Part II  Responses at the National Level
Chapter 3  The Response of the United Kingdom’s Legal and Constitutional Orders to the 1991 Gulf War and the Post-9/11 ‘War’ on Terrorism

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1 Introduction and Overview

This chapter examines the impact of terrorism on immigration law and asylum law in the United Kingdom – particularly those parts concerned with national security – in respect of two rather different ‘wars’. Section 2 considers the response of the United Kingdom’s legal and constitutional orders during the First Gulf War (1990-91). Section 3 does the same with respect to the post-9/11 ‘war’ on terrorism. This section briefly places the responses in context and highlights points of contrast between them, and the key factors shaping them, the better to enable appreciation of the more detailed analysis in the rest of the chapter.

At first sight the central elements of the response in each ‘war’ appear the same. As regards immigration law, the focus is firmly on the exclusion, curtailment of residence or deportation of foreign nationals thought to threaten national security, or their detention without charge or trial, ostensibly under the ancillary powers of detention in immigration legislation, where deportation was precluded. As regards asylum law, the most direct impact on obligations under the Refugee Convention is the invocation of the ‘national security’ exceptions in Articles 1F and 33(2). But the impact goes wider than that. The link between some asylum seekers and a perceived security threat has rendered colder the climate for all asylum seekers and further contributed to the reduction in substantive and procedural rights of asylum seekers in United Kingdom law and policy since 1990. However, it is also important to view this development against the background of strenuous efforts on behalf of the government to reduce the flow of asylum seekers by a variety of tools, such as accelerated determination procedures for manifestly unfounded claims, safe countries of origin and safe third country concepts, the removal of the suspensive effect of appeals, and the reduction of welfare benefits, especially for those asylum seekers who fail...