death].

This paper further builds on the contributions in critical security studies that have focused on the politics of objects to understand how security knowledge is produced, contested, and enabled. We have learned how art objects can become forms of political critique by disrupting technologies or rituals of border practices (Amoore and Hall 2010); technologies as essential objects in security practices (Bellanova and Duez 2012); and technopolitical projects in their colonial context (Mitchell 2002). Researching objects not only enables a better understanding of security practices but also broadens the understanding of how these practices become enacted in other settings, like a courtroom. This paper aims to connect this literature on legal materiality to debates on international security by introducing the concept of the folding object, previously described by Latour and Venn (2002), Oorschot (2018), and M'charek (2014). The folded object, which I will introduce more extensively later in this paper, foregrounds the practices of unfolding different reconstructions of events and the tracing back of links to the object's history. According to M'charek (2014), it is the way these folds of temporalities are held together that makes folded objects politically relevant. In the case of evidentiary objects, it allows for a focus on the power that is embedded in the practices of evaluating legal evidence in terrorism cases by making explicit what historical events become visible while others remain unnoticed or are actively silenced. This is not to argue that these trials are political trials, quite the opposite, but to understand how legal decisions are formed by security knowledge and decisions. The folding object can, therefore, not only bring together literature on international law, politics, and security but push it to better understand how security knowledge is mediated in legal settings.

Within the relatively new and extensive legal framework to prevent and prosecute terrorism, terrorism financing specifically provides an interesting case study for studying social media as evidence. The Financial Action Task Force (FATF) recently published a report concerning the challenges of legal practitioners to present admissible evidence in their fight against money laundering and terrorism financing (FATF 2018, 33). Prosecuting terrorism financing, according to this report, presents a very distinct set of evidentiary challenges to the judiciary. For example, terrorism financing cases can involve classified information and span multiple jurisdictions. Contrary to other terrorist activities where networks appear to be kept stable to plan activities, financing and donation networks are constantly shifting, operating with different methods, and revenues might be generated from unexpected sources (FATF 2018, 33). To introduce social media activities as evidence is one of the suggestions of the FATF to the judiciary to overcome evidentiary challenges. Social media evidence can include, among other things, photographs, status updates, location registration, and communication to or from the defendant's social media account (Murphy and Fontecilla 2013). The specific challenges to prosecuting terrorism financing in comparison with other terrorist crimes make terrorism financing cases an interesting site for researching social media as evidentiary objects, which I will illustrate in this paper by drawing on two financing court cases.

The paper proceeds as follows. First, I describe the literature on legal materiality and practices to show the importance of researching legal objects when researching legal processes in court, including legal evidence. Then I give a brief overview of new technologies that have been introduced to the court as evidence to illustrate the legal discussions surrounding the presentation and admissibility of evidence. I furthermore describe why the concept of the folding object provides comprehensive tools to understand how objects become legal evidence. The second part commences with a sketch of the overall legal framework of terrorism financing. I elaborate on two court cases in which social media evidence became crucial for the court to formulate a conviction. I follow the folding practices in which time, space, history, and context are made (in)visible in court. In the conclusion, I sum

up how we can understand objects in the legal response against terrorism financing as bringing together politics, law, and technology.

Part I: Becoming Legal Evidence

Legal Objects

The focus on legal objects is heavily inspired by science-and-technology (STS) scholars, who approach objects not as self-evident but rather as enacted in the relations and practices that carry them or as effects of networks of relations (Law 2002). Within sociolegal studies, research on, inter alia, legal expertise emphasizes the importance of studying objects to understand how the law operates in practice (Leander and Aalberts 2013). In this paper, I aim to bring this literature to the debates within IPS on law. These debates have already contributed to researching how international law shapes the politics of state borders (Basaran 2008), the production of (non)knowledge (Aradau 2017), and how we can understand "exceptionalism" in counterterrorism lawmaking (Neal 2012; De Goede and De Graaf 2013). These contributions draw attention to understanding international law through its practices, reflecting critically on their social and political functions or consequences (Werner 2010). By bringing in an empirical focus on objects from sociolegal studies, I contribute to the existing debates on the intersection of international security and law and open up new avenues of understanding legal practices. To further clarify what this particular approach to studying law and evidentiary object entails, I turn to the question of what makes legal objects different from other objects or, more specifically, what makes an object act like a *legal object?*

Recently, legal scholars have turned to the study of legal objects to research how law is constructed and authorized through its materiality (Hohmann 2018). Gurtwith explains that legal objects acquire their legal character when they are thought of, or processed, in anticipation of how a judge would think or rule about it (Gutwirth 2015). In this sense, law and legal objects are a regime of enunciation. All objects and every person can become legal beings if they are captured by the correct juridical forms and shaped into legal discourse. To anticipate the judge's approach is to practice in full the obligations and particular constraints that make up and form the law (Gutwirth 2015, 131). McGee defines this process as "jurimorphing," or how nonlegal beings are used for legal purpose, to give consistency, direction, and objectivity to the legal trajectory of the case (McGee 2015, 64). Once objects are put into a legal form, they enter the legal arena, and they become a matter of legal dispute (Van Dijk 2015). In this process of disputing, objects can be challenged, excluded, or altered during the trial, as various objects and arguments are competing in this arena to be taken seriously and to become a legal obligation. The obligations connected, or the "chain of obligations" (McGee 2015, 75), is what forms the legal trajectory of statements and ultimately the judgment. These contributions help us understand how a knife, a blood sample, or a doctor's statement are not inherently legal but gain legal meaning by becoming part of a legal argument through practices of jurimorphing (McGee 2015, 75). This paper builds on this literature and asks what makes an object powerful enough to speak to legal and political questions in terrorism trials?

From Hearsay to Reality: Evidence for the Court

When photographs were introduced during court cases in the 1860s as evidence, lawyers questioned whether a photograph could give a reliable statement of the situation and how this object of evidence should be understood legally (Snyder 2004). Up until then, only written texts or witness testimonies could serve as evidence. Without being able to cross-examine a photo, it was unclear whether photos

could "speak the truth" or should be considered "hearsay from the sun" and therefore excluded as reliable evidence (Snyder 2004, 220). The question was therefore not only about whether the photo itself could obtain legal status but also how the court should understand the objects that make up the photograph (the sun, apparatus, chemicals) and whether they speak truthfully (Snyder 2004, 220). In an 1877 ruling,[7] a Texas appellate judge judged that all witness testimonies are based on the eyes, which he described as "photographs of nature's camera." The photograph does not need to talk, it can be included as a legal document, or as truthful text, similar to eyewitness testimonies (Snyder 2004, 220–21). The admissibility of video-evidence went through a very similar process: on the condition that the video is relevant to the material and accurately represents its subject, it can be brought before the court as evidence. Video-evidence can be used to show reconstructions of accidents or crime scenes or to tape confessions. How was this truthful and accurate reflection of reality discussed during the introduction of new materials of evidence in the courtroom?

Van Oorschot explains that this legal truth-telling, even though carefully guarded by procedures, remains a practice giving rise to multiple and specific ways of telling the truth (Van Oorschot 2018, 213). This multiplicity of truth-telling through evidence is described by Scheppele as "manners of imagining the real" (Scheppele 1994). What is presented and accepted as real or true evidence during a court case is the result of many competing "imaginations of the real," of which one eventually becomes dominant. In her article on a sexual harassment case in the United States, she describes how physical evidence is considered "tangible evidence, a visible trace of the past, that connects the legal problem now before the court with the time and place of the event in question" (Scheppele 1994, 1012). By analyzing the different narratives and evidentiary objects presented in the case, Scheppele shows that the production of physical evidence is often a byproduct of social relations (Scheppele 1994, 1012). Furthermore, to count as physical evidence in a criminal case, the object has to present something suspicious or not considered normal in everyday life. However, what passes for "normal" is not self-evident but a social judgment and a product of how the court imagines reality (Scheppele 1994, 1013).

Even with video-material evidence, which is considered very powerful evidentiary material as it combines audio and visual work, the question of whether it speaks truthfully to reality remains to be settled during court cases. Coleman (1993) describes how, during the trial of Rodney King, the video material was shown more than thirty times, at various speeds; paused at different moments; and subjected to lengthy analyses by the prosecution, defense, and experts. Even then, based on the same footage, both the prosecutor and the defense argued different stories of what happened (Coleman 1993). Even with the material convincingly showing police brutality, the all-white jury could not find the policemen guilty because the interpretation of the events on the video as self-defense against a threatening black man was closer to their "reality" than four police officers using excessive force (Coleman 1993). Schuppli (2014) describes this as the duality of the material evidence. On the one hand, evidence needs to adhere to the legal procedures of evidence: to have an unbroken chain of custody that is reliable and speaks to the case at hand. On the other hand, the legal "truth" to which these materials bear witness is the result of the translation of unfolded multiple interpretations and histories into legal formats. She explains:

> Elsewhere I refer to this condition of double-articulation as that of the "material witness." By this I mean an entity (object or unit) whose physical properties or technical organization not only records evidence of passing events to which it can actively bear witness, but also the means by which the event of evidence is itself made manifest

[7] Wiliam Eborn versus George B. Zimpelman, Administrator, and Company, 47 Texas 503 (1877).

> . . . Matter, in effect, only becomes a material witness when the complex histories entangled within objects are unfolded, translated, and transformed into legible formats that can be offered up for public contestation and debate. (Schuppli 2014, 292–8)

In sum, the discussions on photography and video material show that the law's demand for speaking truthfully is not self-evident. What makes evidence important objects in these (social) judgments is their capacity to have "complex histories entangled within objects" that "are unfolded" into legal objects. This focus on how histories are made visible allows us to research how social media evidence becomes a powerful object of truth in complex issues on security and terrorism financing. Research on histories folded into objects was previously introduced by Latour and Venn (2002), who speak of multiple histories in technology, folded together to describe the complexity and agency of technology. Rather than understanding technology as simply a means, the folds of objects force researchers to examine how this technology is remade, complex, and layered (Latour and Venn 2002). This focus on multiple histories and complex entanglements of time and space are essential to understand how technology in the courtroom becomes essential evidence able to connect histories for legal purposes. For this reason, the paper uses the concept of the folded object to analyze evidentiary objects in terrorism financing cases.

(Folded) Objects and (Political) Practices

Objects and technology that we use on a daily basis are more than simple tools. Our daily objects have a connection to the time and space in which they were created and to other objects that formed them. The folds of objects, according to Latour and Venn (2002), comprise exactly this sociotechnological relation, which allows for the connection of heterogeneous spaces, times, and agents that otherwise would not have existed (Latour and Venn 2002). An important contribution on researching the historical folds of objects is made by M'charek (2014), who argues that researching how time and space are made visible or remain folded helps us to pay attention to the politics they articulate (M'charek 2014). She uses the example of a DNA reference sequence to explain how the standardization of this sequence did not erase its racial history but folded it, making it almost invisible. It was therefore used without any questions in European laboratory practices. Through this analysis, M'charek (2014) illustrates that objects fold multiple histories inside them, even though this might not be immediately visible. By unfolding, or retracing the temporality and spatiality of the object, we can understand the controversies of that object, in this case the racialized politics around DNA research. She argues that what makes folded objects politically interesting is not necessarily the temporalities or spatialities that they carry but the way the objects are (un)folded and how histories or controversies are made (in)visible (M'charek 2014, 50).

Van Oorschot uses the concept to research the criminal law case file as a folding object (Van Oorschot 2018). The case file is a written document that consists of statements, photos, videos, and witness reports. During the trial, correct reconstruction of the events in the past is needed to ensure a judgment in the future. The case file is an essential object, as it not only folds the history and future of the case inward, but it can also be unfolded itself during court trials. For example, discussions or objections might lead to the exclusion of certain documents, or new information might be included in the case file. Van Oorschot's approach of taking the case file as a folding object shows how the file mediates the relation between the objects and histories it contains while, at the same time, functioning as a form of road map that lays out the legal questions that demand an answer (Van Oorschot 2018).

To understand how histories are (un)folded and what knowledge becomes "truthful" through this (un)folding practice seems to be essential to understanding how legal judgments are reached about evidence in trials. Similar to the DNA sequence,

or other technological objects, the social media activities used in terrorism financing cases can carry multiple interpretations depending on the political or security context. Like a racialized history, these can be made visible, ignored, challenged, or amplified. I am interested in how this happens during terrorism financing court cases and what we can learn about the intersection of law, security, and technology in this practice. I focus specifically on the practices of the judges in these cases. There are different reasons for this approach. The first reason is strongly related to how the concept of folding objects is deployed in this paper. I am interested in how different possible legal interpretations and ways of giving meaning to the histories inside the objects are part of the judgment. Instead of a focus on temporality and spatiality, like M'charek I am interested in broader interpretations of the *histories* folded in the objects, as Schuppli (2014) describes. In this paper, I therefore use (un)folding as a tool to understand how judges reconstruct a sequence of events and their interpretations to come to a verdict. This practice goes further than interpretation or presenting legal arguments: it allows for an analysis of how histories are interpreted, stitched together as a "truthful" story on the evidence. These histories can contain ways to give meaning to spaces and time but also to actions, events, or enactments of emotion. The second reason is related to the character of the law. As Latour discusses, contrary to scientific outcomes that continue to be contested, the law comes to an "arrêt" after a judgment (Latour 2010). Legal discussions come to an end, and their outcomes become standardized legal facts that can serve as precedents for the next cases. Furthermore, a judgment is more than an "arrêt," it is a judgment on the factual or the legal truth (Valverde 2009, 7–11; Van Oorschot 2018, 212–14). Courts are producers of knowledge, and, through official judgments that distinguish between facts and nonfacts, judges are engaged in the exercise of power (Scheppele 1994, 997) and the construction of a legal narrative. It is the role of the judge to investigate and decide whether and how evidence speaks "truthfully to reality" (Van Oorschot 2018). Similar to how Jasanoff argues that law and science jointly produce scientific and social knowledge (Jasanoff 2009, 8), court judgments on terrorism cases produce knowledge that is relevant for security facts and practices.

Part 2: Folding Practices in Terrorism Financing Trials

Methodological Reflections

In this paper, I focus on two court cases in two different domestic jurisdictions in Europe. One of the cases is a Dutch appeal case that was concluded in 2017. The defendant was, among other charges, convicted for financing terrorism in the period between January 1, 2014, and November 25, 2014. There are multiple counts of terrorism financing but, for the purpose of this paper, I focus on one specific count of terrorism financing in which WhatsApp conversations were included as crucial evidence. I chose this specific moment because the other terrorism financing counts were conducted with other defendants, and an analysis of their conversations would have been too elaborate for the scope of this paper. I selected this case to illustrate how legal objects become connected to broader discourses on security and terrorism. As this was one of the first cases in the Netherlands on terrorism financing, the reasoning behind the judgment forms part of the jurisprudence for further terrorism court cases. The other case is a first attempt case in the UK. In this case, there were also multiple counts of terrorism financing, but they are discussed together in the sentencing remarks. I selected the second case because the process of unfolding, emphasizing, and silencing multiple possible histories is very evident, on which I will elaborate below.

I obtained the Dutch transcript online—most of the judgments are publicly available through www.rechtspraak.nl. The judgment is very elaborate, with multiple

charges against the defendant, an elaboration on the relevant legal framework, and background information on the situation in Syria and the current (legal) status of IS and Jabhat Al-Nusra. Even though financing was only one of the charges, the other chapters in the judgments offered useful background information and seemed intertwined with the defendant's financial activities. I took the discussion on terrorism financing as the main focus of analysis, but I considered other relevant argumentations of the court as well. For the analysis, I focused on identifying the social media activities that were crucial in the judgment. In these two cases, social media activities consisted mainly of conversations on online platforms such as WhatsApp. Social media as evidence can include a range of activities including posting photos, videos, and status updates (Murphy and Fontecilla 2013). Even though there are references to pictures, the judges—and therefore this paper—mainly focused on written and private conversations, rather than on public posts or tweets. The focus is nevertheless relevant because, as one Dutch defense lawyer[8] put it, the conversations have an interesting relation with (sometimes unknown) offline events that need to be explained and linked to the online conversation. This shifting back and forth between offline and online context emphasized the applicability of using the folding object to analyze how the judges in these cases make this connection. I first highlighted the other objects and legal arguments that were mentioned by the court in relation to these activities, and, through this, I tried to map how the conversations over WhatsApp were linked, explained, or contested by referencing other objects. A visual overview of this exercise is included in the analysis.

The transcript of the case in the UK was received from the court upon request. The sentencing remarks were much shorter than in the Dutch case but included not only the judgment from the court but also the pleas and argumentation of both the prosecution and defense lawyers. This was very useful in order to situate the judgment in the different argumentations presented. As for the analysis, I went through the document in the same way as the Dutch court case. A visual overview of this is also included in the analysis. I was unable to interview the judges in either case, and, therefore, only the arguments that are included in their judgments are used as data. In order to gain a better understanding of the general legal questions and trends in prosecuting terrorism financing, I deployed other qualitative research methods to gain a better general understanding of these court cases. I observed several terrorism financing court sessions; I have had informal conversations and tape-recorded interviews with lawyers, prosecutors, and expert witnesses from multiple European countries; and I attended conferences and meetings where legal practitioners presented on their practices in prosecuting terrorism financing. I have also researched the case files of two terrorism financing cases to understand what kind of material is collected and included in the case files that serve as the basis for these court cases. I use this knowledge as a form of context and background information. I have not spoken with any of the practitioners who were directly involved in the empirical cases in this paper. To include this context and background in this paper, I present a short overview of the relevant legal framework prior to turning to the cases.

The Legal Response against Terrorism Financing

The rationale behind legal measures against terrorism financing was presented by politicians as very straightforward: terrorist operations cannot succeed without money. Their activities, such as buying weapons, traveling, and recruiting, will create a money trail that law enforcement agencies can follow, disrupt, and even prosecute (Walker, King, and Gurulé 2018). A financial record is considered more reliable than other forms of intelligence, is easily governed by law, and can be used to bring these perpetrators to justice in front of a (domestic) court (De Goede 2018).

[8] Field notes, interview with a Dutch defense lawyer, November 14, 2018, Amsterdam.

This straightforward representation is, however, disputed by evidentiary challenges that arise in practice, described earlier in this paper. One of the main challenges of proving terrorism financing for the court follows from the preemptive and broad formulation of the legislation. What needs to be proven in court is the act of financing (*actus reus*), which includes transferring but also collecting, fund-raising, and receiving contributions with the intention (*mens rea*) to finance terrorism.[9] This criminal intention is defined as knowing or having reasonable cause to suspect that the money may be used for terrorist activities. There is no obligation to prove that the money sent was used in a terrorist attack nor that the defendant supported a terrorist ideology. This language of preemptively criminalizing activities before an attack has taken place fits the precautionary trend of security policies (McCulloch and Carlton 2006; Opitz and Tellmann 2014). Information and the imagination of a possible future have become an essential part of the practice of counterterrorism legislation (Kessler and Werner 2008; Borgers and Van Sliedregt 2009; De Goede and De Graaf 2013), in which spatiotemporal logics are more and more focused on the identification of potential violence (De Goede 2014). One of the challenges with presenting evidence to bring a possible violent future into the courtroom has previously been discussed by De Goede and De Graaf (2013), arguing that the precautionary character of legal proceedings resulted in the presentation of intelligence evidence in court.[10]

Social media activities have become important points of analysis in the fight against terrorism. Different terrorist groups, especially IS, have used social media platforms to campaign for their cause, recruit new members, and raise awareness online (Keatinge and Keen 2019). According to Keatinge and Keen (2019), social media has also been essential in raising funds. They illustrate that fundraising campaigns and coordination of the "financial jihad" on social media are important ways in which terrorism financing can be detected and disrupted (Keatinge and Keen 2019, 39). As mentioned before, these social media activities are increasingly finding their way to the courts. The prosecution, as well as law enforcement agencies, draw heavily on open source research and information on social media to contextualize suspicious (financial) behavior. By describing (un)folding practices in the two court cases, I illustrate how conversations on social media become powerful objects of evidence through unfolding practices.

Case 1: Did John Go Shaheed?

The appeal court in Den Haag convicted a man to a jail sentence on October 6, 2017. Among other charges, the defendant was brought to court for sending money to acquaintances in Syria. During the trial, the defendant[11] admitted that he traveled to Syria in November and returned in December 2013. During his trip, he met John and George, who were recipients of Mike's financial support. In the judgment, the court reconstructed this transaction through information retrieved from social media conversations. In a WhatsApp chat on January 6, 2014, Mike said to John: "There is a fanny pack too, there is money and so in there, keep it with you." On January 25, 2014, George replies on behalf of John: "John has

[9] Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), OJ L 141/73.

[10] "Much of this information relies on classified pieces of intelligence, that have to be 'converted' into admissible evidence during a court case" (FATF 2018).

[11] The names of this case need to remain anonymous. In this paper, the defendant is Mike. Recipient 1 is named John, and recipient 2 is named George.

received ur bag."[12] The court accepts this conversation as credible evidence of the transfer because it reveals a logical sequence of events: the time that Mike spent in Syria during which he left goods and money behind (probably November and December 2013); the time that Mike notified John about the money (January 6, 2014); and the moment George confirmed the receipt of the money (January 25, 2014). The evidence of the act is not contested by the defendant. It is the question of *mens rea*, or the intention of this transaction, however, that remains unanswered by this conversation and becomes an important legal question during the case. How to prove that Mike willingly left money that could be used for terrorist purposes?

The defense argues that this money transfer and his presence in Syria were for personal reasons. According to the lawyer, Mike was planning to start a transportation company in Syria and traveled to the area to do market research. The money transfer to John was not to finance terrorism but was intended as financial support for a friend. Furthermore, the lawyer argues that there is no evidence that the money Mike left in Syria benefitted a terrorist organization. The prosecution, however, argues that Mike knew at the time of the transaction that his friends were involved in terrorist activities, and the transaction could be used for the financing of these terrorist activities. To judge the intent of the transaction, the court, therefore, considered another conversation between Mike and George. On September 23, 2014, Mike asks George: "Did John go shaheed?" George confirms that John "went" shaheed (died as a martyr) and answers, "he was in soooo much peace."[13] This becomes the essential evidence whether Mike had knowledge about John when he left him money.

The judges start with an examination of John. They note that he speaks the same language as Mike (Dutch) during the chat conversations. After his death, Mike contacts John's sister using a phone number with the Dutch land code and speaking Dutch. Earlier police investigations show that John has willfully traveled to Syria from the Netherlands, which makes him a traveler in Syria and not a Syrian national.[14] The specific location that John traveled to is then identified by experts as an area under the control of Jabhat al-Nusra. Based on the conclusions of an expert report on Dutch foreign fighters, the prosecution argues that young men who traveled to certain areas in Syria after the beginning of 2014 are very unlikely to escape involvement in jihadist and terrorist activities.[15] These notions of nationality and geographical location become entangled with security knowledge by experts to conclude that Mike and John should be classified as foreign fighters and that their activities should be examined through this lens. In the security literature, the link between law, security, and territory is often researched through a lens of exception or extralegal approaches (Basaran 2008). In this case, the link between law, security, and territory, however, is based on a legal decision by a Dutch court on areas and activities outside its own jurisdiction. Contrary to most practices of legal identification of territories, the Dutch court has defined the legal rights and status of a Syrian space as terrorist related. It is a fundamental decision, as this identification of a territory under the control of Jabhat-al Nusra becomes an important fold through which the message is interpreted.

Neither John's nationality, nor his stay in Syria, are sufficient to prove that he was involved in Al-Nusra's activities or that Mike had any knowledge of this. The

[12] Court of The Hague, October 6, 2017, ECLI:NL:GHDHA:2017:2854. 7.3.4, De door het hof vastgestelde feiten [The facts established by the court].

[13] Court of The Hague, October 6, 2017, 7.3.4.

[14] Court of The Hague, October 6, 2017, 7.3.4, De door het hof vastgestelde feiten [The facts established by the court], Onderdelen 2. C en D van de tenlastelegging.

[15] According to the report, even if Syria travelers are involved with terrorist organizations, it is very unlikely that they are allowed to only execute civil functions within the organization (Weggemans et al. 2016).

judges continue explaining other parts of this conversation in accordance with their categorization as foreign fighters. The court aims to understand why and how John died, looking specifically at how Mike refers to him as *shaheed*. Literally, the word *shaheed* means "witness," but it is also used for an individual who dies for an ideological, including religious, cause.[16] Even though the word has a rich history and multiple possible interpretations outside a religious or Islamic discourse, the court understands *shaheed* only as one of the promised prospects of joining the armed jihad, while other meanings of *shaheed* are not discussed.[17] The judge states that it: "especially considers the description of John as a policeman by Mike, the comment that he was on a mission, together with the question whether he went *shaheed*"[18] as evidence that the transfer of money is terrorism financing.

The conversations between Mike and his friends in Syria allow for multiple legal narratives on the money transfer. After all, there is no explicit mention of sending money to plan a certain attack or to support a terrorist organization. For the court, three important concepts within the conversations are connected: First, the identification of Mike and John as Syria foreign fighters through expert reports and testimonies relates any further activities in Syria to terrorist organizations or activities. The court, mobilizing security knowledge, concludes that young men who travel to areas controlled by terrorist organizations are unlikely *not* to be involved in terrorist activities. This understanding is not only a legal identification of a different jurisdiction but also links John's daily activities of policing and keeping order to this territorial classification and his status as a foreign fighter. Following from this identification, the court only considers a specific interpretation of martyrdom (s*haheed*) and concludes that John must have been involved in terrorist activities. Mike's visit to the same area and the nature of his contact with John are indicators for the court that Mike must have had knowledge of these activities. The links between the identities and activities of foreign fighters, expert knowledge on areas in Syria, and the interpretation of martyrdom, seem to exclude the defense's argument as a truthful reconstruction of the events. The way in which the different histories are unfolded from this conversation allows for powerful objects of evidence, referring to notions on nationality, territoriality, and security knowledge on terrorist organizations.

This conclusion is not a normative stance against the interpretation of the court, as the defendant indeed seems sympathetic to IS. This analysis is an illustration of how a seemingly simple conversation becomes an important subject of debate on whether the defendant has financed terrorism. This verdict is more than a judgment on terrorism financing, as it allows for very specific interpretations of security knowledge on territory and control in a different jurisdiction. These legal conclusions have important consequences for how further activities related to this territory are interpreted by the court. The identification of individuals as foreign fighters and of territories as inevitably related to terrorism seems straightforward for the court and even removes or silences other possible interpretations of these activities or words outside of a terrorist context. This is summarized in Figure 1.

[16] For an elaboration on the contextual interpretations of the word *shaheed*, see, for example, Baker 2007.

[17] ". . . waarbij het sterven als martelaar wordt gepresenteerd als een van de vooruitzichten binnen de context van de gewapende jihadstrijd." Court of The Hague, October 6, 2017, 7.3.4 De door het hof vastgestelde feiten [The facts established by the court].

[18] "Meer in het bijzonder heeft het hof met betrekking [betrokkene 6] gelet op de verwijzing door de verdachte naar de functie van [betrokkene 6] als politieman, de opmerking dat hij op (andere momenten) op missie ging in samenhang met de vraag van de verdachte of [betrokkene 6] als martelaar is gestorven." Court of The Hague, October 6, 2017, 7.3.4 De door het hof vastgestelde feiten [The facts established by the court].

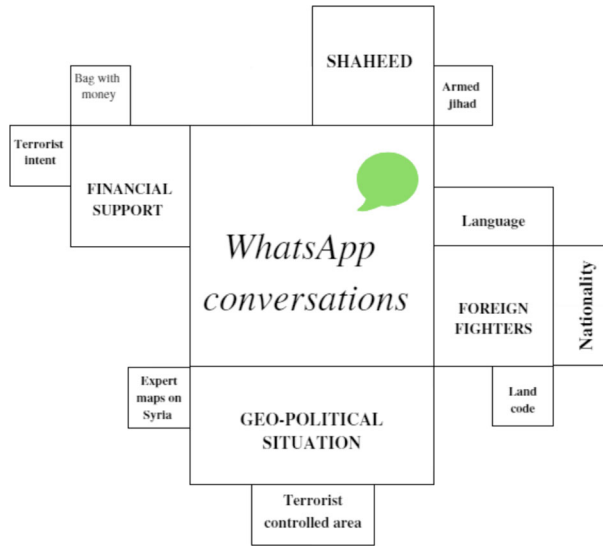

Figure 1. A visual overview of the conversations that can be unfolded like a **box**. It emphasizes how histories can be opened and folded back inward and how they can be unfolded into more detail. The size of the boxes does not represent the importance of the history but rather shows the fluid nature of the process

Case 2: I Got It on Amazon

On April 9, 2018, Nadia[19] pleaded guilty to two counts of terrorism financing. The first count concerned the actual transfer of funds (a total of more than five thousand pounds) to her husband in Syria, while the second count concerned the purchase of goods for possible transfer. When Nadia was arrested, she stated in her police interview that she believed her husband resided in Turkey where he intended to start a business. Nadia made three transfers of money to her husband between January and August 2015. All transactions included intermediaries, and, for two transactions, she involved other individuals who were unaware of the exact destination and purpose of the money. Through the involvement of these third parties, the police were able to arrest Nadia, and it provided the prosecutor with enough evidence to prove the *actus reus* of the first count. The second count, however, is particularly interesting for this paper for two reasons. First, it involves goods that have been purchased but not yet sent. As described above, the precautionary character of terrorism financing legislation includes criminal liability even without an actual transaction of money or goods. It is furthermore not relevant whether the goods or money will eventually be used for a terrorist attack, as long as they were bought or collected with the intention to finance terrorism. For this second count, therefore, the *mens rea* is an essential part of the evidence, but there are fewer traces of a physical transaction to prove the argument. For this reason, the analysis focuses specifically on the second count of the case.

In July and August 2015, the defendant ordered several items through her Amazon account. These items included external battery chargers, solar panels, flip flops, and boots. There is evidence that the goods were delivered to the house of the defendant, but there is no indication as to whether these goods were further transported to Turkey or Syria. The defendant, Nadia, bought these specific items on the request of her husband. He provided instructions for the goods and how to send them through Threema, an application that presents itself as a messenger that "grants full anonymity, end-to-end encryption and prevents the collection

[19] Nadia is a pseudonym.

of meta-data."[20] When asked about these conversations and purchases, Nadia initially denied any knowledge of the possible terrorist activities of her husband. However, when confronted with their conversations on Threema and a picture of her husband in combat gear, Nadia admitted that she was aware of his true daily activities and location. During the court sittings, Nadia's defense lawyer argued that she felt forced by her husband to send money and she felt it was her obligation as a wife to contribute to her husband's wellbeing. The defense further argued that the transfers happened over a short period of time, and, since the last transfer, she had withdrawn from her husband and his family, who she experienced as oppressive and controlling, and changed her life for the better. The fact that the items were not sent to her husband and that other promises of sending money were not followed up with action could serve as indications that Nadia was trying to distance herself from his activities, according to the defense's plea.

The prosecutor, however, argued that the messages did not indicate any proof of an abusive relationship or that Nadia's actions were the result of pressure or bullying. The prosecutor emphasized that the activities show significant planning and communication over a sustained period of time. In the communication between Nadia and her husband, and the indication that she would provide more funds, the prosecution found no proof that this was not genuine. The court had to unfold the conversations to judge how serious the offenses were and to what extent they prove the intention of the defendant to finance terrorism. In order to prove terrorism financing, it needs to become clear from the evidence that the defendant knew or had reasonable cause to suspect that this money and equipment could be used in terrorist activities. The court first examined, aside from the content of the message, the use of the medium "Threema." The messages were found by the police after they discovered instructions on the phone from Nadia's husband on how to install the encrypted app. The use of such a messenger, compared to the Facebook messenger application or WhatsApp, turns out to be relevant for the case, as the judge claims: "I am bound to agree with the prosecution that there is an aggravating feature in the use of (relatively simple) encrypted communications." A more secured platform to exchange messages points to these messages as secretive and therefore more suspicious. Separate from the actual content of the messages, the medium of technology that is used to transfer messages becomes legally relevant, and the history of the way the technology is encrypted becomes the subject of unfolding and interpretation.

The messages between Nadia and her husband contained explicit instructions on how to transfer the money and which equipment to buy and send. The conversations also included messages about drone strikes, a "brother" being wounded in combat, and the possibility of being granted shohadaa (martyrdom). The judge qualified these messages as "the most explicit jihadist messages." Similar to the Dutch court, the British court acknowledged that to die as "shaheed" is a clear link with terrorism. Furthermore, the objects (drones, clothes) and activities (being wounded) discussed in the messages were interpreted by the court as indications of involvement in jihadist armed activities, comparable to the arguments presented by the Dutch court. The crucial legal question was different, however, from the Dutch case, as we will see. For example, these "most explicit jihadist" messages date from September 2015. The photograph of her husband in a combat outfit, which eventually made Nadia confess, was dated February 2016. The last transfer, however, from Nadia to her husband was dated August 2015. The social media evidence that, according to the judge, was most important to prove the awareness of terrorist activities, and most crucial in securing the confession, was dated *after* the transfers. Furthermore, it is in exactly this period that Nadia argues she was trying to distance herself from her marriage and started to make excuses for not sending money and

[20] https://threema.ch/en.

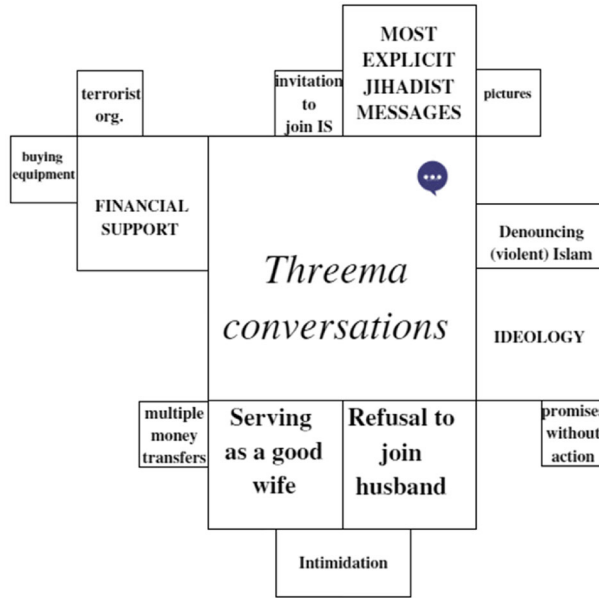

Figure 2. A visual mapping of the possible ways of unfolding the messages

refused to join him in Syria. How does the court relate the enactment of these different histories in the conversations to the merits of the case?

On one hand, the content of the messages shows that Nadia is guilty of collecting and transferring money to a man involved in terrorist activities. On the other hand, over time, the conversations can also be unfolded with the statements that Nadia was trying to distance herself from her husband and in-laws and to build a new life with a new partner. More than in the Dutch case—where the non-terrorism-related arguments were almost immediately excluded from the folding process—in this case, the judge can unfold and interpret the interactions of Nadia and her husband in different ways or as different manners of imagining the "truth." In this case, the court accepted the arguments presented by the defense as a mitigating factor but nevertheless concluded that Nadia's role in supporting an IS-fighter was central in ensuring her husband could continue fighting in Syria. The emphasis on the jihadist content of the messages, the instructions that were followed by concrete action, and the encrypted nature of the messaging app became important legal arguments to prove Nadia's involvement in terrorism financing. At the same time, other enactments of history, such as Nadia distancing herself from her husband, making promises that were not followed by action, and denouncing violent ideology, were also unfolded but gained less legal weight to impact the judicial trajectory of the trial. Returning to Scheppele's elaboration on self-evident evidence, what speaks for itself in these messages is that Nadia sent money and promised to send more to a man who was radicalized and supportive of terrorist organizations. What doesn't speak for itself are the traces that are not explicit in the communication between Nadia and her husband but which hint at the struggle of Nadia with his intimidation. As Scheppele describes the evidence in cases of women claiming harassment:

> In all these situations "nothing has happened" because the oppressions are not made visible in the world through physical evidence . . . women may feel the invisible violence in their lives as real presence, but such real presence is hard to document unless it is converted into the sort of violence that leaves physical traces. (Scheppele 1994, 1015)

Indeed, what gains legal weight is Nadia's confession that folds the messages from 2016 and the transactions from early 2015 together, making other times and events less visible. The conversations on Threema speak more to a sequence of events on planning, strategizing, and willfully sending money to Syria. The way time and events are unfolded in the sentencing remarks of the judge make the conversations admissible and crucial evidence to lead to a conviction, a sentence in which these actions fit the security practice of punishing terrorism financing despite personal or emotional relations between sender and receiver. This is visualized in Figure 2.

Conclusion

Courts allow multiple stories to be told, many dialects to be heard, and different imaginaries of reality to be taken seriously (Scheppele 1994, 1021). To do so, the court carefully weighs and hesitates over the objects and arguments presented as evidence (Schuppli 2014). The discussions or controversies over these objects are useful to understand the developments and boundaries of international law and its impact on the social and political reality in which law operates (Hohmann 2018). In this paper I focused specifically on social media objects to understand how new technologies are discussed and become powerful enough to function as credible and truthful legal evidence for the legally and politically complicated questions that arise in terrorism financing court cases. By using the concept of the folded object, I illustrated how this new form of evidence brings together knowledge on politics, technology, and law. This concept is a contribution to the debates on law and politics, as it allows for a detailed analysis of how different histories are carried within evidence and how some histories are made or kept invisible, while others become crucial in reaching a verdict.

In the Dutch case, the court was actively involved in reconstructing the political situation in Syria to come to a legal decision about the content of the messages. Attending to how the folds of objects are connected and interpreted provides more insight into how security knowledge on terrorism becomes essential in the practice of the law. The legal story of the folds of a social media object excludes the possibility of young men traveling to Syria without terrorist intentions but constructs and confirms a political and legal discourse on radicalized foreign fighters going to Syria. Sending money to foreign fighters in Syria, whatever the personal connections or motivations might be, is sentenced as terrorism financing. In the British case, the different imaginaries of the real in the process of (un)folding are more obvious. Aside from the contextualization, in this case the encrypted platform and technology itself were also jurimorphed and interpreted as suspicious and secretive and criminalized as such. Furthermore, in this case it becomes evident that there were two possible ways to unfold these messages. The first way, as presented by the defense lawyer, tells the story of a woman trying to please and later escape her dominant husband. The second way of unfolding tells the story of foreign fighters and their financial support as terrorism financing. The process through which the conversations and pictures became legal evidence was not simply deciding on "truthfulness" but engaged in folding history, politics, and emotions in a way that supported a heavily securitized discourse on terrorism with very little space for other interpretations. What makes this analysis particularly interesting is that, considering the novelty of the practice and the limited access to credible evidence, this securitized discourse and knowledge become dominant and largely uncontested in legal practices. Tracing these histories is therefore necessary, as this paper demonstrates, to make alternative and personal narratives visible.

By making these (un)folding practices explicit, the concept of the folded object pushes the current debate on international law and security by further describing how this results in particular dominant forms of legal knowledge in the international response against terrorism (financing). The prosecution and sentencing of

terrorism financing is not straightforward but is a new and highly contested international practice that raises questions about international regulations, legal decisions on events in other territories, and international security practices. Focusing on legal folded objects helps to make clear how security knowledge is mediated in legal settings and makes visible how certain knowledge-patterns become dominant while others are silenced. This is important, not only to critically push back on the narrow (legal) interpretations of terrorism but also to pay attention to how security knowledge pushes out explanations that are personal, emotional, or more nuanced. The attention to legal objects opens up new ways of understanding legal practices in a transnational context, by tracing choices and histories that otherwise might have remained unnoticed.

Acknowledgements

This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation program (grant agreement no. 682317). The author wishes to thank the reviewers and the editorial board of this journal for their insightful comments and suggestions. Furthermore, the author is grateful for the comments of Marieke de Goede and Beste İşleyen on earlier versions of this paper. The paper also benefitted from the contributions during the workshop STS and International Relations: Politics, Practices and Methods in Bochum, October 2018.

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