

Combating International Terrorism

Waseem Ahmad Qureshi

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COMBATING INTERNATIONAL TERRORISM

*Waseem Ahmad Qureshi**

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INTRODUCTION

Terrorism has become the predominant issue in the international arena, altering the primary focus of the international community from battling poverty, environmental degradation, and aggression to assisting weak and failing states to combat and repress terrorism.¹ Acts of terrorism are the most atrocious form of crimes against humanity, demonstrated by the events of September 11, 2001, which established that, above all crimes, international terrorism is the apogee of belligerence against human rights and international order at the global level. International terrorism encapsulates various forms of human rights violations; whatever definition is given to terrorism, it still infringes all basic human rights guaranteed in the Universal Declaration of Human Rights (UDHR).²

International law is governed mainly by the law of treaties, and terrorism is the principal violator of a considerable number of treaties on human rights. For example, terrorism violates the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, among many others.

Generally, terrorism can be defined as an act or application of fear and the threat of compelling a person or group of people to do (or not do) something, which they would otherwise not do. Conversely, institutions, states, and scholars have no consensus on the scope of the definition of the word “terrorism”; different definitions have been proposed and used by various organizations. This ambiguity has led states to misuse the word to deny individuals their human rights, including individual rights, such as freedom of expression or religion, and collective group rights, such as the right to life or the freedom to practice religion.

The first part of this Article will scrutinize the characterizations and explanations of “international terrorism” given by different organizations and renowned scholars, and it will discuss the scopes of those definitions.

1. ANTONIO CASSESE, INTERNATIONAL LAW 463 (2005).

2. See generally U.N. Universal Declaration of Human Rights (1948).

The second part will further elaborate on the subject with the political deliberation of terrorist events, the criminalization of terrorism and the derogation from fundamental human rights in the absence of an actual state of emergency. The third part will analyze the acts of international organizations and the international community, and their scope in combating terrorism. The fourth part will consist of concluding observations.

I. DEFINING TERRORISM

The spattered perceptions of characterizing terrorist acts, defining the purposes and motivations behind such acts, and identifying unpredictable perpetrators make it challenging to define the term “terrorism.” Defining terrorism is so problematic that not only have separate definitions with divergent meanings emerged all over the world from scholars, institutions, organizations, and states, but the term has also been made so nebulous that defining such a concept does not always seem worthwhile. There is no unanimity among the definitions of scholars and institutes because every attempt to draft a new definition and to clear up the vagueness of the previous definitions creates both clarity toward the misconception and ambiguity in the insight of the writer. Furthermore, uncertainties arise with new definitions because of the new language of the definition and its perceptions by the reader and writer; questions immediately arise regarding the intractability and identification of the terrorists through any new proposed definition. In the sociopolitical milieu of ideology, terrorists and freedom fighters are distinguished, but our perceptions regarding fighters from Palestine, Kashmir, and other contemporary political arenas vary depending upon their motives and other characteristics.³

A. *Etymology of Terrorism*

The English word “terrorism” is the combination of the root “terror” and the suffix “-ism.” The root “terror” means “state of fear” and the suffix “-ism” advances the root, in our case advancing the state of fear.⁴ The root and the suffix have been adopted in the modern English language from the Latin and French languages respectively. The Latin word *terrere* means “fear” and the French suffix *-isme* means “to act.”⁵ The use of the word “terror” has been used to demonstrate a state of panic.

3. See G. RAMACHANDRA REDDY, FAULT LINES IN INDIAN DEMOCRACY 151 (2007).

4. EDWARD V. LINDEN, FOCUS ON TERRORISM 24 (2006).

5. W. TIMOTHY COOMBS ET AL., STRATEGIC COMMUNICATION, SOCIAL MEDIA AND DEMOCRACY: THE CHALLENGE OF THE DIGITAL NATURALS 146 (2015).

In Ancient Rome (105 B.C.), the phrase *Terror Cimbricus* was used to describe the situation of panic among citizens during the attacks by the Cimbri tribe.⁶ It was during the French Revolution, however, that the term “terrorism” was coined to describe the violent acts of the Public Safety Committee.⁷

B. *Terrorism as a Disdainful Term*

The term “terrorism” is pejorative and has a deep negative connotation. Hence, the expression “terrorism” has been used to describe systematic acts of an enemy that invoke fear in people. This began in 1869, when Sergey Nechayev, the founder of the Russian revolutionary group Peoples Retribution, called himself a “terrorist.”⁸ Later, states and political parties started to call their enemies “terrorists” based on their violent actions and systematic efforts to invoke fear in the hearts of the civilian population.⁹

C. *Research on Definitions of Terrorism*

In his book *The Terrorist Trap*, Jeffery David Simon wrote that there are 200 definitions of “terrorism.”¹⁰ Different institutions, organizations, governments, and scholars from all over the world use all of these definitions.¹¹ In 1988, two researchers, A. Jongman and A. Schmid from Leiden University, compiled all of the definitions to derive a universal definition that would contain almost all of the crucial elements from the varying definitions.¹² They adopted a different methodology, under which the frequency of the use of each element of the definition would demonstrate the significance of that element. They discovered that about 83% of the definitions contained a violation element, 65% contained a political motives element, 51% contained an element of instigating horror, fear, or dread, 21% contained the element of randomness in targeting, and 17.5% referred to noncombatants, civilians, and impartial

6. VAHAB AGHAI, *TERRORISM, AN UNCONVENTIONAL CRIME: DO WE HAVE THE WISDOM AND CAPABILITY TO DEFEAT TERRORISM?* 13 (2011); *see also* JONATHAN MATUSITZ, *TERRORISM AND COMMUNICATION: A CRITICAL INTRODUCTION I* (2012).

7. RICHARD JACKSON & SAMUEL JUSTIN SINCLAIR, *CONTEMPORARY DEBATES ON TERRORISM* (2013) (discussing in Chapter 3 whether States can be terrorists); *see also* JONATHAN R. WHITE, *TERRORISM & HOMELAND SECURITY* 9 (7th ed. 2016).

8. MARTIN AVERY, *MUSKOKA TERROR G8* (2010) ch. 4 STAMPS; *see also* YU PETER KIEN, *INTERNATIONAL GOVERNANCE AND REGIMES: A CHINESE PERSPECTIVE* 90 (2012).

9. MATUSITZ, *supra* note 6, at 1.

10. JEFFREY D. SIMON, *THE TERRORIST TRAP* 384 (1994).

11. MATUSITZ, *supra* note 6, at 2.

12. SEBASTIAN WOJCIECHOWSKI, *THE MODERN TERRORISM AND ITS FORMS* 9 (2007); WHITE, *supra* note 7, at 3.

people as victims and targets of terrorism.¹³ Similarly, in 1993, Professor Ariel Merari from University of California researched and adopted the methodology used by Jongman and Schmid, analyzing the content of state definitions of terrorism from the United Kingdom, the United States, and Germany.¹⁴ He conducted a thorough examination of the contents of the definitions and systematically identified patterns and similarities.¹⁵ He found that the three definitions had three basic elements in common: (1) violence, (2) political motives, and (3) the goal to spread fear in the targeted population.¹⁶

D. Terrorism Definitions by Renowned Scholars and Organizations

Overall, unanimity on the delineation of “terrorism” has not yet been achieved. Below is a list of definitions from some of the world’s most renowned scholars and institutions.

1. Martha Crenshaw

Terrorism is a conspiratorial style of violence calculated to alter the attitudes and behavior of multiple audiences. It targets the few in a way that claims the attention of the many. . . . Terrorism is not mass or collective violence but rather the direct activity of small groups.¹⁷

Crenshaw’s definition of terrorism acknowledges that terrorism is directed at several types of audiences, but she restricts her view of the perpetrators of terrorism to a small group of people. She denies that there are organized groups conducting their various acts to achieve greater goals, and she also rejects the assertion that the state plays a role in terrorism. She explains how terrorism targets not only the few people directly affected, but also those beyond them, who are another type of audience, and how the pursuit of their attention is the real motive for terrorism.¹⁸

13. WHITE, *supra* note 7, at 3.

14. NONVIOLENCE: AN ALTERNATIVE FOR DEFEATING GLOBAL TERROR(ISM) 78 (Senhil Ram & Ralph Summy eds., 2007).

15. MATUSITZ, *supra* note 6, at 2.

16. *Id.*

17. TERRORISM IN CONTEXT 4 (Martha Crenshaw ed., 1995), available at <http://www.psupress.org/books/samplechapters/0-271-01014-2sc.html> (last visited Aug. 01, 2017).

18. *Id.* (explaining the directions and limitations of Crenshaw’s definition); see also JOSEPH S. TUMAN, COMMUNICATING TERROR: THE RHETORICAL DIMENSIONS OF TERRORISM 9 (2d ed. 2010).

2. Walter Laqueur

Terrorism is the use or the threat of the use of violence, a method of combat, or a strategy to achieve certain targets . . . [I]t aims to induce a state of fear in the victim, that is ruthless and does not conform with humanitarian rules . . . [P]ublicity is an essential factor in the terrorist strategy.¹⁹

Laqueur's definition of terrorism is distinctive from Crenshaw's description, particularly with respect to the state. Laqueur concedes that states have the ability to commit violence, and that states, not just individuals, can be designated "terrorists."²⁰ However, he distinguishes a state's violent demeanor from individual terrorist activity by the establishing a component of "systematic conduct"; he advocates that states, generally, do not engage terror as a methodical measure.²¹ Laqueur also submits and outlines criteria for terrorism; he proposes that philanthropic guidelines will evaluate what is normal and abnormal,²² what is acceptable, and what is terrorist.²³

3. Annamarie Oliverio

[I]t contains its own rhetoric, which has been transformed throughout history by different states. By claiming to be defining a type of violence, i.e. one that threatened the site of legitimate violence (the state), it is clear that this term is reserved for the art of statecraft.²⁴

Oliverio suggests here that state terrorism is defined as a deviation when it is anticipated; it is now a bad act from the state as compared to the good act from the good democratic state.²⁵ In her book *The State of Terror*, Oliverio also suggests that child abuse, the destruction of rainforests, and the massacre of millions as described by experts, media,

19. MATUSITZ, *supra* note 6, at 3.

20. CONTEMPORARY STATE TERRORISM: THEORY & PRACTICE 14 (Richard Jackson et al. eds., 2009) [hereinafter Jackson et al.]. See also LEE GRIFFITH, *THE WAR OF TERRORISM & THE TERROR OF GOD* 19 (2004); NAUZANIN A. KNIGHT, *STATE TERRORISM IN IRAN: UNDERSTANDING THE CASE OF THE IRANIAN BAHÁ'Í* 13 (2015).

21. TUMAN, *supra* note 18, at 9; Jackson et al., *supra* note 20, at 70.

22. TUMAN, *supra* note 18, at 9; see also Tomis Kapitan, *PHILOSOPHICAL PERSPECTIVES ON THE ISRAELI-PALESTINIAN CONFLICT* 118 (2015).

23. *Id.* (differentiating Laqueur's definition from Crenshaw's definition and explaining the standards set by Laqueur for terrorism).

24. ANAMARIE OLIVERIO, *THE STATE OF TERROR* 142 (1998); TUMAN, *supra* note 18, at 10; JEFF LEWIS, *CULTURAL STUDIES* 365 (2008).

25. HARMONIE TOROS, *REALISM AND TRADITIONAL TERRORISM STUDIES IN TERRORISM, TALKING AND TRANSFORMATION: A CRITICAL APPROACH* ¶ 3 (2012).

and states people can be termed political or terrorist activity.²⁶

4. Bruce Hoffman

[Terrorism is] ineluctably political in aims and motives, violent—or, equally important, threatens violence, designed to have far-reaching psychological repercussions beyond the immediate victim or target, conducted by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia), and perpetrated by a subnational group or non-state entity. We may now attempt to define terrorism as the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change. All terrorist acts involve violence or the threat of violence. Terrorism is specially designed to have far-reaching psychological effects beyond the immediate victim(s) or object of the terrorism attack. It is meant to instill fear within, and thereby intimidate, a wider “target audience” that might include a rival ethnic or religious group, an entire country, a national government or political party, or public opinion in general. Terrorism is designed to create power where there is none or to consolidate power where there is very little. Through the publicity generated by their violence, terrorists seek to obtain the leverage, influence, and power they otherwise lack to effect political change on either a local or an international scale.²⁷

Hoffman’s characterization and description are self-explanatory; he suggests that terrorism has mixed agendas ranging from organized crimes to religious crusades. He draws a line of distinction between terrorist activity and other forms of violence by adding a political dimension to terrorism. For example, an armed robbery can be distinguished from terrorist activity by considering the motives behind the crime. Moreover, similar to Crenshaw’s definition, Hoffman believes that terrorism has far-reaching goals with respect to its audience.

5. Albart Jonggman & Alex Schmid

[Terrorism is] an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby—in contrast to assassination—the direct targets of violence are not the main targets. The immediate human victims of violence are

26. OLIVERIO, *supra* note 24, at xiv.

27. Convention for the Prevention and Punishment of Terrorism (Nov. 16, 1937).

generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators.²⁸

Similar to Hoffman, Jonggman, and Schmid propose that the main motives of the terrorist activities consist of political goals and they can vary in their reasoning. Their definition also suggests that the violence behind terrorist acts is just a message for the greater audience and for the greater goals.

6. David Rapoport

[Terrorism is] the use of violence to provoke consciousness, to evoke certain feelings of sympathy and revulsion.²⁹

Rapoport, in his book *Inside Terrorist Organizations*, suggests that terrorism is the result of random actions by unpredictable interactions.³⁰ He also suggests that geopolitical terrorism by superpowers leads to global terrorism, which is the sum of terrorism and counterterrorism actions by organizations.³¹

7. Yonah Alexander

Terrorism is the rise or threat of violence against random or civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.³²

Yonah Alexander's definition of terrorism is the simplest in its form; he suggests that the civilians directly affected by the violence are chosen randomly. He also explains that the main driving force in such violence is to extend dread and send a message to a greater audience for political purposes.

8. Stephen Sloan

[T]he definition of terrorism has evolved over time, but its political, religious, and ideological goals have practically never

28. *Id.*

29. DAVID C. RAPOPORT, *The Government is Up in the Air Over Combating Terrorism*, 9 NAT'L J. 1853-56 (1977); see also ALBERT J. JONGMAN, *POLITICAL TERRORISM* 23 (1988); WHITE, *supra* note 7, at 9.

30. DAVID C. RAPPORT, *INSIDE TERRORIST ORGANIZATIONS* 28 (2013).

31. *INSIDE TERRORIST ORGANIZATIONS* 84, 255 (David C. Rapoport ed., 1988).

32. JATIN KUMAR MOHANTY, *TERRORISM AND MILITANCY IN CENTRAL ASIA* 25 (2006).

changed.³³

Sloan, in his book *The Historical Dictionary of Terrorism*, suggests that the definition of terrorism has not achieved consensus because of political reasons.³⁴ Thus, partisans can oust whichever political party they do not support and bring it within the ambit of terrorism.³⁵

9. The Covenant of the League of Nations

[Terrorism includes all] criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons, or the general public.³⁶

10. U.S. Department of Defense

[Terrorism is] the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.³⁷

11. U.S. Department of State

[Terrorism is] premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine state agents.³⁸

12. The Arab Convention for the Suppression of Terrorism

[Terrorism is] any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national

33. Convention for the Prevention and Punishment of Terrorism, *supra* note 27.

34. STEPHEN SLOAN & SEAN K. ANDERSON, HISTORICAL DICTIONARY OF TERRORISM 665 (2009).

35. *Id.*

36. Convention for the Prevention and Punishment of Terrorism, *supra* note 27, art. 1(2).

37. BARRY LEONARD, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY ASSOCIATED TERMS 472 (2011); *see also* ANDREW SILKE, PRISONS, TERRORISM & EXTREMISM 123 (2014).

38. 22 U.S.C. § 2656f (2004).

resources.³⁹

Additionally, there is a lack of consensus on the identity of perpetrators of terrorism, because the world is bifurcated between the developed world and the developing world. The former is more concerned with individual acts of terrorism. The developed world restricts the term to independent organizations, which in their explanation are religiously motivated to spread terror, disregarding all political motivations (especially in the Middle East), while juxtaposing their own acts of violence as necessary acts of humanitarian aid. The developing world, by contrast, believes that terrorism is politically motivated against national interests, and intelligently mechanized by developed minds. The developing world sees terrorism as solely designed to spread fear and build a nexus in the minds of masses through mainstream media to establish the need to engage with a state, which is politically designed and aligned with calculated agendas. On the other hand, from the perspective of humanitarian rights advocates, any act of violence, be it hijacking, target killing, or bombing, among other acts, is terrorism, irrespective of its motivations and political justifications.⁴⁰

E. *International Efforts to Define Terrorism*

The controversies generated in the definitional debate have stimulated the minds of many politicians and academics. One leading authority noted that between 1936 and 1981, no fewer than 109 definitions of terrorism were proposed.⁴¹ During this time frame, the first and most notable definition of terrorism was proposed in 1937.⁴² Article 1(2) of the Convention for the Prevention and Punishment of Terrorism states that “[i]n the present convention the expression, acts of terrorism means criminal acts directed against a state intended or calculated to create a state of terror in the mind of particular persons or a group of persons or the general public.”⁴³

To come within the ambit of the abovementioned definition under Articles 2 and 3 of the Convention, a deliberate act had to meet any of following three criteria: (1) cause “loss of liberty,” death, or harm to

39. Arab Convention for the Suppression of Terrorism (Apr. 22, 1998).

40. INTERNATIONAL LEGAL DIMENSION OF TERRORISM 67-69 (Pablo Antonio Nchez ed., 2009).

41. Walter Laqueur, *Reflection of Terrorism*, 64 FOREIGN AFF., 88 (1986). See also JAVAID REHMAN, INTERNATIONAL HUMAN RIGHTS LAW 440-41 (2003) [hereinafter REHMAN, INTERNATIONAL HUMAN RIGHTS LAW]; JAVAID REHMAN, ISLAMIC STATE PRACTICES, INTERNATIONAL LAW & THE THREAT FROM TERRORISM 75 (2005) [hereinafter REHMAN, ISLAMIC STATE PRACTICES].

42. Convention for the Prevention and Punishment of Terrorism, *supra* note 27.

43. *Id.*

government official or populace; (2) destroy the property of citizens, the government, or international organization; and (3) be formulated to endanger life.⁴⁴

The international community did not approve the abovementioned definition in the 1937 convention. Efforts were made over the three decades following the convention to draft a new explanation of terrorism that would bring international consensus. As a result, in 1972 the United States presented a draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism.⁴⁵ In this draft, under the heading of “Offences of International Significance,” acts of terrorism included offenses such as bodily harm, killing, kidnapping participation or association with such activities, and offenses committed with the intention of influencing interests of states or international organizations. An exception was given to states, military forces, and their members for any such acts they committed.⁴⁶

The international community has not accepted the United States’ definition in its draft convention, as the definition has not been included in the 1937 convention, nor has the draft convention been adopted. On the contrary, the General Assembly of the United Nations established an ad hoc commission to provide a report to the Assembly after analyzing the observations of other states about terrorism and the suggestion to curb this problem quickly and effectively. A sub-commission was also created that provided the definition of the term “international terrorism” after thorough reflection and discussion with the members of the commission. According to the definition it produced, international terrorism is:⁴⁷

- (1) an act of usage of force and repression by colonial, bigoted, and foreign regimes against peoples who are struggling to be free;⁴⁸
- (2) accepting and helping a mercenary, fascist, or remnant group that is targeting the peace of other sovereign states by initiating terrorist activities there;
- (3) an act of violence by certain groups of individuals who are

44. SUSAN FORBES MARTIN, *INTERNATIONAL MIGRATION: EVOLVING TRENDS FROM THE EARLY TWENTIETH CENTURY TO THE PRESENT* 189 (2014). See also REHMAN, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 41, at 441; REHMAN, *ISLAMIC STATE PRACTICES*, *supra* note 41, at 75.

45. *U.S. Draft Convention for Prevention and Punishment of Terrorism Acts*, 11 INT’L LEGAL MATERIALS 1382-87 (1972); MYRA WILLIAMSON, *TERRORISM, WAR & INTERNATIONAL LAW* 54 (2016).

46. See REHMAN, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 41, at 441.

47. Ad Hoc Comm. on Int’l Terrorism on Its Twenty Eighth Session, U.N. Doc. A/9028 (1973); see also REHMAN, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 41, at 442.

48. Ad Hoc Comm. on Int’l Terrorism on Its Twenty Eighth Session, U.N. Doc. A/9028 (1973); see also DAVID CARLTON & CARLO SCHAEFER, *INTERNATIONAL TERRORISM AND WORLD SECURITY* 23 (2015).

involved in killing innocents and threatening the fundamental rights of freedom of others. Any harm caused to the basic human rights of self-determination and freedom is also included in the definition, especially for people who are living in colonial regimes and have racist rulers or foreign control over their country;⁴⁹

(4) an act of fierceness which individual or collective person/persons may commit to acquire private gains, especially when the impacts of the violence may reach more than one state.⁵⁰

This definition is notably different from those proposed in the 1937 convention and the 1972 draft convention. The ad hoc commission highlighted the principle importance of racism and foreign alien regimes in defining “international terrorism.” Moreover, some exceptions have also been made for the undeniable “right of self-determination.”⁵¹

The ideological factions in the definition of international terrorism have caused an impediment to the efforts of drafting new international instruments and treaty laws in regard to international terrorism. Therefore, particular approaches for paving the way to fight terrorism were advanced when deliberating on the exact aspects highlighted in the regional issues. The obligatory considerations have been applied in all possible facets of international terrorism, for instance marine sabotage, aircraft hijacking, hostage taking, civil aviation violations, and arms and nuclear material stealing.⁵²

Efforts have been made to define terrorism since 1920.⁵³ All regional antiterrorism treaties, U.N. General Assembly resolutions, as well as U.N. Security Council Resolution 1566 (2004),⁵⁴ the International Convention for the Suppression of the Financing of Terrorism 1999,⁵⁵ the U.N. Draft Comprehensive Anti-Terrorism Convention, national laws, and national judicial decisions counter terrorism by addressing only

49. Ad Hoc Comm. on Int'l Terrorism on Its Twenty Eighth Session, U.N. Doc. A/9028 (1973). See also 1 ROBERT FRIEDLANDER ET AL., *TERRORISM: DOCUMENTS OF INTERNATIONAL AND LOCAL CONTROL* 350 (1979); CARLTON & SCHAEF, *supra* note 48, at 23; REHMAN, *ISLAMIC STATE PRACTICES*, *supra* note 41, at 76.

50. Ad Hoc Comm. on Int'l Terrorism on Its Twenty Eighth Session, U.N. Doc. A/9028 (1973); CARLTON & SCHAEF, *supra* note 48, at 23; REHMAN, *ISLAMIC STATE PRACTICES*, *supra* note 41, at 76.

51. See also REHMAN, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 41, at 442; REHMAN, *ISLAMIC STATE PRACTICES*, *supra* note 41, at 76; ALEX P. SCHMID, *ROUTLEDGE HANDBOOK OF TERRORISM RESEARCH* 50 (2011).

52. See generally UNITED NATIONS ACTION TO COUNTER TERRORISM, available at <http://www.un.org/en/counterterrorism/legal-instruments.shtml> (last visited Aug. 01, 2017).

53. J. MITCHELL MILLER, *THE ENCYCLOPEDIA OF THEORETICAL CRIMINOLOGY* 872 (2014).

54. See generally S.C. Res. 1566 (Oct. 8, 2004).

55. UNGA International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999.

specific crimes and methods used by terrorists. These instruments fail to provide a comprehensive definition for crimes of international terrorism, thus demonstrating the global unwillingness to come to a consensus in defining terrorism. Likewise, the Terrorist Financing Convention restricts its scope by criminalizing only the financing of terrorism and not terrorism itself.⁵⁶ This provides ample gap in the treaties' laws that cannot be countered by the customary rule to provide a comprehensive transnational criminalization of terrorism by definition.

Moreover, the regional convention acknowledges that there is no definition of terrorism that is accepted by the international community.⁵⁷ All regional treaties define terrorism by criminalizing either certain traditional kinds of conduct or generic methods used by terrorists, such as hostage taking or hijacking aircraft.⁵⁸ By contrast, a few conventions give very general forms of definitions or serve only to prescribe law enforcement conduct and extradition, and do not criminalize any offenses relating to terrorism at all.⁵⁹ Many of these conventions do not enjoy widespread global participation, and those conventions that do have many state parties do not have national effect.⁶⁰

U.N. efforts to reach a global definition of terrorism have failed. However, U.N. Security Council Resolution 1373 urges states to criminalize terrorism.⁶¹ National laws have approached the definition of terrorism in a variety of ways. For instance, the U.N. Counter-Terrorism Committee did not make it mandatory in Resolution 1566 for states to bring their national laws into conformity with the Resolution.⁶² National laws and national judicial decisions can only serve as evidence of customary international law, and no more than that.⁶³

Although U.N. Resolution 1566 did not widen the scope of terrorism by providing any additional crimes to be classified as terrorism, it instead

56. ERLING JOHANNE HUSABO & INGILD BRUCE, *FIGHTING TERRORISM THROUGH MULTILEVEL CRIMINAL LEGISLATION* 137 (2009).

57. CECILIA M. BAILLIET, *SECURITY: MULTIDISCIPLINARY NORMATIVE APPROACH* 362 (2009).

58. YVONNE MCDERMOTT, *ASHGATE RESEARCH COMPANION TO INTERNATIONAL CRIMINAL LAW* ¶ 2 (2016). *See also* GENEVIEVE LENNON & CLIVE WALKER, *ROUTLEDGE HANDBOOK OF LAW & TERRORISM* 29 (2015); ANCITEO MASFERRER, *POST 9/11 & THE STATE OF PERMANENT LEGAL EMERGENCY* 82 (2012).

59. MCDERMOTT, *supra* note 58; LENNON & WALKER, *supra* note 58, at 29; MASFERRER, *supra* note 58, at 82.

60. MCDERMOTT, *supra* note 58; LENNON & WALKER, *supra* note 58, at 29; MASFERRER, *supra* note 58, at 82.

61. CHARLES JALLOH, *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY* 316 (2013); MARTHA CRENSHAW, *CONSEQUENCES OF COUNTER-TERRORISM* 43 (2010).

62. ANA AS & KATJA SAMUEL, *COUNTER-TERRORISM: INTERNATIONAL LAW AND PRACTICE* 145 (2012).

63. J. OPPENHEIM, *GLOBAL WAR CRIMES TRIBUNAL COLLECTION* 157 (1997); MCDERMOTT, *supra* note 58, at 88.

acknowledged a new element of motive in those crimes already classified as terrorism, to bring them into conformity with human rights law.⁶⁴ This element of intent will be unfavorable to national terrorism laws that harm basic human rights.

F. *Elements of the Definition of Terrorism*

The elements discussed below show what little consensus there is in the international community as to what constitutes terrorism and its understanding of the unacceptable “acts or forms of terrorism.”

Firstly, because terrorism is the prime violator of human rights,⁶⁵ a definition of terrorism must acknowledge the element of terrorism as a human rights violator. Such a definition should prohibit “serious violence” against people and utilities, such as bodily harm or injury, and the destruction of property. The definition should prohibit the actions of violence against people, and private, or public infrastructure.⁶⁶

The element of “prohibition of violence” can be achieved by two methods: (1) by listing the crimes constituting violence (*i.e.*, murder and assault), or by leaving “serious violence” open-ended to encompass terrorists using new methods to evade the law, and (2) by bringing the “serious violence” of terrorism into line with the existing list of crimes within international or national laws. This can be done, for example, by drafting the following: “all crimes listed in national or international laws will constitute serious violence in the act of terrorism.”⁶⁷

Secondly, any definition of terrorism must acknowledge that terrorism challenges the state.⁶⁸ This element can be achieved by requiring a particular intention or purpose for the terrorist actions. The intention of the act must be for seriously inducing terror in the general civil population or to influence the state or any international organization to do or refrain from doing something that they would normally do or not do. The word “terrorism” itself suggests “invoking terror,” so the definition must “inflict or invoke terror among the general public” to qualify as terrorist activity.⁶⁹ Acts of private violence, such as blackmail, extortion, and other personal crimes, can serve to spread fear among the general civil population or to influence the government from doing or abstaining from

64. ANDREW LYNCH ET AL., *LAW & LIBERTY IN THE WAR ON TERROR* 36-37 (2007).

65. JULIE MERTUS, *HUMAN RIGHTS & CONFLICT* 269 (2006).

66. CARL WELLMAN, *TERRORISM AND COUNTERTERRORISM: A MORAL ASSESSMENT* 13 (2013).

67. GENEVIEVE LENNON, *HANDBOOK OF LAW AND TERRORISM* 36 (2015).

68. WERNER G.K. STRITZKE ET AL., *TERRORISM AND TORTURE: AN INTERDISCIPLINARY PERSPECTIVE* 37 (2009).

69. Georges Abi-Saab, *The Proper Role of International Law in Combating Terrorism, in ENFORCING INTERNATIONAL LAW NORMS AGAINST TERRORISM* 242 (Andrea Bianchi ed., 2004).

certain acts.⁷⁰ However, what distinguishes terrorist activity from private violence is the element of “public motive,” which can be ethnic, religious, philosophical, or political.⁷¹

Thirdly, a definition must acknowledge the element of “threat to the peace and security of the international community.” Restricting terrorism to internal national violence poses a threat to the international community.⁷² This does not mean that it would be wise to preclude violence within a state altogether, but this element must be added in addition to national terrorism.

In conclusion, the terrorism can be defined as:

(1) A criminal, serious, violent act intended to harm a person or property.

(2) An act whose purpose qualifies as ethnical, religious, political, ideological, or philosophical.

(3) An anticipated act instilling terror.

(4) An act intended to seriously induce terror or extreme fear in the civilian population, a particular person, or collective persons.

(5) An act intended to compel the state or international organization to do something or refrain from doing something.⁷³

G. Terrorism: A Working Definition

Categorically, it is settled from the aforementioned that the definition of terrorism is within the wider ambit of the sociopolitical milieu of society at large.⁷⁴ The international community has not come to any consensus upon one definition for terrorism;⁷⁵ however, this does not mean to disparage the efforts to define “terrorism” in the context to identify terrorists for criminalizing terrorism by the different organizations and states.⁷⁶ Correspondingly, it is harmless to assume that

70. ANDREW LYNCH, LAW AND LIBERTY IN THE WAR ON TERROR 47 (2007).

71. *Id.*; see also STRITZKE ET AL., *supra* note 68, at 36.

72. Rosa Giles-Carnero, *Terrorist Acts as Threats to International Peace and Security*, in INTERNATIONAL LEGAL DIMENSION OF TERRORISM 67 (Pablo Antonio Fernandez-Sanchez ed., 2009).

73. ANDREA BIANCHI & YASMIN NAQVI, ENFORCING INTERNATIONAL LAW NORMS AGAINST TERRORISM 240 (2004); see also SCHMID, ROUTLEDGE HANDBOOK OF TERRORISM RESEARCH, *supra* note 51, at 73-74.

74. Jacoby Adeshei Carter, Social Inquiry: A Pragmatist Analysis of Just War Theory Explanations of Terrorism, 4 (May 2007) (unpublished dissertation) (on file with Purdue University).

75. MARTIN DIXON ET AL., CASES & MATERIAL ON INTERNATIONAL LAW 293 (2011).

76. *Id.*; BRUNO S. FREY, DEALING WITH TERRORISM 9 (2004); JACKSON NYAMUYA MAOGOTO, BATTLING TERRORISM 61 (2016).

almost everyone has the general idea of what terrorism means.⁷⁷ Professor Oscar Schachter has given the best descriptive definition for terrorism, which states:

[T]he threat or use of violence in order to create extreme fear and anxiety in a target group so as to coerce it to meet political (or quasi-political) objectives of the perpetrators. Such terrorist acts have an international character when they are carried out across national lines or directed against nationals of a foreign State or instrumentalities of that state. They also include the conduct defined in the international conventions against hijacking, Ariel sabotage, sabotage at sea, hostage taking, and attacks on diplomats and other internationally protected persons. Terrorist acts are generally carried out against civilians but they also include attacks on governmental buildings, vessels, planes and other instrumentalities. The objectives of the terrorists are usually political but terrorism for religious motives or ethnic domination would also be included.⁷⁸

H. *Concluding Remarks on the Definition of Terrorism*

It can be argued that—notwithstanding political and ideological divisions—a generalized and comprehensible definition of “terrorism” can nevertheless be formed. The amount of studies and research on terrorism has increased exponentially in the last decade, but a gap still lies at the very core of defining terrorism. This gap can be used by states and organizations to tailor their laws to meet their objectives, and consequently, violate and derogate from respecting human rights. However, terrorists too can use this gap, in order to achieve their goals. The vagueness in defining terrorism is the principal aberrance, which obscures the perpetrators of terrorism in the guise of states themselves.

II. INTERNATIONAL LEGAL DEVELOPMENTS SINCE 9/11

The terrorist attacks of September 11, 2001, led to the loss of thousands of innocent lives⁷⁹ and property damage running into the

77. DIXON ET AL., *supra* note 75, at 3-6; *see also* CLARK MCCAULEY, *TERRORISM RESEARCH & PUBLIC POLICY* 7 (2012).

78. Oscar Schachter, *The Lawful Use of Force by a State Against Terrorists in Another Country*, in 19 ISRAEL YEARBOOK ON HUMAN RIGHTS (Yoram Dinstein & Mala Tabory, eds., 1989); *see also* REHMAN, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 41, at 443; YORAM DINSTEIN, *ISRAEL HANDBOOK ON THE HUMAN RIGHTS* 210 (1990).

79. LLOYD S. DIXON & RACHEL KAGANOFF STERN, *COMPENSATION FOR LOSSES FROM THE*

billions of dollars.⁸⁰ Such devastation has served as a chilling reminder of the dangers inherent in international terrorism and has sent shock waves around the world. The attacks have been unequivocally condemned by the overwhelming majority of states and international organizations. On September 12, 2001, the U.N. General Assembly (UNGA) passed a resolution condemning the heinous acts that resulted in enormous destruction, and led to the loss of lives.⁸¹ While showing solidarity with the people of the United States, the resolution appealed to the international community to bring the perpetrators to justice. Similarly, the U.N. Security Council (UNSC), also called on the international community to join forces to fight the perpetrators of the events of 9/11,⁸² and condemned these terrorist acts as threats to the peace and security of the international community.⁸³ A further resolution was adopted requiring states to undertake a series of actions.⁸⁴ The UNSC powers to ask for international cooperation come from the provisions of Chapter VII of the U.N. Charter, thus making all of its decisions binding upon states.⁸⁵

Under this resolution, the UNSC required states to suppress terrorism by freezing terrorist funds and financing through the adoption of existing antiterrorism frameworks.⁸⁶ Moreover, this resolution asked the member states to assist each other in investigating the financing of terrorism,⁸⁷ as well as to restrict terrorists' movement by adopting an efficient mechanism for controlling and patrolling borders.⁸⁸ The states were implored to share acquired intelligence with other member states regarding terrorists' adopted technology, methodology, movements, progressions, and threats.⁸⁹ Subsequently, the resolution established a committee to monitor the member states' implementation of the resolution and the progress in the adoption of new policies against

9/11 ATTACKS 15 (2004).

80. *Id.* at 106.

81. Kim Lane Scheppele, *The Migration of Anti-Constitutional Ideas: The Post-9/11 Globalization of Public Law and the International State*, in *THE MIGRATION OF CONSTITUTIONAL IDEAS* 352 (Sujit Choudhry ed., 2006); *see also* REHMAN, *INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 41, at 461.

82. REHMAN, *INTERNATIONAL HUMAN RIGHTS*, *supra* note 41, at 461.

83. *See generally* S.C. Res. 1368. (Sept. 12, 2001).

84. *See generally* S.C. Res. 1373 (Sept. 28, 2001); *see also* REHMAN, *INTERNATIONAL HUMAN RIGHTS*, *supra* note 41, at 461-62.

85. *Id.*

86. AS & SAMUEL, *supra* note 62, at 198.

87. Press Release, Security Council, Security Council Unanimously Adopts Wide-Ranging Anti-Terrorism Resolution; Calls for Suppressing Financing, Improving National Cooperation, U.N. Press Release SC/7158 (Sept. 28, 2001).

88. MARK PIETH, *FINANCING TERRORISM* 180-90 (2002); *see also* MARIE BENEDICTE DEMBOUR & TOBIAS KELLY, *ARE HUMAN RIGHTS FOR MIGRANTS* 59 (2011).

89. *Id.*

terrorism.⁹⁰ On October 4, 2001 Sir Jeremy Greenstock of the United Kingdom was named chair of the Security Council Committee on Terrorism.⁹¹

A. U.N. Charter: Self-Defense and Military Interventions

Immediately after the terrorist acts of September 11, 2001, there were calls for military action against the perpetrators of such monstrous acts.⁹² While the U.N. Charter bars the “use of force,” it expressly endorses sovereign states’ basic right of self-defense. The following sections of the U.N. Charter set out this position.

1. Article 2(4)

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.⁹³

Article 2(4) addresses all uses of force, including but not limited to war, and now constitutes a part of customary international law that must be upheld by all states. The only exemption to this embargo on the use of force is Article 51 of the U.N. Charter, which protects the inherent right of self-defense granted to states under customary international law:

2. Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense in an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by the Members in exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to

90. IBP INC., U.K. NATIONAL INTELLIGENCE SERVICE HANDBOOK, vol. 1 Strategic Information, Activities & Regulations 44 (2013).

91. JOHN HARPER, TREATIES AND ALLIANCES OF THE WORLD 14 (2002). *See also* REHMAN, INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 41, at 462; KEITH GRINT, LEADERSHIP: LIMITS & POSSIBILITIES 152 (2005).

92. DEMBOUR & KELLY, *supra* note 88, at 59.

93. U.N. Charter, art. 2, ¶ 4.

maintain or restore international peace and security.⁹⁴

Article 51 thus allows states to engage in armed acts in self-defense, although this right, too, is limited so as to prevent misuse of the provision.

Violations of Article 2(4) through grave armed offenses have to be accounted for by the leader of the aggressor state. Articles 39 and 42 bestow on the UNSC the right to use force to respond to violations of Article 2(4).

3. Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.⁹⁵

Through Article 39 of U.N. Charter, the Security Council is empowered to determine and investigate the existence of any threat, breach, or aggression against the peace of the international community. The charter further maintains, that the Security Council, in furtherance to tracing intimidation against peace, can take required measures to restore or maintain peace of the world.

4. Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.⁹⁶

In accordance with Article 42 of U.N. Charter, Security Council is authorized by U.N. Charter to use force only to maintain or restore peace of the global community. In his context, Security Council can use land, sea, and air to use force. Additionally, within the scope of this Article, Member States, and their respective forces can be utilized by Security Council to maintain peace. The military action in Afghanistan commenced in October 2001, and has principally been justified by the

94. U.N. Charter, art. 51.

95. U.N. Charter, art. 39.

96. U.N. Charter, art. 42.

governments of the United States and the United Kingdom on the basis of this basic right of collective and individual self-defense.⁹⁷ In the face of the heinous acts of 9/11, the loss and destruction of lives and property, and the threat of further attacks by terrorists, there is some strength in the reliance upon the principles of self-defense. Nevertheless, the right of self-defense must be conducted in accordance with well-established principles of “proportionality” and “immediate or imminent threat” in international law.⁹⁸

All countries condemn terrorism, but certain military and legal actions against terrorism are considered equally destructive, as they tend to violate human rights laws. For instance, criminal proliferation of terrorism by the United States and the United Kingdom in the wake of 9/11 tended to violate basic human rights, including the rights to liberty and to a fair trial, and minorities and immigrants in the Western world faced widespread discrimination.⁹⁹ Paradoxically, the international community concentrated on the legislation and criminalization of terrorism to hold people responsible for terrorism, but there was no system prescribed to provide for the victims of war on terror.¹⁰⁰ Subsequently, Afghanistan was bombed to the ground, resulting in the deaths of thousands of citizens,¹⁰¹ which proves that terrorism is the most heinous of all crimes and has profound consequences for citizens around the globe. In these circumstances, the International Court of Justice tried to create a criminal court to bring the perpetrators of terrorism to justice; regrettably, it was opposed by the United States.¹⁰² Although the International Criminal Court exists now and the schema of crimes against humanity has the wider ambit of prosecuting terrorists, but ordinary criminal laws hinder the legal ramifications needed for efficacy.

B. *Criminalizing Terrorism*

Using criminal law to criminalize terrorism can be counterproductive,

97. ASHOK SWAIN & RAMSES AMER, GLOBALIZATION AND CHALLENGES TO BUILDING PEACE 50-52 (2008).

98. 1 RAINER HOFMANN & ALLEMAGNE HEIDELBERG, WORLD COURT DIGEST FORMERLY FONTES IURIS GENTIUM 49-50 (1993); *see also* USTINIA DOLGOPOL & JUDITH GAIL GARDAM, THE CHALLENGE OF CONFLICT 404 (2006).

99. SINNO H. ABDULKADER H., MUSLIMS IN WESTERN POLITICS 176-79 (2009); RICHARD WILSON, HUMAN RIGHTS ON THE WAR ON TERROR 216 (2005).

100. Lauren Carasik, Americans Have yet to Grasp the Horrific Magnitude of the ‘War on Terror,’ ALJAZEERA (Apr. 10, 2015), <http://america.aljazeera.com/opinions/2015/4/americans-have-yet-to-grasp-the-horrific-magnitude-of-the-war-on-terror.html> (last visited Apr. 30, 2017).

101. *See generally* D.P. SHARMA, VICTIMS OF TERRORISM (2003); RAHUL MAHAJAN, THE NEW CRUSADE: AMERICAS WAR ON TERROR 49 (2007).

102. ELLEN F. PAUL ET AL., MORALITY & POLITICS 26-28 (2004); JAMES BECKMAN, COMPARATIVE LEGAL APPROACHES TO HOMELAND SECURITY & ANTI-TERRORISM 157 (2007).

because while terrorism can be countered by criminal law, terrorist activities would then resemble ordinary crimes or organized crimes. Since the intention of any crime is intangible, criminalizing terrorism mitigates the margin of differentiation between terrorism and ordinary crimes. Furthermore, criminalizing terrorism requires derogation from certain fundamental human rights guaranteed by national and international law.

The United States did not consider the legislation to be enough to counter terrorism, and instituted extended versions of detention and surveillance of citizens,¹⁰³ which violated numerous forms of human rights.¹⁰⁴ On the other hand, the United Kingdom declared its national policy of prosecuting the terrorists.¹⁰⁵ In the United Kingdom, the Macdonald Report of 2011 suggested that “people involved in terrorist activity should be detected, prosecuted and locked up as a primary policy of the state.”¹⁰⁶ However, the U.K. counterterrorism laws are not restricted to prosecution. The priority list of such laws states that “we need to prosecute the terrorists, this is our first priority, but if we cannot prosecute them, remove them, and if we cannot remove them, detain them.”¹⁰⁷

Detention without trial violates the basic right to trial, a right instituted not only by national laws, but also by international organizations.¹⁰⁸ In the United Kingdom, the Prevention of Terrorism Act 2005 and its predecessor, the Anti-terrorism, Crime and Security Act 2001, both permitted the detention of people without trial.¹⁰⁹ Tony Blair stated that the “game is changing” in the context of tightening the rules and laws relating to immigrants and asylum-seekers.¹¹⁰ The British government noted that, since British citizens do not commit acts of terrorism, detaining perpetrators without trial would not infringe the basic civil human right to a fair trial afforded to British citizens.¹¹¹ But the need for the normal prosecution process, including a trial, was recognized after

103. MICHAEL YEW MENG HOR, *GLOBAL ANTI-TERRORISM LAW AND POLICY* 107 (2005); *see also* CYNTHIA SOOHOO ET AL., *BRINGING HUMAN RIGHTS HOME* 289 (2009).

104. ARTHUR H. GARRISON, *SUPREME COURT JURISPRUDENCE IN TIMES OF NATIONAL CRISIS, TERRORISM, AND WAR: A HISTORICAL PERSPECTIVE* 285 (2011); SOOHOO ET AL., *supra* note 103, at 289.

105. ROBERT T. UDA, *COMBATING TERRORISTS IN THE USA* 46 (2009).

106. BARON MACDONALD, *REVIEW OF COUNTER-TERRORISM & SECURITY POWERS* 9 (2011).

107. MASFERRER, *supra* note 58, at 125.

108. 1 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2008, at 885 (2008); MARY LOU BERTUCCI, *ENCYCLOPEDIA OF HUMAN RIGHTS* 501-03 (1996).

109. REZA BANAKAR, *RIGHTS IN CONTEXT LAW AND JUSTICE IN LATE MODERN SOCIETY* 200 (2010).

110. KATJA FRANKO AAS, *THE BORDERS OF PUNISHMENT: MIGRATION, CITIZENSHIP, AND SOCIAL EXCLUSION* 228 (2013); MASFERRER, *supra* note 58, at 125.

111. HOWARD DAVIS, *HUMAN RIGHTS LAW* 424 (2007).

noting that the majority of suspects of the terrorists detained were British citizens.¹¹²

As a result, the U.K. Terrorism Act of 2006 relied on the prosecution of persons who are suspected of carrying out terrorist activities by the criminal justice system,¹¹³ so as to conform to British human rights commitments to its citizens and the international community. Similarly, the Counter-Terrorism Act of 2008 placed post-sentencing restrictions and enhanced the sentences based on persecution-related policies.¹¹⁴ Secondly, the United Kingdom slowed its pace of detaining civilians: at one time, no more than twenty citizens were detained, and only ten orders for apprehension were given, while there were 2000 suspected terrorists.¹¹⁵ Thirdly, the number of prosecutions in the United Kingdom increased: terrorists are now prosecuted not under a special regime but under the same regime as ordinary crimes with ideological, political, or religious motivations or intentions, under the Explosive Substances Act 1883.¹¹⁶ Fourthly, with the Northern Ireland Justice and Security Act 2007, the United Kingdom is disassembling the nonstandard Diplock court system in Northern Ireland, which tried suspected terrorists and restricted the abnormal practices of abuse of power, illegal confessions, and dismantled the juryless courts.¹¹⁷

Thus, criminal prosecution of terrorists is preferred over the executive measures taken to detain terrorists without trial, as criminal prosecution affirms the human rights of equality and due process of law.¹¹⁸ But there are pros and cons to the criminalization of terrorism.

The most concerning element in criminalizing terrorist activity is the inability of law enforcement to apprehend the terrorists planning terrorist activity, no matter how calamitous the effects of the activity may be.¹¹⁹ For this reason, the problem of criminal prosecution can be divided into

112. JOHN GUNN, *FORENSIC PSYCHIATRY: CLINICAL, LEGAL AND ETHICAL ISSUES* 470–81 (2d ed. 2014). *See also* ANN LYON, *CONSTITUTIONAL HISTORY OF THE U.K.* 508 (2016); AJAYA KUMAR SAHOO ET AL., *DIASPORA & IDENTITY* 40–41 (2016).

113. AMNESTY INTERNATIONAL REPORT 2006: *THE STATE OF THE WORLD'S HUMAN RIGHTS* 269 (2006); KRISTEN BOON ET AL., *EUROPEAN RESPONSES TO TERRORIST RADICALIZATION* 81 (2011).

114. Counter-Terrorism Act 2008, c. 28, § 100–120 (U.K.).

115. 525 Parl. Deb., H.C. (2011) col. 26 (U.K.); MASFERRER, *supra* note 58, at 126.

116. MASFERRER, *supra* note 58, at 126.

117. URSULA SMARTT, *MEDIA AND ENTERTAINMENT LAW* 155 (2011); DANIEL MOECKLI, *HUMAN RIGHTS & THE NON-DISCRIMINATION IN THE WAR ON TERROR* 135 (2008); MASFERRER, *supra* note 58, at 126.

118. KRISTEN BOON, *U.N. RESPONSE TO AL QAEDA: DEVELOPMENTS THROUGH 2011*, at 384 (2012); VICTOR V. RAMRAJ, *ANTI-TERRORISM LAW & POLICY* 282 (2012); MASFERRER, *supra* note 58, at 125; ANDREW SILKE, *PRISONS, TERRORISM & EXTREMISM* 16–17 (2014).

119. ANDREA BIANCHI, *ENFORCING INTERNATIONAL LAW NORMS AGAINST TERRORISM* 255 (2004); CLAIRE MACKEN, *COUNTER-TERRORISM & DETENTION OF SUSPECTED TERRORISTS* 126 (2013).

two situations: (1) where there is a suspected (non-terrorism) crime, which can involve death or assault, usually relating to violence within a state by civilian people but posing no threat to the state, and (2) where a group of terrorists plans a major event, such as the bombing of an entire block, and poses a political threat to the state. In such situations, the government needs to call for executive control of the situation to neutralize the risk, which could have led to devastating consequences.¹²⁰ However, the problem with prosecuting terrorist activity is that one cannot neutralize terrorists in the ordinary settings of criminal laws and one often cannot prosecute them.¹²¹ This is because either the evidence indicating their planning of secret terrorist activity was obtained by secret measures, usually involving methods unacceptable in the legal arena.¹²² Thus, the state cannot present such evidence, which poses a problem in prosecuting terrorists.¹²³

Upon such a deadlock, Dame Elizabeth Manningham-Buller, former Director General of the U.K. Security Service, stated the following:

We may be confident that an individual or group is planning an attack but that confidence comes from the sort of intelligence I described earlier, patchy and fragmentary and uncertain, to be interpreted and assessed. All too often it falls short of evidence to support criminal charges to bring an individual before the courts, the best solution if achievable.¹²⁴

The criminal law can assist counterterrorism in six different ways: (1) the criminal law can stop terrorist activity before the completion of a terrorist act; (2) it can widen the scope of the definition of terrorism; (3) it can reduce the obstacles faced by national criminal laws in convicting terrorists; (4) it can organize people against terrorist activities; (5) it can call for state condemnation of terrorism; and (6) it can ensure the solidarity of the state with its citizens and with the international community.

120. AUDREY KURTH CRONIN, *ATTACKING TERRORISM: ELEMENTS OF GRAND STRATEGY* 276 (James M. Ludes eds., 2004); *see also* FERGEL DAVIS ET AL., *SURVEILLANCE, COUNTER-TERRORISM & COMPARATIVE CONSTITUTIONALISM* 24 (2014) (providing same contended analysis over criminal prosecution versus executive measures in anticipation of terrorist activities); MACKEN, *supra* note 119, at 126 (providing same contended analysis over criminal prosecution versus executive measures in anticipation of terrorist activities).

121. MALCOLM W. NANCE, *TERRORIST RECOGNITION HANDBOOK: A PRACTITIONER'S MANUAL FOR PREDICTING AND IDENTIFYING TERRORIST ACTIVITIES* 229 (2d ed. 2008).

122. *Id.*

123. *Id.*

124. CLIVE WALKER, *TERRORISM AND THE LAW* 222 (2011); PABLO ANTONIO FERNÁNDEZ-SÁNCHEZ, *INTERNATIONAL LEGAL DIMENSION OF TERRORISM* 155 (2009).

1. Stopping Crimes Before They Are Committed

Terrorism can cause enormous intimidation through violent acts against civilian populations, which can force criminal law enforcement to revert from the traditional legal norms that require evidence and other procedures, as well as to act preemptively to stop terrorist activity. Because of this, customary norms in criminal law pose impediments to the investigation of terrorism, as they are usually effective only after the crime has been committed.¹²⁵

Arresting individuals before crimes have been committed is not new. The Explosive Substances Act of 1883 has been used since it was enacted in terrorism and other crimes.¹²⁶ A “conspiracy” charge can hold an individual accountable for planning or conspiring to commit a crime that that an individual might want to do but has not yet committed.¹²⁷ Precursor crime charges are used worldwide; for example, in the United Kingdom, Sections 57 and 58 of the Terrorism Act 2000 allow the state to prosecute a person for terrorism-related crimes, such as for the possession of material or information related to terrorism.¹²⁸ Scholars have long debated whether the state can accuse a person of a crime that has not yet been committed, but the crime here is possessing material that can be used for bombing and other terrorist activity and, similarly, technical information that can be used to invoke terror in the civilian population. Possessing such material and information is in itself a crime that can be pursued by the state to seek punishment according to the seriousness of the offense. However, the list of items used to make bombs is very far-reaching. This is because terrorists have used household goods, such as bleach and car batteries, to create bombs. Thus, while one can argue that possessing household items and downloading technical information out of curiosity can cause a person to be accused of terrorism, there is always circumstantial evidence to suggest the actual intentions such a person.

Moreover, Sections 1 and 2 of the Terrorism Act of 2006 criminalize acts that incite crimes of terrorism.¹²⁹ Similarly, Section 5 criminalizes assisting in the preparation of terrorist activity,¹³⁰ and Section 6 has a wider ambit for prosecuting conspiracy to commit terrorism by receiving

125. JOHN C. KLOTTER & JOYCELYN M. POLLOCK, *CRIMINAL LAW* 566 (8th ed. 2012); see also MARIANNE F.H. HIRSCH BALLIN, *ANTICIPATIVE CRIMINAL INVESTIGATION* 28 (2012).

126. See WALKER, *supra* note 124, at 236.

127. THOMAS J. GARDNER & TERRY M. ANDERSON, *CRIMINAL LAW* 82 (2011).

128. ALAN REED, *GENERAL DEFENCES IN CRIMINAL LAW: DOMESTIC AND COMPARATIVE PERSPECTIVES* 149 (2014).

129. Stuart Macdonald, *Prosecuting Suspected Terrorists: Precursor Crimes, Intercept Evidence and the Priority of Security*, in *CRITICAL PERSPECTIVES ON COUNTER-TERRORISM*, 130, 132 (Lee Jarvis & Michael Lister eds., 2015).

130. *Id.* at 132.

jihadi training.¹³¹ In the Terrorism Act 2000, Section 54 prohibits armed training and Section 11 prohibits association with terrorist organizations.¹³² Articles 421 and 422 of the French Penal Code recognize the same precursor crime by forbidding association with terrorist organizations.¹³³

Nonetheless, all of these laws have received criticism along the following lines. First, preparatory crimes or precursor crimes are remote; it is very likely that a crime will not happen if it is very remote.¹³⁴ Second, precursor crimes, such as inciting terrorism, are very remote and a person can be defended using his right to freedom of speech among many others, whereas the perception of an individual who is incited by such speech cannot be judged by the perception of the speaker.¹³⁵ Finally, criminalizing “association with terrorism” can be problematic because such criminalizing would require derogation from the right of freedom of association in a specific situation. For instance, NGOs and media—through such criminalization—would not be able to interact with certain organizations for humanitarian and informative purposes, such as defending minority rights and rights of self-determination. Therefore, any peaceful association does not necessarily establish an act of terrorism. There has to be a call for some sort of violence in such association in order to categorize such an association as terrorist activity.¹³⁶

2. Widening the Scope of Terrorism

Widening the ambit of terrorism is faced with legal challenges, such as juridical and judicial overlapping, because the definition of the term “terrorism” itself has not gained international consensus.¹³⁷ In order to characterize acts as “terrorism” by criminalizing acts such as bombing and hijacking, states need international cooperation and support in the form of multilateral conventions.¹³⁸ For example, if a terrorist involved in terrorist activity is found in Pakistan, the United States faces legal jurisdiction difficulties to apprehend or prosecute the terrorist. However, even if Pakistan allows the United States to prosecute the terrorist, the

131. Terrorism Act 2006 §§ 5-6; *see also* HUMAN RIGHTS IN THE PREVENTION & PUNISHMENT OF TERRORISM 240 (2010).

132. McDONALD, *supra* note 106, at 132; Terrorism Act 2000 §§ 1 & 54.

133. ELIZABETH CHADWICK, SELF-DETERMINATION IN THE POST-9/11 ERA 120 (2011); Criminal Code of the French Republic arts. 421-422 (2005).

134. BEN EMMERSON ET AL., HUMAN RIGHTS & CRIMINAL JUSTICE 505-06 (2012).

135. JAMES J.F. FOREST, INFLUENCE WARFARE: HOW TERRORISTS & GOVERNMENTS FIGHT TO SHAPE PERCEPTIONS IN A WAR OF IDEAS 78 (2009).

136. TERRORISM: COMMENTARY ON SECURITY DOCUMENTS: U.N. RESPONSE TO AL QAEDA—DEVELOPMENTS THROUGH 2011 vol. 122, at 360 (Kristen E. Boon et al. eds., 2012)

137. Marja Lehto, Indirect Responsibility for Terrorist Acts 427 (2009).

138. HUSEYIN DURMAZ, UNDERSTANDING & RESPONDING TO TERRORISM 43 (2007).

problem with costs, namely the costs of prosecution and imprisonment, arises.¹³⁹ The other way to widen the net of the criminal law to fight terrorism is to recognize international terrorism by extending the jurisdiction to extraterritorial terrorist activity. For instance, post 9/11 legislations (e.g., PATRIOT Act of United States) delivers an impeccable specimen for extending jurisdiction to counter international terrorism in extraterritorial activities. Therein, jurisdiction of the U.S. federal government extends to all individuals who conspire against U.S. soil or its citizens in foreign lands.¹⁴⁰

3. Reducing the Obstacles in National Criminal Laws to Convicting Terrorists

Criminal law can help counter terrorism by lowering the traditional norms that hinder the prosecution of terrorists and by altering the evidence rubrics required by the criminal law.¹⁴¹ Usually, criminal law requires the representation of witnesses and the exposure of the methods by which the information regarding the crime was obtained. In cases involving terrorism, however, this may lead to the death of an informant or to the endangerment of current and future intelligence operations.¹⁴² In this regard, Article 6 of the European Convention of Human Rights can be used.¹⁴³ Articles 57 and 58 of the Terrorism Act 2000 have been extended to encompass the rules of “beyond reasonable doubt” and the presumption of innocence to reduce the risk of the non-conviction of terrorists.¹⁴⁴ This is because even if the intelligence agencies apprehend terrorists, the traditional norms fail to meet the legal criteria for any kind of conviction,¹⁴⁵ which places national security and international peace and security at risk.

139. Lucy Martinez, *Prosecuting Terrorists at the International Criminal Court: Possibilities and Problems*, RUTGERS L.J. 2002, at 53; see also ARMED GROUPS: STUDIES IN NATIONAL SECURITY COUNTERTERRORISM & COUNTERINSURGENCY 94 (Jeffrey H. Norwitz ed., 2008); HUSEYIN DURMAZ, UNDERSTANDING & RESPONDING TO TERRORISM 46-47 (2007).

140. See LARRY K. GAINES & ROGER LEROY MILLER, CRIMINAL JUSTICE IN ACTION 267 (2006).

141. See David Miller & Rizwaan Sabir, *Counter-Terrorism as Counterinsurgency in the U.K. 'War on Terror,'* in COUNTER TERRORISM AND STATE POLITICAL VIOLENCE: THE 'WAR ON TERROR' AS TERROR, 12, 20 (Scott Poynting & David Whyte eds., 2012); BARRY VAUGHAN & SHANE KILCOMMINS, TERRORISM, RIGHTS AND THE RULE OF LAW 25 (2013).

142. THOMAS J. GARDNER & TERRY M. ANDERSON, CRIMINAL EVIDENCE: PRINCIPLES AND CASES (2015).

143. European Convention of Human Rights art. 6 (1950).

144. See Terrorism Act 2000, c. 11, §§ 57-58, 26 (U.K.); JAMES BECKMAN, COMPARATIVE LEGAL APPROACHES TO HOMELAND SECURITY & ANTI-TERRORISM 61 (Tom Payne & Tom Lansford eds., 2007).

145. See BECKMAN, *supra* note 144, at 149.

4. Organizing People Against Terrorist Activities

In organizing people against terrorist activities, people can help themselves and the state by acting as state informants and reporting suspected terrorism. The realm of terrorism has shifted from the extremist jihadi to normal people residing in the neighborhood; in this condition of oblivion, reporting suspected terrorist acts can greatly help the enforcement agencies of the state. In this regard, programs in the United States such as the Terrorism Information and Prevention System of 2002 (TIPS) and the Reward for Justice program have been working,¹⁴⁶ but they have faced criticism for false accusations and the infringement of subjects' right to privacy; consequently, TIPS was cancelled.¹⁴⁷ Similarly, international organizations such as the Financial Action Task Force (FATF),¹⁴⁸ under "Special Recommendations on Terrorist Financing," requires employees in the financial sector to report suspicious terrorist activities; failing to report one's suspicion is an offense.¹⁴⁹ The United Kingdom had a similar idea in Section 19 of the Terrorism Act 2000 and for the regulated sector under Schedule 2, Part 3, of the Anti-terrorism, Crime and Security Act 2001.¹⁵⁰

Article 38B of the U.K. Terrorism Act 2000 holds citizens accountable for not disclosing relevant information regarding terrorism or not volunteering to provide information on suspicious acts of terrorism.¹⁵¹ The U.K. Countering International Terrorism (CONTEST) document states that information regarding terrorism is the key element in countering terrorism, and that information obtained from citizens can be used for the prevention of terrorist activities or for the apprehension of terrorists.¹⁵²

5. State Condemnation of Terrorism

Condemnation of terrorism can best be achieved by making national

146. MASFERRER, *supra* note 58, at 139.

147. *Id.*

148. An international organization to fight money laundering and terrorism financing. This organization has certain set of rules and regulations termed as "recommendations," where evolving trends and threats of money laundering and terrorism financing are anticipated. Under Section IV, FATF IX Special Recommendations, of 2001 it mandates its employees to report suspicious terrorist activities.

149. FATF IX Special Recommendations 2001 § IV.

150. Terrorism Act 2000 § 19; *see also* Anti-Terrorism, Crime & Security Act 2001 sched. 2, pt. 3.

151. Terrorism Act 2000 art. 38b.

152. Great Britain: Parliament: House of Commons: Home Affairs Committee, Project Contest: the Government's Counter Terrorism Strategy, Ninth Report of Session 2008-09, Report, Together with Formal Minutes, Oral and Written Evidence 63 (July 7, 2009).

laws that target offenses against the state. Historically, laws of treason and sedition served the purpose of denouncing crimes against the state, but with the passage of time historic laws became outdated and this resulted in the acquittals of the culprits.¹⁵³ Article 5 of the Council of Europe's Convention on the Prevention of Terrorism (2005) and the provisions of UNSC Resolution 1624 (2005) have criminalized advocacy offenses.¹⁵⁴ Similarly, Section 1 of the U.K. Terrorism Act of 2006 prohibits the publication of material that encourages incitement of terrorism, the preparation of terrorist activity, or invokes people against the state to act against it.¹⁵⁵ This law has only one statutory defense: that no person was incited to commit acts of terrorism.¹⁵⁶

6. Solidarity

Solidarity is the declaration by the state that it not only safeguards its own citizens, but it also stands alongside the international community to fight terrorism.¹⁵⁷ UNSC Resolution 1373 (2001) demands that states help other states to fight terrorism.¹⁵⁸ Similarly, UNSC Resolution 1624 (2005), demands that states criminalize terrorism in their domestic or national laws.¹⁵⁹ Whereas resolutions such as 2456 (2001) and 1566 (2004) establish that such measures to combat terrorism must be in conformity with international laws, more particularly with international human rights laws.¹⁶⁰ Likewise, the European Council Framework Decision on Combating Terrorism (2002) has raised the agenda of fighting terrorism in member states.¹⁶¹

The symbolization of the denunciation of terrorism can be witnessed by monitoring the legislation that has been created in almost every country under the supervision of the U.N. Counter-Terrorism Committee.¹⁶² For example, the U.K. legislation comprises of the

153. GENEVIEVE LENNON & CLIVE WALKER, *ROUTLEDGE HANDBOOK OF LAW OF TERRORISM* 20 (2015).

154. *See* The Council of Europe's Convention on the Prevention of Terrorism (2005) art. 5.

155. IAN CRAM, *TERROR AND THE WAR ON DISSENT FREEDOM OF EXPRESSION IN THE AGE OF AL-QAEDA* 40 (2009).

156. IAN CRAM, *TERROR & THE WAR ON DISSENT* 97-98 (2009).

157. GIUSEPPE NESI, *INTERNATIONAL COOPERATION IN COUNTER-TERRORISM* 220 (2016).

158. *See generally* U.N. Res. 1373; LARISSA J. HERIK ET AL., *COUNTER-TERRORISM STRATEGIES IN A FRAGMENTED LEGAL ORDER* 45 (2013).

159. LOUISE DOSWALD-BECK, *HUMAN RIGHTS IN TIMES OF CONFLICT AND TERRORISM* 146 (2011).

160. ERLING JOHANNES HUSABO & INGVID BRUCE, *FIGHTING TERRORISM THROUGH MULTI-LEVEL CRIMINAL LEGISLATION* 50 (2009).

161. *See generally* COUNCIL OF THE EUROPEAN UNION, *COUNCIL FRAMEWORK DECISION OF JUNE 13, 2002 ON COMBATING TERRORISM* (2002/475/JHA).

162. CENTRE OF EXCELLENCE DEFENCE AGAINST TERRORISM, *LEGAL ASPECTS OF COMBATING TERRORISM* 28 (2008).

following: the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act of 2005, the Terrorism Act of 2006, the Counter-Terrorism Act of 2008, the Terrorism (U.N. Measures) Order of 2009, the Terrorist Asset-Freezing (Temporary Provisions) of Act 2010, the Justice and Security Act 2013 and the Counter-Terrorism and Security Act of 2015. Similarly, the U.S. legislation on terrorism includes the USA PATRIOT Act of 2001 and the USA Freedom Act of 2015. Australia has also passed more than 29 pieces of legislation on terrorism since 2000.¹⁶³

C. Human Rights Derogation and States of Emergency

The UNSC drove the international campaign against terrorism after 9/11.¹⁶⁴ UNSC Resolution 1373 requested that all states bring their national laws in line with internationally required antiterrorism policies by enlisting mechanisms to freeze funds, with the goal of stopping assistive financial terrorism.¹⁶⁵ UNSC Resolution 1373 also called for member states to draft legislation criminalizing terrorism.¹⁶⁶ However, UNSC Resolution 1373 violated basic human rights,¹⁶⁷ and it needed to be brought into conformity with international standards of human rights.¹⁶⁸ Subsequently, UNSC Resolution 1456 (2003) called upon all member states to bring their national anti-terrorism laws policies in line with standards of international human rights, especially refugee and humanitarian laws.¹⁶⁹

It is irrefutable that very few states have ensured the protection of their own population's human rights while drafting domestic laws to counter terrorism.¹⁷⁰ As a consequence of 9/11, states around the world wanted their counterterrorism laws to be efficient; hence they derogated from protecting civil human rights.¹⁷¹ This also happened because international conventions protecting human rights have derogation clauses, under

163. MASFERRER, *supra* note 58, at 144.

164. SECRECY, NATIONAL SECURITY & THE VINDICATION OF CONSTITUTIONAL LAW 294 (David Cole et al. eds., 2013).

165. COMBATING MONEY LAUNDERING & THE FINANCING OF TERRORISM 21 (2009).

166. STEPHANIE LAGOUTTE ET AL., HUMAN RIGHTS IN TURMOIL: FACING THREATS, CONSOLIDATING ACHIEVEMENTS 145 (2007).

167. See ISIDORO ZANOTTI, EXTRADITION IN MULTILATERAL TREATIES AND CONVENTIONS 395 (2006).

168. *Id.*

169. IAN SEIDERMAN, YEARBOOK OF THE INTERNATIONAL COMMISSION OF JURISTS 400-04 (2004).

170. 58 YEARBOOK OF THE U.N. 2004, at 739-42 (2006) [hereinafter YEARBOOK OF THE U.N.].

171. Great Britain: Parliament: 15th Rep. of Session 2008-09, Volume 2: Evidence, Vol. 2, at 51 (2009); see also EVAN J. CRIDDLE, HUMAN RIGHTS IN EMERGENCIES 127 (2016).

which states can derogate from human rights laws in cases of emergency.¹⁷² Consequently, domestic laws to fight terrorism were created temporarily due to an emergency, but were extended indefinitely.¹⁷³ Prominent examples of clauses permitting derogation from human rights standards in emergencies appear in the International Covenant on Civil and Political Rights (ICCPR), The European Convention on Human Rights (ECHR), and the American Convention on Human Rights (ACHR).¹⁷⁴ Article 15 of the ECHR, Article 4 of the ICCPR, and Article 27 of the ACHR provide the opportunity for member states to derogate from their human rights obligations in cases of war or public emergency.¹⁷⁵

Several Latin American states have derogated from their human rights obligations under Article 27 of the ACHR.¹⁷⁶ Similarly, the United Kingdom derogated from its international human rights obligations under Article 15 of the ECHR after 9/11.¹⁷⁷ Some states abrogated their legal international obligations toward human rights by invoking a state of permanent emergency after the events of 9/11, however no actual state of public emergency or war has been found in the derogating states.¹⁷⁸

The Siracusa principle of degrading human rights in Sections 39, 40, and 41 of the ICCPR provides that a state can derogate from its international and community obligation of respecting human rights in the event of public emergency, where “public emergency” is an event that threatens the life of nations.¹⁷⁹ Moreover, it is necessary that the threat affect the whole nation and disturbs the integrity, effectiveness, and functioning of the state or population.¹⁸⁰ However, civil unrest and economic distress do not constitute a state of emergency under the Siracusa Principle.¹⁸¹

States’ national counterterrorism legislation does not necessarily follow the standards of their international human rights obligations. Thus,

172. ANTHONY AUST, *HANDBOOK OF INTERNATIONAL LAW* 228 (2010).

173. MASFERRER, *supra* note 58, at 156; *see also* ALEX CONTE, *HUMAN RIGHTS IN THE PREVENTION & PUNISHMENT OF TERRORISM* 111 (2010).

174. *See* American Convention on Human Rights (1969); *see also* European Convention of Human Rights art. 15 (1950).

175. European Convention of Human Rights art. 15 (1950); International Covenant of Civil & Political Rights art. 4 (1966); *see also* American Convention of Human Rights art. 27 (1969).

176. JUAN F. GONZALEZ-BERTOMEU & ROBERTA GARGARELLA, *THE LATIN AMERICAN CASEBOOK* 210 (2016).

177. EVAN J. CRIDDLE, *HUMAN RIGHTS IN EMERGENCIES* 137 (2016).

178. KEITH E. WHITTINGTON ET AL., *OXFORD HANDBOOK OF LAW AND POLITICS* 179 (2010).

179. International Covenant of Civil & Political Rights arts. 4, 39-41 (1966).

180. *Id.* art. 4.

181. U.N. Doc E/Cn.4/1984/4 (1984); M. MAGDALENE SEPULVEDA & MARIA M.S. CARMONA, *THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & ECONOMIC, SOCIAL & CULTURAL RIGHTS* 295 (2003); *see also* International Covenant of Civil & Political Rights arts. 4 & 22 (1966).

states have not publicly acknowledged the fact that they have declared a state of emergency, for fear that their antiterrorism policies and laws are not consistent with international human rights standards or that they do not meet the criteria for declaring a state of emergency.¹⁸² Thus, it can be concluded that the presence of derogation clauses in international human rights conventions poses the threat of states exploiting such clauses by declaring permanent states of emergencies and derogating from their human rights obligations. Therefore, international organizations should eliminate such derogation clauses, though this seems unlikely in the near future.

III. THE CONTEMPORARY COUNTERTERRORISM POLICY OF PAKISTAN

The Pakistani government established the National Action Plan in January 2015, after an appalling attack by foreign-national terrorists on the Army Public School in Peshawar.¹⁸³ The attack caused 141 deaths, including the deaths of 132 innocent children.¹⁸⁴ The plan received unprecedented support by all political parties and governments at federal and provincial levels.¹⁸⁵ The plan aimed to attack the terrorism prevalent across the country by framing laws under the 21st amendment to the 1973 Constitution of Pakistan.¹⁸⁶ The law helped set up separate military courts for the speedy trial of terrorists.¹⁸⁷ The new policy mandated all telephone companies to re-verify the fingerprints of all telephonic connections; consequently, 27.5 million users were blocked.¹⁸⁸ Moreover, the action plan reinstated capital punishment in the country to bring justice to terrorists.¹⁸⁹

On December 24, 2014, Prime Minister Nawaz Sharif chaired a

182. YEARBOOK OF THE U.N., *supra* note 170, at 739-42.

183. Zahir Shah Sherazi et al., *Militant Siege of Peshawar School Ends, 141 Killed*, DAWN (Dec. 16, 2014), <https://www.dawn.com/news/1151203> (last visited Apr. 29, 2017).

184. *Id.*

185. *National Action Plan in Practice*, NATION (Feb. 10, 2015), available at <http://nation.com.pk/columns/10-Feb-2015/national-action-plan-in-practice> (last visited Aug. 02, 2017).

186. CONSTITUTION OF PAKISTAN, 21ST AMENDMENT, 1973.

187. Gen (R) Mirza Aslam Beg, *The National Action Plan*, NATION (Jan. 12, 2015), <http://nation.com.pk/columns/12-jan-2015/the-national-action-plan> (last visited Aug. 01, 2017); see also Prakash Singh, *P.M. Sharif Announces Anti-Terrorism Action Plan*, NEWSWEEK (Dec. 25, 2014), <http://newsweekpakistan.com/pm-sharif-announces-antiterrorism-action-plan/> (last visited Aug. 02, 2017); see also SANU KAINIKARA, POLITICAL MUSINGS (2016).

188. See APP, *PTA Blocks 27.5 Million Unverified Sims*, DAWN, 2015, <http://www.dawn.com/news/1182351> (last visited Apr. 29, 2017).

189. AFP, *Pakistan Executed 332 After Reinstating Death Penalty: Report*, EXPRESS TRIB. (Jan. 16, 2016), <https://tribune.com.pk/story/1028511/pakistan-executed-332-after-reinstating-death-penalty-report/> (last visited Aug. 02, 2017).

Political Conference Meeting, which achieved consensus from all political parties on the operation and application of the National Action Plan.¹⁹⁰ On this occasion, the prime minister of Pakistan stated: “We have to act fast and whatever is agreed we have to implement it immediately . . . this agreement is a defining moment for Pakistan and we will eliminate terrorists from this country.”¹⁹¹ Afterwards, Chaudhry Nisar Ali Khan, the then federal interior minister of Pakistan, took crucial steps to crack down on terrorism in Pakistan by taking initiatives under the umbrella of the National Action Plan.¹⁹² In May 2015, while addressing the notables of Kallar Syedan in the Rawalpindi District, Chaudhry Nisar Ali Khan stated that the war on terrorism would be won at any cost to bring peace back to Pakistan, and emphasized the responsibility of the entire nation to give a message of unity and commitment to defeating terrorism.¹⁹³

Chaudhry Nisar Ali Khan urged the nation to unite against the imminent threat of terrorism by elucidating the calamitous state of affairs, and articulated the success of Pakistani operations against terrorism.¹⁹⁴ He is also the leading spokesperson relating to the performance of the National Action Plan and other military actions against terrorism in Pakistan.¹⁹⁵ Under Operation Zarb-e-Azb, armed forces of Pakistan have carried out more than 25,000-32,000 intelligence-based operations (IBO) in the territories of Pakistan, where 11,000 IBO’s were conducted in Punjab alone.¹⁹⁶ Different military operations have been conducted in all parts of Pakistan, especially in Karachi, and have resulted in the

190. Anup Kaphle, *Pakistan Announces National Action Plan to Fight Terrorism, Says Terrorists' Days are Numbered*, WASH. POST (Dec. 24, 2014), https://www.washingtonpost.com/news/worldviews/wp/2014/12/24/pakistan-announces-a-national-plan-to-fight-terrorism-says-terrorists-days-are-numbered/?utm_term=.d78f3d9d2ff9 (last visited Apr. 29, 2017).

191. Haider Mateen, *Political Leaders Reach Consensus on Military Courts*, DAWN, 2015, <https://www.dawn.com/news/1152909> (last visited Apr. 29, 2017).

192. *National Action Plan Will Continue With Same Enthusiasm: Ch Nisar*, DUNYA NEWS (Dec. 29, 2015), <http://dunyanews.tv/en/Pakistan/314961-National-Action-Plan-will-continue-with-same-enthu> (last visited Aug. 02, 2017).

193. *Nisar Urges Nation to Stand United Against Terrorism*, DAWN (2015), <https://www.dawn.com/news/1044884> (last visited Apr. 29, 2017).

194. *See id.*

195. News Desk, *Rebuttal: Interior Ministry Offers Open Debate on NAP Performance*, EXPRESS TRIB. (Apr. 10, 2015), <https://tribune.com.pk/story/867379/rebuttal-interior-ministry-offers-open-debate-on-nap-performance/> (last visited Aug. 02, 2017) (affirming “[f]or the record, the statement said, it is also clarified that the NAP was conceived, chaired and implemented by Chaudhry Nisar, in its entirety, in consultation with all the stake holders in the country.”).

196. Javed Mahmood, *Punjab Sees Success in Intelligence-Based Operations*, PAKISTAN FORWARD (Jan. 17, 2017), http://pakistan.asia-news.com/en_GB/articles/cnmi_pf/features/2017/01/17/feature-02 (last visited Aug. 01, 2017); Zahid Gishkori, *National Action Plan 26 Months on: Over 7,400 Suspected Terrorists Arrested*, NEWS (Feb. 20, 2017), <https://www.thenews.com.pk/print/187573-Over-7200-suspected-terrorists-arrested> (last visited Aug. 02, 2017).

apprehension of thousands of terrorists and hundreds of convictions.¹⁹⁷ NADRA, which works under the Ministry of Interior, is helping provinces computerize the arms licenses.¹⁹⁸ Pakistan is taking all kinds of initiatives to crack down on terrorism and has achieved a lot in a very short span of time: (1) 55,000 illegal non-nationals have been deported; (2) 27.5 million nonregistered telephonic connections have been blocked;¹⁹⁹ (3) arms licenses have been restricted and monitored, (4) more than 1,100 military and intelligence operations on terrorism have been initiated; (5) more than 32,000 suspected terrorists have been apprehended; and (6) target killings in Karachi have decreased by 44%.²⁰⁰

Operations Zarb-e-Azb and Radd-ul-Fasaad are milestones in the history of Pakistan and the credit goes to the Pakistan Army. Pakistani armed forces have been conducting operations against a number of armed terrorist groups, such as the Tehrik-i-Taliban Pakistan (TTP), the Islamic Movement of Uzbekistan (IMU), the East Turkestan Islamic Movement (ETIM), Lashkar-e-Jhangvi, al-Qaeda, Jundallah, and the Haqqani network.²⁰¹ Operations Zarb-e-Azb and Radd-ul-Fasaad have received unconditional public and political support, decreased terrorist attacks, and improved security conditions around Pakistan.

CONCLUSION

It has been 16 years since the terrorist attack on the World Trade Center, which resulted in the loss of thousands of lives on September 11, 2001. Nevertheless, it is considered the foremost act of terrorism, having viciously affected not only the thousands of victims of the event but also millions of people all around the world. To fight terrorism, all states around the globe have taken desperate measures to create laws to criminalize terrorism, some of which violate human rights laws, but are still crucially necessary for the desperate times.²⁰² The U.S. Patriot Act is an example of such desperate measures, violating the civil liberties and

197. Gishkori, *supra* note 196; Mahmood, *supra* note 196.

198. *Computerized Armed License System*, Government of Pakistan, Ministry of Interior and Narcotics Control (Feb. 8, 2014), <https://www.interior.gov.pk/index.php/directions/88-downloads-category/145-computerized-arms-license-system> (last visited Aug. 02, 2017).

199. APP, *supra* note 188.

200. Nisar Urges Nation to Stand United Against Terrorism, *supra* note 193.

201. Express News Serv., *Pakistan's New War on Terror*, INDIAN EXPRESS (Mar. 1, 2017), <http://indianexpress.com/article/explained/pakistans-new-war-on-terror-zarb-e-azb-shahbaz-qal-andar-suicide-bombing-army-afghanistan-balochistan-punjab-4548651> (last visited Aug. 02, 2017). See also YUVAL NERIA ET AL., 9.11: MENTAL HEALTH IN THE WAKE OF TERRORIST ATTACKS 3 (2006); SUJIT CHOUDHRY, THE MIGRATION OF CONSTITUTIONAL IDEAS 33 (2007).

202. ANEEK CHATTERJEE, INTERNATIONAL RELATIONS TODAY CONCEPTS AND APPLICATIONS 284 (2010).

privacy of citizens by authorizing the government to limit rights through surveillance.²⁰³ Such measures include tapping telephone companies and accessing banking account details, all permitted by the FBI without having to prove or show any cause for such activities, which violate the preexisting laws of privacy and liberty granted in the United States.²⁰⁴

In 2005, the U.S. Supreme Court held in *Hamdan v. Rumsfeld*²⁰⁵ that the military commissions established by the Department of Defense in 2001 were incompatible with the domestic laws of the United States and Article 3 of the Geneva Convention.²⁰⁶ However, in 2006 the decision was reversed such that Bush administration had no authority and needed congressional approval to set up a war crimes tribunal.²⁰⁷ The court added that the detainees had the following rights: to be treated humanely, to have a fair trial, and to see the evidence used against them.²⁰⁸ This judgment of the Supreme Court resulted in the passage of the Detainees Treatment Act of 2005 and the Military Commissions Act of 2006, which gave vast powers to the U.S. government to take action against suspected terrorists.²⁰⁹ These new pieces of legislation also deprived accused persons of some fundamental rights, including the right to a fair trial and the right to seek judicial review of the legality of their imprisonment (*habeas corpus*).²¹⁰ Conversely, in the prominent case of *Boumediene v. Bush* (2008), the U.S. Supreme Court held that Section 7 of the Military Commissions Act of 2006 was inconsistent with the U.S. Constitution, as the detainees had the right to petition in the federal court for *habeas corpus*.²¹¹

Pakistan has been an ally of the United States in the war against terrorism. The government of Pakistan has arrested many Pakistanis as

203. See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001); see also DANIEL FARBER, SECURITY V. LIBERTY: CONFLICTS BETWEEN NATIONAL & CIVIL LIBERTIES IN AMERICAN HISTORY 107 (2008).

204. ROBERT CURLEY, ISSUES IN CYBERSPACE: FROM PRIVACY TO PIRACY 49–52 (2012).

205. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

206. LENNON, *supra* note 67, at 62–64; *Submission to the Committee on the Elimination of Radical Discrimination*, HUM. RTS. WATCH 43 (2008).

207. ANTONIO CASSESE, THE OXFORD COMPANION TO INTERNATIONAL CRIMINAL JUSTICE 463 (2009).

208. See *Hamdan*, 548 U.S. at 557; see also FRAUKE LACHENMANN & RÜDIGER WOLFRUM, THE LAW OF ARMED CONFLICT & THE USE OF FORCE: THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 420 (2017); *Locked Up Alone: Detention Conditions & Mental Health at Guantanamo*, HUM. RTS. WATCH 52-53 (2008).

209. THOMAS RISSE ET AL., THE PRESIDENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE 155 (2013).

210. LENNON, *supra* note 67, at 63; CHRIS EDELSON, EMERGENCY PRESIDENTIAL POWERS 200 (2013).

211. MICHAEL A. NEWTON, TERRORISM: INTERNATIONAL CASE LAW REPORTER 2008 1057 (2010); see also Gishkori, *supra* note 196.

suspected terrorists, and no one knows the whereabouts of some of these people.²¹² The Criminal Procedure Code of Pakistan provides that a person, once arrested, should be produced before a local magistrate within twenty-four hours.²¹³ These missing persons have never been produced before magistrates, and the government is now denying that they have been arrested.²¹⁴ The Supreme Court of Pakistan took *suo motu* notices and asked the government to produce the missing persons before the court.²¹⁵ The state responded to the dire situation by recovering the missing persons, however not all of the missing people were recovered.²¹⁶

Human rights activists argue that governments need to uphold human rights from the outset and integrate human rights into the core of governments' antiterrorism policies. Governments should always keep in mind the recommendation of Kofi Annan, the former U.N. Secretary-General:

We are all determined to fight terrorism and to do our utmost to banish it from the face of the earth. But the force we use to fight it should always be proportional and focused on the actual terrorists. We cannot and must not fight them by using their own methods—by inflicting indiscriminate violence and terror on innocent civilians, including children.²¹⁷

The protection of human rights is important because they are an indispensable part of the democratic process required in emergency situations. The protection of human rights is necessary to nurture politics that insist upon the importance of individual rights, the rule of law, and judicial review of the executive. Unfortunately, in order to protect national security, the United States has restricted some human rights. This has led us to an era that lacks liberty and the freedom to enjoy human rights. There is a message in the political developments leading up to the events of 9/11, and a strong nexus among human rights violations and terrorist activities. In order to put an end to international terrorism, the international community of states must also address the underlying

212. MUHAMMAD SHOAIB BUTT & JAYATILLEKE S. BANDARA, TRADE LIBERALISATION AND REGIONAL DISPARITY IN PAKISTAN, 67 (2008).

213. § 61, PAK. CODE CRIM. PROC., 1898.

214. *Id.*

215. LOME NEUDORF, THE DYNAMICS OF JUDICIAL INDEPENDENCE: A COMPARATIVE STUDY OF COURTS IN MALAYSIA & PAKISTAN 191 (2017).

216. ROGER D. LONG ET AL., STATE & NATION BUILDING IN PAKISTAN 120-21 (2015).

217. Press Release, Sec'y Gen., Global Effort Needed Against Terrorism, says Secretary-General but Responses Must Be Sophisticated, Proportional, U.N. Press Release SG/SM/7224 (Nov. 18, 1999), <http://www.un.org/press/en/1999/19991118.sgsm7224.doc.html> (last visited Aug. 01, 2017); see also REHMAN, INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 41, at 437.

causes that lead individuals to resort to such extreme measures.²¹⁸

The 9/11 Commission report says:

We must find ways of reconciling security with liberty, since the success of one helps the other. The choice between security and liberty is a false choice . . . Our history has shown us that insecurity threatens liberty. Yet if our liberties are curtailed, we lose the values that we are struggling to defend.²¹⁹

This observation from the 9/11 Commission clearly states that liberty and security are interdependent, but the post-9/11 legislation contradicts this statement. The most immediate reaction to terrorism was the adoption of laws and policies to preserve national security, but such laws drastically curtailed human rights and paved the way for further limitations by the Executive. Some human rights activists assert that safeguarding human rights while preserving national security, is important, and there should be balance between them.²²⁰ It is difficult to maintain this balance, which is why we have been witnessing the legislation of the last few years.

International organizations and states have been fighting terrorism by defining and criminalizing it through legislation. However, these measures have proved to be counterproductive, as not only has the criminal legislation diminished human rights of the civilian population, but also terrorism itself has been thriving and emerging like never before.²²¹ On November 13, 2015, ISIS conducted a series of terrorist attacks in Paris, France, including suicide bombings and mass public shootings at various locations.²²² Like the 9/11 attack, this event was so colossal that it is now considered a milestone terrorist attack, which left more than 120 civilians dead.²²³ The Paris attacks by ISIS are considered

218. *Id.*

219. *The 9/11 Commission Report*, 361, 2004 WL 1634382 (U.S. Senate).

220. See Larman C. Wilson, *Human Rights in U.S. Foreign Policy* in DIVERSITY AND U.S. FOREIGN POLICY: A READER, 323 (Ernest J. Wilson, III ed. 2004).

221. LEANNE WABER & BEN BOWLING, *STOP & SEARCH: POLICE POWER IN GLOBAL CONTEXT* 24-25 (2014). See also HOWARD S. LEVIE ET AL., *TERRORISM: DOCUMENTS OF INTERNATIONAL & LOCAL CONTROL* 163 (1979); JILL STEANS & DANIELA TEPE-BELFRAGE, *HANDBOOK ON GENDER IN WORLD POLITICS* 259 (2016); GREAT BRITAIN: PARLIAMENT: JOINT COMMITTEE ON HUMAN RIGHTS, *COUNTER-TERRORISM POLICY & HUMAN RIGHTS* 145 (2005).

222. CENAN AL-EKABI ET AL., *YEARBOOK ON SPACE POLICY* 5 (2017); PHILIP TRANTON, *PARIS ATTACKS: ISIS SPREADING INTO EUROPE* 1-3 (2015).

223. Steve Almasy et al., *Paris Massacre: At Least 128 Die in Attacks*, CNN (Nov. 14, 2015, 9:48 AM), <http://edition.cnn.com/2015/11/13/world/paris-shooting>; see also Natalie Nougayrède, *Paris Attacks Leave France in Trauma, Fearing for the Future*, GUARDIAN (Nov. 13, 2015, 8:24 PM), <https://www.theguardian.com/commentisfree/2015/nov/14/paris-attacks-leave-france-in-trauma-fearing-for-the-future> (last visited Apr. 29, 2017).

an act of war against France and humanity.²²⁴ In the aftermath, the French president, Francois Hollande, declared that the acts of terrorism were “an act of war” and that “France will destroy IS.”²²⁵

International terrorism has reached its highest level yet, and is still growing. The Islamic State of Iraq and the Levant (ISIL, ISIS, IS, and Daesh are all terms for the same terrorist organization²²⁶) is the most prominent terrorist organization,²²⁷ which has occupied territory in Iraq and Syria and has spread to Afghanistan, Libya, and other parts of countries in South Asia and northern Africa, controlling over 6.5 million people.²²⁸ ISIL has caused thousands of deaths in Iraq alone with bombings and mass shootings in less than five years, which has led to the occupation of major cities of Iraq and affected millions across the globe.²²⁹ The terrorist group has promulgated social propaganda by posting horrendous videos of beheadings in brutal ways,²³⁰ exploding persons with bazookas,²³¹ and mass executions of adults and children,²³² which caught immediate international attention and spread terror globally.²³³ ISIL has also utilized the leftover equipment of the United States in Iraq²³⁴ and gained firepower that the United States provided to

224. Nougayrède, *supra* note 223.

225. *Paris Attacks: 'France Will Destroy IS' – Hollande*, BBC (Nov. 16, 2015), <http://www.bbc.com/news/world-europe-34836439> (last visited Apr. 29, 2017); *see also* Jim Muir, *Islamic State Group: The Full Story*, BBC News (June 20, 2016), <http://www.bbc.com/news/world-middle-east-35695648> (last visited Aug. 02, 2017).

226. RICHARD YORK, *KNOW THY ENEMY: ISLAMIC STATE OF IRAQ AND THE LEVANT*, 2 (LULU ed., 2015).

227. RILEY M. TOWNSEND, *THE EUROPEAN MIGRANT CRISIS*, 42 (LULU ed., 2015).

228. Zachary Laub, *The Islamic State*, COUNCIL ON FOREIGN RELATIONS (Aug. 10, 2016), <http://www.cfr.org/iraq/islamic-state/p14811> (last visited Apr. 29, 2017).

229. Jessica D. Lewis, *Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part I*, *Middle East Security Report 14*, THE INSTITUTE FOR THE STUDY OF WAR, Sept. 2013; Muir, *supra* note 225.

230. Steve Almasy, *ISIS Video Purportedly Shows Beheadings of Kurdish Fighters in Iraq*, CNN (Oct. 31, 2015), <http://edition.cnn.com/2015/10/30/middleeast/isis-iraq-hawija-executions-video/> (last visited Apr. 29, 2017).

231. Simon Tomlinson, *ISIS Execute a Man with A Bazooka in Shocking New Video: Terror Group Blast Prisoner After Tying Him to a Post*, DAILY MAIL (May 21, 2015, 11:58 AM), <http://www.dailymail.co.uk/news/article-3090886/ISIS-execute-man-BAZOOKA-shocking-new-video.html> (last visited Apr. 29, 2017).

232. Corey Charlton, *Anti-ISIS Activists Use Horrific Jihadi Propaganda Film to Claim Brutal Militants Executed Hundreds of Children*, DAILY MAIL (Nov. 9, 2015, 2:46 PM), <http://www.dailymail.co.uk/news/article-3310486/Shocking-footage-shows-ISIS-militants-mass-accrue-200-captive-Syrian-children-bloodthirsty-jihadis-latest-mass-execution.html> (last visited Apr. 29, 2017).

233. *See generally* Marco Lombardi, *Islamic State Communication Project*, 1 SEC. TERRORISM SOC'Y INT'L J. 99, 108 (2015).

234. Eric Pianin, *U.S Shoots Itself in the Foot by Accidentally Arming ISIS*, FISCAL TIMES (June, 4, 2015).

rebels in Syria to fight Assad regime,²³⁵ which included all kind of modern warfare technology such as Humvees, armored vehicles, tanks, machine-guns, antiaircraft missiles, and trucks.²³⁶

The financial sources of ISIL are comparable to those of a state; ISIL raises its money by illegal taxation, extortion, ransom, smuggling, and other actions; it has looted banks and obtained more than \$429 million, occupied the oil reserves of Syria and Iraq, sold those reserves on the black market to raise millions of dollars a month, and looted gold and other resources in the occupied territories.²³⁷

Today, ISIL is considered a leading violator of human rights and the chief terrorist organization, posing a threat to international peace and security.²³⁸ More than 60 countries have joined the international coalition against ISIL,²³⁹ and countries, including the United States and Russia, have been conducting airstrikes recurrently.²⁴⁰ The Paris attack was the last nail in the coffin, and it will lead to serious and immediate ramifications in the counter-ISIL strategies.²⁴¹

It is evident from the discussion above that the human rights are not being scrupulously adhered to at the moment, because of states' preferences for national security over the promotion of human rights. Today, some governments and civil society organizations are increasingly emphasizing the need in times of crisis to protect human rights and to not derogate from them in the fight against terrorism.²⁴² The recommendation of the 9/11 Commission is also an indication of a growing support for human rights to be an integral part of effective counterterrorism measures. Hitherto, terrorism around the globe has been

235. Spencer Ackerman, *U.S. Ammunition Airdrop in Syria Raises Concerns amid Reduced Vetting of Rebels*, GUARDIAN (Oct. 13, 2015, 3:25 PM), <https://www.theguardian.com/world/2015/oct/13/us-syria-rebels-ammunition-airdrop-isis-assad-regime> (last visited Apr. 29, 2017).

236. *Id.*; see also Pianin, *supra* note 234.

237. YORK, *supra* note 226, at 30-35.

238. Bertrand G. Ramcharan, *Human Rights and Security Challenges in THE LAW, POLICY AND POLITICS OF THE U.N. HUMAN RIGHTS COUNCIL*, 112 INT'L STUD. IN HUM. RTS. 81 (2015); see also PEU GHOSH, *INTERNATIONAL RELATIONS* 509 (4th ed. 2016).

239. Laura Smith-Spark, *International Coalition Vows Unity In Fight Against ISIS*, CNN (Jun. 2, 2015, 4:03 PM), <http://edition.cnn.com/2015/06/02/world/anti-isis-coalition-conference> (last visited Apr. 29, 2017).

240. *Battle for Iraq and Syria in Maps*, BBC (Jan. 20, 2016) <http://www.bbc.com/news/world-middle-east-27838034#share-tools> (last visited Apr. 29, 2017).

241. Isabelle Fraser, *Paris Attacks: Major Police Raid in Saint-Denis Over, Seven Arrested and Two Suspects Killed – Live*, TELEGRAPH, (Nov. 18, 2015); see also Vikram Dodd, *Anti-Terrorism Policies Will Need To Be Revisited After Paris Attacks*, GUARDIAN (Nov. 13, 2015, 8:05 PM), <https://www.theguardian.com/uk-news/2015/nov/14/anti-terrorism-policies-will-need-to-be-revisited-after-paris-attacks> (last visited Apr. 29, 2017).

242. Neil Hicks, *The Impact of Counter Terror on the Promotion and Protection of Human Rights: A Global Perspective in HUMAN RIGHTS IN THE "WAR ON TERROR"* 222 (Richard A. Wilson ed., 2005).

rampant; where ordinary criminal laws lack efficacy, extraordinary measures such as establishing military courts and separate terrorism-related criminal procedural codes can serve to assist counterterrorism efforts.

