

# JTSA

The Journal on Terrorism and Security Analysis

## Beyond Terror: Security in the Post-Bin Laden World

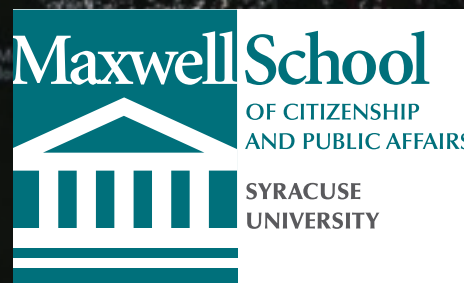
Fighting Quietly In The Post-Bin Laden Era: *The Tools, Tactics & Techniques Of Soft Counter-Terrorism In The Twenty-First Century*  
By Melissa Jane Kronfeld

Viewing Militancy In Fata From A Conflict Transformation Lens: *Moving From Critique To Transformatory Engagement*  
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Redefining Terrorism Under The Mubarak Regime: *Toward A New Definition Of Terrorism In Egypt*  
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Enthusiastically Approving Failure: *The Unintended Consequences of SOF's Success*  
By Jason Mangone



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# Contents

- 2 Introduction
- 3 Contributors
- 4 **Fighting Quietly In The Post-Bin Laden Era: *The Tools, Tactics & Techniques Of Soft Counter-Terrorism In The Twenty-First Century***  
By Melissa Jane Kronfeld
- 17 **Viewing Militancy In FATA From A Conflict Transformation Lens: *Moving From Critique To Transformatory Engagement***  
By Dr. Nazya Fiaz
- 28 **Redefining Terrorism Under The Mubarak Regime: *Toward A New Definition Of Terrorism In Egypt***  
By Dr. Islam Ibrahim Chiha
- 46 **Assessing The Terrorist Threat: *The Primacy of Domestic Terrorism***  
By Luke Lischin
- 60 **Enthusiastically Approving Failure: *The Unintended Consequences of SOF's Success***  
By Jason Mangone

## Our World

Since the success of the now famous Operation Neptune Spear, which resulted in the killing of Al Qaeda founder and terrorism mastermind Osama Bin Laden, international security has become more dynamic and amorphous than the founders of our current world could have envisioned. In the post-Bin Laden world, which is now our world, international security is changing in dramatic ways. In the post-Bin Laden world our security will be threatened from increasingly diverse geographic locales. From rising state powers; from social revolutions; from paradigmatic environmental changes and near economic collapses, to mechanized warfare and shifting global alliances. The post-Bin Laden world that we have entered will display a greater range of issues than those that troubled past generations. We will not only continue to be challenged by the myriad of terror groups that have evolved from their Jihadi and Salafist predecessors of the Soviet-Afghan war, but from factors incomprehensible to those that fought that war only a few decades earlier. Cyber wars conducted at the push of a button and the militarization of space will give way to the advent of technologies not yet dreamed of. Environmental and energy challenges will test international goodwill and cooperation, while the international structures born of WWII and Cold War security concerns, structures that have laid the foundation for our present world, will be put to the test by emerging paradigms previously unimagined.

For good or evil, the post-Bin Laden world will be predicated only upon the imagination of those living in the present. In our world, the post Bin-Laden world, former guarantors of safety derived from the bi-polar schematic of Cold War politics have given way to a multi-polar world of numberless potential futures. Our generation bears the responsibility of choosing a future worthy of those who have sacrificed their present for ours. It is in this post-Bin Laden world, now our present world, that we must imagine a future worth living for: *a future beyond terror*.

## Our Journal

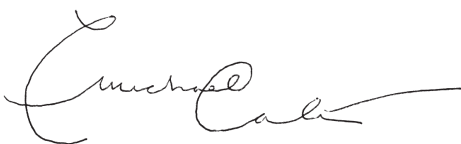
Our Journal is also changing. Now in our 8<sup>th</sup> volume, the JTSA is advancing towards our goal of becoming the premier university based academic security journal in the nation. This year's journal is the combined effort of our largest and most diverse staff yet, boasting twenty-seven JD, PhD and Masters Students from the Law, Public Administration, and International Relations departments of our beloved Maxwell School. Last November our journal received national press for the first time, as our call for papers was prominently featured in *Lawfareblog.com*. Additionally, we have also improved our media presence with a new and improved website (<http://jtsa.syr.edu/>), and have incorporated the JTSA into various social media outlets as well. We have also continued to attract top notch scholarly attention from established scholars, as well as from rising young academic stars. With newly implemented protocols in place to ensure institutional memory, the JTSA hopes to build on our past achievements to ensure continued future advancement towards our goal of increasing academic excellence and scholarly innovation.

## Our Thanks

The JTSA Staff would first and foremost like to thank the faculty and staff of the Institute for National Security and Counterterrorism ("INSCT"). The INSCT staff, without whom this journal and our annual conference would hardly be possible, provide a source of constant inspiration and support for those students lucky enough to be associated with them. We would especially like to thank Professors William C. Banks, Robert B. Murrett, David M. Crane, Keli Perrin, William Snyder, Tara Helfman, and Isaac Kfir for their continued support and guidance. The JTSA would like to extend a special thank you to Marlene Diamond for all of her hard work here at Syracuse University. The inspirational depth of scholarship and personal generosity of the INSCT faculty to their students has added greatly to our experience here and will not soon be forgotten.

The JTSA Staff would also like to thank Dean James B. Steinberg for his leadership here at the Maxwell School. We are fortunate to have him here not only as an excellent dean, but also as an inspiring teacher. We thank our publisher, the Student Association on Terrorism and Security Analysis ("SATSA"). JTSA also thanks our authors who we are fortunate to have the opportunity to publish this year. Finally, we would like to thank you, our reader. We hope you enjoy this year's journal as much as we have enjoyed its production.

Sincerely,



C. Michael Cali, Editor-in-Chief

## Contributors

**Melissa Jane Kronfeld** is a Ph.D. candidate in the Division of Global Affairs at Rutgers University. A New York City native and resident, Melissa received a B.A. in International Relations from George Washington University and an M.S. in Global Affairs from New York University and Rutgers University. Currently, Melissa lectures on American foreign policy in the Political Science department on the Newark campus and is writing a dissertation on American national security and defense posture. In 2012, she was awarded first place in the Richard A. Clarke National Security and Counter-Terrorism Scholarship contest. A long-time journalist, Melissa has been featured in the Politico, The Daily Caller, Government Security News, Fox News, Fox News Channel, Fox Business, and the New York Post. She can be reached at [MelissaJaneKronfeld@gmail.com](mailto:MelissaJaneKronfeld@gmail.com).

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**Luke Lischin** graduated Magna Cum Laude from Muhlenberg College in 2012, where he received his Bachelor's Degree in International Studies. During his time at Muhlenberg, he received honors for his work on his capstone thesis in International Studies entitled Violent Radical Potential, which explored and compared theoretical approaches to the etiological study of terrorism. He is currently an MA candidate at Georgetown University's School of Foreign Service, where he is enrolled as a student in the Security Studies Program.

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## Fighting Quietly in the Post-Bin Laden Era: The Tools, Tactics & Techniques of Soft Counter-Terrorism in the Twenty-First Century

By Melissa Jane Kronfeld

*"We can keep fighting and we can keep killing them, but if somebody's not working on draining the swamp, we're never going to be finished with this." - General Peter Pace<sup>1</sup>*

### INTRODUCTION

As the post-Bin Laden era begins, and the war on radical Islamic extremism (hereafter the War on Terrorism) enters its second decade, politicians, pundits, and policymakers alike are asking how the conflict will end?<sup>2</sup> With more than 100,000 Islamic militants interned and imprisoned around the world, democratic countries like the United States have found it increasingly difficult to justify indefinite detention, both fiscally and morally.<sup>3</sup> Although unsustainable in the long term, repatriation without addressing the militant's ideological outlook is equally problematic, and has resulted in some individuals re-

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\*Parts of this research also appeared in a monograph by the author entitled, *Killing Them With Kindness: A Softer Approach to Preventing Violent Extremism and Countering Radicalization in the War on Terrorism* which was awarded first place in the 2012 Richard A. Clarke National Security and Counter-Terrorism Scholarship contest. The author would like to thank David P. Culley and Dr. Simon Reich for providing input on earlier drafts.

1 Frances Townsend, "Deradicalization: Oasis or Mirage?," (Global Security Forum 2011, Washington, D.C., June, 8, 2011), accessed July 1, 2012, <http://csis.org/event/global-security-forum-2011-deradicalization-oasis-or-mirage>.

2 For the purposes of this research, we define 'radical' as the, "possession of extremist views and a willingness to use violence in the pursuit of extremist, racist, or political objectives." Naureen Chowdhury Fink and Ellie B. Hearne, *Beyond Terrorism: Deradicalization and Disengagement from Violent Extremism* (New York: International Peace Institute: 2008), i. For the purposes of this research 'Islamic terrorism' refers to a distinct branch of Salafism, as practiced by al Qaeda, its affiliates and aspirants, and not to Islam as a religion.

3 Rohan Gunaratna, "Example Cases and Programs: Battlefield of the Mind: Terrorist Rehabilitation," in *Protecting the Homeland from International and Domestic Terrorism Threats: Current Multi-Disciplinary Perspectives on Root Causes, the Role of Ideology, and Programs for Counter-radicalization and Disengagement*, eds. Laurie Fentsermacher, Larry Kuznar, Tom Reiger and Anne Speckhard (Washington, D.C.: United States Government, 2010), 364.

turning to terrorism upon release.<sup>4</sup> As the U.S. draws down its forces in Iraq and Afghanistan (subsequently handing over the prison and detainee facilities to local officials), and as the debate over closing Guantanamo Bay has been reignited by in a second Obama administration, it is now more crucial than ever to ensure that the means of counter-terrorism are sufficiently maintained, despite policy shifts.<sup>5</sup> Therefore we must ask ourselves, beyond killing and capturing terrorists, what other means of preventing violent extremism and countering radicalization are available to the United States? How have other countries effectively deterred terrorists from committing violent acts, and how have they enticed them into renouncing their radicalized ideology? And finally, how can lessons learned from these programs be broadly applied to America's War on Terrorism?

Over the last decade, counter-terrorism tactics have increasingly evolved from "hard" to "soft" measures. A "hard" approach to counter-terrorism entails employing strictly military or law enforcement techniques, including the use of force, intelligence and surveillance, as well as killing, capturing or detaining terrorists.<sup>6</sup> A "soft" counter-terrorism approach, "seeks to undo the radicalization process by engineering the individual's return to moderate society, usually by providing them with a stable support network, probing their original reasons for radicalizing, and divorcing them from their extreme beliefs and social contacts."<sup>7</sup> Soft counter-terrorism measures, what one researcher labels "cognitive immunization" policies, can be understood as part of a broader "war of ideas" against terrorism and those susceptible

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4 In 2009 the Saudi government released a list of its 85 most wanted terrorist suspects. Among them were seven men who, after having left the Guantanamo Bay detention facility, went through an extensive rehabilitation program in Saudi Arabia, and upon their release, returned to terrorism in Yemen. Some of these men were identified as senior ranking members of al Qaeda on the Arabian Peninsula (AQAP). Similar problems occurred in Yemen, leading to the dismantling of that country's prison-based religious rehabilitation program. See Brian Bennett, "U.S. concerned about former Guantanamo prisoners in Yemen," *Los Angeles Times*, November 2, 2010, and Christopher Boucek and Gregory D. Johnsen, "The Dilemma of the Yemeni Detainees at Guantanamo Bay," *CTC Sentinel*, 1 (2008), 2.

5 For more on the renewed effort to close the Guantanamo Bay facility, see *Guantanamo Bay Detainees: Facilities and Factors for Consideration If Detainees Were Brought to the United States*. (Washington, D.C.: Government Accountability Office, 2012).

6 Ellie B. Hearne and Nur Laiq, *A New Approach? Deradicalization Programs and Counterterrorism* (New York: International Peace Institute, 2010), 3.

7 *Ibid.*, 3.

to the terrorist's message.<sup>8</sup> The vast literature on soft counter-terrorism methods makes mention of government, community, and religious-based efforts in over 50 countries, emphasizing the growing influence of this approach in the ongoing battle against extremist violence and religious, as well as other forms, of political and social radicalization.<sup>9</sup>

### UNDERSTANDING THE DISCOURSE

Before we discuss the way in which states have pursued soft counter-terrorism tactics, we must begin by defining the nuanced terminology employed for the purpose of this research. To understand counter-terrorism, it is crucial to understand what is being countered, or how terrorism is defined. With hundreds of official designations in use today, this research borrows from Alex P. Schmid's work on a definitional consensus, and refers to terrorism as,

A doctrine about the presumed effectiveness of a special form or tactic of fear-generating, coercive political violence and, on the other hand, to a conspiratorial practice of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and non-combatants, performed for its propagandistic and psychological effects on various audiences and conflict parties.<sup>10</sup>

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8 Kumar Ramakrishna, "The Four Mutations of Violent Muslim Extremism in Southeast Asia: Some Implications for a Cognitive Immunization Policy," *Asia Policy*, 12 (2011): 13-19 and William Rosenau, "Waging the 'War of Ideas,'" in *The McGraw-Hill Homeland Security Handbook: The Definitive Guide for Law Enforcement, EMT, and all other Security Professionals*, ed. David Kamien (New York, The McGraw-Hill Companies, Inc., 2006), 1131-1148.

9 The author found references to counter-radicalization and de-radicalization efforts in Afghanistan, Algeria, Australia, Austria, Bangladesh, Belarus, Belgium, Canada, Columbia, Denmark, Djibouti, Egypt, Finland, France, Germany, Guyana, Iceland, India, Indonesia, Iraq, Ireland, Italy, Jordan, Kuwait, Libya, Malaysia, Mauritania, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, the Philippines, Qatar, Romania, Russia (Chechnya), Saudi Arabia, Seychelles, Singapore, Slovenia, Spain, Sri Lanka, St. Vincent and the Grenadines, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America and Yemen. These undertakings include efforts to counter right and left wing ethno-nationalist and insurgent, as well as narco- and religious-based, violent extremism and radicalization.

10 Alex P. Schmid, "The Definition of Terrorism" in *The Routledge Handbook of Terrorism Research*, ed. Alex P. Schmid (Abingdon, Oxon: Routledge, 2011), 39, 86.

Terrorism is a threat-based communicative process.<sup>11</sup> It rarely occurs as a single act, but rather as part of a larger campaign of action by irregular or insurgent forces engaged in asymmetric warfare, wherein the enemy is perceived as having a distinct military advantage.<sup>12</sup> The direct victims are typically non-combatants but they are meant to serve as "message generators" for a larger audience, consisting of the media, parties to the conflict, and sympathetic observers who might be recruited based on the perceived success of the violent tactics employed.<sup>13</sup> The motivation and intent of terrorism is context-based (i.e. grievances and aims are contingent upon the actors employing said tactics and the social economic, cultural and political situation in which the act of terrorism occurs).<sup>14</sup> The contentious nature of the definition stems from the perception of its application in a given situation. It implies that for some, a terrorist might be more appropriately labeled a "freedom fighter" or perhaps a "criminal, crusader or crazy."<sup>15</sup> Violent extremism and terrorism are often used interchangeably, but violent extremism is broader in scope and can encompass non-terrorist groups.<sup>16</sup>

Engaging in acts of terrorism requires an individual undergo a process of radicalization. As Omar Ashour writes, radicalization is defined as, "a process of relative change in which an [individual] or group undergoes ideological and/or behavioral transformations that lead to the rejection of democratic principles (including the peaceful alternation of power and the legitimacy of ideological and political pluralism) and possibly to the utilization of violence, or to an increase in the levels of violence."<sup>17</sup> Furthermore, radicalization can be cognitive or behavioral: "cognitive radicalization is the process through which an individual adopts ideas that are severely at odds with those of the mainstream, refutes the legitimacy of the existing social order, and seeks to replace it with a new structure based on a

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11 *Ibid.*, 86.

12 *Ibid.*, 86.

13 *Ibid.*, 86-87.

14 *Ibid.*, 87.

15 Frederick Hacker, *Crusaders, Criminals, Crazy: Terror and Terrorism in our Time* (New York: W. W. Norton, 1976).

16 Heame and Nur, *A New Approach? Deradicalization Programs and Counterterrorism*, 2.

17 Omar Ashour, *The De-Radicalization of Jihadists: Transforming Armed Islamist Movements* (London: Routledge, 2009), 5.

completely different belief system."<sup>18</sup> Radicalization becomes behavioral when, "an individual takes the additional step of using violence to further the views derived from cognitive radicalism."<sup>19</sup>

Given the aforementioned definition, counter-terrorism therefore refers to the means – including practices and policies, tactics, techniques, and strategies – by which terrorism is confronted and averted. Counter-terrorism programs can refer to institutionalized or ad hoc efforts, emerging from, or administered by, government (federal, state or local), law enforcement or community groups, or a combination of the aforementioned groups, with the aim of preventing violent extremism and countering radicalization through soft and/or hard tactics. For the purposes of this research, I define 'programs' broadly, "describing a wide variety of policies to facilitate disengagement... Alternatively, what constitutes a 'programme' may essentially just be a legal framework for facilitating reduced sentencing in exchange for repentances and collaboration with the authorities."<sup>20</sup> Today, counter-terrorism is an international legal obligation. In the days following the 2001 terrorist attacks in the U.S., the United Nations Security Council passed a resolution mandating that countries adopt specific measures to combat, prevent and suppress acts of terrorism for the sake of transnational security.<sup>21</sup> Counter-terrorism is therefore an integral part of global governance.

Counter-terrorism strategies consist of counter-radicalization as well as de-radicalization efforts. Counter-radicalization typically refers to preventative methods while de-radicalization is reactive, referring to methods applied to an individual (or group of individuals) post-radicalization.<sup>22</sup> The United Nations refers to counter-radicalization as poli-

cies and programs that address, "some of the conditions that may propel some individuals down the path of terrorism. It is used broadly to refer to a package of social, political, legal education and economic programmes specifically designed to deter disaffected... individuals from crossing the line and becoming terrorists."<sup>23</sup> On the other hand, John Horgan defines de-radicalization as, "the social and psychological process whereby an individual's commitment to, and involvement in, violent radicalization is reduced to the extent that they are no longer at risk of involvement and engagement in violent activity."<sup>24</sup> Therefore, de-radicalization programs are, "generally directed against individuals who have become radical with the aim of re-integrating them into society or at least dissuading them from violence."<sup>25</sup> Counter-radicalization and de-radicalization programs can be secular or religious in orientation, and seek to modify and undermine individual and group behavioral or ideological processes.<sup>26</sup>

Horgan makes a further distinction between de-radicalization and disengagement, characterizing de-radicalization as an actual shift in the individual's cognitive or normative understanding, while disengagement implies a behavioral change, in which an individual may no longer be an active participant in violent activities but may still maintain their radical ideologies or beliefs.<sup>27</sup> Importantly, disengagement does not imply de-radicalization; "a disengaged terrorist may not necessarily be repentant or 'deradicalized' at all. Often physical disengagement may not result in any concomitant change or reduction in the ideological support or, indeed, the social and psychological

18 Lorenzo Vidino, *Countering Radicalization in America: Lessons from Europe* (Washington, D.C.: United States Peace Institute, 2010), 4.

19 Ibid., 4.

20 Tore Bjorgo and John Horgan, "Introduction," in *Leaving Terrorism Behind: Individual and Collective Disengagement*, eds. Tore Bjorgo and John Horgan (Abingdon, Oxon: Routledge, 2009), 5.

21 United Nations Security Council. *Resolution 1373: On Threats to International Peace and Security Caused by Terrorist Acts* (New York: United Nations, 2001).

22 Hamed El-Said, *De-Radicalising Islamists: Programmes and their Impact in Muslim Majority States* (London: The International Centre for the Study of Radicalisation and Political Violence, 2012), 1. See also Shira Fishman and Arie W. Kruglanski, "Psychological Factors in Terrorism and Counterterrorism: Individual, Group, and Organizational Levels of Analysis," *Social Issues and Policy Review*, 3 (2009): 33.

23 Counter-Terrorism Implementation Task Force, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programmes* (New York: United Nations, June 2010), 5.

24 John Horgan, *Walking Away from Terrorism: Accounts of Disengagement from Radical and Extremist Movements* (Abingdon, Oxon: Routledge, 2009), 153.

25 Counter-Terrorism Implementation Task Force, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programmes*, 5.

26 Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 *STANFORD L. REV.* 138, 138-45 (2012).

27 Horgan, *Walking Away from Terrorism: Accounts of Disengagement from Radical and Extremist Movements*, 159.

control that the particular ideology exerts on the individual."<sup>28</sup> Disengagement can be an individual or a collective act, a member may leave the group and no longer participate in the organization's violent activism, or a group may, "abandon their use of terrorist methods or end their terrorist campaign." This process occurs voluntarily, involuntarily or as a combination of both.<sup>29</sup> Andrew Silke suggests the real goal in preventing violent extremism and countering radicalization should be disengagement, noting that de-radicalization implies the onus of the individual's actions are a result of their ideological outlook, while discounting the numerous other factors at play.<sup>30</sup>

### A SOFT APPROACH to COUNTER-TERRORISM

Preventing violent extremism and countering radicalization is not a new concept, and has precedence in wartime and post-conflict situations, as well as with comparator groups such as criminal gangs, religious cults, and racially-charged organizations.<sup>31</sup> Programs to counter violent Islamic extremism and radicalization have taken on an orientation that is distinctly Arab and Muslim or European. As Christopher Boucek et al. writes, "European countries emphasize counter-radicalization, and their efforts to rehabilitate radical Islamists are a by-product of preventive initiatives. By contrast, most Middle Eastern and Southeast Asian govern-

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28 Furthermore Horgan posits that though they might be disengaged, no terrorist is ever truly de-radicalized. See *ibid.*, 27. See also John Horgan, "Individual Disengagement: A psychological analysis," in *Leaving Terrorism Behind: Individual and Collective Disengagement*, eds. Tore Bjorgo and John Horgan (Abingdon, Oxon: Routledge, 2009), 27.

29 Bjorgo and Horgan, "Introduction," 4.

30 Andrew Silke, "Disengagement or Deradicalization: A Look at Prison Programs for Jailed Terrorists," *CTC Sentinel*, 4 (2011): 20.

31 On precedence see Bjorgo and Horgan, "Introduction," 5; Lindsay Clutterbuck et al., *Individual disengagement from Al Qaeda-influenced terrorist groups: A Rapid Evidence Assessment to inform policy and practice in preventing terrorism* (Santa Monica: RAND, 2011), vii-ix; 21-45; Rohan Gunaratna and Lawrence Rubin, "Introduction" in *Terrorist Rehabilitation and Counter-Radicalisation: New Approaches to Counter-Terrorism* eds. Rohan Gunaratna, Jolene Jerard, and Lawrence Rubin (London: Routledge, 2011), 3-4; Gary LaFree and Erin Miller, "Desistance from Terrorism: What can we learn from Criminology? *Dynamics of Asymmetric Conflict: Pathways toward terrorism*, 1 (2009): 203-230; and Frances Eberhard et al, *Deradicalization: A Review of the Literature with Comparison to Findings in the Literatures on Degauging and Deprogramming* (Durham: Institute for Homeland Security Solutions, 2010), 6-7. See also Nico Voigtländer and Hans-Joachim Voth, *Hatred transformed: How Germans changed their minds about Jews, 1890-2006* (London: Centre for Economic Policy Research, 2012).

ments pursue both counter-radicalization and deradicalization initiatives."<sup>32</sup> These efforts can be broadly categorized as methodologically religious versus methodologically secular in Arab and European countries, respectively. This distinction is a result of the government's role as an authority on Islam. In the Middle East and Asia, the separation between religion and state is less pronounced than in Europe, and in some cases, a specific religion is sanctioned by the state. Successful programs in the Middle East and Southeast Asia therefore have a distinctly religious component to their programs because rehabilitation and reintegration back into mainstream society requires the acceptance of mainstream values and therefore acceptance of a mainstream (or state-sponsored) version of Islam.

The literature on preventing violent extremism and countering radicalization describes numerous programs in existence that use soft techniques and purport to be successful, but because most lack identifiable metrics, results remain primarily inconclusive. Horgan and Kurt Braddock warn that in assessing these programs it is impossible to discern implications or expectations. No program has "formally identified valid and reliable indicators of successful de-radicalization or even disengagement... Consequently, any attempt to evaluate the effectiveness of any such program is beset with a myriad of challenges that are as much conceptual as they are practical."<sup>33</sup> With that caveat, the following section will provide a brief overview and assessment of the anecdotal evidence available for those programs deemed "successful" in the pursuit of preventing violent extremism and countering radicalization.

### A MIDDLE EASTERN APPROACH to SOFT COUNTER-TERRORISM

Preventing violent extremism and countering radicalization in the Middle East blends together a unique mix of coercion, co-option and cash to cajole terror suspects into renouncing violent extremism. These programs have two components: one being, "the intellectual/cognitive component including exposure to counterarguments," and the second, "a motivational component based on material support, job training, and assistance to families of detained militants, all offering an alternative opportunity for honorable

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32 Christopher Boucek et al., *Deradicalizing Islamist Extremists* (Santa Monica: RAND, 2010), 34-35.

33 John Horgan and Kurt Braddock, "Rehabilitating the Terrorists? Challenges in Assessing the Effectiveness of De-radicalization Programs," *Terrorism and Political Violence*, 22 (2010): 268.



existence and a sense of personal significance.<sup>34</sup> The most ambitious and successful program in the Middle East comes from Saudi Arabia, which evolved from the realization by the government that, “focusing on the elimination of terrorists, rather than on their radical ideology in general, was misguided and counterproductive.”<sup>35</sup> In addition to a traditional hard counter-terrorism approach, the Saudi government also advances a Prevention, Rehabilitation, and Aftercare (PRAC) strategy that utilizes counseling, dialogue and education to prevent violent extremism and to counter radicalization.<sup>36</sup> The Saudi program is a multi-pronged strategy focusing on the rehabilitation and reintegration of individual terrorists, as well as the prevention of further radicalization in society by addressing educational and media related content.

The detainee counseling program or *al Munasahah*, created in 2004, addresses the welfare and rehabilitation of radicalized detainees. The outreach strategy is based,

Not on punishment or retribution but on a presumption of benevolence; that is, the state does not seek to exact revenge through this program. It begins from the assumption that the suspects were lied to and misled by extremists into straying from true Islam. Saudi security officials assert that extremists prey on people who want to know more about their faith, then corrupt them through exposure to violent extremist ideologies... Counseling is thus presented as help for victims of radicalization, not as punishment for transgressors.<sup>37</sup>

Prisoners are separated into groups - those who committed or planned acts of terrorism, those who provided limited aid

34 Fishman and Kruglanski, “Psychological Factors in Terrorism and Counterterrorism: Individual, Group, and Organizational Levels of Analysis,” 28.

35 Abdullah F. Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” *Middle East Policy*, 15 (2012): 118; Christopher Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare* (Washington, D.C.: Carnegie Endowment for International Peace, 2008), 4. See also Nicole Stracke, “Arab Prisons: A Place for Dialog and Reform,” *Perspectives on Terrorism*, (1) 2007: 7.

36 Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 118. See also Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 5.

37 Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 118 and Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 11.

to terrorists, and terrorist sympathizers - in order to maximize the potential of the process, and avoid corruption by “hard-core” militants of those less radicalized and therefore, presumably, more easily rehabilitated.<sup>38</sup> Detainees are exposed to a team of psychologists, psychiatrists, social scientists, and researchers who assess their mental capacity and well being, in addition to their potential to successfully complete the program, and upon completion, evaluate the authenticity of repentance. These practitioners also assess the welfare of the detainee’s family, seeking, “to offset physical and social hardships caused by incarceration and to lessen the chances that other family members will become radicalized” by providing basic services and financial resources.<sup>39</sup> Prisoners undergo religious rehabilitation, working with qualified Muslim clerics, scholars and professors to learn a mainstream (or state-sponsored) version of Islam through a six-week long religious course, culminating with a final exam upon completion.<sup>40</sup> Detainees are then released to an after-care facility where they remain engaged with medical and religious officials while beginning reintegration back into society through family visits, team building exercises and art therapy.<sup>41</sup> Upon final release, detainees continue to work with rehabilitation officials and remain under strict surveillance by the state, while receiving incentives to remain on track, including educational opportunities, vocational training, stipends, and even arranged marriages.<sup>42</sup> The Saudi government claims that approximately 3,000 prisoners have taken part in the counseling program, and approximately half have renounced their former beliefs and have been released.<sup>43</sup> The program claims to have a recidivist rate of two percent or less, though the

38 Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 119.

39 Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 119 and Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 12, 19.

40 Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 120.

41 Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 13, 17-18.

42 Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 120 and Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 19-21.

43 It is important to note that completion of the counseling program is not a guarantee that a detainee will be released. See Ansary, “Combating Extremism: A Brief Overview of Saudi Arabia’s Approach,” 120-121 and Boucek, *Saudi Arabia’s “Soft” Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 21-22.

## Beyond Terror: Security in the Post-Bin Laden World

government admits there might be infractions of which they are unaware.<sup>44</sup> The program is designed exclusively for men, though the government has admitted to counseling female security suspects in their homes.<sup>45</sup>

The Saudi government also implemented a comprehensive social program that includes public education and national solidarity campaigns, Islamic dialogue conventions, and the monitoring of Imam's and teachers in mosques and schools.<sup>46</sup> State sponsored television airs programs that emphasize the negative aspects of radical *Jihad* and feature stories of repentant militants.<sup>47</sup> And due to the increasing role of the Internet in the radicalization process, the Saudi government launched the *al Sakinah* or Tranquility campaign, aimed at undermining extremists online.<sup>48</sup> As Boucek writes, "similar to how the country's counseling program seeks to help detainees abandon extremist beliefs through face-to-face discussions, the *Sakinah* Campaign works to erode the intellectual support for extremism online."<sup>49</sup> Initiated in 2004, the campaign consists of male and female volunteers – including

44 Ansary, "Combating Extremism: A Brief Overview of Saudi Arabia's Approach," 121 and Boucek, *Saudi Arabia's "Soft" Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 21.

45 Boucek, *Saudi Arabia's "Soft" Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 21.

46 Ansary, "Combating Extremism: A Brief Overview of Saudi Arabia's Approach," 126-127 and Boucek, *Saudi Arabia's "Soft" Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare*, 8-10, 13-14.

47 Ansary, "Combating Extremism: A Brief Overview of Saudi Arabia's Approach," 125.

48 Ibid, 121-123; Christopher Boucek, "The *Sakinah* Campaign and Internet Counter-Radicalization in Saudi Arabia," *CTC Sentinel*, 1 (2008): 1-4; and Jonathan Fighel, *The Saudi Double-Game: The Internet "Counter-Radicalization" Campaign in Saudi Arabia* (Herzliya: International Institute for Counter-Terrorism, 2009). For more on the dynamics of online radicalization, see Jarret M. Brachman and Alex N. Levine, "You Too Can Be Awlaki!", *The Fletcher Forum of World Affairs*, 35 (2011): 25-46; Frank Cilluffo et al., *NETworked Radicalization: A Counter-Strategy* (Washington, D.C.: Homeland Security Policy Institute, 2009); Committee on Homeland and Governmental Affairs, *Zachary Chesser: A Case Study in Online Islamist Radicalization and Its Meaning for the Threat of Homegrown Terrorism* (Washington, D.C.: United States Senate, 2012); Sajjan M. Gohel, "The Internet and its Role in Terrorist Recruitment and Operational Planning," *CTC Sentinel*, 2 (2009): 12-15; Peter R. Neumann and Tim Stevens, *Countering Online Radicalisation: A Strategy for Action* (London: International Centre for the Study of Radicalisation and Political Violence, 2009); and Hanna Rogan, *Jihadism Online: A Study of How al-Qaida and Radical Islamist Groups Use the Internet for Terrorist Purposes* (Kjeller: Norwegian Defence Research Establishment, 2006).

49 Christopher Boucek, "The *Sakinah* Campaign and Internet Counter-Radicalization in Saudi Arabia," *CTC Sentinel*, 1 (2008): 3.

religious officials, academic scholars, mental health practitioners and other specialists – who log on to extremist websites, seek out those looking for knowledge, and engage them in a virtual dialogue, while simultaneously depicting the fallacies of radicalized Islamic ideology.<sup>50</sup> This process also allows volunteers to catalog extremist materials, observe trends, and analyze information used by terrorists to radicalize individuals online.<sup>51</sup> The Saudi government claims that the campaign has engaged in approximately 1,600 conversations, and has convinced almost 1,000 individuals, worldwide, to renounce their radical ideology across 1,500 extremist websites.<sup>52</sup> But as Boucek notes of all aspects of the operation, "this is very much a Saudi solution to a Saudi problem."<sup>53</sup>

The American-run program in Iraqi detention centers has been among the most celebrated successes, spurring a similar program by U.S. forces in Afghanistan.<sup>54</sup> From 2007 to 2009, the U.S. detention facility at Camp Bucca, was home to a cutting-edge rehabilitation and reintegration program. It sought to de-radicalize more than 23,000 Iraqi inmates, including 800 youths, imprisoned by American troops during the course

50 Ansary, "Combating Extremism: A Brief Overview of Saudi Arabia's Approach," 121-123 and Boucek, "The *Sakinah* Campaign and Internet Counter-Radicalization in Saudi Arabia," 2-3.

51 Abdullah Ansary notes that, "al Qaeda issued several statements over the Internet cautioning their followers not to engage in dialogues with members of the Tranquility Campaign, an indication that it is having a positive impact." See *ibid*, 121-123 and Boucek, "The *Sakinah* Campaign and Internet Counter-Radicalization in Saudi Arabia," 2-3.

52 Ansary reports the program is increasingly focusing on women, who, according to the Saudi government, operate more than half of all extremist websites. See Ansary "Combating Extremism: A Brief Overview of Saudi Arabia's Approach," 122-123.

53 Christopher Boucek, "'Deradicalization': Oasis or Mirage?," (Global Security Forum 2011, Washington, D.C., June, 8, 2011), accessed July 1, 2012, <http://csis.org/event/global-security-forum-2011-deradicalization-oasis-or-mirage>.

54 See Ami Angell, and Rohan Gunaratna, *Terrorist Rehabilitation: The U.S. Experience in Iraq*, (Boca Raton: CRC Press, 2012).

of the invasion and war in Iraq.<sup>55</sup> Like the Saudi program, the Iraqi one separated detainees based on level of commitment to violent extremism.<sup>56</sup> The program was completely voluntary but incentives, including early release and/or amnesty, were offered.<sup>57</sup> As one individual involved with the creation and execution of the program declared, it was,

The first of its kind to incorporate a comprehensive religious and psychological approach from the start – combining religious challenge by Muslim imams with psychological counseling to inmates to help address the many psychological traumas and vulnerabilities that led them to involvement with terrorism and insurgency. The goal of the program is to challenge and move the detainees to make a profound shift from embracing violence to adopting a nonviolent stance.<sup>58</sup>

The program aimed at achieving one simple objective in addressing a detainee's psychological, physical and material needs, his ideological proclivities and civic understanding. As program founder Major General Douglas Stone stated, "if a detainee returns to the fight, it is a failure in the process. If a detainee assists in reducing the fight, it is considered a success in the process."<sup>59</sup> Approximately 10,000 prisoners were released during the first nine months of the program

with only 100 re-arrests.<sup>60</sup> Another 8,000 prisoners were released before the program's end, with a recidivism rate of 1.5 percent or less.<sup>61</sup> Similar programs have been initiated elsewhere in the region. Yemen was an early pioneer of de-radicalization, but their program lacked the requisite after-care and focused exclusively on detainees refraining from violence at home. This led detainees to enlist in militant forces outside the country upon release.<sup>62</sup> The program in Jordan suffered from a lack of credibility, as detainees did not believe in the epistemologically authority of the supervising Islamic officials.<sup>63</sup>

## A SOUTHEAST ASIAN APPROACH to SOFT COUNTER-TERRORISM

With a particular emphasis on 'social harmony,' preventing violent extremism and countering radicalization in Southeast Asia has a distinct set of characteristics, emphasizing societal interests, community morals, and family values to rehabilitate and reintegrate militants. The Religious Rehabilitation Group (RRG) was created in Singapore in 2003 following a wave of terrorist arrests across the country.<sup>64</sup> It consists of an all-volunteer force of Islamic scholars and teachers who study the radical ideology of *Jemaah Islamiyah* (JI) and engage terror-

55 A smaller program was also instituted at Camp Cropper. See Jason Keyser, "Camp Bucca: Military Closes Largest Detention Camp In Iraq," *The Associated Press*, September 16, 2009; Judith Miller, "What I Learned At 'Anti-Jihad U,'" *The New York Post*, May 2, 2008; and Anne Speckhard, "Prison and Community Based Disengagement and De-Radicalization Programs for Extremists Involved in Militant Jihadi Terrorism Ideologies and Activities," in *Protecting the Homeland from International and Domestic Terrorism Threats: Current Multi-Disciplinary Perspectives on Root Causes, the Role of Ideology, and Programs for Counter-radicalization and Disengagement*, eds. Laurie Fentsermacher, Larry Kuznar, Tom Reiger and Anne Speckhard (Washington, D.C.: United States Government, 2010), 355-356.

56 Speckhard, "Prison and Community Based Disengagement and De-Radicalization Programs for Extremists Involved in Militant Jihadi Terrorism Ideologies and Activities," 356.

57 *Ibid.*, 355.

58 *Ibid.*, 355.

59 Angell and Rohan, *Terrorist Rehabilitation: The U.S. Experience in Iraq*, 179.

60 Boucek, et al., *Deradicalizing Islamist Extremists*, 79 and Speckhard, "Prison and Community Based Disengagement and De-Radicalization Programs for Extremists Involved in Militant Jihadi Terrorism Ideologies and Activities," 357.

61 Douglas Stone, "'Deradicalization': Oasis or Mirage?," (Global Security Forum 2011, Washington, D.C., June, 8, 2011), accessed, July 1, 2012, <http://csis.org/event/global-security-forum-2011-deradicalization-oasis-or-mirage>.

62 Boucek and Johnsen, "The Dilemma of the Yemeni Detainees at Guantanamo Bay," 2.

63 Naureen Chowdhury and Hamed El-Said, *Transforming Terrorists: Examining International Efforts to Address Violent Extremism* (New York: International Peace Institute, 2011), 9 and Hamed El-Said, *De-Radicalising Islamists: Programmes and their Impact in Muslim Majority States*, 23-24.

64 William J. Dobson, "The Best Guide for Gitmo? Look to Singapore," *Washington Post*, May 17, 2009; Rohan Gunaratna and Mohamed Feisal bin Mohamed Hassan, "Terrorist Rehabilitation: The Singapore Experience" in *Terrorist Rehabilitation and Counter-Radicalisation: New Approaches to Counter-Terrorism* eds. Rohan Gunaratna, Jolene Jerard, and Lawrence Rubin (London: Routledge, 2011), 36-58; Muhammad Haniff Hassan, "Singapore's Muslim Community-Based Initiatives against JI," *Perspectives on Terrorism*, 1 (2007): 3-8; Kumar Ramakrishna, "A Holistic Critique of Singapore's Counter-Ideological Program," *CTC Sentinel*, 2 (2009): 8-11; and Gavin Chua Hearn Yuit, "Singapore's Approach to Counterterrorism," *CTC Sentinel*, 2 (2009): 21-24.

ist detainees and their families in counseling sessions.<sup>65</sup> Since its creation in 2007, the RRG claims to have engaged in over 800 counseling sessions, with an additional 100 sessions for family members, in order to help imprisoned extremists, “understand Islam in the Singapore context.”<sup>66</sup> Authorities not only enlist family members in the rehabilitation of detainees, but also ensure that detainees and their families were cared for through educational, financial and vocational opportunities.<sup>67</sup> Psychological assessment was also incorporated. An Aftercare Service Group (ASG) provided post-release care, though it was not mandatory, leaving the onus of continued rehabilitation upon the community, whose members are responsible for keeping former detainees from returning to terrorism.<sup>68</sup> The government has also used religious authorities to reach out to the community articulating ‘accepted’ Islamic beliefs at national dialogue conventions in schools, workplaces and mosques, as well as Web sites and blogs.<sup>69</sup> Singapore has not suffered a terrorist attack in over two decades, and although this cannot be directly attributable to the aforementioned rehabilitation program over the past 10 years, release and recidivism numbers (according to the government) appear to support claims of success: of the more than 70 individuals arrested between 2003 and 2009, more than 40 have been released on restriction

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65 Yuit, “Singapore’s Approach to Counterterrorism,” 21.

66 “About RRG,” Religious Rehabilitation Group, accessed July 9, 2012, [http://rrg.sg/index.php?option=com\\_content&view=article&id=3&Itemid=2](http://rrg.sg/index.php?option=com_content&view=article&id=3&Itemid=2); Zachary Abuza, “The rehabilitation of Jemaah Islamiyah detainees in South East Asia: A preliminary assessment,” in *Leaving Terrorism Behind: Individual and Collective Disengagement*, eds. Tore Bjorgo and John Horgan (Abingdon, Oxon: Routledge, 2009), 202; Boucek, et al., *Deradicalizing Islamist Extremists*, 98-99; Hassan, “Singapore’s Muslim Community-Based Initiatives against JI,” 4-5; Ramakrishna, “A Holistic Critique of Singapore’s Counter-Ideological Program,” 10; and Yuit, “Singapore’s Approach to Counterterrorism,” 21.

67 Boucek, et al., *Deradicalizing Islamist Extremists*, 99-100 and Hassan, “Singapore’s Muslim Community-Based Initiatives against JI,” 5.

68 Although post-release care is optional, detainees are required to attend religious counseling. Making the community responsible only works, according to Boucek et al., because of the well-ordered and disciplined nature of Singapore’s society. See Boucek, et al., *Deradicalizing Islamist Extremists*, 100-102, 104 and Hearne and Laiq. *A New Approach? Deradicalization Programs and Counterterrorism*, 9-10.

69 Abuza, “The rehabilitation of Jemaah Islamiyah detainees in South East Asia: A preliminary assessment,” 202; Hassan, Muhammad Haniff, “Singapore’s Muslim Community-Based Initiatives against JI,” 5-8 and Ramakrishna, “A Holistic Critique of Singapore’s Counter-Ideological Program,” 10.

orders and just one re-arrest has been reported.<sup>70</sup> U.S. officials have called the Singaporean effort, the “ideal” model.<sup>71</sup>

Conversely, Indonesia pursues a more ad-hoc policy towards JI that emerged as a bottom-up strategy from within the prison system. This non-institutionalized program consists of two core tenets: “only radicals can deradicalize militant *jihadi* prisoners because they have credibility and that the state must reestablish trust and legitimacy (through incentives, etc.) to foster the cooperation of former militants/terrorists.”<sup>72</sup> State or religious representatives do not engage in a “formal theological dialogue” with detainees; rather that task is left to “insiders” or former militants who have publically recanted their extremist ideologies and cooperated with authorities.<sup>73</sup> This is because the program, as such, is less focused on religious rehabilitation than the cultivation of intelligence for the disruption of attacks and the arrest of more terrorists.<sup>74</sup> And in that regard it has been, and continues to be, successful.<sup>75</sup>

With little financial or administrative support from the government, police use a strategy of humane treatment to build trust with detainees, consulting with psychologists to understand detainee culture, language and ideology.<sup>76</sup> This “re-humanization” process, which also includes better living conditions than most prisoners, is enough for some detainees

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70 Boucek, et al., *Deradicalizing Islamist Extremists*, 104 and Ramakrishna, “A Holistic Critique of Singapore’s Counter-Ideological Program,” 10.

71 Boucek, et al., *Deradicalizing Islamist Extremists*, 103 and “Singapore Scheme Helps De-Radicalise Detainees in Iraq,” *Malaysian Insider*, April 20, 2009.

72 Speckhard, “Prison and Community Based Disengagement and De-Radicalization Programs for Extremists Involved in Militant Jihadi Terrorism Ideologies and Activities,” 353.

73 Attempts by Indonesian authorities to create and administer formal lectures and other educational material on Islam for detainees failed to gain traction and was abandoned in 2005. Analysts credit a lack of comprehensive knowledge regarding the radical ideology the state was attempting to counter. Ali Amin, Inayah Rphmaniyah and Mark Woodward, *Lessons from Aceh Terrorist De-Radicalization* (Phoenix: Consortium for Strategic Communication, 2010), 7; Boucek, et al., *Deradicalizing Islamist Extremists*, 107, 110-114; *Deradicalisation and Indonesia Prisons* (Brussels: International Crisis Group, 2007), 11-12; and “The Bali jihadist now on a peace mission,” *BBC News*, March 14, 2008, accessed July 1, 2012, <http://news.bbc.co.uk/2/hi/asia-pacific/7296934.stm>.

74 Boucek, et al., *Deradicalizing Islamist Extremists*, 107.

75 *Ibid.*, 107.

76 *Ibid.*, 107-108 and Amin, Rphmaniyah, and Woodward, *Lessons from Aceh Terrorist De-Radicalization*, 3.

to begin to reject extremism.<sup>77</sup> They are also offered counseling services, though very few have elected to accept.<sup>78</sup> By raising funds through private donations, guards provide limited assistance to family members, mostly for family visits.<sup>79</sup> Police officials estimate that more than half of all detainees respond positively to treatment and increase their level of cooperation with authorities.<sup>80</sup> And because there is no link between cooperation and release, it is expected that only those detainees who sincerely felt compelled to cooperate would do so.<sup>81</sup> But there are reports of recidivism: in one case as many as 20 former detainees were rearrested in 2010, having formed an extremist network among themselves after their release.<sup>82</sup> Taking a broader approach, the government has also established youth de-radicalization programs, as well as interfaith dialogue workshops, “to turn the tide against rising trends of radicalism and religious intolerance.”<sup>83</sup> In general, this bottom-up strategy is successful because it is a reflection of Indonesia’s decentralized method in governing its diffuse island nation.<sup>84</sup>

77 Amin, Rphmaniyah, and Woodward, *Lessons from Aceh Terrorist De-Radicalization*, 4, 5.

78 The government reports only 20 out of approximately 400 detainees have sought counseling. See Abuza, “The rehabilitation of *Jemaah Islamiyah* detainees in South East Asia: A preliminary assessment,” 200.

79 Amin, Rphmaniyah, and Woodward, *Lessons from Aceh Terrorist De-Radicalization*, 4 and Boucek, et al., *Deradicalizing Islamist Extremists*, 108.

80 Boucek, et al., *Deradicalizing Islamist Extremists*, 108-109, 115.

81 *Ibid.*, 110.

82 *Ibid.*, 115.

83 Magnus Rainstorm, *Preventing Violent Radicalization and Terrorism: The Case of Indonesia* (Stockholm: Swedish National Defence College, 2009), 9-10 and “Small steps mark big fight against growing radicalism,” *The Jakarta Post*, June 25, 2012.

84 It is important to note that the Indonesian’s decentralized approach also has its drawbacks. Without engaging in religious dialogue, and by allowing prisoners to control the religious discourse, there is an increased potential for radicalization by detainees of detainees and prisons staff. The lack of financial support by the government makes the program more difficult to administer, creates an uneven disruption of incentives, and has resulted widespread corruption. Amin, Rphmaniyah, and Woodward, *Lessons from Aceh Terrorist De-Radicalization*, 6, 13; Boucek, et al., *Deradicalizing Islamist Extremists*, 114-116; Demant, Froukje et al., *Decline and Disengagement: An Analysis of Processes of Deradicalisation* (Amsterdam: Institute for Migration and Ethnic Studies, 2008), 173; and Muhammad Haniff Hassan and Nur Azlin Mohamed Yasin, “Indonesian Prisons: A Think Tank for Terrorists,” *Counter Terrorist Trends and Analysis*, 4 (2012): 10-15.

Emulating their efforts, programs similar to those in Singapore and Indonesia have been established, with varying degrees of success, in Bangladesh, Malaysia, Thailand, Pakistan and the Philippines.

## A EUROPEAN APPROACH to SOFT COUNTER-TERRORISM

Europe has a long history of dealing with extremists from across the political spectrum. But more recently, European governments have had to also address the threat posed by radical Islam. This long history of dealing with the problem of terrorism on the continent has led to the creation of a distinctly European approach to preventing violent extremism and countering radicalization. It is heavily preventative, less focused on prison rehabilitation, and makes use of local communities and civil society for the purposes of targeted interventions during the pre- or early radicalization stages.<sup>85</sup> For example, the *EXIT* program - pioneered by the Norwegian government and subsequently adopted by governments in Finland, Germany, Sweden and Switzerland - has had success disengaging and de-radicalizing right wing and racist individuals. These techniques are being used in an effort achieve the same results among Muslim extremist.<sup>86</sup> More broadly, the European strategy consists of five components. These include mainstreaming and normalizing counter-terrorism within government and law enforcement; creating an extensive legal framework to confront violent extremism and terrorism as a criminal offense; stressing good communication between state officials and Muslim communities; creating assessment capabilities to analyze success and failure in counter-terrorism; and focusing on a secular, rather than a theological approach

85 According to the British government, 1,500 interventions or “empowerment conversations” have been staged with no arrests following. Danish, Dutch and Norwegian authorities claim similarly high success rates. See James Brandon and Lorenzo Vidino, “European Experiences in Counterradicalization,” *CTC Sentinel*, 5 (2012): 17-18.

86 Tore Bjorgo, “Reducing Recruitment and Promotion Disengagement from Extremist Groups: The Case of racist Sub-Cultures,” in *A Future for the Young: Options for helping Middle Eastern Youth Escape the Trap of Radicalization*, ed. Cheryl Benard (Santa Monica: RAND, 2005) and Bjorgo, Tore, Grunenber, Sara and Van Jaap, Donelaar, “Exit from right-wing extremist groups: Lessons from disengagement programmes in Norway, Sweden and Germany,” in *Leaving Terrorism Behind: Individual and Collective Disengagement*, eds. Tore Bjorgo and John Horgan (Abingdon, Oxon: Routledge, 2009), 135-151.

to preventing violent extremism and countering radicalization.<sup>87</sup>

Following the 2005 London bombings, the United Kingdom launched the *CONTEST* strategy (based on an earlier 2003 version known as *PREVENT*). It consists of four components: Prevent (preventing terrorism by addressing the factors that produce radicalization); Pursue (pursuing terrorists and their sponsors); Protect (protecting the public and government); and Prepare (preparing for the consequences of a terrorist attack).<sup>88</sup> The strategy employs local police and government officials, as well as non-governmental organizations in order to, “challenge radical Islamism, disrupt those who promote violent extremism, support individuals who are vulnerable to radicalization or who have begun to radicalize, increase the capacity of communities to resist violent extremism, and address grievances that violent extremists exploit.”<sup>89</sup> The British government empowers local groups to create prevention strategies suited for specific communities while conducting in-depth research into attitudes, demographics, and media consumption to effectively target those most at risk.<sup>90</sup> In an effort to engender dialogue with Muslim communities, the government also sponsors Muslim outreach activities, campus debates, and customized educational materials focusing on youths.<sup>91</sup> Officials pay special attention to combating Islamophobia in society by using non-inflammatory terminology in an effort to create a non-emotive lexicon when discussing violent extremism and radicalization.<sup>92</sup> The British government also partners with ‘moderate’ Muslim organizations, recognizing their legitimacy and authority in combat-

87 Stefan Bogaerts et al., *First Inventory of Policy on Counterterrorism: Germany, France, Italy, Spain, the United Kingdom and the United States - 'research in progress'*, (The Hague: Wetenschappelijk Onderzoek, 2006) and Brandon and Vidino, “European Experiences in Counterradicalization,” 18.

88 In 2009, the British government launched *CONTEST-2*, with a greater emphasis on proactive and preventive measures. Boucek, et al., *Deradicalizing Islamist Extremists*, 124; Brandon and Vidino, “European Experiences in Counterradicalization,” 17; HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism* (London, 2011); and Raffaello Pantucci, “A contest to democracy? How the UK has responded to the current terrorist threat,” *Democratization*, 17 (2010): 25-271.

89 Boucek, et al., *Deradicalizing Islamist Extremists*, 124.

90 Ibid., 126-128.

91 European Commission, *Radicalisation, Recruitment and the EU Counter-Radicalisation Strategy* (Brussels, 2008): 73.

92 Ibid., 74-75.

ing radical Islam through the employment of the teaching of ‘mainstream’ Islam.<sup>93</sup> Secular governments naturally lack such capacities.<sup>94</sup> As James Brandon notes, although it may be premature to evaluate the British government’s counter-radicalization efforts, “it is clear, however, that Muslim secularists are increasingly successful in finding ways to challenge jihadist ideologies.”<sup>95</sup>

The Netherlands has instituted one of the most “sophisticated” soft counter-terrorism strategies.<sup>96</sup> After the 2004 assassination of Theo Van Gogh, local municipalities created customized counter-radicalization programs that were later compiled and presented by the Dutch government in its 2007 *Polarization and Radicalization Action Plan*.<sup>97</sup> The basic strategy encourages a three-tiered approach, targeting the demand (for individuals searching for answers from Islam), the supply (of radical ideology) and the breeding grounds (for radical Islamic beliefs).<sup>98</sup> The program is “characterized by the cooperation of an intricate web of ministries, governmental agencies, local authorities, social services, educational facilities, think-tanks, religious institutions and freelance consultants. Openness, information sharing and constant input from all possible sources seem to be the guiding principles.”<sup>99</sup> By increasing societal trust, political confidence, religious defensibility and reaching out the at-risk youth, the program employs a more flexible approach, using “repressive measures” in severe cases.<sup>100</sup> The Dutch focus on empowering

93 One popular example of a ‘moderate’ Muslim group is the British-based Quilliam Foundation, established and run by two former Islamic extremists. For more information, see <http://www.quilliamfoundation.org>. Also see Cheryl Benard et al., *Building Moderate Muslim Networks* (Santa Monica: RAND, 2007) and Boucek, et al., *Deradicalizing Islamist Extremists*, 128-136.

94 Benard, et al., *Building Moderate Muslim Networks*, 128-136.

95 James Brandon, “The UK’s Experience in Counter-Radicalization,” *CTC Sentinel*, 1 (2008): 11.

96 Lorenzo Vidino, “A Preliminary Assessment of Counter-Radicalization in the Netherlands,” *CTC Sentinel*, 1 (2008): 12.

97 Brandon and Vidino, “European Experiences in Counterradicalization,” 17.

98 Colin Mellis, “Amsterdam and radicalisation: the municipal approach,” in *Radicalisation in broader Perspective* (Amsterdam: National Coordinator for Counterterrorism, 2007): 40-48.

99 Vidino, “A Preliminary Assessment of Counter-Radicalization in the Netherlands,” 12.

100 Ibid, 12; European Commission, *Radicalisation, Recruitment and the EU Counter-radicalisation Strategy* (Brussels, 2008) 77; and Marco Zannoni, *Amsterdam against radicalisation* (Amsterdam: Municipality of Amsterdam, 2007): 9.

individuals through interventionist strategies, improving the welfare of Muslim communities, and cultivating multi-faith initiatives to combat Islamophobia and maintain social cohesion in an effort to promote Muslim integration as a means to prevent violent extremism.<sup>101</sup> Programs similar to those in the U.K. and the Netherlands have been instituted in Denmark as well as Australia and Canada.<sup>102</sup>

## THE WAY FORWARD

As Horgan and Tore Bjorgo remind us, Terrorism is a phenomenon that manifests itself within specific political and social contexts. The factors that drive or facilitate disengagement for each group tend to be context-specific, movement-specific, and time-specific. Each programme is thus context-bound, and we ought to be cautious about over-generalizing from individual successes or failures. The strengths of particular disengagement programmes derive from their ability to meet the social needs of the 'clients' as well as being sensitive to their specific political and social contexts.<sup>103</sup>

Despite this, lessons learned from preventing violent extremism and countering radicalization programs are broadly applicable in the global effort to combat terrorism in both

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101 James Brandon and Lorenzo Vidino, "European Experiences in Counterradicalization," 18 and Marije Meines, "Radicalisation and its prevention from the Dutch perspective" in *Radicalisation in Broader Perspective* (Amsterdam: National Coordinator for Counterterrorism, 2007): 36-38. See also Vidino, "A Preliminary Assessment of Counter-Radicalization in the Netherlands," 12-13.

102 On Denmark see Government of Denmark, *Common and Safe Future: An action plan to prevent extremists views and radicalisation among young people* (Copenhagen: 2009) and Lasse Lindekilde, "Neo-liberal Governing of "Radicals": Danish Radicalization Prevention Policies and Potential Iatrogenic Effects," *International Journal of Conflict and Violence*, 6 (2012): 109-125. On Australia see Pete Lentini et al., *Counter-Terrorism Policing and Culturally Diverse Communities* (Victoria: Monash University, 2007); Sally Neighbour, "Battle of ideas to curb terror," *The Australian*, November 2, 2010 and "Terrorists to be 'de-radicalised' in NSW Supermax," *ABC News Australia*, February 25, 2010. On Canada see James Ellis and Richard Parents, *Countering Radicalization of Diaspora Communities in Canada* (Vancouver: Metropolis British Columbia, 2011) and Kathleen Foster, "Canadian Mosque Sets Up 'Detox' Program for Would-Be Terrorists," *Fox News*, February 26, 2009.

103 Tore Bjorgo and John Horgan, "Conclusions," in *Leaving Terrorism Behind: Individual and Collective Disengagement*, eds. Tore Bjorgo and John Horgan (Abingdon, Oxon: Routledge, 2009): 249.

the short term and long term. The most important lesson is that prison rehabilitation can be successful when properly executed. As Peter Neumann writes, no de-radicalization program is perfect but, what they illustrate is that prisons, "can make a positive contribution to tackling problems of radicalisation and terrorism in society as a whole: the positive and outward-looking approach that is exhibited in several of these programmes should serve as an inspiration for policymakers and prison authorities all over the world."<sup>104</sup> Borrowing from Anne Speckhard, the best programs to prevent violent extremism and counter radicalization appear to consist of a series of features. These include a civil rapport between prisoner and cleric, psychologist or team; religious rehabilitation with an emphasis on challenging radical Islamic beliefs and engaging in faith-based critical thinking; psychological and medical treatment; family and/or tribal involvement; economic inducements and incentives for participation; skills training, including education and vocational opportunities, as well as recreational programs (including sports, art and music); isolation from 'hardcore' or non-rehabilitative militants; weekly or daily counseling sessions; post-release care; a commitment to the human rights as well as the "humanization" of the prisoner throughout the rehabilitation process; and finally, the creation of systematic means for assessing the efficiency of the program.<sup>105</sup> With approximately 350 terrorists incarcerated in U.S. prisons, and over 35,000 terrorism convictions across the world since 2001, the potential for extremism to flourish

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104 Peter R. Neumann, *Prisons and Terrorism Radicalisation and De-radicalisation in 15 Countries* (London: International Centre for the Study of Radicalisation and Political Violence, 2010): 8.

105 Ami Angell and Rohan Gunaratna provide similar suggestions. Richard Barrett and Laila Bohari would add, "repentant terrorists taking an active part" to this list. See Angell and Rohan, *Terrorist Rehabilitation: The U.S. Experience in Iraq*, 359-365; Barrett, Richard and Bohari, Laila, "Deradicalization and rehabilitation programmes targeting religious terrorists and extremists in the Muslim world: An overview," in *Leaving Terrorism Behind: Individual and Collective Disengagement*, eds. Tore Bjorgo and John Horgan (Abingdon, Oxon: Routledge, 2009), 173 and Speckhard, "Prison and Community Based Disengagement and De-Radicalization Programs for Extremists Involved in Militant Jihadi Terrorism Ideologies and Activities," 358.

behind bars in any country cannot be understated.<sup>106</sup> Stone suggest an, “international coordination to develop programmes that reduce the risk of religious radicalization,” suggesting a “global counsel” that might advise government on the reduction of threat, provide services and assist in the securing of international funding.<sup>107</sup> This job might be filled by the United Nations’ Counter-Terrorism Implementation Task Force, which has already begun to address the matter.<sup>108</sup>

But the single most critical element for countries to focus on is the use of preventative measures to ensure individuals are not radicalized in the first place. As Bjorgo and Horgan reminds us, “disrupting the process of violent radicalization early in a terrorist career is far better than attempting to do so after someone has committed serious crimes and caused suffering.”<sup>109</sup> Drawing from the case studies presented in this research, we know what works. This includes empowering local communities to customize solutions and engage in community policing; targeting specific groups with relevant information (for example, immigrant or native-born Muslims as distinct from converts to Islam) with a specific focus on reaching out to younger generations (particularly individuals under the age of 30); making Muslim communities aware of the state’s commitment to democratic participation, justice and equality; publicizing efforts to combat Islamophobia; and creating effective channels for communication between state and local authorities, religious institutions, schools, recreational associations, parents and mentors so that interventionist strate-

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106 “359 Terrorists Currently in US Federal Prisons,” *ABC News*, December 15, 2009. On prison radicalization in the U.S., see Central Intelligence Agency, *Terrorists: Recruiting and Operating Behind Bars* (Langley, 2002); Committee on Homeland Security and Governmental Affairs, *Prison Radicalization: Are Terrorists Cells Forming in U.S. Cell Blocks* (Washington, DC: United States Senate, 2006); and Mark S. Hamm, *Terrorists Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups* (Washington, D.C.: National Institute of Justice, 2007); and Martha Mendoza, “Rightly or wrongly, thousands convicted of terrorism post-9/11,” *The Associated Press*, September 4, 2011.

107 Douglas M. Stone, “Thinking Strategically About Terrorist Rehabilitation: Lesson from Iraq,” in *Terrorist Rehabilitation and Counter-Radicalisation: New Approaches to Counter-Terrorism*, eds. Rohan Gunaratna, Jolene Jerard, and Lawrence Rubin (London: Routledge, 2011), 107.

108 Counter-Terrorism Implementation Task Force, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programmes*.

109 Bjorgo and Horgan, “Conclusions,” 248.

gies might be employed as a preventative measure.<sup>110</sup> Strategies to counter the extremist message – in schools, community centers, mosques, recreational associations, and especially online – must be undertaken by partnering with a wide variety of experts and credible Muslim messengers, all of who promote a moderate Islamic message that seeks to de-glamorize or demystify terrorism.<sup>111</sup> Although choosing Muslim partners is always problematic – concerns include sanctioning one type of Islam over another through the very act of selecting a partner, choosing groups who later prove to be less moderate than expected, and reconciling the institutionalized separation of church and state in the democratic world – governments should keep in mind that, “the idea is not to regard Islamists as providing an alternative mass movement to *jihadism*. Rather, the division of labor that falls to Islamist-linked groups within Muslim public space in the West has more to do with framing issues and organizing events where these concerns are discussed and debated.”<sup>112</sup>

As the Foreign Minister of Norway penned in the *New York Times*, “political extremism does not grow in a vacuum. Ideas are the oxygen that allows it to flourish and spread. Extremist perspectives win sympathy and recruits because they offer narratives that claim to identify deep injustices and enemies. Without this fuel, the blaze of extremism is quickly extinguished.”<sup>113</sup> This is why a practical emphasis on countering the radical narrative of terrorist organizations is the most crucial element in any program to prevent violent extremism and counter radicalization. The U.S. has implemented a Saudi style *al Sakinah* campaign to undermine extremists online. The State Department’s “strategic trolling” program known as *Viral Peace*, “seeks to occupy the virtual space that extremists fill, one thread or Twitter exchange at a time,” by using “logic, humor, satire, [and] religious arguments, not just to confront [extremists], but to undermine and demoralize

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110 Jonathan Paris, *Approaches to Anti-Radicalization and Community Policing in the Transatlantic Space* (New York: Hudson Institute, 2007).

111 Jamie Bartlett, Jonathan Birdwell, and Michael King, *The Edge of Violence: A radical approach to extremism* (London: Demos, 2010), 38-39 and Benard et al., *Building Moderate Muslim Networks*.

112 Peter Mandaville, “Engaging Islamists in the West,” *CTC Sentinel*, 1 (2007): 5-7.

113 Jonas Gahr Storer, “Learning From Norway’s Tragedy,” *New York Times*, July 19, 2012.



them.<sup>114</sup> Empowering young, social media savvy Muslims from around the world, equipped with an Internet connection and a basic curriculum, the State Department hopes to subvert online extremism by using the very pool of able-bodied men and women said extremists aim to recruit.<sup>115</sup> Lessons learned from this program could be easily localized and applied to at-risk communities in some of the world's most troubled regions. But further research into the field of de-radicalization and disengagement is necessary. One promising avenue involves "terrorist dropouts" or individuals who elect to disengage from terrorism voluntarily.<sup>116</sup> Examining the reasons and process behind the choice to leave a terrorist organization might enable authorities to create conditions conducive to making this decision a more accessible reality at home and overseas.

As for the long term, the world must remain committed to the policies of democratization, human rights and economic development. As noted in the *Journal of National Security Law & Policy*, "political and economic reform in the Middle East remains the best strategic response to overcoming the region's deep structural challenges and reducing the pool of potential recruits to radical extremism."<sup>117</sup> The changing currents in the Middle East and North Africa keep alive a fleeting hope, though without strong leadership and a clear strategy for supporting the right partners in the Arab world, the opportunity will be lost to those on the ground – including extremist elements who seek to usurp the revolutionary-democratic fervor of the protestors in the street. Lorenzo Vidino sums it up best in his presentation of 10 lessons learned from his research into counter-radicalization programs: know your client, be flexible, set clear metrics, choose many partners, work at the local level, play down counter-terrorism, be open (to anyone with expertise), find ways to

114 Spencer Ackerman, "Newest U.S. Counterterrorism Strategy: Trolling," *Wired*, July 18, 2012, accessed, July 19, 2012, <http://www.wired.com/dangerroom/2012/counterterrorism-trolls>.

115 Ibid.

116 Clutterbuck et al., *Individual disengagement from Al Qaeda-influenced terrorist groups*; Horgan, "Individual Disengagement: A psychological analysis," 17-29; Horgan, *Walking Away from Terrorism: Accounts of Disengagement from Radical and Extremist Movements*; and Michael Jacobson, *Terrorist Dropouts: Learning from Those Who Have Left* (Washington, D.C.: Washington Institute for Near East Policy, 2010).

117 J. Scott Carpenter, Matthew Levitt, and Michael Jacobson, "Confronting the Ideology of Radical Extremism," *Journal of National Security Law & Policy*, 3 (2009): 315.

evaluate success and failure and finally, have a thick skin – counter-radicalization is no easy task.<sup>118</sup>

It is obvious to any nation confronting violent extremism and radicalization that soft counter-terrorism policies are an integral part of the War on Terrorism. As Admiral Michael Mullen reminds us, "we can't kill our way to victory."<sup>119</sup> But these programs are not a panacea.<sup>120</sup> The real question countries facing the threat of violent extremism and radicalization should ask themselves is, how can the government be used to affect positive societal change so that individuals do not feel it incumbent upon themselves to take matters into their own hands, acting out in a violent or unwanted fashion?<sup>121</sup> By downplaying the focus on who holds the moral high ground in this struggle, much can be gained in the fight. Confronting terrorism as a practical problem with practical solutions, and not allowing it to strangle society through fear, or the suspension of liberties, is the only way forward. The post-Bin Laden era is ripe for further victories against terrorism, if only those aligned against are willing and able to evolve with the threat.



118 Lorenzo Vidino, "Toward a Radical Solution," *Foreign Policy*, January 5, 2010.

119 "Admiral: Troops alone will not yield victory in Afghanistan," CNN, September 10, 2008.

120 Hearne and Laiq, *A New Approach? Deradicalization Programs and Counterterrorism*, 11.

121 Boucek, "'Deradicalization': Oasis or Mirage?"

## Viewing Militancy in FATA from a Conflict Transformation Lens: Moving from Critique to Transformatory Engagement

By Dr Nazya Fiaz

### Introduction

Debates on terrorism are often organised around two inter-related points: the notion of global jihad, and the idea of 'new' terrorism. With reference to the first, jihad is most often viewed through a lens that juxtaposes the liberal-democratic ideology of the West with the alternative cultural values and ideology of Islam.<sup>1</sup> In this context, violent, anti-Western jihad is interpreted in a number of ways: jihad an integral part of the Islamic faith and therefore something that cannot be entirely extinguished;<sup>2</sup> as a specific instance in which groups have grossly misconstrued the Islamic notion of jihad,<sup>3</sup> or as a reactionary (Islamic) response to the political, cultural and social encounters with a hegemonic Western civilisation. Specifically, expositions on global jihad are overwhelmingly interested in taking ideology as the central and causal unit of analysis. If ideology is seen as fundamental to jihadist violence, then solutions often dictate the need to articulate counter-discourses that highlight the contradictions, self-interest, and inconsistencies of contemporary jihadi discourses.<sup>4</sup> For Cozzens, counter-narratives

are important primarily because Jihadi 'culture' 'cannot be bombed away, withered with a sanctions regime, or kept out with border fences'.<sup>5</sup>

While clearly efforts to counter the ideological dimensions of global jihad are indispensable if the appeal of global jihad is to be counteracted, there is however a tendency to overstate the case of ideology. In particular, the overwhelming prioritising of ideological dimensions has the inevitable effect of affording secondary status to all other potential causal connections and explanations of violence. Consequently, violence perpetuated by Muslim groups is often seen as unequivocally connected to ideology and therefore far removed from the wider material and ideational contexts within which it emerges. Such a lens, in erasing wider contextual webs, makes it all too easy to simply interpret terrorist violence as driven by jihadist ideology.

Mapping onto this notion of global jihad is the 'new terrorism' thesis.<sup>6</sup> The argument here is that while 'old' terrorist outfits were rational and pragmatic with focussed, well defined, and potentially achievable political objectives, 'new' terrorists are not only fanatical, but their goals extend beyond simply influencing political processes; their ultimate aim being the creation of an alternative political reality. Moreover, given that the motivation of contemporary terrorists is overwhelmingly rooted in religious ideology, terrorists are no longer selective and discriminating in their use of violence, rather a religious motivation provides for mass casualties and indiscriminate killing. The modern terrorist is neither constrained by any political agenda nor concerned with amassing public support or sympathy; rather new terrorists 'execute their terrorist acts for no audience but themselves'.<sup>7</sup>

This old/new dichotomy has not gone unquestioned. Martha Crenshaw<sup>8</sup> has noted that contemporary terrorism is

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1 Angel Rabasa et al., *Beyond Al-Qaeda. Part 1. The Global Jihadist Movement* (Santa Monica CA RAND Corporation, 2006).

2 Laurent Murawiec, "Deterring Those Who Are Already Dead?," in *Radical Islam and International Security: Challenges and Responses*, ed. Hillel Frisch and Efraim Inbar (London: Routledge, 2008), 180-87. Shmuel Bar, "The Religious Sources of Islamic Terrorism," in *The Theory and Practice of Islamic Terrorism: An Anthology*, ed. Marvin Perry and Howard Negrin (New York: Palgrave MacMillan, 2008), 11-21.

3 Mary Habeck, *Knowing the Enemy: Jihadist Ideology and the War on Terror* (New Haven, CT: Yale University Press, 2006).

4 Jeffrey Cozzens, "The Culture of Global Jihad: Character, Future Challenges and Recommendations" in *The Future Action Series*, ed. Vanessa Haas (Kings College, London: The International Centre for the Study of Radicalisation and Political Violence, 2008); Christian Leuprecht et al., "Containing the Narrative: Strategy and Tactics in Countering the Storyline of Global Jihad," *Journal of Policing, Intelligence and Counter Terrorism* 5, no. 1 (2010): 42-57.

5 *Ibid.*, 8.

6 Ian Lesser et al., *Countering the New Terrorism* (Santa Monica, CA: RAND Corporation, 1999), accessed on February 27, 2013, [http://www.rand.org/pubs/monograph\\_reports/MR989](http://www.rand.org/pubs/monograph_reports/MR989). Oliver Roy et al., "America and the New Terrorism: An Exchange," *Survival* 42, no. 2 (2000): 156-172; Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction* (New York: Continuum, 1999), 59-75.

7 Bruce Hoffman, "Terrorism and WMD: Some Preliminary Hypotheses," *The Nonproliferation Review*, no. Spring-Summer (1997): 45-53.

8 Martha Crenshaw, "Old and New Terrorism – Lessons Learned" (Keynote Speech, *Second IRRI Conference on International Terrorism and Jihadi Terrorism: Where Do We Stand?*, February 13, 2006), accessed on July 21, 2012, <http://www.egmontinstitute.be/speechnotes/06/060213-jihad.terr/crenshaw.htm>.

less a radical departure vis-à-vis 'old' terrorism, but reflects an evolutionary process in which groups have adapted to changing external circumstances.<sup>9</sup> More recently Michael Stohl has problematised the empirical and statistical grounding of claims advocating a hard and fast distinction between 'old' and 'new' terror.<sup>10</sup> Despite such contestations however, the notion of the 'new' terrorist motivated by global jihad has dominated much of the thinking on contemporary terrorism. At the policy level, such a narrative has been consequential on at least two accounts. Firstly such conceptual frameworks positing irrationality and non-negotiability naturalise policies focussed on the physical elimination of the terrorist other. Clearly, if the 'new' terrorist is fundamentally incorrigible, can there be any other legitimate policy apart from capturing or killing? Secondly the simultaneous focus on ideology and the notion of incorrigibility also works to de-contextualise and de-historicise terrorist violence. If the defining feature of contemporary terrorism is precisely its ideological basis then logically this leaves little incentive to explore the socio-political and economic contexts within which violence emerges. Indeed changes or transformations in contextual webs are unlikely to influence or affect the 'new' incorrigible terrorist.

For some, such conceptual parsimony vis-à-vis the contemporary terrorism serves particular purposes. In particular, parsimony ensures that 'analysts' can operate without having to tediously examine the long and complicated history of terrorism; if 'new' terrorism dates only from 2001 there seems little need to understand the past. Secondly, the excessive simplification of the complex problem of terrorism is able to facilitate effortless decision-making and corresponding counter-terrorist policies. Crenshaw argues that:

Terrorism is an enormously complicated phenomenon. Understand the worldwide threat in all its complexity, involving many different political and social contexts, requires knowledge of detail. A fully informed assessment would recognize that

9 See also: T Copeland, "Is the New Terrorism Really New? An Analysis of the New Paradigm for Terrorism," *Journal of Conflict Studies* XXI, no. 2 (2001): 91-105. D. Tucker, "What Is New About the New Terrorism and How Dangerous Is It?," *Terrorism and Political Violence* 13, no. 3 (2001):1-14, accessed on January 3, 2013, <http://www.nps.edu/Academics/Centers/CTIW/files/The%20New%20Terrorism.pdf>.

10 Michael Stohl, "Don't Confuse Me with the Facts: Knowledge Claims and Terrorism," *Critical Studies on Terrorism* 5, no. 1 (2012): 31-49.

confusion, incomplete and inconsistent information, and contradictions are common. [On the other hand] It is much simpler to have a policy framework that defines the threat (the adversary's intentions and methods are assumed) and prescribes an appropriate response, which is their defeat. It permits top-down processing of information. It replaces ambiguity with certainty.<sup>11</sup>

Conceptual parsimony is also dangerous. As the remainder of this article will argue, the tendency to paint the militancy in Pakistan's Federally Administered Tribal Areas (FATA) with the paintbrush of 'global jihad' and 'incorrigibility' has been consequential on a number of levels. Most importantly, the resultant conceptual framework has inhibited a deeper and comprehensive understanding of the links between context and militancy in FATA.

### Erasing differences

FATA abruptly came to international limelight following the September 11, 2001 terrorist attacks on the US. While, in the immediate aftermath of the terrorist attacks, Afghanistan was the primary concern of the US-led coalition, it soon became clear that FATA would also be included in the 'war'. Pakistan's tribal belt became relevant particularly since the alleged hosts of al-Qaida, the Afghan Taliban, frequently and freely moved in and out the area, and across the porous Durand line separating Pakistan from Afghanistan. Indeed for many, the FATA territories in providing sanctuaries for militant groups effectively represented the 'headquarters' of al-Qaida and other like-minded groups.<sup>12</sup> However, some clarity is important here: the attacks on the US were allegedly carried out by the broadly Arab al-Qaida organisation. FATA became relevant because its various militants were accused of providing shelter to al-Qaida, it was this provision of sanctuary that was problematic for the US-led coalition and which justified FATA also being encompassed in the 'war on terror'. However, at the time, driven by Bush's 'either you are with us or not' rhetoric such subtleties' hardly seemed to matter. Instead the counterterrorist campaign simply categorised all those 'not with us' into one terrorist 'other' group - a group that was only to be engaged with through firepower.

11 Crenshaw, "Old and New Terrorism – Lessons Learned."

12 Rohan and Nielson Gunaratna, Anders, "Al-Qaeda in the Tribal Areas of Pakistan and Beyond," *Studies in Conflict and Terrorism* 31, no. 9 (2008): 775-807.

On its part, Pakistan, in the immediate aftermath of the 9/11 attacks, decided to allow the US the use of airbases in Jacobabad in Sindh province and Shamsi in Balochistan to be used as recovery facilities during military strikes. Officially, these airbases were to only provide 'logistical support' rather than be employed as bases from which to launch military strikes inside Afghanistan. Instead, American and British warships lying off of Pakistan's coast were used to launch aircraft and missiles over Pakistani airspace and into Afghanistan.<sup>13</sup> Pakistan's military and other agencies also played an important role in providing intelligence and support to US forces inside Afghanistan and along the Afghanistan-Pakistan border. With reference to the tribal region itself, Pakistan's armed forces, among other things, mounted a major incursion into the South Waziristan area of FATA in 2004; the FATA territories have also been subjected to an intensive and extensive CIA-operated drone strike programme.<sup>14</sup> However, given the now eleven-year coalition engagement with FATA, it is clear that these counterterrorism efforts have had limited success. While key terrorist leaders have been killed or captured, including Osama Bin Laden, it would be incorrect to deduce that the militancy in FATA has either subsided or is on the wane.<sup>15</sup> Instead, it has become increasingly clear that militancy continues to exist and there are now strong indications that it is spreading outside of FATA and into Southern Punjab

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13 Hilary Synnott, "Chapter Two: Pakistan after 9/11," *The Adelphi Papers* 49, no. 406 (2009): 63-98.

14 Since 2009 the CIA has launched 239 drone strikes into Pakistan, see: Greg Miller, "Under Obama an emerging global apparatus for targeted killing," *Washington Post*, December 27, 2011, accessed on December 29, 2011, [http://articles.washingtonpost.com/2011-12-27/national/35285416\\_1\\_drone-program-drone-campaign-lethal-operations](http://articles.washingtonpost.com/2011-12-27/national/35285416_1_drone-program-drone-campaign-lethal-operations).

15 Some writers suggest that another 11<sup>th</sup> September style attack, not necessarily on the USA, would most likely be organised in FATA, For example see, Shuja Nawaz, *FATA – A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan* (Washington D.C.: Center for Strategic and International Studies, January 2009), accessed on February 27, 2013, <http://csis.org/event/most-dangerous-place-meeting-challenge-militancy-and-terror-fata>.

and Baluchistan.<sup>16</sup> Further, given that NATO and ISAF forces have also announced their impending withdrawal from Afghanistan in 2014, it is now highly unlikely that militants would lay down arms. Thus despite the war on terror being the longest US military campaign in history, it is clear that the Taliban continue to thrive.<sup>17</sup>

Of course, while the successes and failures of the 'war on terror' vis-à-vis stamping out the militancy has undoubtedly been shaped by the frequently fraught and transactional relationship between the US and Pakistan. Nevertheless, the failure to extinguish militancy and FATA's continued provision of sanctuaries to Afghan based militants, and now also the Pakistani Taliban, cannot be entirely explained in terms of the volatile US-Pakistan relationship or the alleged 'double-game' played by Pakistan.<sup>18</sup> It is important to bring into this equation the fundamental failure to comprehensively understand the nature and the drivers of the militancy itself. This state of affairs has been largely promoted by the de-decontextualising effects of 'new' terrorism and 'global' Jihad. Given that militants in FATA were not directly involved in the September 11 attacks, rather their guilt lay in providing sanctuaries to those that were involved, it is important to underscore that the 'new' terrorism narrative ignored this important difference. Instead a homogenising 'either you are with us or against us' narrative blurred distinctions between al Qaeda and the militancy in FATA. In categorising all the 'others' into one group the narrative legitimised and encouraged a parsimonious and uniform response, simply 'capture or kill'.

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16 For the Taliban spread into Punjab, see U.S. Department of State, *Country Report on Terrorism 2010*, accessed on January 1, 2013, available at: <http://www.state.gov/s/ct/rls/crt/2010/>. Most recently, the Islamabad based Conflict Monitoring Centre reports that the Zhob district of Baluchistan province is rapidly falling under the influence of extremist groups including the Taliban, see, Security Report (September 12, 2012): *TTP's threat looms on Baluchistan*, accessed on October 1, 2012, <http://cmcpk.wordpress.com/2012/10/11/ttps-threat-looms-on-baluchistan/>.

17 See for e.g., Tony Karon, "Is the U.S. admitting defeat in Afghanistan?," *Time*, October 3, 2010, accessed on January 1, 2013, <http://world.time.com/2012/10/03/is-the-u-s-admitting-defeat-in-afghanistan/>.

18 Usama Butt and Julian Schofield, eds., *Pakistan: The U.S. Geopolitics and Grand Strategy* (London: Pluto Press, 2012), 9. Butt and Schofield note that: "Pakistan's skilful balancing act to its own security requirement is perceived to be a double game by US and Western eyes."

Arguably then, in erasing difference and excluding context, the narrative overlooked the wider contextual conditions that enabled the FATA territories to be used as sanctuaries and as a recruiting ground in the first place. The narrative for instance, erased not only the United State's own complicity in the creation of the problem in FATA, but also the Pakistani state's historical and shocking neglect of the FATA territories. The point here is that FATA's status as a breeding ground for extremism and terrorism did not emerge from a vacuum or a void; rather, particular social, historical, political and economic contextual enablers facilitated the toleration and acceptance of militant groups and ideologies in FATA. Arguably, counterterrorist policy that was to simply focus on 'stamping' out the problem without engaging with the contextual enablers of extremism in FATA was bound to have limited success.

## Contextualising FATA's militancy

The discussion above is not to suggest that connections between FATA's militancy and context have not be addressed at all, rather the argument here is that the dominance of the 'global jihad' and 'new' terrorism lens has meant that the existing scholarly literature has largely bypassed *serious* engagement with the dialectical and multiple causes and sustainers of terrorism in FATA. Where attempts are made to contextualise FATA's susceptibility to extremist ideologies there has been a tendency to perceive contextual influence in mono-causal terms. For example, for some, poverty is the most significant factor in FATA's militancy,<sup>19</sup> for others it is not;<sup>20</sup> some blame imperial actions,<sup>21</sup> others identify governance failures on the part of Pakistan.<sup>22</sup> What is notable however is that these 'contextual' accounts tend to prioritise one context over and above other enablers. Although useful, nevertheless such fractured accounts are unhelpful in conceptualising

19 Safiya Aftab, "Poverty and Militancy," *Conflict and Peace Studies* 1, no. 1 (2008): 1-18.

20 Jacob N. Shapiro and C. Christine Fair, "Understanding Support for Islamist Militancy in Pakistan," *International Security* 34, no. 3 (2009): 79-118.

21 Noreen Ali, "Bombs Vs. Books? Humanitarian Development and the Narrative of Terror in Northern Pakistan," *Third World Quarterly* 31, no. 4 (2010): 541-559. Chalmers Johnson, *The Costs and Consequences of American Empire* (New York: Henry Holt, 2004).

22 Ijaz Khan, "Challenges Facing Development in Pakistan's Federally Administered Tribal Areas (FATA)," (Seattle: The National Bureau of Asian Research, 2008), accessed on July 10, 2013, <http://nbr.org/publications/element.aspx?id=145>.

a complex social reality where causes and drivers are often multiple and intertwined. While a more holistic framework will be discussed shortly, it is important to first explore some of the peculiar contextual enablers of extremism and terrorism in FATA. In doing so the discussion moves away from a generic 'global jihad' lens and towards a nuanced and contextualised account.

The tribal territories have always been somewhat of an enigma. Even before the advent of the US-led 'war on terror', the FATA territories have historically presented a challenge in terms of access. This is because at the time of Pakistan's creation in 1947, the tribal areas had only acceded to the new state on the condition that the territories were to enjoy a semi-autonomous status. This translated into minimal central governance and intervention in tribal affairs. Consequently, FATA largely developed sans central administration and state apparatus, and ultimately the formulation of laws and all other administration were based on tribal culture, traditions and institutions. In fact, Islamabad only exercised authority via the appointment of a Political Agent (PA) who was responsible for distributing funds and liaising with tribal populations. The concentration of power in the office of the Political Agent was instrumental in disenfranchising local populations and entrenching a system in which the PA, largely on the basis of patronage, selectively distributed development funds and resources. This exclusion from central governance had the effect that FATA remained severely underdeveloped lacking in even basic infrastructure such as road networks, education and basic health.<sup>23</sup> Given the lack of state apparatus, the territories were traditionally referred to within mainland Pakistan as 'alaqa ghair' or 'foreign land' and much myth surrounded the FATA territories absence of state policing. If FATA has historically been 'off-limits' then the advent of the 'war on terror' made it even more difficult to access.

Secondly, while up-to-date empirical data on FATA is sketchy, it is widely accepted that the immediate roots of the militancy in FATA go back to height of the Cold War, when the Soviet Union occupied Afghanistan during the 1980s. At the time, the extension of Communist influence into South Asia had propelled the West into an alliance with Pakistan and a deliberate focus on creating and arming Islamic Mujahidin groups in FATA to ward off the communist expansion. Consequently, during much of the 1980s the CIA covertly

23 See for example: "Pakistan Countering Militancy in FATA", *Crisis Group Asia Report* No. 178 (October 21, 2009), accessed on June 22, 2011, [http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/178\\_pakistan\\_\\_\\_countering\\_militancy\\_in\\_fata.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/178_pakistan___countering_militancy_in_fata.pdf).

channelled large amounts of funds, through Pakistan's Inter Services Intelligence (ISI), to create and arm anti-communist FATA-based Mujahidin.<sup>24</sup> However, what is most important about the Soviet occupation of Afghanistan is what happened afterwards. Indeed following the end of the Cold War both the Pakistani government and the USA seemed to care little about dismantling or at least regulating social structures that had deliberately been put into place in FATA. For instance, seminaries that had been set up during the Cold War continued to educate in the path of extremism and violence;<sup>25</sup> foreign Islamists recruited from outside of FATA continued to reside and influence FATA. As Pakistan's former President Musharraf noted in hindsight:

We helped create the mujahideen, fired them with religious zeal in seminaries, armed them, paid them, fed them, and sent them to a jihad against the Soviet Union in Afghanistan. We did not stop to think how we would divert them to productive life after the jihad was won.<sup>26</sup>

Thirdly, for some analysts, the tribal codes of FATA enshrined in the *Pakhtunwali* are problematic in that they have encouraged the provision of unconditional hospitality to 'guests' with the result that these 'guests' are able to easily live and operate in FATA. Christine Fair and Chalk<sup>27</sup> for instance have argued that 'FATA has given a geographic space that has been open and receptive to the influx of foreign Islamists'.<sup>28</sup> Arguably however, such explanations marginalise the role of both the CIA and ISI in creating and

embedding militancy in FATA. For Farhat Taj however, the resort to *Pakhtunwali* in explaining the existence of militancy in FATA rests not only on a distorted understanding of the tribal codes, but also draws attention away from the Pakistani state's failure to govern effectively, and absolves the state's complicity in embedding militancy in the tribal regions.<sup>29</sup> Taj argues that tribal hospitality is not so unconditional and so flexible as to allow refuge to terrorists and criminals; instead she argues that local tribal populations have been socially, politically, and economically overwhelmed by foreign Islamist fighters and the Taliban, who have, in the past at least, received important state patronage from the Pakistani government. Rather than culture or tribal codes, it is the state itself that has allowed the embeddedness of the Taliban and other militant groups in FATA. Taj bases her analysis on extensive primary research, and her resultant argument is largely persuasive, however her exclusive prioritisation of state failure is somewhat problematic. While the state certainly cannot be absolved of responsibility in FATA's militancy, and neither the role of the US in embedding extremism in FATA, it is nevertheless important to simultaneously recognise that circulating discourses, which themselves emerge from the material organisation of space within FATA, play a productive role in maintaining and reproducing the militancy. Radio broadcasts by Maulana Fazullah or 'FM Mullah' as he was more popularly known, continued to broadcast extremist views well into 2009; arguably these broadcasts played a key role in the toleration, accommodation, and legitimisation of extremist discourse in FATA.<sup>30</sup>

Arguably then, scholarship that seeks to contextualise FATA's susceptibility to militancy outside of the 'new' terrorism and 'global' jihad framework has a tendency to identify a limited number of variables or causes. These explanatory 'causes' range from Pakistan's neglect of FATA and the resultant under-development to the problematisation of *Pakhtunwali*. However, the point here is that this scholarship, while individually helpful, is ultimately divided in its analysis of 'causes'. Each explanatory 'cause' competes for attention. On the other hand, it would be far more useful to move contextualisation in a direction that allows for the simultaneous consideration and analysis of multiple and dialectical causes that produce the particular social reality

24 Dennis Kux, *The United States and Pakistan 1947-2000: Disenchanted Allies* (Washington: Woodrow Wilson Press, 2001). Harold Gould, *The South Asia Story: The First Sixty Years of Us Relations with India and Pakistan* (London: Sage Publications, 2010); Ahmed Rashid, *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia* (London: I B Tauris, 2008).

25 Zahid Hussain, *Frontline Pakistan: The Struggle with Militant Islam* (London: I B Tauris, 2007).

26 Pervez Musharraf, *In the Line of Fire: A Memoir* (New York: Simon & Schuster Inc., 2006), 208.

27 Peter Chalk and Christine Fair, "United States Internal Security Assistance to Pakistan," *Small Wars and Insurgencies* 17, no. 3 (2006), 339.

28 Claude Rakisits, "Pakistan's Tribal Areas: A Critical No-Man's Land" in *Webster University Forum* (Geneva: Geopolitical Assessments, 2008); Ahmed Rashid, *Descent into Chaos: The World's Most Unstable Region and the Threat to Global Security* (London: Penguin Books Ltd, 2008).

29 Farhat Taj, *Taliban and Anti-Taliban* (Newcastle upon Tyne: Cambridge scholars publishing, 2011).

30 Nazya Fiaz, "Policy Intervention in Fata: Why Discourse Matters," *Journal of Strategic Security* 5, no. 1 (2012):49-62.

under scrutiny. For instance a framework that acknowledges the simultaneous relevance of multiple contexts: the political vacuum in FATA, the chronic and endemic underdevelopment, the existence of problematic ideational structures and material conditions, and the impact of history on FATA's militancy.

A much deeper contextualisation would go further by also engendering a genuine understanding of FATA vis-à-vis Pakistan. It would for instance recognise that the Pakistani state's responses to militancy in FATA does not occur in a vacuum but is also shaped by its regional and global concerns, economics, political structures, and state identity. Its insecurity vis-à-vis India for instance has shaped its relationship and interference in Afghanistan, its decision to ally with the US during the Cold War, its abrupt decision to join the 'war on terror', and its interest in bolstering Islamic Mujahidin groups. While militancy in FATA is problematic, seen from Pakistan's India-centric prism, a NATO withdrawal from Afghanistan leading to a potential return of Taliban power means that, from a Pakistani perspective, maintaining links with the Taliban (in FATA and beyond), no matter how distasteful, is nevertheless, critical. Further, the transactional nature of the US-Pakistan relationship epitomised in the Cold War interaction is not unimportant. The Cold War left a deep seated antipathy towards the US, and a feeling that Pakistan had been 'used' by the US to deter the threat of Soviet expansion, and then duly abandoned.<sup>31</sup> As Ali notes, hostility to the US 'has little to do with religion, but is based on the knowledge that Washington has backed every military dictator that has squatted on top of the country'.<sup>32</sup> Arguably then merely scrutinising 'input' versus 'output' i.e. US funds given to Pakistan versus Pakistan's actual efforts in FATA represents a superficial mathematical exercise. It is far more important to underscore that 'genuine' cooperation on FATA can only evolve on the basis of a deeper under-

31 For many in Pakistan the fact that US economic sanctions coincided with the end of the Cold War was not accidental. The abrupt exit of the US from Afghanistan following the expulsion of the Soviets meant that Pakistan was left alone to deal with the wreckage of the war in the shape of 2 million Afghan refugees, and the proliferation, into Pakistan, of weapons and narcotics from uncontrolled areas of war-torn Afghanistan. This set of events had a deep-seated impression on the public psyche. See contributions in, Maleeha Lodhi, *Pakistan: Beyond the Crisis State* (London: C Hurst & Company Ltd., 2011).

32 Tariq Ali, *The Duel: Pakistan on the Flight Path of American Power* (London: Simon & Schuster., 2008), 8.

standing of Pakistan's own regional and global concerns.<sup>33</sup>

Militancy in FATA viewed from a global Jihad lens however obscures subtleties and erases the contexts within which terrorist violence emerges and is reproduced. Instead of an appreciation of local, regional and global connections, a global Jihad lens exceptionalises militancy and extremism ascribing it a novelty that can only be eradicated through physically eliminating terrorists. On this account the terrorism in FATA is de-contextualised and de-historicised from aspects such as FATA's chronic underdevelopment, political disenfranchisement, embedded ideational structures, the Cold War experience, and the Pakistani state world-view and subsequent state practices. The consequential effect of this conceptual lens is that the militant is simplistically conceived as ahistorical, apolitical, and asocial to the extent that the over-riding identity and purpose of the militant is reduced to 'global Jihad'. Where attempts at context do take place, the accounts are often fractured and partial in their contextualisations.

## Peace Studies and violence: context, nuance, and specificity

For many critical scholars, the traditional field of terrorism studies has been characterised by its reifying tendencies, its lack of solid empirical study, and its hostility to interdisciplinary incursions.<sup>34</sup> This closure of traditional terrorism studies to intellectual pluralism is most evidently demonstrated in its lack of interaction with the field of Peace Studies despite the latter's scholarly focus on examining the drivers of conflict, violence and militancy, and the conditions under which peace becomes possible.<sup>35</sup> Peace Studies has developed in directions that can easily

33 On this account for instance, it is possible to argue that the 2008 Indo-US civil-nuclear deal fed directly into Pakistan's India-centric insecurity and was viewed as yet another demonstration of the unreliability of the West. This 'rewarding' of India and uncertainty in relation to the NATO exit strategy inhibits genuine co-operation on Afghanistan. Arguably, for Pakistan, it is a case of assessing who is the 'lesser' of the two 'evils' – India or the Taliban – India is perceived as the bigger threat.

34 Richard Jackson, Marie Breen Smyth, and Jeroen Gunning, eds., *Critical Terrorism Studies: A New Research Agenda* (London: Routledge, 2009).

35 David Barash, ed., *Approaches to Peace: A Reader in Peace Studies*. (New York: Oxford University Press., 2000); Peter Wallerstein, *Peace Research: Theory and Practice* (Oxon: Routledge, 2011); Hugh Miall, "Conflict Transformation: A Multi-Dimensional Task," *Berghof Handbook for Conflict Transformation*, accessed on April 6, 2008, [http://www.berghof-handbook.net/uploads/download/miall\\_handbook.pdf](http://www.berghof-handbook.net/uploads/download/miall_handbook.pdf). ([www.beyondintractability.org](http://www.beyondintractability.org), 2004).

be contrasted with traditional terrorism studies. Firstly, in contrast to much of the 'ivory tower' scholarship of terrorism studies, peace researchers have often been engaged as not only academics, but also as active practitioners in the communities they study. Secondly, while terrorism studies has traditionally closed itself to both critique and conceptual development by seeking distance from other disciplines, Peace Studies in contrast, has been fundamentally underpinned by an interdisciplinary *modus operandi*, and drawn widely and freely on a range of approaches and perspectives. Peace studies openness to the exchange of ideas has allowed it to not only sharpen its conceptual apparatus, but also allowed it to consistently 'stay in touch' with ground realities by drawing on empirical studies across the social sciences. Thirdly, Peace Studies has been characterised by its overt normative and emancipatory agenda; consequently, conflict is not understood as simply a manifestation of good/evil, but as symptomatic and indicative of problematic structures and/or relationship patterns. As a result, Peace Studies takes a critical lens to the existing status quo and seeks to encourage the reordering of exploitative social relations in order to redress conflict and violence in society. Lastly, as opposed to terrorism studies' fixation with justifying and examining (more efficient) ways to eradicate perpetrators of violence and militancy, Peace Studies expends its energies on exploring how violence can be mitigated and resolved through a range of tools such as management, intervention, negotiation, mediation and a transformation in the dynamics driving and sustaining the conflict. In essence, 'resolving' conflict means that Peace Studies has been more attuned to the possibilities of social change as opposed to the essentialist tendencies of traditional terrorism studies.

One of the most distinctive and useful subfields within the broader Peace Studies field is Conflict Transformation, an area developed by many in the field,<sup>36</sup> but most

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36 See: Raimo Väyrynen, "To Settle or to Transform? Perspectives on the Resolution of National and International Conflicts" in *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*, ed. Raimo Väyrynen (London: Sage, 1991), 1-25; Kumar Rupesinghe, "Conflict Transformation," in *Conflict Transformation*, ed. Kumar Rupesinghe (New York: St. Martin's Press, 1995); Dale Spencer and William Spencer, "Third-Party Mediation and Conflict Transformation: Experiences in Ethiopia, Sudan, and Liberia," in *Conflict Transformation*, ed. Kumar Rupesinghe (New York: St. Martin's Press, 1995); Johan Galtung, *There Are Alternatives! Four Roads to Peace and Security* (Nottingham: Spokesman, 1984); *Solving Conflicts: A Peace Research Perspective* (Honolulu University of Hawaii Press, 1989); *Peace by Peaceful Means: Peace and Conflict, Development and Civilisation* (London: Sage Publications, 1996).

closely associated with the researcher/practitioner John Paul Lederach.<sup>37</sup> While a more thorough review cannot be entertained here, at its most basic, Conflict Transformation may be differentiated from a conflict resolution focus on mitigating, managing and/or containing conflict.<sup>38</sup> As Miall notes,<sup>39</sup> Conflict Transformation moves beyond managing and containing conflict. Instead it moves towards engaging with the far more ambitious task of promoting sustainable, 'positive' peace through transforming the relationships, interests, discourses, and if necessary, the structure of the societies enabling the reproduction of violence. Transformation is an emancipatory stance that seeks to both contextualize violence and suggest change processes and transformations that begin from the 'bottom-up'. Thus, on the one hand, it focuses less on conflict 'resolution' and notions of (foreign) peacekeeping, (outsider) negotiations and mediation, instead conflict 'transformation' prioritizes the creation of space for indigenous efforts and engagement in order to produce more equitable and just social structures. On the other hand, transformation is also about 'changing the relationships between the parties to the conflict'.<sup>40</sup>

### Conflict Transformation: Strategies for Change

In wishing to move the discussion forward, I wish to draw on the Conflict Transformation literature to show how it is able to contribute and provide a fresh perspective to the case-study under question. Before proceeding, it is important to underscore that thinking about 'peace'-building or transformation cannot take place within a conceptual framework overwhelmingly dominated by notions of 'newness', 'incurability',

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37 John Paul Lederach, *Building Peace—Sustainable Reconciliation in Divided Societies* (Tokyo: United Nations University Press, 1994); John Paul Lederach, *Preparing for Peace: Conflict Transformation across Cultures* (New York: Syracuse University Press, 1995); *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: U.S. Institute of Peace, 1997).

38 Some writers oppose the delineation of conflict transformation as a separate area of study vis-à-vis conflict resolution, see, Oliver Ramsbotham, Tom Woodhouse, and Hugh Miall, *Contemporary Conflict Resolution* (Cambridge: Polity Press, 1999).

39 Miall, "Conflict Transformation: A Multi-Dimensional Task," in *Transforming Ethnopolitical Conflict: the Berghof Handbook*, eds. Alex Austin, Martina Fischer, and Norbert Ropers (VS Verlag für Sozialwissenschaften, Berlin, Germany, 2004), 4.

40 Louis Kriesberg, "The Development of the Conflict Resolution Field," in *Peacemaking in International Context: Methods and Techniques*, ed. William Zartman and Lewis Rasmussen (Washington DC: US Institute of Peace Press, 1997), 64.



and 'exceptionalism' vis-à-vis contemporary violence. This is because Conflict Transformation operates outside of such essentialist and reductionist understandings of conflict; instead it fundamentally conceptualizes violence as a social product connected to contextual enablers. In taking a holistic view of conflict and shifting towards the broader task of reconciling and restoring relationships, John Paul Lederach prescribes three points of inquiry when approaching a conflict situation.<sup>41</sup> In exploring the *presenting situation*, there is a concern with identifying the patterns, issues and history of the conflict. In particular there is a concern with locating the presenting situation within a wider contextual web in which the violence is seen as an expression of problematic structures and contexts. This focus on locating conflict within a contextual web is an important step away from viewing violence as episodic, and therefore amenable to a quick-fix solution or a 'problem-solving' approach. The second point of inquiry for Lederach is what he calls the '*horizon of the future*'; it is this image of a preferred future that drives transformation. Having located the contextual connections of conflict, the layers of complexity, and the multiplicity of stakeholders, Conflict Transformation prescribes a deep analysis of how the present can be transformed into a (sustainable) peaceful future. The third point of inquiry constitutes Conflict Transformations operational arm in that it focuses on the development of multiple constructive change processes, based on the peculiarity of the conflictual situation. For Lederach, while change processes must cater for short-term needs, it is most important to embed short-term needs within the 'bigger picture,' the image of the sustainable peace envisioned in the second level of inquiry.

The three points of inquiry identified here are, for Lederach, rather like three lenses needed to bring into sharper focus the reality of conflict; the absence of any one lens results in a distorted view and ultimately leads to an inadequate understanding of both the present conflict and the desired future. In the context of FATA, the first level of Lederach's inquiry engenders the identification of multiple material and ideational contexts producing and reproducing the conflict. Seen from this lens, FATA's Cold War experience, its socio-economic deprivation, its political structures, the historical absence of effective governance, and the existence of particular discursive structures are simultaneously significant and relevant to the *presenting situation*. A Conflict Transformation lens enables a concurrent consideration of multiple variables as opposed to the current tendency to isolate singular 'causes' of FATA's

41 Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*.

militancy. Secondly, in attuning attention to context, a Conflict Transformation lens reduces space for considering terrorist violence and militancy as apolitical, ahistorical and acontextual; thus while a 'global jihad' ideology may be relevant, Conflict Transformation deters an over reliance on explaining violence as the overwhelming product of ideology. However, while an interrogation of the *presenting situation* is central to Conflict Transformation, nevertheless the focus does not stop at deconstruction and exploration of why conflict is present in a society, rather the Conflict Transformation project is concerned with moving forward towards thinking about a desired (peaceful) future, and the operationalisation of strategies that can ensure the desired future is achieved. Based on a thorough understanding of the contextual webs in which conflict is embedded, the third point of inquiry within Lederach's Conflict Transformation project is concerned with prescribing a blueprint for the initiation of emancipatory change in conflict dynamics.<sup>42</sup> It is this aspect of transformation that is most interesting and one to which we shall turn next.<sup>43</sup>

In developing the third point of inquiry Lederach offers a comprehensive strategy of engagement to initiate indigenous and sustainable changes in conflict dynamics.<sup>44</sup> For Lederach, sustainable transformation in the dynamics of a conflict and the movement towards a peaceful future cannot be principally led from outside, as in a conflict resolution approach in which peace-keeping enables the absence of violence. A peace enforced from the outside is seen as unstable because it is essentially enforced rather than something that is genuinely desired by the parties to the conflict. In order to foster 'positive' peace, Lederach suggests that genuine, long-term transformation must involve a process in which peace emanates from the 'bottom-up'. Lederach neatly expresses his ideas around operationalising transformation in the pyramid reproduced below:

42 See Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*.

43 See Jeroen Gunning, Social Movement Theory and the Study of Terrorism, in *Critical Terrorism Studies: a New Research Agenda*, eds. Richard Jackson, Marie Breen Smyth, and Jeroen Gunning (New York: Routledge, 2009), 156-77. Gunning provides a useful overview of how Social Movement Theory (SMT) can provide important conceptual tools enabling a more contextual understanding of terrorist violence. In contrast to SMT, Conflict Transformation provides, alongside such conceptual tools, concrete models and policy prescriptions to transform violent societies.

44 Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*.

## Beyond Terror: Security in the Post-Bin Laden World



Lederach, J P., 1997. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, DC: U.S. Institute of Peace.

In focusing on constructive, emancipatory change in conflict dynamics, Lederach prescribes three levels of simultaneous engagement in order to initiate transformation in a conflict ridden society. In Lederach's model, the larger base of the pyramid is indicative of the greater attention that must be afforded to local, grassroots issues, drivers, and contexts. In FATA, this would mean a much more intensive engagement with the local ideational, material, and agential enablers of militancy. On the one hand, this means a greater understanding and exploration of the multiple causes of conflict in FATA and a deeper understanding of the power disparities between and within FATA's tribes, their respective relationship to the state and to the militancy. For instance, it is widely accepted, if not fully evidenced, that foot-soldiers of the militancy in FATA are paid a monthly wage which is considerably higher than what a local tribesman can hope to achieve.<sup>45</sup> Recruitment into militancy makes economic sense. Moreover, the government's continued inattention to discursive spaces within FATA is problematic,<sup>46</sup> as is the power of

45 Numerous personal communications.

46 Lederach points to the important links between discursive space and violence, consequently noting that discourse can become an important 'platform for change'. Whilst policy space for counter-discourse intervention is an important component of a more holistic and engaged strategy in FATA, nevertheless it is insufficient for instance, to ask people in FATA to form 'peace constituencies' or lashkar's against militants if corresponding government protection is lacking. Indeed there is clear indication that these lashkars receive little in the way of state protection. See also: Fiaz, "Policy Intervention in Fata: Why Discourse Matters."

militants vis-a- vis local populations.<sup>47</sup> In identifying multiple material and ideational drivers, the larger base of Lederach's pyramid also means much greater intervention and focus at the grass-roots level. The commitment to a conceptual apparatus that posits local actors as the prime architects of peaceful societies would mean that intervention and attention is directed at engaging with local religious seminaries, religious clerics, tribal elders, and formal, and informal educational providers. Rupesinghe for instance,<sup>48</sup> prescribes identifying 'the visible and articulate elites, as well as the less visible, less articulate, but still influential opinion-shapers and leaders within a given society'; I would add women here as well. This 'bottom-up' approach to changing conflict dynamics ensures local ownership of efforts towards a peaceful society.

Secondly, Lederach's pyramid stipulates attention to 'middle-range' leadership. One of the very few empirical studies conducted in FATA indicates that tribal maliks (elders), the Frontier Corps (FC) and the Pakistani army are deemed both influential and important actors in the tribal region.<sup>49</sup> Moreover, political agents (PA) representing the federal government although notorious for their wide-ranging and unaccountable powers in FATA, and though deemed less favorable, are nevertheless not unimportant. While the first step must entail identifying important local actors, a second step must also include engagement with this middle-range leadership and the exploration and acknowledgement of actor world-views, concerns, economies, and practices. A depth engagement would point towards the need for, and possibilities and capacity for structural and/or ideational transformation in order to initiate transformative changes in conflict dynamics. It is notable here that the capacity and reach of FATA's middle-range leadership is greatly impacted by the lack of a robust law enforcement infrastructure in Pakistan. While data-sets, including the USIP survey cited above indicate that there is very little sympathy or support in FATA for Arab and other foreign al-Qaida fighters, Afghan Taliban or the Pakistani Taliban, there is little infrastructure in place to encourage open revolt against militancy. In FATA, as well as the rest of Pakistan, effective police functioning is hampered

47 Taj, *Taliban and Anti-Taliban*.

48 Rupesinghe, "Conflict Transformation", 81.

49 The survey was funded by the U.S. Institute of Peace, and jointly conducted by New America Foundation (NAF) and Terror Free Tomorrow (TFT). The survey was carried out by the Community Appraisal Motivation Programme (CAMP) in all seven tribal agencies and involved 1000 respondents. See: "Fata: Inside Pakistan's Tribal Region," New American Foundation, accessed January 1, 2013, [pakistansurvey.org/](http://pakistansurvey.org/).

by the lack of training and equipment, wide-spread corruption, and the minimal coordination with other law enforcement and intelligence agencies.<sup>50</sup> This sorry state is compounded by a judicial system which not only offers almost non-existent witness protection for anyone who chooses to testify against militants, but is also governed by legislation that deems inadmissible 'telephonic intercepts, press statements and claims by members of banned terrorist organisations'.<sup>51</sup> Most famous is the case of Malik Ishaq a founding member of the al-Qaida linked Lashkar-e-Jhangvi (LeJ) who, although jailed since 1997, was released by Pakistan's Supreme Court in January 2012 owing to a 'lack of evidence'. Fida Hussain Ghilvi, who testified against Ishaq over a decade ago, lives in constant fear of retribution.<sup>52</sup> Clearly, middle-range leadership seeking to galvanize grass-roots support and involvement in transformational change cannot emerge in such an environment.

Finally, the top of the pyramid refers to a genuine and committed involvement of the top-tier national leadership. However, Pakistan's relationship with militancy in FATA and the 'war on terror' as a whole is mediated by its domestic, regional and global concerns. Rightly or wrongly, India has historically featured large in Pakistan's security concerns, and was arguably one of the main drivers of Pakistan's decision to involve itself in the 'war on terror'.<sup>53</sup> However, Pakistan's commitment to eradicating militancy in FATA is intimately connected to its genuine distrust of the US, and contemporary events seem to reproduce this distrust. For instance, the 2008 US-India civil nuclear deal, despite India not being a signatory to the non-proliferation treaty (NPT), feeds directly into Pakistan's insecurity vis-à-vis India and mistrust of the US. Similarly, the expanding Indian interest in Afghanistan involving the training of Afghan soldiers and contracts for building infrastructure in Afghanistan are viewed with extreme suspicion in Pakistan. As is widely documented, Pakistan has for much of its history viewed Afghanistan as providing important 'strategic depth'. Its interference in Afghan affairs has sought to preempt any Indian influence in the region.

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50 Hassan Abbas, "Reforming Pakistan's Policy and Law Enforcement Infrastructure," (United States Institute of Peace, Special Report No. 266, February, 2011), accessed on January 20, 2012, <http://www.usip.org/files/resources/sr266.pdf>.

51 Imtiaz Gul, "Pakistan on the Anti-Terror Front," *The Friday Times*, April 1, 2011.

52 Sabrina Tavernise and Waqar Gilani, "70 Murders, yet Close to Going Free in Pakistan.," *New York Times*, August 5, 2009.

53 Fiaz, "Policy Intervention in Fata: Why Discourse Matters."

While many have argued that India's interest in Afghanistan is simply reflective of its desire to become a regional economic power, it is nevertheless fraught with contention; Gen. Stanley McChrystal in his August 2009 COMISAF's Initial Assessment Report observed that, while Indian activities largely benefit the Afghan people, increasing Indian influence in Afghanistan is likely to exacerbate regional tensions and encourage Pakistani countermeasures in Afghanistan or India.<sup>54</sup> The point is that, rightly or not, the US's expanded relationship with India coupled with the latter's interest in Afghanistan is consequential in impacting Pakistan's world-view and subsequent 'commitment' to the 'war on terror' and the eradication of militancy in FATA. Arguably, analysis which focuses on ascertaining Pakistan's 'genuineness' vis-à-vis its strategic relationship with the US, and calls for 'talking tough' to Pakistan by stopping aid and assistance seemingly emanate from an ahistorical and acontextual vantage point in which the US is unproblematically 'genuine' vis-à-vis Pakistan. Indeed the question is never posed.<sup>55</sup>

While militancy in FATA is complex and poses a huge challenge both in terms of explanation and intervention, it is clear that the current counter-terrorist strategies underpinned by notions of 'global jihad' and 'new' terrorism fail to both comprehensively understand the drivers and causes of militancy or postulate credible solutions. The exclusive attention to 'capture and kill' is grossly insufficient and is reflective of an approach that problem-solves within the existing status quo and ordering of social relations. On the other hand, Conflict Transformation, in envisaging the possibilities of social change provides a useful conceptual framework for thinking about how change can be initiated and the points at which non-military intervention can be valuable to promoting positive peace. While Conflict Transformation framework allows for the embedding of terrorist violence in all its multi-level contexts, more specifically it is Lederach's peace-building pyramid that provides a useful starting point for reflection on how transformation and social change can be operationalised so that a sustainable peace comes within reach.

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54 See unclassified report: Stanley A. McChrystal, *Commander's Initial Assessment: U.S. Forces-Afghanistan/International Security Assistance Force*, accessed January 1, 2013, [http://media.washingtonpost.com/wp-srv/politics/documents/Assessment\\_Redacted\\_092109.pdf](http://media.washingtonpost.com/wp-srv/politics/documents/Assessment_Redacted_092109.pdf).


55 For example see: Stephen Krasner, "Talking Tough to Pakistan: How to End Islamabad Defiance," *Foreign Affairs* 90, no. 6 (November 29, 2012), 87-96.

### Conclusion

To summarize, the key argument made here is that a nexus of material and ideational structures converges to create the conditions in which militancy is produced and reproduced in Pakistan's FATA. Given that these enabling conditions range from local conditions right up to national enablers changing conflict dynamics within FATA require sensitized intervention at the sites of these multiple enablers. Of course, the first task itself is to identify the multiple contexts within which the militancy is embedded. Such a task is necessarily complex, laborious and wide-ranging, but accurate explanations of a complex social reality are not amenable to parsimony and the isolation of singular autonomous contexts. An over-reliance on one explanation not only obscures and misleads, but is also inadequate as the basis for policy decisions.

The argument here has been that the 'new' terrorism thesis and the 'global jihad' optic are, for the most part, averse to reflection on the complex dialectic between contexts and an emergent social reality. Most often these lenses prompt explanations that focus on a limited number of contexts and drivers whilst overlooking other important explanations. In the case of FATA, the dominant optic has engendered policies that focus on exceptionalising the terrorist 'other' to the extent that the only legitimate response becomes 'capture or kill'. In doing so, the lens makes irrelevant a multi-level contextual analysis. If context is at all relevant, it is in the domain of ideology and religion, which are seen as stand-alone causal factors divorced from a wider set of local, regional and global drivers.

Although the discussion here is preliminary, I have suggested that Peace Studies in general and Conflict Transformation in particular can make a number of important contributions to the study of terror. While Peace Studies is an important anchor point for contextualising social conflict in the first instance, Lederach's third point of inquiry goes one step further by focusing on operationalising 'transformation' in conflict dynamics. In particular, Conflict Transformation moves beyond critique and deconstruction towards thinking about strategies and interventions that can initiate

social change and mitigate violence and conflict. In connecting the terrorist subject and action to its embeddedness within social structures, Conflict Transformation envisions the possibility of emancipatory change in the very structures producing the conflict. It is at this point that Conflict Transformation is at its most useful. 

## Redefining Terrorism under the Mubarak Regime: Toward A New Definition of Terrorism in Egypt

By Islam Ibrahim Chiha<sup>1</sup>

### Introduction

The proper definition of terrorism has long been the subject of controversy.<sup>2</sup> Since the early twentieth century,<sup>3</sup> the question has been debated among states and scholars, politicians, governmental agencies, and ordinary citizens.<sup>4</sup> As one scholar commented, “it has become a real cliché; every paper on terrorism begins by noticing that the definition of terrorism is highly controversial.”<sup>5</sup> However, it should not be inferred that the need for a definition should be ignored or that a standard definition of terrorism is impossible. Quite the contrary, a universally-agreed upon definition is of great utility. As Professor Scharf noted, “an effort to understand terrorism in no way indicates an attitude of acceptance.”<sup>6</sup> Similarly, Baxter noted that “we must make the best of matters and see what can be made of this notion of terrorism.”<sup>7</sup>

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2 Alex Schmid, *Terrorism – The Definitional Problem*, 36 CASE W. RES. J. INT’L L. 375, 402 (2004) (“[T]errorism has become such a diverse phenomenon that either it disappears under a host of precise definitions or it is covered by too broad an umbrella.” (quoting Thomas Mockaitis, *Winning Hearts and Minds in the ‘War on Terrorism’*, in GRAND STRATEGY IN THE WAR AGAINST TERRORISM 21, 23 (Thomas Mockaitis & Paul B. Rich, eds., 2004))).

3 *Id.* at 395-400 (providing a comprehensive discussion of four reasons for this failure).

4 BRUCE HOFFMAN, *INSIDE TERRORISM* 13 (1998) (“Like the Internet . . . most people have a vague idea or impression of what terrorism is, but lack a more precise, concrete and truly explanatory definition.”).

5 Cyrille Begorre-Bret, *The Definition of Terrorism and the Challenge of Relativism*, 27 CARDOZO L. REV. 1987, 1988 (2006).

6 Michael P. Scharf, *Terrorism on Trial*, 37 CASE W. RES. J. INT’L L. 287, 292 (2005).

7 R.R. Baxter, *A Skeptical Look at the Concept of Terrorism*, 7 AKRON L. REV. 380, 380 (1974).

In reaching a compromise on a definition of terrorism, it should be kept in mind that terrorism is a legal concept that entails significant legal consequences and therefore should have a legal meaning.<sup>8</sup> Terrorism is a serious crime that kills innocent civilians and threatens the security and peace of states.<sup>9</sup> As a preliminary threshold for any effective counter-terrorism strategy, it is crucial to develop a comprehensive, clear and precise definition that comports with the principles of legality and legal certainty and encompasses all of the universally-agreed upon elements constituting genuine terrorist conduct.<sup>10</sup>

However, in the fight against terrorism some states have tended to craft overbroad definitions of terrorism featuring ambiguous and vague terms that reach well beyond the true meaning of terrorism. By applying such an approach, those states have taken advantage of the ambiguity and vagueness in order to increase their counter-terrorism powers with

8 Reuven Young, *Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and its Influence on Definitions in Domestic Legislation*, 29 B.C. INT’L & COMP. L. REV. 23, 30 (2006); see also U.N. GAOR, 56th Sess., 12th plen. mtg. at 18, U.N. Doc. A/56/PV.12 (Oct. 1, 2001) (proving that Ambassador Jeremy Greenstock, KCMJ Permanent Representative of the United Kingdom of Great Britain and Northern Island, emphasized the importance of having a concrete definition of terrorism in his statement in the General Assembly debate over terrorism saying that the definition certainly requires something more than “what looks, smells and kills like terrorism is terrorism.”).

9 See G.A. Res. 49/60, ¶ 2, U.N. Doc. A/RES/49/60, Annex (Feb. 14, 2013); see also Naomi Norberg, *Terrorism and International Criminal Justice: Dim Prospects for a Future Together*, 8 SANTA CLARA J. INT’L L. 11, 46 (2010); see also Richard Goldstone & Janine Simpson, *Evaluating the Role of the International Criminal Court as a Legal Response to Terrorism*, 16 HARV. HUM. RTS. J. 13, 14 (2003).

10 See Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Sixth Rep. on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, transmitted by Note of the Secretary-General*, ¶ 72(c), U.N. Doc. A/65/258 (Aug. 6, 2010) [hereinafter *Sixth Rep. of the Special Rapporteur*] (recommending “to continue to work towards the completion of the draft comprehensive convention on international terrorism, keeping in mind that only a legally precise definition of terrorism that respects the principle of legality and that is restricted to conduct that is truly terrorist in nature, will help stop the use of abusive national definitions.”); see also G.A. Res. 60/288, pmb., U.N. Doc. A/RES/60/288 (Sep. 6, 2006); see also Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *First Rep. on the Promotion and Protection of Human Rights*, ¶ 45, Comm’n on Human Rights, U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005) (by Martin Scheinin) [hereinafter *First Rep. of the Special Rapporteur*].

respect to targets and tactics.<sup>11</sup> The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism has warned that an overbroad definition “poses the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.”<sup>12</sup> This is understandable since many of the exceptional measures taken in counter-terrorism laws, such as powers of arrest, preventive detention, rules of investigation, and seizure of assets have far-reaching consequences for human rights. These extraordinary measures do not apply only to terrorist perpetrators but also to others on the ground of mere suspicion of any linkage to terrorism whether by participation, incitement, support, or finance. Therefore, failure to link these measures to an objective and precise definition of terrorism can undoubtedly result in an encroachment on human rights.

Under the oppressive ruling of President Hosni Mubarak, Egypt is unfortunately one of the countries that has over-broadly and ambiguously defined terrorism. The Mubarak Regime intended such a broad definition to ensure that the Egyptian legal system contained permanent tools to restrict the fundamental rights and freedoms of its citizens, in particular the freedoms of speech and association. Relying on that definition and a strong secret police apparatus, Mubarak’s regime has been able to weaken political opposition and civil society groups for decades. Such groups were forced into silence out of fear of being prosecuted as terrorists.

Before proceeding it should be noted that the Egyptian definition of terrorism has been the main inspiration for the definition of terrorism incorporated in the Organization for the Islamic Conference Convention on Combating International Terrorism and the Arab Convention for the Suppres-

sion of Terrorism.<sup>13</sup> This definition is found in article 86 of the Egyptian Penal Code.<sup>14</sup> The definition was incorporated by Act No. 97 of 1992 known in Egypt as the Anti-Terrorism Reform Act.<sup>15</sup> Article 86 of the Penal Code reads:

Any use of force or violence or threat or intimidation to which the perpetrators resort in order to carry out an individual or collective criminal plan – or project<sup>16</sup> aimed at disturbing the peace- or the public order<sup>17</sup> or jeopardizing the safety and the security of society which is of such nature as to create harm or fear in persons or imperil their lives, freedom or security; or [of such nature as] to damage the environment; damage or take possession over communications, transport, property,

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13 See *infra* notes 14, 15; see also League of Arab States, Arab Convention on the Suppression of Terrorism art. 1(2), Apr. 22, 1998, reprinted in UNITED NATIONS, INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, U.N. SALES NO. E.08.V.2 (2008) [hereinafter Arab Convention on the Suppression of Terrorism] (defining terrorism); see also Organization of the Islamic Conference, Convention on Combating International Terrorism art. 1(2), Jul. 1, 1999, reprinted in UNITED NATIONS, INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, U.N. SALES NO. E.08.V.2 (2008) [hereinafter Islamic Conference Convention on Combating International Terrorism] (defining terrorism). See Amnesty Int’l, *The Arab Convention for the Suppression of Terrorism: A Serious Threat to Human Rights*, AI Index IOR 51/001/2002 (Jan. 9, 2002), available at [http://www.amnesty.org/en/library/asset/IOR51/001/2002/en/c2325833-d8a7-11ddad8cf3d4445c118e/ior510012002\\_en.pdf](http://www.amnesty.org/en/library/asset/IOR51/001/2002/en/c2325833-d8a7-11ddad8cf3d4445c118e/ior510012002_en.pdf) [hereinafter Amnesty Int’l, *A Serious Threat to Human Rights*].

14 Law No. 58 of 1937 (Egyptian Penal Law), *Al-Jarida Al-Rasmiyya*, 5 Aug. 1937, art. 86, amended by Law No. 95 of 2003 and Law No. 147 of 2006 [hereinafter Egyptian Penal Code].

15 Law No. 97 of 1992 (Law Amending Some Provisions of the Penal Code, the Criminal Procedure Code, the Law Establishing State Security Courts, the Law on Secrecy of Bank Accounts, and the Law on Weapons and Ammunition), *Al-Jarida Al-Rasmiyya*, 18 July 1992, art. 2 (Egypt).

16 The Arabic version of provision 86 of the Egyptian Penal Code uses the term “individual or collective project,” not “plan,” as often found in English translations. The Minister of Justice, in his presentation of the Law to the National Assembly, tried to make clear that the concept of “project” was intended to preclude random and accidental acts because terrorist offenses presuppose a certain degree of preparation. Thus “project” means any measures taken based on an existing plan. Many scholars have criticized the concept as ambiguous, confusing, and most likely to be used in other areas of law such as commercial or civil law.

17 The Arabic version of provision 86 of the Egyptian Penal Code uses the term “disturbance of public order” rather than “of the peace,” as found in many English translations.

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11 See Alexander V. Orlova & James W. Moore, “Umbrellas” or “Building Blocks”?: Defining International Terrorism and Transnational Organized Crime in International Law, 27 *Hous. J. INT’L L.* 267, 306 (2005); see also Rep. of the Policy Working Group on the United Nations & Terrorism, 57th Sess., ¶ 14, U.N. Doc. A/57/273, Annex (Sept. 10, 2002) (“The rubric of counter-terrorism can be used to justify acts in support of political agendas, such as the consolidation of political power, elimination of political opponents, inhibition of legitimate dissent and/or suppression of resistance to military occupation.”).

12 *Sixth Rep. of the Special Rapporteur*, *supra* note 10, ¶ 26.

buildings or public or private reality; prevent or impede either the public authorities or religious institutions or educational institutions the performance of their work; or thwart the application of the constitution or existing laws or regulations.”<sup>18</sup>

The Egyptian definition of terrorism has been the subject of a number of critiques because it is considered extremely vague and dubious.<sup>19</sup> This definition seems to suggest that every action carried out against any of the state’s interests qualifies as terrorism. In that respect, the Human Rights Committee has strongly criticized the Egyptian definition of terrorism noting that it “is so broad that it encompasses a wide range of acts of differing gravity.”<sup>20</sup> Likewise, the Special Rapporteur for the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism noted a similar concern in his report on Egypt’s counter-terrorism policy, saying that “the definition in article 86, including the substantial and intentional elements as well as its purposes, is notably much broader than the three-step cumulative characterization presented [in his proposed definition].”<sup>21</sup>

This paper considers the Egyptian definition of terrorism adopted by the regime of President Hosni Mubarak in light of the international law norms and standards for defining terrorism. In Section One, this paper addresses the various attempts to develop an international definition of terrorism, including a number of United Nations General Assembly and Security Council Resolutions, international and regional conventions and a recent decision rendered by the Special Tribunal of Lebanon. Section Two demonstrates

that there are core elements of an objective definition that can be distilled from the various definitions of terrorism in International Law and that reaching a compromise formula for a terrorism definition is quite possible. Section Three evaluates the Egyptian definition of terrorism and highlights the various points of dissimilarities between the Egyptian and international approaches, This section concludes with proposed recommendations for the Egyptian legislature to consider when revising the current definition of terrorism in order to avoid implications for Egypt’s international responsibilities.

## I- Definitions of Terrorism in International Law

This section examines the evolution of the concept of terrorism at the international level, where defining terrorism has always been problematic. International attempts to define terrorism date back to the early twentieth century and predate the United Nations which was established after World War II.<sup>22</sup>

To date, there has never been consensus on a comprehensive and universally accepted definition of terrorism in any international instrument. The United Nations, with all its organs, has never come to a consensus on a definition of terrorism; neither have any of its constituent elements.<sup>23</sup> Moreover, among the thirteen international conventions and regional treaties related to terrorism, none has deliberately adopted a definition of terrorism. Rather, they tend to focus on particular aspects or types of terrorism, such as hijacking or financing of terrorism.

This section addresses the efforts of the United Nations General Assembly and Security Council to establish an objective definition of terrorism. It then examines a number of international conventions and regional treaties that have addressed the issue. It will end by examining the recent decision handed down by the Special Tribunal of Lebanon that attempted to articulate a universal definition of terrorism.

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18 Egyptian Penal Code, amended by Law No. 97 of 1992. See GLOBAL ANTI-TERRORISM LAW AND POLICY 592 (Victor V. Ramraj, et al., eds., 2005).

19 See AHMED BELAL, PRINCIPLES OF EGYPTIAN CRIMINAL LAWS 191 (2d ed. 2006); see also ASHRAF SHAMS EL DIN, AL SEYASA AL TASHRE’YA LE MOKAFHAT EL ERHAB WE MADA ETAFQA MA’A OSOUL AL SHAREYA AL GENA’YA [LEGISLATIVE POLICY FOR COMBATING TERRORISM] 28 (2006) (describing the Egyptian Minister of Interior’s argument for the three years extension of the Law of Emergency in 2002).

20 Human Rights Comm., *Comments on Egypt*, ¶ 11, U.N. Doc. CCPR/C/79/Add.23 (Aug. 9, 1993) [hereinafter *Comments on Egypt*].

21 *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Mission to Egypt*, ¶ 9, Human Rights Council, U.N. Doc. A/HRC/13/37/Add.2 (Oct. 14, 2009) (by Martin Scheinin) [hereinafter *Mission to Egypt*].

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22 See, e.g., Convention for the Prevention and Punishment of Terrorism, in 19 LEAGUE OF NATIONS O. J. 23 (1938); see also Schmid, *supra* note 2, at 385.

23 U.N. Secretary-General, *Follow-up to the Outcome of the Millennium Summit*, ¶ 159, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter U.N. Secretary-General, *Follow-up*] (“[T]he lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image.”).

### A. United Nations General Assembly Definitions of Terrorism

The U.N. General Assembly has frequently condemned all acts of terrorism as criminal and posing a serious threat to international peace and security.<sup>24</sup> The first U.N. action regarding terrorism was in the early 1970s.<sup>25</sup> In 1970, the General Assembly issued the Declaration on Friendly Relations.<sup>26</sup> However, this Declaration focused on terrorism committed by states and paid little attention to terrorist acts committed by individuals.<sup>27</sup> No definition of terrorism was incorporated into the Declaration; rather, it enumerated a list of obligations incumbent upon states to refrain from involvement in terrorism.<sup>28</sup>

Following the terrorist attacks that killed eleven athletes at the Munich Olympic Games in September 1972, the General Assembly became more concerned about the issue of terrorism, and more precisely about terrorism committed by individuals and organized groups.<sup>29</sup> In the same year, the

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24 See, e.g., G.A. Res. 49/60, *supra* note 9, ¶ 1; see also, e.g., G.A. Res. 51/210, ¶ 1, U.N. Doc. A/RES/51/210 (Dec. 17, 1996); see also, e.g., G.A. Res. 60/288, *supra* note 10, at pmb1.

25 Ben Saul, *Defining Terrorism In International Law* 193-95 (2006) (“[U]se of terrorist (concept) in the 1970 Declaration refer to acts or activities, rather than to terrorist groups or bands. The term is used adjectivally to qualify the nature of acts violating the non-use of force or non-intervention, not as a noun to describe a separate legal category of persons. It relates to, and elaborates on, the *jus as bellum* (resort to force), rather than the *jus in bello* (means of force), and is only helpful in that it strengthens prohibitions on indirect force and intervention.”).

26 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN, G.A. Res. 2625 (XXV), U.N. Doc. A/2625 (Oct. 24, 1970).

27 *Id.* at Annex ¶ 1 (“Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to... involve a threat or use of force. Another provision of the declaration urged states to “to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state.”).

28 *Id.*

29 Cindy C. Combs, *Terrorism in the Twenty-First Century* 168 (2d ed. 2000).

General Assembly adopted Resolution 3034.<sup>30</sup> However, this Resolution was limited in various aspects. It included no definition of terrorism or even general language condemning it.<sup>31</sup> Instead, it only reiterated its deep concern about the rise of terrorism and violence and expressed its sympathy to victims of terrorism, and called upon states to join international conventions dealing with various aspects of terrorism.<sup>32</sup> The Resolution established an *ad hoc* committee composed of thirty-five members to work on measures to suppress terrorism.<sup>33</sup> The committee attempted in its 1973, 1977, and 1979 reports to reach a comprehensive definition of terrorism, but failed due to disagreement among member states.<sup>34</sup> It noted in its last report that terrorism is “a loaded term [that is] liable to diverse interpretations” and is therefore “extremely difficult to define.”<sup>35</sup>

Beginning in 1979, the General Assembly shifted its concern from state sponsored terrorism to terrorism conducted by individuals and organizations.<sup>36</sup> Nearly all of the succeeding resolutions on terrorism open by condemning “as criminal all acts, methods and practices of terrorism, wherever and by whomever committed.”<sup>37</sup> In subsequent resolutions, such as, Resolutions 44/29, 46/51, 50/53, 51/210, 52/165, 54/110 and 55/158, the Assembly has expressed great concern over the increasing rise in terrorism, both international and domestic, seeing it as “criminal and

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30 See G.A. Res. 3034 (XXVII), U.N. Doc. A/RES/3034 (Dec. 18, 1972).

31 See *id.*

32 *Id.* ¶ 1.

33 *Id.* ¶ 9.

34 Young, *supra* note 8, at 38 (establishing an ad hoc committee on terrorism to define terrorism, but the committee did not make any progress because of disagreement among member states).

35 See Rep. of the Ad Hoc Comm. on Int'l Terrorism, ¶¶ 36, 88, U.N. Doc. A/34/37; GAOR 34th Sess., Supp. No. 37 (Apr. 17, 1979).

36 See Saul, *supra* note 25, at 203; see also G.A. Res. 34/145, ¶ 3, U.N. Doc. A/RES/34/145 (Dec. 17, 1979) (“Unequivocally condemned all acts of international terrorism which endanger or take human lives or jeopardize fundamental freedoms.”).

37 E.g., G.A. Res. 40/61, ¶ 1, U.N. Doc. A/RES/40/61 (Dec. 9, 1985). E.g., G.A. Res. 42/59, ¶ 1, U.N. Doc. A/RES/42/59 (Nov. 30, 1987).



unjustifiable” under any circumstances.<sup>38</sup>

The first resolution to define terrorism and identify some of its core elements was the 1994 Declaration on Measures to Eliminate Terrorism.<sup>39</sup> Although not initially intended to be a definition, the Declaration to a great extent “serve[d] that function, at least as a working premise for the assembly.”<sup>40</sup> Article Three defines terrorism as:

[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, and religious or any other nature that may be invoked to justify them.<sup>41</sup>

In 1996 the General Assembly issued a resolution on Measures to Eliminate Terrorism that created an *ad hoc* committee to sketch out a comprehensive convention addressing the problem of terrorism.<sup>42</sup> The committee conceded in the preamble of the resulting convention that no international treaty had yet offered a precise and comprehensive definition of terrorism. Article Two of the draft comprehensive treaty on terrorism defined it as:

[U]nlawfully and intentionally caus[ing] a) death or serious bodily injury to any person; or b) serious damage to public or private property, including a place of public use, a state or government facility, a public transportation system, an infrastructure facility or the environment or c) damage to property, places, facilities, or systems...resulting or likely to result in major economic loss, when the purpose of the con-

duct, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.<sup>43</sup>

The latest General Assembly attempt to articulate a definition of terrorism came in a 2006 resolution intended to encourage members of the international community to adopt a comprehensive convention that would clearly define terrorism.<sup>44</sup> However, the resolution simply reiterated its predecessors in calling on states to “consistently, unequivocally and strongly condemn terrorism in all its forms and manifestations, committed by whoever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security.”<sup>45</sup>

## B. United Nations Security Council Definition of Terrorism

The Security Council has always regarded terrorism as criminal conduct involving the “most serious threat to peace and security.”<sup>46</sup> Prior to 2001 the Security Council had addressed the problem occasionally with respect to a number of incidents, but had never attempted to define it or promulgate measures to combat or punish it.<sup>47</sup> However, since 2001 the Security Council has passed a significant

38 See Saul, *supra* note 25, at 203. See G.A. Res. 44/29, ¶ 1, U.N. Doc. A/RES/44/29 (Dec. 4, 1989); see also G.A. Res. 46/51, ¶ 1, U.N. Doc. A/RES/46/51 (Dec. 9, 1991); see also G.A. Res. 50/53, ¶ 1, U.N. Doc. A/RES/50/53 (Oct. 12, 1995); see also G.A. Res. 51/210, *supra* note 24, ¶ 1; see also G.A. Res. 52/165, ¶ 1, U.N. Doc. A/RES/52/165 (Jan. 19, 1998); see also G.A. Res. 54/110, ¶ 1, U.N. Doc. A/RES/54/110 (Feb. 2, 2000); see also G.A. Res. 55/158, ¶ 1, U.N. Doc. A/RES/55/158 (Jan. 30, 2001).

39 G.A. Res. 49/60, *supra* note 9, at Annex ¶ 3.

40 SAUL, *supra* note 25, at 209.

41 G.A. Res. 49/60, *supra* note 9, at Annex ¶ 3.

42 G.A. Res. 51/210, *supra* note 24, ¶ 9.

43 Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996, Jan. 28 – Feb. 1, 2002, U.N. Doc. A/57/37; GOAR, 57th Sess., Supp. No. 37, Annex II (2002) [hereinafter Report of the Ad Hoc Committee].

44 G.A. Res. 60/288, *supra* note 10, at Annex ¶ 1.

45 *Id.*

46 S.C. Res. 1373, at pmb1, U.N. Doc. S/RES/7158 (Sep. 28, 2001); see also S.C. Res. 1566, at pmb1, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

47 See SAUL, *supra* note 25, at 214-33. See S.C. Res. 731, ¶ 3, U.N. Doc. S/RES/731 (Jan. 21, 1992); see also S.C. Res. 748, ¶ 2, U.N. Doc. S/RES/748 (Mar. 31, 1992). Both Resolutions condemned the terrorist bombing of a civilian aircraft over Lockerbie, Scotland and required member states “to contribute to the elimination of international terrorism” and to “cease all forms of terrorist actions and all assistance to terrorist groups.” *Id.* A another resolution “condemn[ed] the terrorist assassination attempt of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on June 25, 1995.” S.C. Res. 1044, ¶¶ 1-4(a)-(b), U.N. Doc. S/RES/1044 (Jan. 31, 1996). It further called upon Sudan “to extradite to Ethiopia for prosecution the three suspects sheltering in Sudan” and to “desist from engaging in activities of assisting, supporting and facilitating terrorist activities and from giving sanctuaries to terrorist element.” *Id.*

number of resolutions pertaining to terrorism, including Resolutions 1368, 1373, and 1566.<sup>48</sup> In particular, the latter two have been seen as “extraordinary.”<sup>49</sup> Unlike prior resolutions, which were confined to particular terrorist incidents requiring a state to undertake a certain action or abstain from a certain action, these resolutions, adopted under Chapter VII powers, seemed “to establish new binding rules of International law...and create a mechanism for monitoring compliance with them.”<sup>50</sup> As Professor Sadat observed, these resolutions “suggest a sea change in *opinio juris* on the issue of terrorism as a universal jurisdiction crime, enacted against the backdrop of a custom that had already been evolving in that direction.”<sup>51</sup>

Following the 9/11 attacks, the Security Council passed what has been considered the most assertive and comprehensive measure to confront terrorism, Resolution 1373.<sup>52</sup> However, despite using the terms “terrorism” or “terrorist” over 40 times and highlighting the incontestable nature of terrorism as a threat to international peace and security the resolution did not set up a definition of terrorism or identify what core elements should be incorporated in a definition. Instead it generally condemned all forms of terrorist acts and placed a number of obligations on members of the international community, such as taking necessary measures to prevent and suppress the financing of terrorism including freezing the funds of terrorist groups and the criminalization of all means of assistance and support for terrorism.<sup>53</sup>

The Resolution also urged states to take all necessary measures to prevent acts of terrorism, to punish perpetrators and anyone providing support for them, to cooperate and exchange information with other states in any criminal investigation or proceedings related to terrorism, and to become parties to all international conventions and protocols relevant to terrorism.<sup>54</sup> Finally, it established a Counter Terrorism Committee (“CTC”) to monitor every member state

through reports on the measures implemented by each state.<sup>55</sup> It is worth noting that formulating a comprehensive definition of terrorism was not among the CTC’s assigned tasks. This was noted by the Chairman of the Counter Terrorism Committee, who said that “I...should also set out what the CTC is not...it is not going to define terrorism in a legal sense, although we will have a fair idea of what is blatant terrorism; where necessary CTC members will decide by consensus whether an act is terrorism.”<sup>56</sup>

In 2004, the Security Council passed Resolution 1566, which basically reiterated its predecessors.<sup>57</sup> In addition to general language condemning all forms of terrorism and asserting the Council’s prior views, the Resolution emphasized the need for cooperation among states in the fight against terrorism and again requested all members of the U.N. to become parties to international conventions related to terrorism.<sup>58</sup> What is novel about this Resolution is that, although not designed to serve as such, it includes what could be construed as a definition of terrorism.<sup>59</sup> Article Three reads:

[R]ecalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate

48 See S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sept. 12, 2001); see also S.C. Res. 1373, *supra* note 46; see also S.C. Res. 1566, *supra* note 46.

49 Leila Naday Sadat, *Terrorism and the Rule of Law*, 3 WASH. U. GLOBAL STUD. L. REV. 135, 150 (2004).

50 Paul C. Szasz, *The Security Council Starts Legislating*, 96 AM. J. INT’L L. 901, 902 (2001).

51 Sadat, *supra* note 49, at 150.

52 S.C. Res. 1373, *supra* note 46.

53 *Id.* ¶ 1(a)-(c).

54 *Id.* ¶ 3(a)-(d).

55 *Id.* ¶¶ 6-7.

56 Jeremy Greenstock, Presentation at the United Nations Symposium: Combating International Terrorism: The Contribution of the United Nations (2002), available at [http://www.un.org/en/sc/ctc/docs/rights/2002\\_06\\_03\\_ctcchair\\_symposium.pdf](http://www.un.org/en/sc/ctc/docs/rights/2002_06_03_ctcchair_symposium.pdf).

57 S.C. Res. 1566, *supra* note 46.

58 *Id.* ¶¶ 2, 4.

59 See *id.* Ronaldo Mota Sardenberg, Ambassador of Brazil, in the debate over the adoption of Resolution 1566, pointed out that paragraph 3 was not an attempt to define terrorism but to convey a political message. See Press Release, Security Council, Security Council Acts Unanimously to Adopt Resolution Strongly Condemning Terrorism as One of Most Serious Threats to Peace, U.N. Doc. SC/8214 (Aug. 10, 2004), available at <http://www.un.org/News/Press/docs/2004/sc8214.doc.htm>. See Special Rapporteur On The Promotion And Protection Of Human Rights And Fundamental Freedoms While Countering Terrorism, *Promotion And Protection Of Human Rights: Human Rights Questions, Including Alternative Approaches For Improving The Effective Enjoyment Of Human Rights And Fundamental Freedoms*, ¶43, U.N. Doc. A/61/267 (August 16, 2006) (recommending that the definition of terrorism in Resolution No. 1566 be considered as “a yardstick for an international definition.”).

a population or compel a government or an intentional organization to do or abstain from doing any act, which constitutes offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all states to prevent such acts and, if not prevented, to ensure that such acts are punishable by penalties consistent with their grave nature.<sup>60</sup>

Recently, in 2010, Martin Scheinin, the U.N. Special Rapporteur on the Promotion and the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, asserted that domestic legislation defining terrorism should seek guidance from and be in compliance with the definition of terrorism in Resolution 1566.<sup>61</sup> Mr. Scheinin stressed that “a definition of terrorism that goes beyond the [definition in Security Council Resolution 1566] would be problematic from a human rights perspective.”<sup>62</sup>

### C. Definitions of Terrorism in International Anti-Terrorism Conventions

Since 1963, about sixteen international conventions have been adopted with the aim of preventing and sup-

60 S.C. Res. 1566, *supra* note 46, ¶ 3. See U.N. Secretary-General, *Follow-up*, *supra* note 23, ¶ 164(d). The Final Report of the High-level Panel on Threats, Challenges and Changes appointed by Secretary General Kofi Anan referenced the Security Council definition of terrorism in Resolution No. 1566 and affirmed that terrorism is “any action. . . that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing act.” *Id.*

61 Human Rights Council, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, Martin Scheinin, U.N. Doc. A/HRC/16/51, (December 22, 2010) (“[I]n the absence of a universally agreed upon, comprehensive and concise definition of terrorism, counter-terrorism laws and policies must be limited to the countering of offences that correspond to the characteristics of conduct to be superseded in the fight against international terrorism, as identified by Security Council Resolution 1566.”).

62 *Id.* ¶¶ 28-29 (proposing a definition of terrorism that endorsed all the standards identified in the Security Council Resolution).

pressing various acts of terrorism.<sup>63</sup> These conventions condemn and prohibit terrorism as attacks directed against civilians with the intent to coerce or to intimidate a population or a government regardless of the motivations of the perpetrators, by stating that such acts “are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.”<sup>64</sup> Most subsequent international legal instruments, including the U.N. General Assembly and Security Council Resolutions as well as regional anti-terrorism conventions, have referred to these conventions as including a comprehensive list of terrorism offenses and have further called upon states to become members of these conventions.<sup>65</sup>

Rarely, however, have any of these conventions provided a precise and objective definition of terrorism. This is understandable because none of them were drafted for that purpose. Rather, these conventions are “operational in nature” and confined to particular aspects or acts of terrorism such as the financing of terrorism or taking of hostages.<sup>66</sup>

Yet the International Convention for the Suppression of the Financing of Terrorism does include what could be deemed a generic definition. Although not intended for that purpose, the Convention incorporates all of the core

63 For a list of international conventions related to terrorism, see *United Nations Conventions Deposited with the Secretary-General of the United Nations*, U.N., [http://treaties.un.org/Pages/DB.aspx?path= DB/studies/page2\\_en.xml&menu=MTDSC](http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSC) (last visited Mar. 23, 2012).

64 International Convention for the Suppression of the Financing of Terrorism art. 6, Dec. 9, 1999, 2178 U.N.T.S. 197 [hereinafter *Terrorism Financing Convention*].

65 Many international instruments have called upon states to join all relevant international conventions and protocols related to terrorism, particularly the Terrorism Financing Convention. See, e.g., G.A. Res. 49/60, *supra* note 9, pmb.; see also, e.g., G.A. Res. 60/288, *supra* note 10, Annex ¶ 2(a). The Security Council also has referred to all international conventions of relevance to terrorism in a number of resolutions. See, e.g., S.C. Res. 1373, *supra* note 46, at pmb., ¶ 3(d); see also, e.g., S.C. Res. 1456, ¶ 2(a), U.N. Doc. S/RES/1456 (Jan. 20, 2003); see also, e.g., S.C. Res. 1535, pmb., U.N. Doc. S/RES/1535 (Mar. 26, 2004); see also, e.g., S.C. Res. 1566, *supra* note 46, ¶ 4. Additionally, a number of regional anti-terrorism conventions have sought guidance from or referenced international conventions for the prevention and suppression of terrorism. See, e.g., European Convention on the Suppression of Terrorism art. 1(1), Jan. 27, 1977, 1137 U.N.T.S. 93; see also, e.g., South Asian Association for Regional Cooperation, Regional Convention on the Suppression of Terrorism art. 1(a)-(d), Nov. 4, 1987, in UNITED NATIONS, INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, U.N. SALES NO. E.08.V.2 (2008).

66 *First Rep. of the Special Rapporteur*, *supra* note 10, ¶ 28.

elements identified by the Security Council and General Assembly resolutions. Article Two bans all funding of all offenses recognized by international treaties for the suppression of terrorism listed in the annex as well as all “[a]cts intended to cause death or serious bodily injury to [any person] not taking an active part ... in a situation of armed conflict ... to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”<sup>67</sup> The ratification of this Convention by more than 170 countries and that fact that these countries have not expressed any reservations as to this definition of terrorism reveals that the international community has accepted these as core elements of the definition of terrorism.<sup>68</sup> The Supreme Court of Canada made a similar conclusion with regard to the definition of terrorism in the Financing Convention, holding that “this definition catches the essence of what the world understands by terrorism.”<sup>69</sup>

Similarly, other conventions, even with different *actus reus* elements suited to their purposes, have the same *mens rea* elements of intending to intimidate a civilian population, compel a government to do or abstain from doing anything, or cause major economic loss.<sup>70</sup> For instance, Article 2(1) of the Terrorism Bombing Convention reads:

any person commits an offence within the meaning of this convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government

67 Terrorism Financing Convention, *supra* note 64, at art. 6.

68 Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Special Tribunal for Lebanon, Case No. STL-11-01/I, ¶ 108 (Feb. 16, 2011), available at [http://www.stl-tsl.org/x/file/TheRegistry/Library/CaseFiles/chambers/20110216\\_STL-11-01\\_R176bis\\_F0010\\_AC\\_Interlocutory\\_Ddecision\\_Filed\\_EN.pdf](http://www.stl-tsl.org/x/file/TheRegistry/Library/CaseFiles/chambers/20110216_STL-11-01_R176bis_F0010_AC_Interlocutory_Ddecision_Filed_EN.pdf) [hereinafter Interlocutory Decision].

69 Kent Roach, *The Role and Capacities of Courts and Legislatures in Reviewing Canada's Anti-terrorism Law*, 24 WINDSOR REV. LEGAL & SOC. ISSUES 5 (2008).

70 Some of these sectoral treaties have explicitly referenced the General Assembly Declarations on Measures to Eliminate International Terrorism annexed to the G.A. Res. 49/60, and have included the same elements of the definition of terrorism provided in the Declaration. See, e.g., International Convention for the Suppression of Terrorist Bombings art. 2(1), Dec. 15, 1997, S. Treaty Doc. No. 106-6, 37 I.L.M. 249 [hereinafter Terrorist Bombing Convention].

facility, a public transportation system or an infrastructure facility: a) with the intent to cause death or serious bodily injury; or b) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.<sup>71</sup>

Another example is found in the Convention on the Physical Protection of Nuclear Material, which states among the offenses included in Article Seven:

i) a threat to use nuclear material to cause death or serious injury to any person or substantial property damage, ii) to commit an offence described in sub paragraph (b) in order to compel a natural or legal person, international organization or state to do or to refrain from doing any act.<sup>72</sup>

Furthermore, The International Convention for the Suppression of Acts of Nuclear Terrorism provides:

1- Any Person commits an offence within the meaning of this convention if that person unlawfully and intentionally:

...

b- uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

i) with the intent to cause death or serious bodily injury;  
ii) with the intent to cause substantial damage to property or to the environment; or  
iii) with the intent to compel a natural or a legal person, an international organization or a state to do or refrain from doing an act.<sup>73</sup>

71 Terrorist Bombing Convention, *supra* note 70, at art. 2(1).

72 International Atomic Energy Agency, Convention on the Physical Protection of Nuclear Material art. 7(1)(2), Oct. 26, 1979, 1987 U.N.T.S. 125.

73 International Convention for the Suppression of Acts of Nuclear Terrorism art. 2(1)(b), Apr. 15, 2005, 2445 U.N.T.S. 89.

## D. Definitions of Terrorism in Regional Anti-Terrorism Conventions

Regional treaties related to terrorism have varied in their treatment of the issue. While some have abstained from incorporating a generic definition of terrorism, others have defined terrorism and established some core elements.<sup>74</sup> However, the latter group has not followed any single protocol. Whereas some vaguely and ambiguously defined terrorism, others have been careful to echo international standards reflected in United Nations resolutions and international treaties.

A number of regional conventions such as the 2005 Council of Europe Convention on the Prevention of Terrorism,<sup>75</sup> the 2004 Additional Protocol to the South Asian Association for Regional Cooperation Regional Convention on the Suppression of Terrorism,<sup>76</sup> the Shanghai Cooperation Organization Convention on Combating Terrorism,<sup>77</sup> and the OAU Convention on the Prevention and Combating of Terrorism<sup>78</sup> have attempted to define terrorism in a way that follows U.N. Security Council Resolution 1566. Although sometimes embracing broad or imprecise concepts, they generally follow the same core elements that make up

the international trend in defining terrorism.<sup>79</sup>

The first common feature is that all of these definitions contain no reference to motivation. Moreover, the *actus reus* has to be a criminal act or a violation of criminal law. Additionally, all require both criminal and specific intent. In other words, terrorist perpetrators must not only have intended death, serious bodily injury, or the destruction and damage of property, but also intended to instill or create a state of fear or to compel a government or an organization to do or abstain from doing something.

Other regional conventions have disregarded these fundamental elements of terrorism and have instead opted for a more imprecise approach. The 1998 Arab Convention on the Suppression of Terrorism<sup>80</sup> and the 1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism contain vague and ambiguous definitions of terrorism.<sup>81</sup> These conventions have very similar definitions that share ambiguous wording, likely because the majority of the members of the Organization of Islamic Conference are Arab countries and are themselves members of the League of Arab States. They seem to have been influenced by the definition of terrorism incorporated in the Egyptian Penal Code.<sup>82</sup>

What is notable about all the definitional approaches of these conventions is that they ignore the core elements

74 See, e.g., European Convention on the Suppression of Terrorism, *supra* note 65. The European Convention on the Suppression of Terrorism and the 2002 Inter-American Convention against Terrorism are examples of regional conventions lacking a definition of terrorism.

75 Council of Europe Convention on the Prevention of Terrorism, *pmb.*, May 16, 2005, E.T.S. 196 (defining terrorism).

76 Additional Protocol to the South Asian Association Regional Convention on the Suppression of Terrorism art. 4(1)(b), Jan. 6, 2004, *reproduced in* UNITED NATIONS, INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, U.N. SALES No. E.08.V.2 (2008) (defining terrorism).

77 Shanghai Cooperation Organization, Convention on Combating Terrorism, Separatism, and Extremism art. 1(1)(a)-(b), June 15, 2001, *reproduced in* UNITED NATIONS, INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, U.N. SALES No. E.08.V.2 (2008) (defining terrorism) [hereinafter Shanghai Convention].

78 Organization of African Unity, Convention on the Prevention and Combating of Terrorism art. 1(3)(a), Jul. 14, 1999, 2219 U.N.T.S. 179 (defining terrorism) [Hereinafter OAU Convention].

79 Incorporating into the definition of terrorism broad and imprecise phrases such as “destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization,” as in the European model, or violating “the public security,” as in the Shanghai Convention, contravenes the principle of legality and may result in restricting a number of fundamental rights. See, e.g., European Convention on the Suppression of Terrorism, *supra* note 65; see also Shanghai Convention, *supra* note 77. Similarly, the OAU definition of terrorism considers as terrorism acts that may “disrupt any public service, the delivery of any essential service to the public or to create a public emergency” and “create general insurrection in a state.” OAU Convention, *supra* note 78. The application of these phrases could treat as terrorists those who protest tyrannical regimes in countries such as Egypt, Tunisia, and Libya.

80 See Arab Convention on the Suppression of Terrorism, *supra* note 13.

81 See Islamic Conference Convention on Combating International Terrorism, *supra* note 13.

82 See Amnesty Int’l, *A Serious Threat to Human Rights*, *supra* note 13.

used in the clear definitions of the international instruments discussed above. For instance, they do not require the prohibited conduct to be criminal or unlawful and they treat the use of violence as terrorism without defining violence or what degree of violence may amount to terrorism.<sup>83</sup> Under both definitions the mere threat of violence could be considered terrorism.

Regarding intent, according to both definitions, violence does not have to be accompanied by a criminal intent to cause death or serious bodily injury. Moreover, the specific intent required by the majority of definitions examined above, consisting of the intent to compel a government or an international organization to do or abstain from doing something, is missing from both conventions. Therefore these conventions consider terrorism in overbroad terms and regard it as simply any act that results in harming people and imperiling their lives, honor, or rights. Both conventions consider both acts of destruction and occupation or seizure of public or private property as terrorism. The Islamic Conference's definition goes further by including all acts threatening the "stability, territorial integrity, political unity or sovereignty of independent states."<sup>84</sup> These are broad and ambiguous terms that are defined nowhere in the convention and have the potential to be used for arbitrariness and abuse of power.<sup>85</sup> Amnesty International warned that definitions such as these "can be subject to wide interpretation and abuse, and in fact [do] not satisfy the requirements of legality."<sup>86</sup>

### E. Special Tribunal for Lebanon's Definition of Terrorism

On Feb. 16, 2011, the Special Tribunal for Lebanon (STL), established by Security Council Resolution 1757 to prosecute those involved in the terrorist assassination of Prime Minister Rafiq el Hariri, attempted to articulate a definition of terrorism.<sup>87</sup> The decision of the STL appeal

"marks the first time that an international tribunal distinctly established a universal definition of terrorism under international law."<sup>88</sup>

Although required by the express terms of Article 2 of the Resolution to apply "the provisions of the Lebanese Criminal Code relating to the prosecution and punishments of acts of terrorism,"<sup>89</sup> the Tribunal did not confine itself to the definition of terrorism in the Criminal Code of Lebanon or relevant Lebanese case law.<sup>90</sup> Instead it emphasized that, in interpreting the Lebanese definition of terrorism, it would take into account Lebanon's international obligations under "international conventional and customary law that is binding upon Lebanon."<sup>91</sup>

The STL attempted to articulate an international definition of terrorism through the examination of definitions of terrorism in a wide variety of sources of international law, including Security Council and General Assembly Resolutions, international and regional conventions on terrorism, domestic legislation of various states, and case law. The STL opined that "although it is held by many scholars and legal experts that no widely accepted definition of terrorism has evolved in the world society ... closer scrutiny demonstrated that in fact such a definition has gradually emerged."<sup>92</sup> It explained that:

a number of international treaties, UN Resolutions, and the legislative and judicial practice of States evince the formation of a general *opinio juris* in the international community, accompanied by a practice consistent with such *opinio*, to the effect that a customary rule of international law regarding the international crime of terrorism... has indeed emerged.<sup>93</sup>

83 See *id.*

84 Islamic Conference Convention on Combating International Terrorism, *supra* note 13, at art. 1(2).

85 See Gabriel Soll, *Terrorism: The Known Element No One Can Define*, 11 WILLAMETTE J. INT'L L. & DISP. RESOL. 123, 147 (2004).

86 Amnesty Int'l, *A Serious Threat to Human Rights*, *supra* note 13.

87 S.C. Res. 9029, U.N. Doc. S/RES/9029 (May 20, 2007).

88 Heather Noel Doherty, *Tipping the Scale: Is the Special Tribunal for Lebanon International Enough to Override State Official Immunity?*, 43 CASE W. RES. J. INT'L L. 831, 868 (2011).

89 S.C. Res. 9029, *supra* note 87, at Attachment art. 2.

90 Interlocutory Decision, *supra* note 68, ¶¶ 47, 49, 51.

91 *Id.* ¶¶ 20, 45; see Michelle Flash, *The Special Tribunal of Lebanon Defines Terrorism*, HUM. RTS. BRIEF (Oct. 10, 2011), <http://hrbrief.org/2011/10/the-special-tribunal-for-lebanon-defines-terrorism/>.

92 Interlocutory Decision *supra* note 68, ¶ 83.

93 *Id.* ¶ 85.

Based on the above, the court concluded that the customary international rule:

requires the following three key elements i) the perpetration of a criminal act... or threatening such act; ii) the intent to spread fear... or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; iii) when the act involves a transnational element.<sup>94</sup>

It is obvious that the STL definition of terrorism shares the same common elements of terrorist crimes identified in the international legal instruments discussed above. First, with regard to the objective element, it requires that the prohibited conduct be criminal. Second, the subjective element is composed of two main elements, a criminal intent and a specific intent. While the former refers to the “intent of the underlying crime,”<sup>95</sup> the second refers to the intent to “spread terror or coerce an authority.”<sup>96</sup> The third element, requiring that the act be transnational, does not appear in the definitions examined above. This provision serves only to distinguish domestic and international terrorism and “does not detract from the essential communality of the concept of terrorism.”<sup>97</sup>

## II. The Core Elements of an Objective Definition of Terrorism

This section will extract the core elements from the myriad of terrorism definitions presented in the foregoing sections. These are the common, core elements that should be incorporated into a definition of terrorism to distinguish it from analogous criminal acts.

Despite the difficulty in reaching an international consensus on a definition of terrorism due to its political nature and reservations expressed by some members of

the international community,<sup>98</sup> it has been somewhat more successful at the domestic level because individual states have not had the same problems.<sup>99</sup> This part will delimit the scope of what should be construed as terrorism and its core elements.

The above definitions suggest common elements that must be present for an act to qualify as terrorism.<sup>100</sup> These core elements, found in various international instruments, including United Nations General Assembly and Security Council resolutions and anti-terrorism conventions and protocols, may suggest a customary international rule or at least provide a minimum legal basis for an objective and precise definition. Therefore, states drafting counter-terrorism laws should seek guidance from these sources to ensure that their laws are in line with international human rights norms and standards.<sup>101</sup> In several reports submitted to the General Assembly and Human Rights Council, The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, has recommended that domestic definitions of terrorism should at least comply with Security Council Resolution 1566 which should serve as a “yardstick” for a defini-

98 See Begorre-Bret, *supra* note 5, at 1994. Many states have opposed international attempts to formulate a definition of terrorism for various reasons. See *id.* For example, Arab countries have long resisted a definition of terrorism because it overlaps with the rights of people to fight for freedom and independence and thus could impede liberation movements. See *id.* Other countries, such as Russia and China, have opposed terrorism definitions because they perceive terrorism only as acts of violence carried out against the state, not against individuals. See *id.*

99 See *id.*; see also Young, *supra* note 8, at 24; see also Sami Zeidan, *Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism*, 36 CORNELL INT'L L. J. 491, 491 (2004).

100 Young, *supra* note 8, at 32. Many scholars argue that terrorism has a core meaning with minimum identifiable elements. See, e.g., Emanuel Gross, *Legal Aspects of Tackling Terrorism: The Balance Between the Right of a Democracy to Defend Itself and the Protection of Human Rights*, 6 UCLA J. INT'L L. & FOREIGN AFF. 89, 97 (2001) (“[T]he majority of the definitions have a common basis . . . terrorism is the use of violence and the imposition of fear to achieve a particular purpose.”); see also Oscar Schachter, *The Extraterritorial Use of Force Against Terrorist Bases*, 11 Hous. J. INT'L L. 309, 309 (1989) (“[T]he absence of a comprehensive definition does not mean that international terrorism is not identifiable. It has a core meaning that all definitions recognizes.”).

101 Young, *supra* note 8, at 26 (suggesting that all “states should treat the international law definitional jurisprudence as setting a minimum level, not a maximum.”).

94 *Id.*

95 *Id.* ¶ 111.

96 *Id.*

97 *Id.* ¶ 90.

tion of terrorism.<sup>102</sup> In a recent report, he further elaborated a model definition that took into account all cumulative elements in the Resolution as well as those in other legal instruments.<sup>103</sup> The following will examine the various definitions and analyze the core elements of terrorism.

First, as discussed in this paper and acknowledged by various legal instruments, terrorism refers to terrorist acts conducted by non-state actors. This includes terrorism by a single individual, a group of persons, or an organization. Whether state acts resulting in death or serious bodily injury could qualify as terrorism is controversial and is still the subject of disagreement in the international community.<sup>104</sup> In fact, invoking state responsibility for acts of terrorism is needless. As one scholar has noted, it is:

unnecessary for two reasons. First, the state action is already restricted by, inter alia, the UN Charter, the Geneva Conventions, the Genocide Convention, customary and conventional rules against torture, human rights obligations, international humanitarian law ... Second, acts done by individuals sufficiently connected to a state engage state responsibility for breaches of international law. State involvement can be usefully categorized as state supporting terrorism... state operating terrorism... state performing terrorism.<sup>105</sup>

Second, with respect to the *actus reus* in the definition of terrorism, while some of the international instruments require the *actus reus* to be criminal under domestic law,<sup>106</sup>

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102 U.N. Secretary-General, *Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶43, U.N.Doc. A/61/267 (August 16, 2006). (“[C]ounter-terrorism must be limited to the countering of offences within the scope of, and as defined in, the international conventions and protocols relating to terrorism, or the countering of associated conduct called for within resolutions of the Security Council, when combined the intention and purpose elements identified in security council resolution 1566 (2001). That an act is criminal does not, by itself, make it a terrorist act.”).

103 *Sixth Rep. of the Special Rapporteur*, *supra* note 10, ¶ 28.

104 Sami Zeidan, *supra* note 99, at 492-96.

105 Young, *supra* note 8, at 62.

106 See, e.g., S.C. Res. 1566, *supra* note 46, ¶ 3; G.A. Res. 49/60, *supra* note 9, at Annex ¶ 3; see also, e.g., Terrorist Bombing Convention, *supra* note 70, at art. 2(1).

others require the prohibited conduct to be unlawful.<sup>107</sup> These two terms serve the same purpose and are a reference to applicable domestic law.<sup>108</sup> A core definition should avoid broad and ambiguous terms such as “the use of violence or force” or “the threat thereof” which are included in the Arab and Islamic anti-terrorism conventions.<sup>109</sup> As previously discussed, these kinds of terms can lead to abuse of power and erosion of fundamental freedoms because there is the potential for them to be applied to situations where the use of force might be justified, such as “the use of force to defend oneself.”<sup>110</sup>

Third, the *mens rea* in terrorism offenses is of a particular nature. The above set of definitions examined in the international law section indicates that *mens rea* in the context of terrorism consists of two major components. These have been referred to as “two-pronged requirements.”<sup>111</sup> The first prong is the criminal intent that requires the act to either be done with the intent to cause death or serious bodily injury or be aimed at the destruction and damage of a public or private property or its installations. Thus, unintentional acts and acts not intended to cause these results should not be considered terrorism even if they are subject to civil or criminal responsibility. The U.N. Special Rapporteur has argued that domestic anti-terrorism legislation should be confined to acts that “have sufficient relation to the intentional element of causing deadly or otherwise serious bodily harm.”<sup>112</sup> A number of definitions in the General Assembly Resolutions, anti-terrorism conventions, and re-

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107 See, e.g., International Civil Aviation Organization, Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation art. 2, Feb. 24, 1988, 27 I.L.M. 627.

108 Young, *supra* note 8, at 56.

109 See Arab Convention on the Suppression of Terrorism, *supra* note 13; see also Islamic Conference Convention on Combating International Terrorism, *supra* note 13.

110 Amnesty Int’l, *A Serious Threat to Human Rights*, *supra* note 13.

111 Orlova & Moore, *supra* note 11, at 275.

112 *Mission to Egypt*, *supra* note 21, ¶ 10. See Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Addendum, Mission to Turkey*, ¶ 76, Comm’n on Human Rights, U.N. Doc. A/HRC/4/26/Add.2 (Nov. 16, 2006) (by Martin Scheinin) [hereinafter *Mission to Turkey*] (terrorism “must be precisely defined, narrow in scope and only be related to crimes of level of severity which entails a threat to life or serious bodily harm to persons.”).



gional conventions consider terrorism to be acts which are intended to cause substantial damage to public or private property.<sup>113</sup>

The second prong consists of the intent to coerce or intimidate a group of civilians or to affect the conduct of a government or an international organization. This specific intent as a preliminary requirement is what distinguishes terrorism from other criminal offenses.<sup>114</sup> It is the goal of intimidation that characterizes terrorism.<sup>115</sup> Ordinary criminal actions should be considered terrorism only if aimed at creating an atmosphere of fear and terror among the population that threatens peace and security. Also to be included are criminal actions accompanied with the intent to influence or to coerce a group of people, a government or an organization to take a precise action, to follow particular policies, or to comply with other demands.<sup>116</sup> Only in such circumstances can a state justify exceptional policies, usually labeled counter-terrorism measures, to maintain peace and security.<sup>117</sup> The majority of the definitions examined require this specific intent for an act to be

labeled terrorism.<sup>118</sup> It is important to note that in some of the international conventions, this specific intent has been referred to as the aim or the purpose of a terrorist act.<sup>119</sup> Whether called a specific intent or a purpose, this element is the decisive factor distinguishing terrorism from other criminal activities.

Fourth, whether it is political, religious, ideological, philosophical, sociological, or ethnic, the motive should be irrelevant.<sup>120</sup> Black's Law Dictionary distinguishes between motive and intent by stating that intent is "the state of mind accompanying an act ... while motive is the inducement to do some act, intent is the mental resolution or determination to do it. When the intent to do an act that violates the law exists, motive becomes immaterial."<sup>121</sup> Accordingly, the definitions of terrorism in Resolution 1566, General Assembly Resolutions, the STL decision, and the majority of international and regional anti-terrorism conventions make no reference to motive.<sup>122</sup> Some advocate the incorporation of motive on the ground that it helps delimit the scope of what constitutes terrorism and distinguishes it from other crimes, but there has been a stronger inclination towards its exclusion.<sup>123</sup>

113 See, e.g., Terrorist Bombing Convention, *supra* note 70, at art. 2(1); see Report of the Ad Hoc Committee, *supra* note 43.

114 Jordan J. Paust, *Terrorism's Proscription and Core Elements of an Objective Definition*, 8 SANTA CLARA J. INT'L L. 51, 58 (2010) (noting that the state of terror or the intimidation provoked by terrorism should be regarded as a foundational requirement of terrorism definition. Terms such as "endanger" or "threaten" are far-reaching and could encompass a wide-range of activities that are not genuinely terrorism).

115 Stephen Dycus et al., *Counterterrorism Law* 2 (2007).

116 Christopher L. Blakesley, *Terrorism, Law, and Our Constitutional Order*, 60 U. COLO. L. REV. 471, 480 (1989) (explaining that the special intent required in terrorism crimes is a foundational factor to distinguish between terrorism offences and ordinary crimes because "if a person kidnaps or murders the child of a head of state simply to reap a profit or because he has a personal dislike for the father, the killing is domestic kidnapping or murder. But if he kills the child in order to coerce her father to take some direct political, military, or religious action, such as withholding aid to some country or group, or forbearing other legitimate conduct, such as publishing an offensive book, the kidnapping or murder also would constitute criminal terrorism.").

117 Mark D. Kielsgard, *A Human Rights Approach to Counter-Terrorism*, 36 CAL. W. INT'L L. J. 249, 260 (2006).

118 Some of the definitions of terrorism, such as the one encompassed in the Terrorism Financing Convention have regarded the requirement of the "intimidation or coercion of a group of people or the compulsion and pressure on [a] government or an international organization to do or abstain from doing something" not as an intention but rather as the purpose or the aim of the terrorist act. See, e.g., Terrorism Financing Convention, at art. 2(1)(b).

119 The Special Rapporteur himself has called this element sometimes both "intent" and "purpose" or "aim." See, e.g., *Mission to Egypt*, *supra* note 21, ¶ 9.

120 Jean-Marc Sorel, *Some Questions about the Definition of Terrorism and the Fight Against its Financing*, 14 EUR. J. INT'L L. 365, 371 (2003) ("[I]t does not seem useful to specify the type of political aim, or . . . [it is] already qualified by their objective, which is to spread terror . . . the removal of redundant provisions in existing texts could be of great help form more harmonious application of the concept in general.").

121 BLACK'S LAW DICTIONARY 369 (7th ed. 1999).

122 G.A. Res. 49/60, *supra* note 9, at Annex ¶ 3 (incorporating a number of motivations to affirm that none could justify terrorism).

123 *Sixth Rep. of the Special Rapporteur*, *supra* note 10, ¶ 27. Many scholars also have advocated similar positions on the exclusion of motivation from terrorism definitions. See, e.g., Eqbal Ahmad, *Terrorism: Theirs & Ours*, Presentation at the University of Colorado, Boulder (Oct. 12, 1998), available at <http://www.sangam.org/ANALYSIS/Ahmad.htm>.

This inclination toward excluding motivation is strong for many reasons. First, no motive can justify commission of this sort of violence.<sup>124</sup> As one scholar noted, to say “what would be a just cause ... would be tacit permission to any violently-oriented group to carry out their actions with a ready defense should they be apprehended.”<sup>125</sup> Second, motives in such offenses are often difficult, if not, impossible to prove.<sup>126</sup> Third, disputes over motives have always been a crucial reason that members of the international community have been unable to reach a consensus on the definition of terrorism.<sup>127</sup> A further disadvantage of inclusion is that with reference to particular motivations, the definition would be unable to include other forms of terrorism that may arise in the future.

Finally, it should be noted that certain acts of international terrorism are proscribed by the United Nations anti-terrorism conventions without reference to the criminal or the political intent discussed above or whether the acts are criminalized in domestic legislation. These acts should be incorporated into a comprehensive definition of terrorism because they represent a consensus on particular forms of terrorism. Examples include acts jeopardizing the safety of aircraft or of persons or property there in,<sup>128</sup> hijacking or seizure of aircraft,<sup>129</sup> acts against the safety of civil aviation,<sup>130</sup> crimes against internationally protected persons includ-

ing diplomatic agents,<sup>131</sup> intentional taking of hostages,<sup>132</sup> unlawful possession or use of nuclear material,<sup>133</sup> acts of violence at airports serving international civil aviation,<sup>134</sup> unlawful acts against the safety of maritime navigation,<sup>135</sup> and unlawful acts against the safety of the fixed platforms located on the continental shelf.<sup>136</sup>

To conclude, an objective definition of terrorism must take into account the following basic elements:

1. The act has to be conducted by a non-state actor.
2. The *actus reus* must be criminal under domestic law.
3. The act has to be intended to cause death or serious injury among civilians or to cause damage to private or public property.
4. The act has to be committed with the intent to generate a state of terror among the population or to compel a government or an organization to do or abstain from doing something.
5. The motive should be irrelevant.
6. A Comprehensive definition should incorporate all internationally proscribed terrorist conducts acknowledged by UN anti-terrorism conventions.

### III. Definition of Terrorism in the Egyptian Legal System

Having surveyed international law definitions of terrorism and illustrated most common and core objective elements necessary for an objective and a generic definition of terrorism, this Section evaluates the Egyptian definition of terrorism in light of the dictates of international law. It will underscore the detrimental effects that using such

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124 See *Sixth Rep. of the Special Rapporteur*, *supra* note 10, ¶ 27 (“[F]acts of terrorism are under no circumstances justifiable, and . . . is not a conceptual requirement of a definition of terrorism.”); see also Susan Tiefenbrun, *A Semiotic Approach to a Legal Definition of Terrorism*, 9 ILSA J. INT’L & COMP. L. 357, 388 (2003) (“[T] here is no justification of terrorism. It is not defensible to argue that terrorism needs to be viewed from a political context and that the motivation of the actor and the sociological context in which the act occurs must be taken into consideration. Such an approach would legitimize terrorist acts by claiming that the ends justify the means. The Machiavellian principle that the ends justify the means simply does not comport with the generally accepted principles of the rule of law.”).

125 Soll, *supra* note 85, at 147.

126 Young, *supra* note 8, at 59.

127 Orlova & Moore, *supra* note 11 at 279.

128 Convention on Offences and Certain Other Acts Committed on Board Aircraft art. 1(b), Sept. 14, 1963, 704 U.N.T.S. 220.

129 Convention for the Suppression of Unlawful Seizure of Aircraft art. 1, Dec. 16, 1970, 860 U.N.T.S. 150.

130 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation art. 1, Sept. 23, 1971, 974 U.N.T.S. 128.

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131 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents art. 2(1), Dec. 14, 1973, 1035 U.N.T.S. 167.

132 International Convention Against the Taking of Hostages art. 1, Dec. 17, 1979, 1316 U.N.T.S. 205.

133 Convention on the Physical Protection of Nuclear Material, *supra* note 72, at art. 7.

134 Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, *supra* note 107, at art. 2.

135 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation art. 3, Mar. 10, 1988, 1678 U.N.T.S. 221.

136 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf art. 2, Mar. 10, 1988, 1678 U.N.T.S. 303.

broad language has had on human rights and fundamental freedoms of Egyptians, particularly their freedoms of speech and association. It then concludes by proposing legal recommendations for the Egyptian Legislature to consider in revising the definition of terrorism used in Egyptian law.

## A. Evaluation of the Egyptian Definition of Terrorism

As noted earlier in the introductory section of this paper, the Egyptian definition of terrorism is so broadly construed that it could be so easily manipulated by the government to suppress fundamental rights and freedoms. Indeed, such a definition was an important tool in the Egyptian counter-terrorism legal framework that the Mubarak Regime relied so heavily upon in denying Egyptians their core fundamental rights and suppressing political opposition.

In essence, the Egyptian definition of terrorism as it stands suffers from several flaws and raises a number of human rights concerns regarding its constituent elements.

First, in most of the definitions examined above, the *actus reus* element requires offenses considered terrorism to be criminal or unlawful. In contrast, the Egyptian definition adopts a loose standard that considers any use of force or violence or threat or intimidation as terrorism. It does not require the prohibited conduct to be criminal or unlawful; rather, it only “requires[s] the act to be violent in nature.”<sup>137</sup> The law does not define any of these concepts, or provide examples of conduct that could be covered or the degree of force, violence, or intimidation that may amount to terrorism. These broad and ambiguous terms do not only oppose international definitions, but also violate the long established constitutional principles of legality and legal certainty which require crimes to be defined precisely and clearly so as to provide individuals with a fair notice of what constitutes prohibited conduct.<sup>138</sup> Consequently, under such a broad definition, countless activities that have nothing to do with terrorism, such as burglary, obstruction of roads by gangs, or even protests and demonstrations, could be considered terrorism. Indeed, such a broad and ambiguous definition could apply to situations where the law has explicitly sanctioned the use of force, such as the

<sup>137</sup> Interlocutory Decision, *supra* note 68, ¶ 70.

<sup>138</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, as amended, May 22, 1980, May 25, 2005, March 26, 2007, art. 66 (repealed 2011) [hereinafter EGYPTIAN CONSTITUTION].

“use of violence to escape oppression” or the “use of force to defend oneself.”<sup>139</sup>

Second, with regard to *mens rea*, the Egyptian definition deems acts intended to “disturb the peace or the public order or jeopardize the safety and security of the society” as terrorism.<sup>140</sup> Accordingly, the Egyptian approach does not require criminal intent to cause killings, serious bodily injury or damage and destruction of property, only specific intent. Such an approach, as the Special Tribunal of Lebanon observed, “is grounded in the notion that terrorist conduct is so reprehensible that it must be punishable regardless of whether or not the intended consequences of the criminal conduct actually materialize.”<sup>141</sup> In other words, terrorism “is punishable not because and insofar as it creates actual damage, but because it puts in jeopardy the protected value.”<sup>142</sup>

Moreover, even the specific intent in the Egyptian definition, like the *actus reus*, offends the constitutional principles of legality and legal certainty.<sup>143</sup> The wording used to identify specific intent is not defined in any part of the Penal Code and thus provides leeway for the government to interpret the law in a way that can better serve its interests.

Furthermore, this specific intent requirement is in clear contrast with the *mens rea* requirements identified in the international law definition of terrorism. The *mens rea* in the majority of the definitions analyzed above consists of two main components. The first is intent to cause death or serious bodily injury or the destruction of public or private property, and the second is a specific intent to intimidate or coerce a group of individuals or to influence the policy

<sup>139</sup> Blakesley, *supra* note 116, at 473.

<sup>140</sup> See, e.g., Case no. 3/1993/ Supreme Constitutional Court (Egypt); see also, e.g., Case no. 28/1995/Supreme Constitutional Court (Egypt). The Supreme Constitutional Court of Egypt has warned that certain expressions employed in the definition are so wide that they do not sufficiently describe the specific intent required for criminalization. See *id.* Failure to narrowly describe the *mens rea* element in terrorism offenses may lead to critical consequences. See *id.* Peaceful assemblies, protests, demonstrations, and other expressions of rights guaranteed under the Egyptian constitution could be subject to criminalization as terrorism if deemed to either disturb the peace or public order or to jeopardize the safety and security of the society. See *id.*

<sup>141</sup> Interlocutory Decision, *supra* note 68, ¶ 56.

<sup>142</sup> *Id.*

<sup>143</sup> Egyptian Constitution, art. 66.

of a government or organization. Accordingly, a criminal act such as murder or battery committed with no intent to create a state of fear could not be characterized as terrorism. Likewise, a demonstration or a legal protest demanding the resignation of a government, where the participants, in response to the extensive use of force by the police might resort to some sort of violence that results in unintentional death or injury, would not qualify as terrorism because of the lack of the first element. However, under the Egyptian definition, both cases could fit into the definition of terrorism as they meet the requirement of disturbing the peace or public order or jeopardizing the safety and security of society.

Another controversial feature of the Egyptian approach is that it enlarges the sphere of criminalization due to the incorporation of extremely vague and ambiguous expressions that are nowhere defined in “concrete terms.”<sup>144</sup> Such expressions violate the principle of legality and open the door for the potential abuse of power and infringement on fundamental human rights by being applied to crimes or even lawful conduct not genuinely falling under the definition of terrorism. This definition considers terrorism to be any act that “damage the environment,” “damage or take possession over communications, transport, property, buildings of public or private reality,” “prevent or impede either public authorities or religious institutions or educational institutions from the performance of their work,” or “thwart the application of the Constitution or existing laws or regulations.” These broad expressions are defined nowhere in the Egyptian statute and could cover a wide variety of legitimate activity.<sup>145</sup> The Special Rapporteur noted, with serious concern, that the definition contains a wide range of purposes that could run the risk of including acts

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144 Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Sixth Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Addendum: Mission to Tunisia*, ¶ 8, Human Rights Council, U.N. Doc. A/HRC/16/51/Add.2 (Dec. 28, 2010) [hereinafter *Mission to Tunisia*] (criticizing the Tunisian definition for including broad terms without explaining precisely to what they refer).

145 *Comments on Egypt*, *supra* note 20, ¶ 11; see also Human Rights Comm., *Concluding Observations on Egypt*, ¶ 16(a), U.N. Doc. CCPR/CO/76/EGY (Nov. 28, 2002) (stating that the Committee “considers that the effect of the very broad and general definition of terrorism given in Act No. 97 of 1992 is to increase the number of offences attracting the death penalty in a way that runs counter to the sense of article 6, paragraph 2, of the Covenant.”).

that do not comprise a sufficient relation to violent terrorist crimes.<sup>146</sup>

It should be noted that the Mubarak Regime used this definition to suppress political opponents. In doing so, Mubarak relied on extraordinary constitutional and legislative powers and transferred cases involving offenses falling under this provision to Military and Emergency State Security Courts. The Mubarak Regime had considerable powers over the rulings of these courts and was able to secure the convictions of many Egyptians charged with terrorism and sentence them to death.<sup>147</sup>

The existence of this provision in the criminal justice system remains highly problematic and jeopardizes a number of fundamental human rights, in particular the freedoms of expression and association. Hypothetically, there are several ways in which the Egyptian definition of terrorism could be used to hold liable for terrorism the demonstrators and protestors participating in the January 25, 2011 Revolution against the tyrant Mubarak Regime.

First, the protestors took possession of Tahrir Square and continued to protest for several successive days, clearly an act of possession of public property. Second, in the final days, the protestors stood in front of certain ministerial buildings including the Ministries of Interior, Justice, and Foreign Affairs, which could be deemed as impeding public authorities from performing their work. Third, “thwarting the application of the Constitution or other laws” can also apply to the protestors’ actions given that one of their primary demands was to abolish the Constitution and several laws they viewed as legitimizing corruption and infringing on fundamental rights and freedoms.

Having established the various deficiencies in the Egyptian approach to a definition of terrorism and its obvious contradiction with international law norms and standards in defining terrorism, this paper shall conclude by providing some legal recommendations derived from the examination of terrorism definitions in international law for the Egyptian legislature to consider when drafting a new anti-terrorism law or revising the current anti-terrorism legal framework.

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146 See *Mission to Egypt*, *supra* note 21, ¶ 11.

147 *Egypt: Systematic Abuses in the Name of Security*, AMNESTY INT’L (Apr. 11, 2007), <http://www.amnesty.org/en/library/asset/MDE12/001/2007/en/29f8281d-d3c5-11dd-8743-d305bea2b2c7/mde12007en.html>. See Sadiq Reza, *Endless Emergency: The Case of Egypt*, 10 NEW CRIM. L. R. 532 (2007).

## B. Concluding observation:

The Egyptians' great Revolution which took place all over Egypt January 25, 2011 against the tyrannical Regime of President Hosni Mubarak demonstrates that the Egyptians are willing to sacrifice themselves for democracy, justice, and human rights. Today Egypt is living a new era where every Egyptian is looking to establish a real democratic state where supremacy of the rule of law and respect of human rights and freedoms are supreme values.

Therefore, the legislature should seize this opportunity to amend the definition of terrorism in a way that complies with international standards. Although some of the sources examined above in the international section are not binding on Egypt, such as international court case law, General Assembly resolutions and the various reports of the Special Rapporteur. Many other sources that have indentified the core elements of an objective definition of terrorism are considered binding on Egypt including the majority of international anti-terrorism conventions to which is Egypt is a member and the binding U.N. Security Council resolutions. The Egyptian legislature should take into account Egypt's obligations under international law and seek guidance from these sources when revising their definition of terrorism.<sup>148</sup> The definition must take into account all of the basic elements of an objective and precise definition which were indentified above.

Accordingly, the legislature should first substitute the existing *actus reus* element in the Egyptian definition consisting of "any of force, or violence or threat" and limit it instead to criminal acts or unlawful acts. Terms such as those employed by the existing definition of terrorism may lead to the abuse of power and may encompass a countless number of acts some of which are otherwise legally justified.

The legislature should also revise the *mens rea* requirement in the Egyptian definition of terrorism. As emphasized earlier, Article 86 of the Penal Code requires no criminal intent for the commission of terrorism, only a specific intent. The penal code considers terrorism to be all acts jeopardiz-

148 Egypt has been very active in adhering to international anti-terrorism conventions. U.N. Security Council, Letter Dated 28 May 2002 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-terrorism Addressed to the President of the Security Council, ¶ 10, U.N. Doc. S/2002/601, Annex (May 29, 2002).

ing the protected value of life regardless of whether such acts have resulted in damages, destruction or loss of lives.<sup>149</sup> Even the specific intent requirement is manifested in broad and ambiguous terms. According to the definition, all acts committed with the aim of "disturbing the peace or the public order or jeopardizing the safety and the security of the society" are considered acts of terrorism. These terms, which are defined nowhere in the Penal Code, have "provided the regime with extensive tools to punish opponents of the regime"<sup>150</sup> and could potentially apply to peaceful activities such as assemblies, demonstrations or protests.

Therefore, the legislature should revise the intent requirement in a way that comports with the various definitions of terrorism promulgated in the aforementioned international law instruments, especially those binding on Egypt. This would of course entail the legislature requiring that in order for a crime to be considered terrorism, criminal intent must be stipulated in clear and precise terms and consist of the intent to cause death or serious bodily injury or destruction of either a private or public. The legislature should further require specific intent to intimidate or coerce a group of individuals or to influence the policy of a government or an organization. Such an element, as regarded by the majority of definitions examined above, is a crucial and decisive element to differentiate between terrorism and other violent crimes.

Third, the legislature must ensure that any definition of terrorism respects the primacy of the Constitution, in particular the principles of legality and legal certainty as required by Article 66 of the Egyptian Constitution as well as Article 11(2) of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Civil and Political Rights (ICCPR).<sup>151</sup> As previously indicated, the Egyptian definition lacks the prerequisite clarity and precision required by the principles of legality and legal certainty, which require that a crime be defined in a concrete and precise way so that the law is sufficiently


149 Interlocutory Decision, *supra* note 68, ¶ 56.

150 Tamir Moustafa, *Amending the Egyptian Constitution: 6 Critical Articles that Test the Military Commitment to Democracy*, HUFF. POST (Feb. 25, 2011, 5:29 PM), [http://www.huffingtonpost.com/tamir-moustafa/egypt-constitution\\_b\\_828479.html](http://www.huffingtonpost.com/tamir-moustafa/egypt-constitution_b_828479.html).

151 EGYPTIAN CONSTITUTION, art. 66; see also International Covenant on Civil and Political Rights art. 15, December 16, 1966, 999 U.N.T.S. 171.

predictable and provides ample notice of what constitutes a crime.<sup>152</sup> Rather, the existing definition of terrorism provides some examples of what could be considered terrorist conduct. They use very broad and ambiguous expressions that could cover a wide variety of acts having nothing to do with the genuine meaning of terrorism, such as, damaging the environment, impeding the public authorities from the performance of their work, or thwarting the application of the constitution and the laws. Such terms have no precise definition and stand in clear contrast with the principles of legality and legal certainty. Hence, the legislature must avoid the incorporation of similar broad terms and ensure that terrorism is precisely and clearly defined by the law before terrorist conduct is committed.<sup>153</sup> Such a requirement is deemed an essential prerequisite for convicting an individual of a criminal offense in accordance with the principle of legality and general principles of criminal law.<sup>154</sup> In other words, a precise definition would allow persons to determine what exactly constitutes terrorism and who should be treated as a terrorist.

Fourth, although the existing definition does not include the motive among the constituent elements of terrorism offenses, the legislature should refrain from using any wordings that take into account a particular motive of the perpetrators whether such motive is of a political, religious, ideological nature. As discussed, most of the international sources including those of a binding character for Egypt have avoided including such an element in their definitions of terrorism.

Furthermore, the new definition of terrorism should be accompanied with a list of international acts of terrorism as determined by the international counter-terrorism conventions to which Egypt is a party. Such acts reflect an international consensus that certain conduct constitutes terrorism and is deemed as such regardless of whether or not they incorporate the above components of an objective definition. This is particularly important given Egypt's obligations under these conventions. 

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152 *Mission to Tunisia*, *supra* note 144, ¶ 9(a).

153 INT'L BAR ASS'N., INTERNATIONAL TERRORISM: LEGAL CHALLENGES AND RESPONSES 58-59 (2004).

154 EGYPTIAN CONSTITUTION, art. 66.

## Assessing The Terrorist Threat: The Primacy of Domestic Terrorism

By Luke Lischin

### Introduction

"The threat is real." crowed the US House of Representatives Committee on Homeland Security in an investigative report entitled *Homegrown Terrorism: The Threat To Military Communities Inside The United States*.<sup>1</sup> Citing incidents of violence perpetrated and attempted by Muslims living in the United States against service members, the report sought to explicate the threat faced by active duty military personnel and veterans within the borders of the United States.<sup>2</sup> Predictably the report and the congressional hearings that followed inspired no end of controversy and outrage from a retinue of critics from ethno-religious advocacy groups, journalists, academics, and policymakers who charged the report's authors, Representative Peter King (R) in particular, with exaggerating the threat posed by so-called homegrown jihadists.<sup>3</sup> It has been over a year now since the Homeland Security Committee brazenly declared the "reality" of the threat posed by homegrown terrorists, and for over a year discourse on the subject has stalled and deteriorated into an almost incomprehensible mass of argumentative fallacies lobbed back and forth between the ever-expanding gulf of the American partisan divide.<sup>4</sup> Such

1 U.S. House of Representatives Committee on Homeland Security, *Homegrown Terrorism: The Threat To Military Communities Inside The United States* (2011), 1-2, (<http://homeland.house.gov/press-release/king-releases-investigative-report-focusing-homegrown-terror-threat-military>).

2 Ibid.

3 Robert Kolker, "Peter King's Muslim Problem," *New York News and Features*, March 6<sup>th</sup>, 2011, accessed January 5<sup>th</sup>, 2012, <http://nymag.com/news/politics/peter-king-2011-3/>. See also Jonathan Alter, "How Peter King's Muslim Hearings Help the Terrorists," *U.S. News*, March 9, 2011, accessed January 5<sup>th</sup>, 2012, <http://www.thedailybeast.com/articles/2011/03/10/how-peter-kings-muslim-hearings-help-the-terrorists.html>.

4 *House-Senate Homeland Security Hearing Examines Domestic Threat To Military From Violent Islamist Extremists, Before the U.S. Senate Committee on Homeland Security and Governmental Affairs*, December 7, (2011) (Statements of Joe Lieberman, Senate Homeland Security and Governmental Affairs Committee Chairman), accessed on February 28, 2013, <http://www.hsgac.senate.gov/media/majority-media/domestic-threat-to-military-from-violent-islamist-extremists>.

is the curse of the domestic terrorism discourse; it simply hits too close to home.

This study was conceived in earnest as an attempt to break away from the canards that obstruct the honest and informed investigation of terrorism as it occurs as a domestic expression of political violence. A review of official reports commissioned and disseminated by the Department of Homeland Security (DHS), the National Counterterrorism Center (NCTC), the Federal Bureau of Investigation (FBI), and the Congressional Research Service (CRS) reveals a degree of consensus concerning the ideological typologies of terrorism<sup>5</sup> considered most threatening to the United States that includes primarily Eco-Terrorism, Far-Right Terrorism, and Jihadist Terrorism; but beyond the cursory acknowledgment of a triadic danger to homeland security, each agency places disparate and even conflicting emphases upon each typology as a purveyor of domestic terrorism. Lest it succumb to the *traison de clercs*<sup>6</sup> that the mere assimilation of these official documents might encourage, this report takes a more critical approach to the assessment of the domestic terrorist threat; endeavoring to answer the perennial question of the scope, character, and trajectory of American domestic terrorism.

In consideration of evidence gathered from incident reporting from diversified sources and the qualitative analysis of each typology, this report argues that the terrorist threat facing the United States in the next 10 years will consist of limited casualty attacks by self-motivated individuals and small groups with far-right and Jihadist affiliations. It also concludes that a less probable though potentially greater threat could emerge in the form of sustained terrorist campaigns originating from well-organized far-right terrorists in the US, or al Qaeda affiliates abroad. Finally, this report closes with the consideration of policy initiatives that could be undertaken to better address the current realities of the domestic terrorist threat.

5 Because this report prioritizes the consideration of domestic terrorism over international terrorism as the primary threat facing the United States, it makes use of the FBI's definition of terrorism as: "The unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." (28 C.F.R. § 0.85)

6 \*Treason of the intellectuals.

### Terrorist Typologies in Historical Context

To understand the rationale of the aforementioned conclusions, it is first necessary to examine the historical dimensions of the terrorist typologies considered herein.

Eco-terrorism, like other terrorist movements, represents the violent offshoot of a law-abiding yet politically extreme<sup>7</sup> set of organizations; most notably People for the Ethical Treatment of Animals (PETA). In the case of eco-terrorism, the violent factions in question were spawned from the radical environmentalist movement that first gained traction internationally in the 1960s and 70s. Groups and individuals affiliated with this movement advocated on behalf of a number of diverse environmental issues, but shared in kind an uncompromising commitment to environmental wellness, a preference towards taking direct action rather than lobbying industries and government, and finally, a grass-roots, non-hierarchical style of organizing. The notion of environmental wellness upon which their ideology is based is heavily influenced by the concept of “Deep Ecology”, first expressed by the Norwegian philosopher Arne Naess, which held all life, plant, animal, and human as equal parts of a balanced ecosystem.<sup>8</sup> Not content to simply accept the environmental status quo, many radical environmentalists call for the “rolling-back” of industry and human settlement to restore local ecosystems to their former glory.<sup>9</sup>

Eco-terrorists reject the utility of civil disobedience and interest politics (i.e. lobbying) outright in favor of varying degrees of violence. This growing schism within the mainstream of the environmental movement was exemplified in the 70s by the defection of the prominent Greenpeace activist Paul Watson, who left to found the Sea Shepherd Conservation Society as the public face of a smaller strike-team known as Orcaforce. Throughout the 70s Orcaforce hounded fishing and whaling vessels from several nations, cutting fishing nets, ramming ships, and even throwing incendiary devices. Throughout the 80s and 90s, groups

7 The definition of extremism referred to herein is best encapsulated by Jerome Bjelopora, who reinterprets the FBI’s unofficial definition: *The FBI’s public formulation of “extremism” suggests two components. First, extremism involves hewing to particular ideologies. Second, it also includes criminal activity to advance these ideologies.* Jerome Bjelopora, *The Domestic Terrorist Threat: Background and Issues for Congress* (Darby: DIANE Publishing Company, 2012), 8.

8 Anne Naess, “The Shallow and the Deep, Long-Range Ecology,” *Inquiry* 16 (1973), 95-100.

9 Sean Eagan, “From Spikes to Bombs: The Rise of Eco-Terrorism,” *Studies in Conflict & Terrorism* 19, no. 1 (1996), 2-4.

like Earth First! and the Hardesty Avengers followed the example of Orcaforce, becoming involved in activities such as tree-spiking, industrial sabotage, arson, and attempted bombings.<sup>10</sup>

In 2008, DHS released an official report that listed the Animal Liberation Front (ALF), the Earth Liberation Front (ELF), and the organizations previously mentioned as the primary sources of the current eco-terrorist threat. Over the past several years, the ALF, ELF, and loosely affiliated individuals have been responsible for many attacks<sup>11</sup> on commercial industry and infrastructure. Incidents such as the 2008 firebombing of a UCLA professor’s home for involvement in primate research and the 2003 arson of a San Diego condominium construction site valued at \$50 million are emblematic of the operations pursued by eco-terrorists in recent years.<sup>12</sup> Ideologically, the motivations of contemporary eco-terrorists remain rhetorically grandiose but practically limited from incident to incident. Many eco-terrorists have claimed that they do not desire to endanger human lives in pursuit of environmental ends, and as will be shown, they have been mostly true to their word.<sup>13</sup> The same cannot be said for terrorists of the American far-right.

When attempting to describe the characteristics of American far-right terrorists, it is useful to refer to Michael Barkun’s concept of a “constellation”. The organizational configuration and philosophical underpinnings of this collective mass of extremists differ starkly from group to group, individual to individual. Barkun observes that since the 1980s, a highly disparate, decentralized movement of violent extremists has emerged, motivated by common tenets of white supremacy, radical regime change, Christian identity, anti-Semitism, and millenarian prophecies. Between each organization<sup>14</sup> exist only tenuous bonds of lateral association, as conflicting ideologies and personalities

10 Ibid., 5-11.

11 The DHS report consulted includes among the incidents reported instances where the act of terrorism in question involved the release of lab animals and spray-paint vandalism. While clearly criminal actions, it is in the opinion of this author a stretch to call these activities terrorism, as they are hardly violent or threatening.

12 U.S. Department of Homeland Security, *Ecoterrorism: Environment and Animal-Rights Militants in the United States* (Washington, DC: DHS, 2008), 15-23.

13 Bjelopora, *Domestic Terrorist Threat*, 11-13 and 34-38.

14 \*Skinheads, neo-Nazis, white-separatists, militias, sovereign citizens, etc.



preclude the formation of a more homogenous and unified movement.<sup>15</sup>

The roots of contemporary far-right extremism are multifarious; the earliest threads of the religious and racial doctrines of the far-right movement date back to the intellectual progenitors of social Darwinism and the British-Israelite movement during the early 20<sup>th</sup> century.<sup>16</sup> Jeffrey Kaplan, moreover, sees the origins of the modern far right amongst anti-communist, anti-Semitic political demagoguery of the 1940's and 50's championed by Charles Coughlin and Joseph McCarthy, as well as within the resurgence of the Klan during the civil rights era. Kaplan's argument turns upon Ehud Spriznak's split-delegitimation theory, which postulates that over the course of several decades the far-right became further and further estranged from the mainstream of American politics and society. Sensing the erosion of the American political enterprise they idealized, the far-right became voluntarily and forcibly withdrawn from the channels of politics and media that they had once inhabited, and began to form violent counter-cultures. Due to the ideological diversity within the far-right constellation, far-right terrorists work towards a multiplicity of ends that often involve the promotion of racial holy war against ethnic minorities and a Zionist Occupied Government (ZOG), the re-legitimation of government through popular revolution, in addition to various single-issue concerns surrounding abortion and LGBT (Lesbian, Gay, Bisexual, Transgender) communities.<sup>17</sup>

Far-right terrorists and extremists have enjoyed resurgence in recruitment and influence as of late. Domestic turmoil over a broad range of issues including illegal immigration, the economic recession and unemployment, the modest expansion of LGBT rights, inadequate veteran's benefits, and the election of the nation's first African American president has fueled a new wave of militant paranoia not seen since the previous rise of far-right extremism in 90s typically exemplified by the Oklahoma City Bombing.<sup>18</sup>

15 Michael Barkun, "Millenarian Aspects of 'White Supremacist' Movements," *Terrorism and Political Violence* 1, no. 4 (2007), 413-415.

16 Ibid.

17 Jeffrey Kaplan, "Right Wing Violence in North America," in *Terror from the Extreme Right*, ed. Tore Bjorgo (London: Frank Cass, 1995), 74-87.

18 U.S. Department of Homeland Security, *Homeland Security Threat Assessment: Evaluating Threats 2008-2013* (Washington, DC: DHS, 2009).

Devastating through it was, the memory of the Oklahoma City Bombing has been in some sense eclipsed by the terrorist attacks of 9/11; attacks perpetrated by terrorists belonging to the Jihadist typology of terrorism.

Of the typologies discussed herein, Jihadist terrorism ranks as the most notorious in the American psyche for obvious reasons. Yet while most Americans recall with solemnity the events that transpired on September 11<sup>th</sup>, 2001, comparatively few understand the context for the horrors they witnessed.

As religious doctrine borne from political realities, the foundational philosophies guiding al Qaeda and other Jihadist organizations find their genesis in the history of the greater Middle East during the 1970s and 80s. It was during the 70s that Abd Al-Salam Faraj wrote the still widely influential text *The Neglected Duty*. The duty referred to in Faraj's work is that of jihad, translated as "striving in the path of god". Many others including Faraj, however, draw evidence from the violence and conquests of the Prophet Muhammad described in the Quran to advance a more militant interpretation of jihad involving the instrumental murder of non-believers to advance the cause of governance under Islamic law.<sup>19</sup> Faraj was himself inspired, however, by another Egyptian theologian by the name of Sayyid Qutb, whose *Milestones* opined for a world governed under Islamic order; a world cleansed of *Jahiliyyah*, or pre-Islamic ignorance. What Qutb envisioned in his writings was a world bound by the righteous and divine ethical norms of Islam manifested as political administration and law. Jihad, as Qutb conceived of it, was the struggle for such a world, free from the secular laws that he viewed as the product of the tyranny of men. As Qutb concluded: "Thus, wherever an Islamic community exists which is a concrete example of the divinely-ordained system of life, it has a God-given right to step forward and take control of the political authority so that it may establish the divine system on earth, while it leaves the matter of belief to individual conscience."<sup>20</sup>

To suggest that Faraj and Qutb are alone responsible for the militant praxis of Islam in contemporary geo-political affairs would be a reduction bordering upon Edward Said's

19 David Rapoport, "Sacred Terror: A Contemporary Example from Islam," in *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*, ed. Walter Reich (Washington DC: The Woodrow Wilson Center Press, 1998), 103, 108-114.

20 Sayyid Qutb, *Milestones* (USA: SIME Journal, 2005), 44-49, accessed February 19, 2013, <http://majalla.org/>

definition of Orientalism.<sup>21</sup> What must be understood, rather, is that Faraj and Qutb were the prolific leaders of broader socio-political movements that burgeoned over the course of the 20<sup>th</sup> century; movements that provide the foundation for understanding violent Jihadism's modern expressions.<sup>22</sup> Set in the greater context of a socio-economically stagnant Middle East replete with repressive autocracies participating in unseemly relationships with foreign powers, the ideology laid out by these men had a deep resonance within dar al-Islam as an explanation of and answer to widespread local grievances. To quote Charles Tripp's clever appropriation of the famous aphorism, "All (Muslim) politics is local."<sup>23</sup>

To reiterate, the works of Qutb and Faraj contributed significantly to the violent radicalization of the earliest waves of violent Jihadists; the ranks of which included Abdullah Azzam, Omar Abdel Rahman, and most infamously, Osama Bin Laden. Capitalizing upon the historical watershed that was the failure of Soviet invasion of Afghanistan, Bin Laden and Azzam created al Qaeda<sup>24</sup> to keep the cause of jihad alive. Prior to his assassination in 1989 and Bin Laden's ascension to power, Azzam assumed the primary role of an ideologue and travelling recruiter for the Mujahadeen, and ultimately played a critical role in the creation of several other terrorist organizations including Hamas and Lashkar-e-Taiba.<sup>25</sup> Over the next decade, Bin Laden established networks of loose support and patronage all across the MENA region ("Middle East, North Africa"), and established ties with groups as far afield as the Indonesian Jemaah Islamiyah and Chechen Muslim militants. Bin Laden exploited his widespread connections and resources to plan several attacks on US targets including the 1993 World Trade Center bombing, the 1998 bombings of the

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21 Edward W. Said, *Orientalism* (New York, NY: Vintage Books, 2003).

22 "International Relations and the Study of Islam and World Politics in the Age of Global Jihad," *Ankara Papers* 16, no. 1(2005): 7-12.

23 Charles Tripp, "All (Muslim) Politics Is Local," *Foreign Affairs* 88, no. 5(2009): 124-129.

24 \*Literally, "the base".

25 Bruce Reidel, "The 9/11 Attacks' Spiritual Father," *The Daily Beast*, September 11, 2011, <http://www.brookings.edu/research/opinions/2011/09/11-riedel>. See also Chris Sullentrop, "Abdullah Azzam: The Godfather of Jihad," *Slate*, April 16, 2002, [http://www.slate.com/articles/news\\_and\\_politics/assessment/2002/04/abdullah\\_azzam.html](http://www.slate.com/articles/news_and_politics/assessment/2002/04/abdullah_azzam.html).

American embassies in Nairobi and Dar es Salaam, and the 2000 attack on the USS Cole.<sup>26</sup>

In retrospect, the United States has come to realize that the attacks perpetrated throughout the 90's were, in a sense, a pale shadow of what lay ahead. Between those killed in the fall of the World Trade Center, the devastation visited upon the Pentagon, and the souls aboard Flights 93, 11, 175, and 77, 2,996 people were killed and over 6,000 were wounded.<sup>27</sup> The events of that day would come to define American politics for over a decade, and leave an indelible impression upon a generation of young Americans who would come of age in the years following.

Since 9/11, much has changed. Americans have witnessed the drastic overhaul of national security policy and infrastructure, the commitment of US troops to two wars overseas, the subsequent reorganization of military strategy according to the dictates of COIN<sup>28</sup> doctrines, and over \$3 trillion lost in economic disruptions and government spending.<sup>29</sup> For our efforts at home and abroad, the United States has earned some success. The central leadership of al-Qaeda has been banished from its safe haven in Afghanistan to new locations in Pakistan, where the assassination of key figures including Bin Laden himself, has substantially reduced the capacity of the organization to orchestrate mass-casualty attacks. Still, NCTC estimates suggest that al-Qaeda's strength in numbers has not diminished, and still retains some organizational integrity. Further, the lateral expansion of the al-Qaeda franchise has resulted in the expansion and diversification of the threat, with new recruits to al-Qaeda affiliates coming from all across the MENA region, East Africa, and Southeast Asia, adding to the concerns of policymakers.<sup>30</sup>

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26 National Commission on Terrorist Attacks Upon the United States 2003, *9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (WW Norton & Company, 2004), 47-70.

27 Ibid.

28 \*Counter Insurgency

29 Tim Fernholz and Jim Tankersley, "The Cost of Bin Laden: \$3 Trillion Over 15 Years," *National Journal*, May 6, 2011, accessed December 1, 2012. <http://www.nationaljournal.com.proxy.library.georgetown.edu/magazine/the-cost-of-bin-laden-3-trillion-over-15-years-20110505>.

30 Peter Bergen and Bruce Hoffman, *Assessing The Terrorist Threat A Report Of The Bipartisan Policy Center's National Security Preparedness Group*, (Washington DC: Bi-Partisan Policy Center, 2010).

## Analysis: Quantitative and Qualitative Insights

The official<sup>31</sup> databases that this report makes use of suffer undoubtedly from issues pertaining to selection bias by virtue of their reliance on media reporting and their individual institutional cultures. These biases manifest themselves in practice as discrepancies in the attacks recorded by each institution. The RAND database, for instance, has a clear selective bias towards representing eco-terrorists and animal rights groups within the US at the expense of recording far-right incidents, as a simple check against the other databases reveals. Similarly, the Global Terrorism Database (GTD) excludes several notable instances of armed assaults by Jihadist terrorists including Carlos Bledsoe and Nidal Hasan with little explanation. Lastly, it is worth noting that the incidents considered within this report only include transnational and domestic attacks that occurred within the borders of the United States; attacks on Americans outside of our national borders were not included as they technically lie beyond the legal remit of the DHS.<sup>32</sup> By relying on a diverse sampling of sources ranging from the official to the independently academic, this report hopes to overcome the limitations of each individual source and present a more complete quantitative account of terrorism in the US.

Selection issues aside, another danger arises from the misuse and misinterpretation of the data presented. Simply put, there are clear limits to what incident data can say about the threat of terrorism.<sup>33</sup> Incident statistics alone are not predictive markers of future trends, as terrorism tends to wax and wane over time. Furthermore, past trends extracted from incident reports are unlikely to anticipate what Nissan Taleb has termed “black swans”; unanticipated, high-impact events such as mass casualty terrorism.<sup>34</sup>

Yet a healthy skepticism of quantitative methods should not translate into the wholesale rejection of incident reporting. The value of these data sources lies in their capacity to provide a context for the phenomenon being observed,

31 “Official” in this context refers to the involvement of government agencies in the production of databases as in-house compilers and analysts (e.g. RAND, and FBI) or patrons (START).

32 Executive Department; Mission, 6 USC §111(2004).

33 Jeffrey Simon, *The Terrorist Trap: America’s Experience with Terrorism* (Bloomington, IN: Indiana University Press, 1994), 25.

34 Nassim Taleb, “The Fourth Quadrant: A Map of the Limits Of Statistics,” *Edge*, September 15th 2008, accessed November 20th, 2012, [http://www.edge.org/3rd\\_culture/taleb08/taleb08\\_index.html](http://www.edge.org/3rd_culture/taleb08/taleb08_index.html).

thus creating a starting point for analysis: “The context for an event studied by a researcher thus determines whether the event should at all count as a relevant event for the study.”<sup>35</sup> As will be demonstrated, the data observed will in this way support the identification of eco-terrorism, far-right terrorism, and Jihadist terrorism as the most salient terrorist threats to the United States today, tomorrow, and for years to come.

There are no completely accurate, all-inclusive data-sources of terrorist incidents currently available to the public. The RAND database lists only 159 incidents from 1990-2010 while START Global Terrorism Database lists 444, including all ambiguous and unsuccessful attacks. While the latter number is likely more accurate than the former, this jarring discrepancy between the two critically complicates data analysis. Nevertheless, between 1990-2010, eco-terrorists committed approximately 70 incidents as exemplified by the reported activities of the ELF and ALF.<sup>36</sup> A more robust sampling of incidents from GTD indicates that eco-terrorists were responsible for 132 incidents and only 1 injury. 122 of these incidents involved incendiary devices, while the second most common method of attack included 11 instances of sabotage equipment. 80 incidents targeted private businesses, 14 targeted government edifices, and 12 targeted education institutions, in addition to a smattering of other targets. No fatalities were reported for any of these incidents.<sup>37</sup> By 2008, the economic value of these attacks had exceeded \$100 million.<sup>38</sup>

In comparison, terrorists from the far-right constellation claimed 348 fatalities between 1990 and 2010 according to

35 Bent Flyvbjerg, *Making Social Science Matter: Why Social Inquiry Fails and How it Can Succeed Again*, trans. Steven Sampson (Cambridge, UK: Cambridge University Press, 2001), 42.

36 RAND Corporation, “Database of Worldwide Terrorism Incidents,” accessed February 25, 2013, [http://smapp.rand.org/rwtid/search\\_form.php](http://smapp.rand.org/rwtid/search_form.php).

37 “Global Terrorism Database,” last modified October 2012, [http://www.start.umd.edu/gtd/search/Results.aspx?chart=pie&chart=target&casualties\\_type=b&casualties\\_max=&start\\_yearonly=1990&end\\_yearonly=2010&criteria1=yes&criteria2=yes&dtp2=all&country=217&perpetrator=3752,291,3632,10057,20147,10058,4197](http://www.start.umd.edu/gtd/search/Results.aspx?chart=pie&chart=target&casualties_type=b&casualties_max=&start_yearonly=1990&end_yearonly=2010&criteria1=yes&criteria2=yes&dtp2=all&country=217&perpetrator=3752,291,3632,10057,20147,10058,4197). Note: This selection does not include the case of James Lee, who was responsible for taking hostages at the Discovery Network headquarters in 2010. Though Lee was the only fatality, the event marked a significant departure from the normal tactics of eco-terrorists. It is believed Lee acted alone. See: <http://abcnews.go.com/US/gunman-enters-discovery-channel-headquarters-employees-evacuated/story?id=11535128#.ULOR0oUYLq0>.

38 DHS, *Homeland Security Threat Assessment: Evaluating Threats 2008-2013*, 1.

START's Extremist Crime Database. This count was rendered over the course of 145 incidents, which includes the Oklahoma City Bombing that killed 168 individuals. 58% of all fatal incidents perpetrated by the right-wing extremists involved armed assaults, while explosives and incendiary devices were the second most common tactic used.<sup>39</sup> More than half of the victims of right-wing terrorism were ethnic minorities, and over a third were law enforcement officers. It should also be noted that 37% of the perpetrators acted alone.<sup>40</sup> While the economic value of the damage caused by far-right terrorism is considerable, especially in the case of the Oklahoma City bombing that resulted in \$652 million in damages,<sup>41</sup> a more significant measure of these costs may be drawn from the calculation of the value of lives lost. In 2002, RAND economist Benjamin Zycher approximated the value of a human life at \$4 million, a figure that represented a mean between the calculations of various economists, bureaucrats, and insurance analysts.<sup>42</sup> Adjusted for inflation, Zycher's estimate runs close to \$5 million per life. Applying this estimation to the number of fatalities produced by incidents perpetrated by far-right terrorists, the direct economic cost of the victims is roughly \$1.74 billion.<sup>43</sup>

Beyond the catastrophic damage wrought by the 9/11 attacks, which claimed almost 3,000 lives, caused about 6,500 injuries, and rendered approximately \$30.5 billion<sup>44</sup> in damages;<sup>45</sup> Jihadist terrorism has maintained a comparatively smaller footprint within the borders of the United States. From 2001 to 2012, Mueller observed 50 cases

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39 Joshua D. Freilich et al., *Far-Right Violence in the United States: 1990-2010* (College Park, MD: The National Consortium for the Study of Terrorism and Responses to Terrorism, 2012).

40 Ibid.

41 Adjusters International, "Oklahoma City Bombing: Oklahoma City Bombing, Alfred P. Murrah Federal Building, Oklahoma," *Adjusters International*, 2012, <http://www.adjustersinternational.com/majorcasesfull.cfm?mcID=6>.

42 Benjamin Zycher, *A Preliminary Benefit/Cost Framework for Counterterrorism Public Expenditures* (Santa Monica, CA: RAND Corporation), 11-12.

43 Author's calculation.

44 This figure represents the assessment made by the City of New York's comptroller's office, which estimated the economic costs of the attacks in terms of property damage and the projected future earnings of the victims.

45 Paul Krugman, *The Costs Of Terrorism: What Do We Know?* (Princeton, NJ: Princeton University, 2004), 2-3.

of Islamist terror, conspiracies, embryonic plots, incipient plots, and implemented plots in the US. 28 of the cases examined involved lone wolves, while the rest involved only a few other accomplices. In total, only 3 incidents at the Los Angeles International Airport, Fort Hood, Texas, and an Army Recruiting Office in Little Rock, Arkansas resulted in any casualties. Consequently, only 16 Americans have been killed as the result of Islamist terrorism since 9/11.<sup>46</sup> Accepting again the figure of \$5 million as the baseline value for a human life, the economic costs of these 16 deaths comes out to \$80 million.<sup>47</sup> Competency amongst the vast majority of Jihadists, Mueller notes, was often comically lacking, as most were caught by law enforcement due to boisterous pronouncements of their intentions over social media and bumbling efforts to acquire CBRN materials through undercover law enforcement.<sup>48</sup> Finally, no Islamist terrorist has managed to successfully detonate any manner of explosive within the borders of the United States; gun violence being the only attack-method to yield casualties of any kind.<sup>49</sup>

For whatever insights quantitative analysis can yield, it must be recognized that the capabilities of violent extremist movements may be appraised only modestly through the thorough analysis of past behavior. A full assessment of the threat further requires detailed knowledge of the organizational qualities of these movements at the present moment, which can be divided into the investigation of organizational structures and popular support for extremism. Official reports on the terrorist typologies previously discussed indicate that leaderless resistance has become the norm for organizing violent extremist movements, yet they do not go much farther in describing the significance of this structuring, or its implications for policymakers. Terrorist organizations operating within the US do so without the presence of a single centralized leadership body, but there are important differences in the structural dynamics of the organizations belonging to each typology.

Eco-terrorists and far-right terrorists, for instance, operate in the context of legally legitimate civil-society organizations with which they share sociopolitical values and interests. The vast majority of these civil-society organizations share no official ties to terrorist groups, and do not willingly

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46 John Mueller, *Terrorism Since 9/11: The American Cases* (Columbus, OH: The Educational Publisher, 2012).

47 Author's calculation.

48 Mueller, *Terrorism Since 9/11: The American Cases*.

49 Ibid.

support them or condone their actions. Wittingly or unwittingly, however, civil-society and the sociopolitical movements they represent almost always precede and precipitate the emergence of terrorists who harbor mirrored distortions of more widely accepted convictions.<sup>50</sup> This was true of the Leftist terrorist organization The Weather Underground, whose members often came directly from the ranks of the radical Students for a Democratic Society (SDS) during the 1970s.<sup>51</sup>

Much like The Weather Underground, eco-terrorists often draw support from students and staff at various universities that host conventions such as the National Conference on Organized Resistance and Animal Rights Conference, in addition to other local affairs. These gatherings tend to be opportunities for terrorists to attract new recruits to their groups, as well as to share experience and network.<sup>52</sup> Indirect associations aside, Senator James Inhofe, ranking minority member of the United States Senate Committee on Environment and Public Works, and others have accused PETA of actively supporting the activities of the ALF and ELF. PETA has consistently denied these accusations.<sup>53</sup> Alarmed by the possibility of PETA connections to eco-terrorism, the FBI conducted several years worth of investigations into the organization through the use of surveillance and informants, but did not discover any terrorism related activity.<sup>54</sup>

Based on the findings of federal investigations and inquiries designed to draw clear connections between radical environmentalists and eco-terrorists, it must suffice to say that relationships between these communities are of a small, almost entirely clandestine nature. In the experience of the now notorious ALF group offshoot "The Family", recruitment was a tightly controlled, selective process facilitated by interpersonal connections rather than organizational ties. The Family, moreover, was entirely self-financed,

50 Ted Gurr, *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*, ed. Walter Reich (Washington DC: The Woodrow Wilson Center Press, 1998), 86-87.

51 Ibid.

52 DHS, *Homeland Security Threat Assessment: Evaluating Threats 2008-2013*, 23-26

53 Terry Frieden, "FBI, ATF Address Domestic Terrorism," *CNN*, May 19, 2005, <http://www.cnn.com/2005/US/05/19/domestic.terrorism/index.html>.

54 Spencer Hsu, "FBI Papers show Terror Inquiries into PETA; Other Groups Tracked," *Washington Post*, December 20, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/19/AR2005121901777.html>.

self-directed, and self-sufficient, qualities that undoubtedly contributed to its exceptionally effective 6-year arson campaign.<sup>55</sup> These traits are in fact commonplace amongst eco-terrorists, rendering their operations highly localized and widely dispersed.<sup>56</sup>

The organizational structure of far-right terrorism in the US bears some resemblance to that of the eco-terrorist model; relying partially on legally sanctioned gatherings to coordinate and recruit, but these structures differ critically in scope.<sup>57</sup> As of 2012, the Southern Poverty Law Center (SPLC) has listed 152 KKK groups, 170 Neo-Nazi groups, 146 white nationalist groups, 133 racist skinhead groups, 55 Christian identity groups, and 32 neo-confederate groups operating in the US.<sup>58</sup> Further, the SPLC has noted the rise of militia groups from 42 in 2008 to 334 today.<sup>59</sup> Increases in far-right affiliated groups have apparently dovetailed with the apparent degradation of race-relations in the US. The ADL suggests that 15% of Americans hold anti-Semitic views, a slight increase from years past<sup>60</sup>; though interestingly, anti-Semitic incidents have fallen to their lowest reported levels in 20 years.<sup>61</sup> More significantly, a recent

55 Brent Smith and Kelly Dampousse, "Patterns of Precursor Behaviors in the Life Span of a U.S. Environmental Terrorist Group," *Criminology & Public Policy* 8 (3)(2009): 489-493, <http://onlinelibrary.wiley.com/store/10.1111/j.1745-9133.2009.00571.x/asset/j.1745-9133.2009.00571.x.pdf?v=1&t=hd0o2czg&s=19c8ce35b9699cd07d45184c3409b860b92bdbd6>.

56 Ibid.

57 Unclassified (but heavily redacted) reports by the FBI indicate that the popularity of far-right extremism has elicited the sympathy and complicity of local law enforcement in certain counties, and attracted former military personnel into the movement. See: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB386/>.

58 Southern Poverty Law Center's Intelligence Project, *Terror from the Right Plots, Conspiracies and Racist Rampages since Oklahoma City* (Montgomery: Southern Poverty Law Center, 2012).

59 Mark Potok, *The Year in Hate and Extremism* (Southern Poverty Law Center, Intelligence Report, no. 145, Spring, 2012), <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/the-year-in-hate-and-extremism>.

60 Anti-Defamation League, "ADL Poll Finds Anti-Semitic Attitudes on Rise in America." *Anti-Defamation League Press Release*, Anti-Defamation League, 2012, [http://www.adl.org/PresRele/ASUS\\_12/6154\\_12.htm](http://www.adl.org/PresRele/ASUS_12/6154_12.htm).

61 Anti-Defamation League 2011, "Audit: 1,080 Anti-Semitic Incidents Reported Across U.S. in 2011, a 13 Percent Decrease," *Anti-Defamation League Press Release*, Anti-Defamation League, 2012, [http://www.adl.org/PresRele/ASUS\\_12/2011+Audit.htm](http://www.adl.org/PresRele/ASUS_12/2011+Audit.htm).

psychological study found that white Americans associate the perceived decline of anti-black bias with the perceived rise of anti-white bias, leading the authors to conclude that whites view race relations in zero-sum terms.<sup>62</sup>

Middling estimations of the number of mobilized supporters of right-wing extremism have placed the figure around 100,000 in 2003.<sup>63</sup> Given that the sovereign citizens movement alone has been estimated between 100,000 and 300,000 members, it is likely safe to assume in the context of more recent reporting that the ranks of the violent far-right has swelled to an even greater extent.<sup>64</sup>

Whereas far-right terrorists, and to a lesser extent, eco-terrorists, make use of some internal structures and public support within the United States, Jihadist terrorists do not enjoy these advantages. According to the Pew Research Center, 70% of American Muslims in 2011 view al Qaeda very unfavorably, as compared to just 58% 4 years earlier. Moreover, 81% of American Muslims believe that suicide bombing and other violence against civilians is never justified, while 60% are very/somewhat concerned about Islamic extremism in the US.<sup>65</sup> These and other statistics concerning American Muslim public opinion clearly indicate that Jihadist terrorists have an extremely small constituency to appeal to within the US.

Those who have been swayed by Jihadist ideology remain a minute fraction of the total Muslim population; only 5% of American Muslims view al Qaeda favorably

according to the poll cited above.<sup>66</sup> Empirically, the call to violent Jihad has attracted enough willing radicals to bring the average number of Jihadist terrorist legal cases in the US to 6 per year, with each case seldom involving more than 4 individuals.<sup>67</sup> Mueller takes note that of the 50 cases he sampled, 3 involved Americans, including the Times Square Bomber Faisal Shahzad, traveling abroad to receive weapons training from an al Qaeda group. Apart from another 3 cases wherein suspects had loose ties to al Qaeda that pre-dated 9/11, but had hardly conspired with them, the element of al Qaeda's central direction is conspicuously absent from contemporary cases of Jihadist terrorist plots.<sup>68</sup> Mueller's study further reveals that not only are the vast majority of homegrown Jihadists cut off from al Qaeda's central command, but conspirators are cut off from one another as well. The cases sampled reveal next to no connections between each plot, nor any relations between suspects, save for a few associative links marked by several degrees of separation.<sup>69</sup>

Even abroad in the MENA region where al Qaeda's influence is greatest, the ability of Jihadist terrorists to organize and rally support has been severely challenged by US military activities and al Qaeda's own strategic missteps. A 2010 report by Peter Bergen and Bruce Hoffman suggests that the contemporary threat posed by al Qaeda is in large part due to their diverse network of affiliates. According to Bergen and Hoffman, al Qaeda Central, al Qaeda in the Arabian Peninsula, al-Shabaab in Somalia, al Qaeda in Iraq, al Qaeda in the Islamic Maghreb, the Pakistani Taliban, Lashkar-e-Taiba in India, and Uzbek militant groups, among other sympathetic local groups and allies, represent the sprawling, multi-faceted presence of al Qaeda today.<sup>70</sup>

Organizational reach, however, does not necessarily translate into strength or influence; often, it is a liability. With the increased branding opportunities that come with the various sub-regional alliances al Qaeda has made also comes the diminution of centralized authority and control. In practice, this has meant the association of al Qaeda with

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62 Michael Norton and Samuel Sommers, "Whites See Racism as a Zero-Sum Game that they are Now Losing," *Perspectives on Psychological Science* 6 (2011): 3. See also Melanie E.L. Bush, *Everyday Forms Of Whiteness: Understanding Race In A Post Racial World* (Plymouth: Rowman & Littlefield Publishers, Inc., 2011). See also Thomas J. Davis, *Race Relations in America: A Reference Guide With Primary Documents* (Westport: Greenwood Press, 2006).

63 Christopher Hewitt, "Understanding Terrorism in America: From the Klan to Al Qaeda," in *Routledge Studies in Extremism and Democracy*, ed. Roger Eatwell and Cas Mudde, (New York: Routledge, 2003), 42.

64 Tom Morton, "FBI calls Wyoming sovereign citizen movement a 'sensitive subject,'" *Star Tribune*, April 19, 2011, [http://trib.com/news/local/casper/fbi-calls-wyoming-sovereign-citizen-movement-a-sensitive-subject/article\\_f4a9ad88-6a1b-11e0-897e-001cc-4c002e0.html](http://trib.com/news/local/casper/fbi-calls-wyoming-sovereign-citizen-movement-a-sensitive-subject/article_f4a9ad88-6a1b-11e0-897e-001cc-4c002e0.html).

65 "Muslim Americans: No Signs of Growth in Alienation Or Support for Extremism," Pew Research Center for the People & the Press Pew Research Center, last modified August 30, 2011, <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/?src=prc-headline>.

66 *Ibid.*

67 Brian Jenkins, *Would-be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States since September 11, 2001* (Santa Monica, CA: RAND Corporation, 2010), 1-3.

68 Mueller, *Terrorism Since 9/11: The American Cases*, 14.

69 *Ibid.*, 13.

70 Bergen and Hoffman, *Assessing The Terrorist Threat A Report Of The Bipartisan Policy Center's National Security Preparedness Group*.

localized terrorist incidents that predominantly target other Muslims;

It has become increasingly apparent to Muslims, however, that al-Qa'ida's affiliates primarily have targeted and killed Muslims, and the al-Qa'ida "brand" increasingly seems to be one of indiscriminate violence against innocent civilians.<sup>71</sup>

The propensity of these attacks by affiliates to kill Muslims has irreparably tarnished the organization's international reputation, and diminished public support for their presence in these areas.

Despite organizational fragmentation and dysfunction, al Qaeda and its affiliates have demonstrated a limited ability to attack America in its own backyard without the use of homegrown proxies. Plots such as the 2006 plot to detonate liquid explosives aboard at least 10 airliners and the 2009 "Underwear Bomber" is indicative of al Qaeda's intent to engage in mass casualty attacks outside of their regional havens. Although al Qaeda and its affiliates remain dangerous in the areas where their presence is greatest, the utter fragmentation of the group's organizational structures and the dearth of public support in the Middle East and United States render the possibility of another 9/11 scale attack or a mass casualty incident of any kind improbable.<sup>72</sup>

Indeed, despite the hype, the successful procurement, development, and weaponization of CBRN<sup>73</sup> materials by terrorists of any ideology remain for the purposes of a mass casualty incident only a distant possibility. Eco-terrorists and animal rights terrorists do not appear to have any interest in procuring such materials, while efforts by Jihadists operating within the United States have come up empty.<sup>74</sup> Even during their prime year under the direction of Osama Bin Laden, al-Qaeda's attempts to obtain a weapon of mass destruction bordered at times on the farcical.<sup>75</sup>

71 Paul Davis et. al., *Understanding and Influencing Public Support for Insurgency and Terrorism* (Santa Monica: RAND Corporation, 2012), 69.

72 Paul Davis et. al., *Understanding and Influencing Public Support for Insurgency and Terrorism*, 68-70. See also Peter Bergen, *The Longest War* (New York: Free Press, 2011), 244-46.

73 \*Chemical, Biological, Radiological, Nuclear

74 Mueller, *Terrorism And Counterterrorism Since 9/11*, 14-16.

75 Peter Bergen, *The Longest War*, 214-228.

Thus far, only far-right and anarchist terrorists have had any success in acquiring and using CBRN weapons. Bergen et. al. recently reported that since 9/11, only four cases of CBRN plots and one instance of successful attacks have come to light during these years. Only one plot, enacted presumably by microbiologist Bruce Ivins, actually came to fruition as the now notorious anthrax attacks that claimed five lives.<sup>76</sup> The most widely injurious use of CBRN capabilities in US history came in the form of an attack perpetrated by the Rajneeshee cult, a group inspired by particular strands of Indian mysticism unaffiliated with any of the aforementioned ideological categories. In 1984 the cult used salmonella typhimurium to contaminate salad bars in Wasco County, Oregon, resulting in the illness of 751 individuals and 45 hospitalizations. Though there were no fatalities, the attack remains an outlier in comparison to contemporary cases.<sup>77</sup>

With the growing prescience of Internet capabilities to national security, cyber-terrorism has garnered the growing attention of policymakers. Evidently, sub-state actors have a demonstrated capacity to attack, collect, and disrupt US digital assets for operational purposes, but the potential for terrorists to physically imperil or otherwise harm national services and infrastructure through the Internet is critically overblown.<sup>78</sup> Cases of hackers with actual terrorist affiliations and sympathies have been practically nil, with the notable exception of Younis Tsouli, who used minor denial-of-service attacks against various webpages to propagandize on behalf of al Qaeda.<sup>79</sup> For the moment, it appears that while the Internet may provide terrorists with tactical and propagandizing opportunities, it will also expose new vul-

76 Peter Bergen et. al., "Right- and Left-Wing Terrorism since 9/11," *The Homegrown Threat*, The New America Foundation and Syracuse University's Maxwell School (2012), accessed on February 19, 2013, [http://homegrown.newamerica.net/overview\\_nonjihadists](http://homegrown.newamerica.net/overview_nonjihadists).

77 W. Seth Carus, "Bioterrorism and Biocrimes: the Illicit use of Biological Agents since 1900," (working paper, Washington DC: Center for Counterproliferation Research, 1998), 7-8.

78 Peter W. Singer, "The Cyber Terror Bogeyman," *Brookings.edu*, accessed on February 25, 2013, <http://www.brookings.edu/research/articles/2012/11/cyber-terror-singer>.

79 Brian Forst, *Terrorism, Crime, and Public Policy* (Cambridge: Cambridge University Press, 2009) 186-189.

nerabilities in the clandestine cover of would-be terrorists.<sup>80</sup>

In summation, while CBRN and cyber capabilities continue to inspire the most catastrophic scenarios of terrorism in theory, empirical evidence suggests that neither weapon will be used to much effect by any terrorist group in the near future. That said, chemical and biological weapons relative to their radiological and nuclear counterparts are demonstrably easier to acquire and deploy, and thus constitute the most likely avenue by which a terrorist group could launch an unconventional attack within the US. Continued vigilance by federal authorities in these areas is certainly warranted, especially where the current state of Syrian chemical weapons caches are concerned,<sup>81</sup> but the consistently demonstrated inability of terrorists to acquire and utilize these capabilities renders any arguments on behalf of doomsday scenarios as little more than red herrings.

### Final Assessments: Conclusions, Policy Options, and Implications

The preceding account of terrorism within the United States is undoubtedly incomplete for several reasons. First, it excludes a small number of incidents committed by less well-known terrorist organizations such as the Puerto-Rican independistas, the Jewish Defense League, anti-Castro Cubans, black separatists and other groups whose activities during this period were minor in comparison to the terrorists discussed.<sup>82</sup> Second, the scope of this quantitative analysis being through 2010 neglects a small number of terrorist incidents of interest that took place this past year, such as the Sikh Temple Shooting.<sup>83</sup> Third, the assessment of the economic costs of terrorism fails to consider the total

80 Mueller, *Terrorism Since 9/11: The American Cases*, 16. Referring again to Mueller's study, 4 out of the 50 plots covered were disrupted by law enforcement due to Jihadists posting their violent aspirations openly over the Internet.

81 "We're Watching Syrian Chemical Weapons Closely," *Reuters*, *The Jerusalem Post*, last modified December 4, 2012, <http://www.jpost.com.proxy.library.georgetown.edu/MiddleEast/Article.aspx?id=294618>.

82 For a more complete accounting of incidents, see: [http://www.start.umd.edu/gtd/search/Results.aspx?start\\_yearonly=1970&end\\_yearonly=2011&start\\_year=&start\\_month=&start\\_day=&end\\_year=&end\\_month=&end\\_day=&asmSelect0=&country=217&asmSelect1=&perpetrator=3497&perpetrator=3218&perpetrator=3747&perpetrator=4659&perpetrator=3581&perpetrator=1236&perpetrator=2371&dtp2=all&success=yes&casualties\\_type=b&casualties\\_max=.](http://www.start.umd.edu/gtd/search/Results.aspx?start_yearonly=1970&end_yearonly=2011&start_year=&start_month=&start_day=&end_year=&end_month=&end_day=&asmSelect0=&country=217&asmSelect1=&perpetrator=3497&perpetrator=3218&perpetrator=3747&perpetrator=4659&perpetrator=3581&perpetrator=1236&perpetrator=2371&dtp2=all&success=yes&casualties_type=b&casualties_max=)

83 For an index of CNN coverage on the case, see: <http://www.cnn.com/SPECIALS/us/sikh-temple-shooting/index.html>.

economic cost of the criminal self-finance methods used by all manner of terrorists, such as bank robberies, fraud, petty theft, boosting, and trafficking.<sup>84</sup> Despite these omissions, the account constructed in this report includes a robust sampling of cases that were evenhandedly selected from various data sources from which a few conclusions may be drawn.

Put simply, as a function of incident accounting and casualty rates, the current terrorist threat to the United States is fairly minimal, especially when compared to decades past. As Brian Jenkins observed in his study of homegrown jihadists, the 1960's witnessed 60 to 70 incidents per year on US soil, a figure 15 to 20 times the current rate.<sup>85</sup> Still, terrorism today remains a modest threat. From 1990-2010, right-wing terrorists claimed more fatalities and incurred a greater direct economic cost than did any other group, excluding the 9/11 attacks.<sup>86</sup> Nevertheless, the lethality of right-wing terrorists and Jihadists has been more or less comparable in the post 9/11 decade. For both far-right terrorists and jihadists, small arms were the most common weapons used in terrorist incidents, while eco-terrorists relied more exclusively upon incendiary devices and sabotage equipment that claimed remarkably minimal casualties.<sup>87</sup>

Based on these findings and prior descriptions of organizational qualities and motivations, it is reasonable to expect that the vast majority of future attacks yielding casualties will consist of far-right and Jihadist terrorists acting alone or in very small groups with small arms to target military, police, and certain ethno-religious persons and institutions

84 Christopher Hewitt, *Consequences of Political Violence* (Delhi: IA Books, 2011), 11-13.

85 Brian Michael Jenkins, *Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States* (Santa Monica: RAND Corporation, 2010), viii. Caveat: While Jenkins' assessment is accurate in the general sense, it should be recognized that the RAND database upon which his calculations are based excludes a fair number of far-right incidents recorded by watchdog groups such as the Southern Poverty Law Center. Ergo, terrorism today may be slightly more frequent than Jenkins presents it.

86 National Consortium for the Study of Terrorism and Responses to Terrorism, "Far Right Violence in the United States" (2012), accessed February 28, 2013, [http://www.start.umd.edu/start/publications/br/ECDB\\_FarRight\\_FactSheet.pdf](http://www.start.umd.edu/start/publications/br/ECDB_FarRight_FactSheet.pdf)

87 *The Threat of Eco-Terrorism, Before the House Resources Committee, Subcommittee on Forests and Forest Health*, February 12, 2002 (Testimony of James F. Jarboe, Domestic Terrorism Section Chief, Counterterrorism Division, FBI), accessed on February 28, 2013, <http://vnnforum.com/showthread.php?t=66388>.



on a small scale; meaning that casualties and property damage resulting from these attacks will be minimal. Similarly, non-lethal attacks against commercial edifices are likely to continue on the part of eco-terrorists.

While these trends represent the most probable nature of the threat facing the US in the next 10 years, a less probable but more disconcerting prospect of the emergence of more competently organized terrorist groups capable of planning mass-casualty incidents remains on the horizon. The ascent of the extreme far-right within the US could conceivably serve as the base for the formulation of groups capable of sustaining multi-incident campaigns; something not seen since the 1980s and 1990s. Meanwhile, the capacity of al Qaeda groups to train operatives and send them abroad to carry out attacks, though degraded, continues to be a prescient concern.

To be clear, the possibility of a fatal attack within the next year is considerable; between far-right militants and self-radicalized Jihadist, there clearly exist enough individuals harboring malicious intentions within our borders to put lives at risk. Risk, however, is the operative word. Where terrorism may be as easy as simply acquiring a firearm and driving a few minutes from home to shoot a man on the street, as the Little Rock, Arkansas army recruiting center shooter Carlos Bledsoe did, there will always be some risk of another terrorist attack. But given the limited ability of terrorists in the US to effectively organize, conspire, train, fundraise, acquire sophisticated weaponry, and attack heavily fortified high-value targets, the impact and significance of occasional incidents will be slight.

It is in light of these findings that this report also recognizes that the United States is swiftly approaching an impasse concerning the economic and military sustainability of counter-insurgency and counter-terrorism operations in the Middle East. Without a doubt, the US will continue to play a major role in the political affairs of the MENA region, especially as the ramifications of the Arab Spring, the Syrian civil war, and recent events in Israel-Palestine become apparent. That said, a sizeable contingent of commentators suggest that the US military posture in the region is likely to emphasize the defensive capabilities of a smaller, more efficient joint-force military presence capable of controlling the

global commons in the future.<sup>88</sup> This shift in military strategy could signal the end of the special operations oriented search and destroy approach to counter-terrorism abroad, to a more sustainable strategy of controlled isolation.<sup>89</sup> From a homeland security perspective, these changes hypothetically place higher premiums upon securing borders and target hardening civilian aviation. In practice, however, this view is misguided.

The previous findings of this report indicate that only a small fraction of individuals involved in terrorist plots travel outside the US to receive training, or have terrorist affiliations outside of the country. Furthermore, attacks on aircraft in the form of attempted bombings have numbered 2 attempts and 1 plot according to Mueller. In addition, worries that Jihadists might infiltrate the US through Mexico or Canada have proven to be immaterial.<sup>90</sup> This, in conjunction with declining support for Jihadist terrorism abroad, diminishes the imperative to place civil aviation security as a priority above all others.

This is not to say that some security measures are not warranted. Economical reforms such as the hardening of cockpit doors to prevent hijackings, a phenomenon that was somewhat commonplace long before 9/11, represent the sort of cost-effective measures that DHS should aspire to promote in lieu of costly screening procedures that stymie travel, invade individual privacy, and often fail to detect dangerous materials.<sup>91</sup> Even though public confidence in the TSA to prevent terrorism has stayed fairly moderate,<sup>92</sup> American anxieties over terrorism continue to fluctuate at

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88 See Andrew Krepinevich, "Strategy in a Time of Austerity: Why the Pentagon should Focus on Assuring Access," *Foreign Affairs* 91 (2012), 58. See also Linda Robinson 2012, "The Future of Special Operations: Beyond Kill and Capture," *Foreign Affairs* 91 (6): 110.

89 Kim Cragin, "The Strategic Dilemma of Terrorist Havens Calls for their Isolation, Not Elimination," in *Long Shadow of 9/11: America's Response to Terrorism*, ed. Brian Michael Jenkins and John Paul Godges (Santa Monica: RAND Corporation, 2011), 119.

90 Mueller, *Terrorism Since 9/11: The American Cases*, 14.

91 Veronique de Rugy, "The Economics of Homeland Security," in *Terrorizing Ourselves: Why US Counterterrorism Policy is Failing and How to Fix it*, ed. Benjamin H. Friedman, Jim Harper and Christopher A. Preble (Washington DC: Cato Institute, 2011), 121.

92 Frank Newport and Steve Ander, "Americans' Views of TSA More Positive than Negative," *GALLUP*, last modified August 8, 2012, <http://www.gallup.com/poll/156491/americans-views-tsa-positive-negative.aspx>.

## Beyond Terror: Security in the Post-Bin Laden World

middling levels irrespective of security measures;<sup>93</sup> casting the utility of so-called “security theatre” into question. In short, DHS does not serve the public interest by hastily implementing nascent technologies or wasting billions in border surveillance programs and other target hardening measures, such as the US VISIT program, that never come to fruition.<sup>94</sup> Rather than over-prioritizing defensive infrastructure over other expenditures, DHS ought to commit a greater portion of their resources to their nascent partnership with the intelligence community.

Few have stated the paramount importance of intelligence to the task of preventing, pursuing, and prosecuting terrorists better than Paul Wilkinson:

A crucial requirement for defeating any terrorist campaign must be the development of high quality intelligence, for unless the police are lucky enough to capture a terrorist red-handed at the scene of the crime it will be only by sifting through comprehensive and accurate intelligence data that the security authorities have any hope of locating the terrorists, uncovering their conspiracies and bringing them to justice.<sup>95</sup>

It is crucial to recognize as Wilkinson does, that there are limitations to what intelligence can accomplish, especially in the context of a growing trend in lone-wolf attacks. While sting operations may flush out the more amateurish and inexperienced lone wolves seeking spectacular casualties, intelligence operations are unlikely to contribute much to the prevention of a semi-competent terrorist with more modest aspirations. It would be foolish to insist that DHS coordinate with intelligence and law enforcement communities to detect and prevent every single would-be terrorist. To do so would be to play into the hands of organized terrorist groups who count on radicalized self-starters to drain counter-terror resources and sow widespread panic

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93 Lydia Saad, “Americans’ Fear of Terrorism in U.S. is Near Low Point,” *GALLUP*, last modified September 2, 2011, <http://www.gallup.com.proxy.library.georgetown.edu/poll/149315/americans-fear-terrorism-near-low-point.aspx>.

94 Joint Majority Staff Report 112th Congress, Airport Insecurity: TSA’s Failure to Cost- Effectively Procure, Deploy and Warehouse its Screening Technologies, S. Res. No. 81 (2012).

95 Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response* (London: Frank Cass Publishers, 2000), 105.

by exacerbating public perceptions of insecurity.<sup>96</sup>

Tragic though their actions may be, lone wolves like Carlos Bledsoe, Wade Page, James von Brunn, Hesham Hadayet, and others are deceptively low-hanging fruit. Ex post facto, their extremism and propensity towards violence seems obvious, yet prior to the moment they murdered their first victims, each of these men were just run-of-the-mill radicals. In the absence of a fortuitous combination of standard policing and dumb luck, there was very little anyone could have done to prevent their actions. While law enforcement should seek to prevent such attacks whenever it is within their capacity to do so, the counter-terrorism policy of DHS and its partners must prioritize the disruption of group-oriented conspiracies rather than the radicalization of lone individuals. To do this, intelligence remains key.

There is a distinction between intelligence reporting on foreign terrorism and domestic terrorism; the former is primarily the purview of the NCTC while the latter remains the uncontested domain of the FBI.<sup>97</sup> Decentralization has been the defining quality of the American intelligence community since the 1947 National Security Act (NSA). The distribution of capabilities and responsibilities among a network of semi-autonomous intelligence agencies was designed to prevent the abuse of national security prerogatives at the expense of democratic governance and law. This manner of structuring the intelligence community has effectively preserved the balance between security and civil liberty, but impeded the ability of agencies to coordinate with one another.<sup>98</sup>

Since 1947, the intelligence community underwent a gradual evolution of actors and structures in reaction to the ebb and flow of political tides throughout the decades.<sup>99</sup>

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96 Jenkins, “The Land of the Fearful or the Home of the Brave?,” 202-203.

97 The NCTC mandate is quite clear on this point, stating in parenthetical that “domestic” terrorism lies beyond its authority. See: [http://www.nctc.gov/about\\_us/about\\_nctc.html](http://www.nctc.gov/about_us/about_nctc.html).

98 Paul Oh, “Reorganizing the US Intelligence Community,” in *The Impacts of 9/11 on Politics and War: The Day that Changed Everything?*, ed. Matthew J. Morgan (New York: Palgrave Macmillan, 2009), 34-35.

99 For a comprehensive history of American intelligence services, see: Christopher Andrew, *For the President’s Eyes Only: Secret Intelligence and the American Presidency from Washington to Bush* (New York: Harper Perennial 1996). See also Amos Jordan, William Taylor Jr. and Michael Mazarr, “Intelligence and National Security,” in *American National Security* (Baltimore: The Johns Hopkins University Press, 1998).

Undoubtedly, however, the most significant restructuring and reform of the intelligence community occurred in 2004 with the Intelligence Reform and Terrorism Prevention Act (IRTPA), which, at the behest of the 9/11 Commission, created the Director of National Intelligence (DNI) to oversee intelligence initiatives and manage members of the intelligence community. Six national security intelligence centers lie below the auspices of the DNI, including the NCTC, whose mandate includes the integration of all intelligence, foreign and domestic, pertaining to terrorism.<sup>100</sup> In the view of Paul Pillar, a former senior CIA and National Intelligence Council official, intelligence reform in the specter of 9/11 has taken a pathos-inspired turn for the worse. Instead of clarifying the roles and responsibilities of intelligence agencies under the model of a lucid hierarchy, IRTPA and the NCTC have added another layer of bureaucracy that obfuscates accountability due to redundancies and complexities in its design.<sup>101</sup>

To help bridge the gap between these agencies and local authorities, DHS has been tasked with the implementation and oversight of over 70 fusion centers around the country since 2003; a task that has only grown more daunting since IRTPA. Conceived as localized conduits for intelligence sharing on terrorism, infrastructure believed to be critically absent from the pre-9/11 security regime, the fusion centers proved to be disastrous in practice, despite the findings of reports drawing upon self-assessment mechanisms.<sup>102</sup>

A senate subcommittee report released in October 2012 based on two years of investigation observed humiliating deficiencies in the quality of fusion center reporting, and the overall management of the centers by DHS. Most intelligence reports drafted by fusion centers were never released due to poor quality and concerns pertaining to the legally questionable sources employed to produce them. Those reports that did see the light of day were often uninspired duplications of NCTC, FBI, and media reporting, and were more often focused on the coverage of various

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100 Jordan, Taylor Jr. and Mazarr, *American National Security*, 157-159.

101 Paul Pillar, *Intelligence and US Foreign Policy: Iraq, 9/11, and Misguided Reform* (New York: Columbia University Press, 2011), 295-303.

102 For information sharing environment reports see: <http://www.fas.org/irp/agency/ise/index.html>.

criminal phenomena other than terrorism. Intelligence outputs aside, fusion centers were veritable money-pits, as DHS could not provide the committee with any accurate accounting of its spending, citing a range of numbers spanning \$289 million to \$1.4 billion. Center staff, it is apparent, misappropriated some of this funding, but the extent of this problem is unclear due to the lack of DHS oversight of state and local spending.<sup>103</sup>

Designed to provide the vital "missing link" between federal intelligence and local law enforcement, the advent of fusion centers has resulted in nothing short of failure, despite the best intentions of their architects. That is not to say that institutionalized information sharing is doomed to failure. As a point to the contrary, 100 joint-terrorism task forces (JTTF) sponsored by the FBI (many of which pre-date 9/11) have by most accounts functioned admirably in their capacity to support local law enforcement with federal resources.<sup>104</sup>

If the crisis of accountability is to be resolved within the intelligence community, fusion centers must be governed by a clearer, narrower mandate. As things currently stand, fusion centers collect, analyze, and disseminate intelligence on a smorgasbord of criminal activities with little focus or oversight, leading to poor quality outputs in all of these areas. Originally, the purpose of these fusion centers was to serve as clearinghouses for intelligence and law enforcement communities, but due to years of bureaucratic overreach, this original mission has faded from the day-to-day performance of each center.<sup>105</sup> Ultimately, the intelligence community, in conjunction with DHS, needs to reassess their current needs vis a vis these functional areas, and repurpose the existing infrastructure with greater alacrity, or risk perpetuating a mediocre and often confused bureaucracy.

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103 United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Federal Support for and Involvement in State and Local Fusion Centers*, Washington DC: Permanent Subcommittee on Investigations. 1-9, (2012).

104 Gregory Treverton, "The Intelligence of Counterterrorism," in *The Long Shadow of 9/11: America's Response to Terrorism*, ed. Brian Michael Jenkins and John Paul Godges (Santa Monica: RAND CORPORATION, 2011), 166-167.

105 David Carter and Jeremy Carter, "The Intelligence Fusion Process for State, Local, and Tribal Law Enforcement," *Criminal Justice and Behavior* 36 (2009): 1323-1339.

## Beyond Terror: Security in the Post-Bin Laden World

While the reformation of the information sharing environment will require the reexamination of current analytic and administrative standard operating procedures, the final success of these initiatives will depend heavily upon prudently managed collection of raw data. Recanting the conclusions of Jerome Bjelopera's report to Congress, there exist neither political mechanisms for designating domestic terrorist groups officially nor any centralized open-source database of past domestic terrorist incidents. Designating domestic terrorist entities would yield many of the same benefits of its foreign-focused analog, i.e. criminalizing support and involvement in these organizations.<sup>106</sup> Whatever the theoretical legal utility of such a blacklist, however, it would be difficult to convince the American public of the impartiality and transparency of the proposed process, and accusations of civil liberties infringements and outright repression may do more to encourage terrorism than to deter and prosecute it. Considering the Congressional and civil-societal backlash caused by Daryl Johnson's 2008 report on far-right extremism, it is apparent that the mechanism Bjelopera prescribes is practically untenable for the moment.<sup>107</sup>

If DHS and other agencies cannot engage in blacklisting procedures, they can at least direct time and resources into compiling an official accounting of terrorist incidents within the United States. This report has already thoroughly detailed the data problems that plague academic and policy-oriented studies of terrorism generally, and has argued that this problem is compounded in the case of chronicling American domestic terrorism. While DHS and other agen-

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106 Bjelopera, *The Domestic Terrorist Threat*, 62-63.

107 "Daryl Johnson: I Tried to Warn Them," *Salon*, last modified August 17, 2012, [http://www.salon.com/2012/08/17/daryl\\_johnson\\_i\\_tried\\_to\\_warn\\_them/](http://www.salon.com/2012/08/17/daryl_johnson_i_tried_to_warn_them/).

cies continue to independently finance data accumulation and analysis in this area, a more concentrated effort needs to be made to synchronize the currently disparate efforts of the DHS, the FBI, the NCTC, the DOJ, private institutes and scholars. A commission comprised of experts drawn from these various sources would ideally lead to the creation of a common reference on terrorists incidents and plots for policymakers at all levels of local and federal governance. Centralized terrorism reporting would not be immune from questions of selection and coding, and would be subject to constant critique in many circles; however the creation of a centralized database capable of facilitating annual statistical reports, qualitative assessments, and press releases would undoubtedly prove to benefit a common and accurate understanding of terrorism among policymakers and average citizens alike.<sup>108</sup>



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108 Bjelopera, *The Domestic Terrorist Threat*, 63-64.

## Enthusiastically Approving Failure: The Unintended Consequences of SOF's Success

By Jason A. Mangone

U.S. counterterrorism (CT) policy since September 11, 2001 has grown increasingly reliant upon Special Operations Forces (SOF)<sup>1</sup> conducting risky direct action<sup>2</sup> missions. The national security decision making system, and the actors therein, are more likely to approve such special operations<sup>3</sup> now than at any other time in U.S. history. This is in large part due to SOF's recurrent, and recently public, success<sup>4</sup>. Indeed, SOF have done much good in countering terrorism by capturing and killing a lot of high-value targets (HVTs).<sup>5</sup> This paper discusses the unintended consequences

1 SOF are defined as "Those Active and Reserve Component forces of the Military Services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations." From *Department of Defense Dictionary of Military and Associated Terms*, accessed March 15, 2012, [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf).

2 Direct action is defined as "Short-duration strikes and other small-scale offensive actions conducted as a special operation in hostile, denied, or diplomatically sensitive environments and which employ specialized military capabilities to seize, destroy, capture, exploit, recover, or damage designated targets." From *Ibid*, 85. For the purposes of this paper, direct action can refer to missions where commandos are actually on the ground, or where they are coordinating the destruction of designated targets, such as is the case with drone strikes.

3 Special Operations are defined as: "Operations requiring unique modes of employment, tactical techniques, equipment and training often conducted in hostile, denied, or politically sensitive environments and characterized by one or more of the following: time sensitive, clandestine, low visibility, conducted with and/or through indigenous forces, requiring regional expertise, and/or a high degree of risk." From *Ibid*, 274.

4 By success, the author means operational mission success. In the case of Operation Neptune Spear, the objective was to capture or kill Usama bin Ladin, and that objective was achieved. For the purposes of this paper, it is most important to note such operational success *relative* to past well-known failures such as Operation Eagle Claw in 1980 and the Battle of Mogadishu in 1993.

5 HVT is defined as: "A target the enemy commander requires for the successful completion of the mission. The loss of high-value targets would be expected to seriously degrade important enemy functions throughout the friendly commander's area of interest." From *Ibid*, 131.

of SOF's operational success—namely, that this success alters the perspective of individuals and groups involved with approval of SOF missions and SOF have the potential to be misused as a result.

The paper will argue the following: First, at the individual actor level, decision makers are likely to draw improper analogies about the utility of SOF's direct action activities in countering terrorism. Second, in a world of bounded rationality, SOF's recent triumphs in HVT operations limit consideration of alternatives as they morph what is considered sufficient for success. Third, these missions have been framed for decision makers in such a way that increases the chances of their being approved. Fourth, there may be bureaucratic pressure to approve the use of SOF in CT. These pressures collectively affect the considerations policymakers take into account when approving such missions. In sum, there is a misguided proclivity for the use of direct action in countering terrorism. After all, "reaction and retaliation are the roles that spring most readily to the popular imagination when one considers SOF roles in the fight against terrorism."<sup>6</sup>

As a result, the U.S. could allow itself to become the unwitting victim of SOF's success. SOF will continue to achieve tactical successes as they engage in HVT operations around the globe. However, if decision makers do not properly contextualize the utility of such operations, SOF are likely to be overextended and improperly employed. Thus, it is possible that SOF will suffer a public failure in a future engagement. It is likely that SOF will win many battles on the way to the U.S. losing momentum in its broader campaign against violent extremism.

It is important to note that while the paper will at times discuss SOF generally, its primary focus is the recent success of SOF in direct action missions aimed at capturing or killing HVTs in support of U.S. CT policy, and the effect of that success on national security decision making. To that end, the paper will move forward in four sections. The first section will provide some brief background information about SOF's utilization in the types of activities discussed above. The second section will discuss the effect of SOF's success on the actors involved in U.S. national security decision making. The third section will detail how these collective effects specifically modify the considerations and risk calculations policymakers take into account when debating and approving such missions. The fourth and final section

6 Ross S. Kelly, *Special Operations and National Purpose* (Lexington, MA: Lexington Books, 1989), 145.

will provide some recommendations for how the U.S. can overcome these unintended consequences by better understanding the utility of SOF in countering terrorism, and thereby approach its CT policy more holistically.

### BACKGROUND: TWO FORCES AND THE RECENT EVOLUTION OF SOF

U.S. Special Operations Command (USSOCOM) is the parent command for all SOF. USSOCOM's mission is to "Provide fully capable SOF to defend the United States and its interests; and synchronize planning of global operations against terrorist networks."<sup>7</sup> To that end, SOF are responsible for carrying out ten "core activities." These include: preparation of the environment, special reconnaissance, security force assistance, military information support operations, civil affairs operations, direct action, SOF combat support, SOF service combat support, hostage rescue and recovery, and interdiction and offensive counter weapons of mass destruction (CWMD) operations.<sup>8</sup> Though the lines are blurred at times, these activities generally break down into two distinct roles: "commando" roles (like direct action, CWMD, and hostage rescue) and "warrior-diplomat" roles (like security force assistance and civil affairs).<sup>9</sup>

These roles break down into "two distinct mission forces: Theater Mission Forces (Theater SOF) and National Mission Forces (NMFs)." Theater SOF are "designed to maintain a persistent presence and cultivate long-term military-to-military relationships within their respective regions." NMFs "are designed for high-end, extremely sensitive operations, often of national importance."<sup>10</sup> Theater SOF are more closely associated with the warrior-diplomat role and NMFs with the commando role. More importantly, NMFs "tended to be used episodically before 9/11, but they are increasingly maintaining a persistent posture in high-interest regions today in order to address significant transnational security challenges."<sup>11</sup> Collectively, SOF are responsible for accomplishing seven "core operations":

7 U.S. Special Operations Command, *Fact Book 2012*, 8, accessed on April 13, 2012, <https://www.fas.org/irp/agency/dod/socom/factbook-2012.pdf>.

8 Ibid.

9 Michele L. Malvesti, *To Serve the Nation: U.S. Special Operations Forces in an Era of Persistent Conflict* (Washington, D.C.: Center for a New American Security, June 2010), 11.

10 Ibid., 9, 11.

11 Ibid., 11.

counterinsurgency, unconventional warfare, stability, foreign internal defense, countering weapons of mass destruction, support to major combat operations and campaigns, and counterterrorism. This paper focuses on the recent success of NMFs carrying out "commando" activities, especially direct action, in support of CT operations. For the purposes of this paper, direct action, commando-type activities include those missions where commandos are actually on the ground capturing or killing their targets, or when they are simply coordinating targeted strikes against HVTs, as is the case with drone strikes.<sup>12</sup>

Within those specified roles, SOF have experienced an evolution since 9/11. First, SOF "have undergone profound improvements in technique and technology" that have "increased [their] agility and reach."<sup>13</sup> Second, SOF have achieved more success in strategically important commando-type missions than they ever have before; recently, this success has been increasingly publicized, as in the case of Operation Neptune Spear where Usama bin Ladin was killed.<sup>14</sup> Third, SOF have engrained themselves in the bureaucracy-at-large, to include near seamless fusion with the intelligence community, and forging enduring partnerships with many other departments and agencies.

Today, the SOF community has invested in strategic and operational relationships across departments and agencies in Washington, as well as achieved forward, on-the-ground success by fusing intelligence analysis and exploitation with operations through Joint Interagency Task Forces (JIATFs). In many ways, SOF

12 See Ken Dilanian and David S. Cloud, "In Yemen, Lines Blur as U.S. Steps up Airstrikes," *Los Angeles Times*, April 2, 2012, sec. A. Direct action traditionally refers to missions where commandos are on the ground. But it is widely reported that some SOF elements regularly coordinate drone strikes against HVTs. Direct action is the SOF core activity that most closely aligns with drone strikes. As an example, the following article reports a SOF-coordinated drone strike against a mid-level Al Qaeda operative in Yemen on 9 March 2012.

13 Linda Robinson, "Inside the 'New' Special Operations Forces," *Proceedings Magazine*, July, 2009, accessed April 26, 2012, <http://www.usni.org/magazines/proceedings/2009-07/inside-new-special-operations-forces>. In addition to employing new technologies, the SOF community has reorganized in order to allow it to deploy much more quickly.

14 As the paper will explain, this success is *relative* to past failures in missions of strategic significance, to include Operation Eagle Claw in 1980 and the Battle of Mogadishu in 1993.

are now serving as both a nucleus of action and as the center for a community of practice, frequently driving interagency discussions on operations and activities against al Qaeda and its affiliates as well as other national security threats and challenges.<sup>15</sup>

In addition to USSOCOM's doubling in size, the result of these and other innovations is "The most intensive use ever made of SOF, including deployments of unprecedented size, duration, and repeat rotation."<sup>16</sup> SOF's reach, especially in missions to capture or kill terrorists, is more global than ever before. "SOF routinely carry out missions that span...multiple countries and areas of operation, as in the case of the hunt for Osama bin Ladin and other leaders of the al Qaeda network. [This] mission has been the primary focus of the national mission force."<sup>17</sup> In sum: if the goal is to capture or kill HVTs, SOF have been utilized to greater effect than ever before, and more people than ever now realize their success.

## SHIFTING THE CONTEXT: THE EFFECT OF SOF'S SUCCESS ON ACTORS

This section will argue that the evolution discussed above, especially SOF's success in capturing and killing terrorists, has the potential to alter the context of judgments made by the individuals and groups involved in U.S. national security decision making. This is important because "The ability of SOF to operate beyond theaters of combat often requires the approval and concurrence of the broader national security decision-making apparatus. This is especially true for SOF's high-end kinetic operations."<sup>18</sup> The section argues that, in four ways, national security decision makers are more likely to opt for kinetic action in CT as a result of the altered decision making context borne of SOF's operational success. Decision makers are likely to draw improper analogies from SOF's success; violent raids executed publicly skew the satisficing process; counterterrorism is framed with a bias for risky action; and the broader bureaucracy has morphed to both readily accept and have a stake in direct action missions primarily carried out by NMFs.

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15 Malvesti, *To Serve the Nation*, 4.

16 Robinson, "Inside the 'New' Special Operations Forces."

17 Ibid.

18 Malvesti, *To Serve the Nation*, 24.

## THE ANALOGY PROBLEM

Here, the problems are twofold. First, decision makers are likely to draw the improper analogies from SOF's recent success. Second, the decision-making bureaucracy is unlikely to make pre-emptive, but necessary changes to SOF's implementation: that would likely require a failure.

The baseline used to be that SOF missions were too risky to justify any strategic objective. The lesson many Washington policymakers took from events like the failed mission in Mogadishu, Somalia, in 1993 was "that some situations were simply too tough, too intractable, and too dangerous for America to get involved."<sup>19</sup> Robert Jervis explains that

People pay more attention to *what* has happened than to *why* it has happened. Thus learning is superficial, overgeneralized, and based on *post hoc ergo propter hoc* reasoning. As a result, the lessons learned will be applied to a wide variety of situations without a careful effort to determine whether the cases are similar on crucial dimensions.<sup>20</sup>

After the Battle of Mogadishu (and after the failed Iranian hostage rescue attempt before that), decision makers appeared less concerned with understanding why SOF failed, and relied more on the simple fact that they had failed when contextualizing other potential operations. Even in considering the decision to launch Operation Neptune Spear, President Barack Obama recalled the tragic events of 1993.<sup>21</sup> Alternatively, SOF's recent success in risky missions is likely to change the analogy from "SOF fails" to "SOF wins" and leave out the nuance. Because there are not many other publicly known alternative analogies for such SOF missions, and because the mission was so vitally important to U.S. interests, Operation Neptune Spear is likely

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19 Derek H. Chollet, and James M. Goldgeier, "The Scholarship of Decision-Making: Do We Know How We Decide?" In *Foreign Policy Decision-Making (Revisited)* (New York: Palgrave, 2002), 158-159.

20 Robert Jervis, *Perception and Misperception in International Politics* (Princeton: Princeton University Press, 1976), 228.

21 Statement by President Barack Obama, from *Targeting Bin Laden*, The History Channel, September 6, 2011.

to become a new reference point for decision makers when SOF missions are considered in the future.<sup>22</sup>

But over time much of the nuance that made Neptune Spear such a success will be lost as decision makers reference the mission to help them inform current decisions. One of the five SOF truths maintains that “most special operations require non-SOF support.”<sup>23</sup> Recently, the Chairman of the Joint Chiefs commented that “SOF can only be...special if there’s a conventional force that allows them to conduct their operations and shape the environment.”<sup>24</sup> In the case of Operation Neptune Spear, trigger-pullers were only the tip of the spear, with a long tail of enabling support in nearby Afghanistan, where the U.S. had a deployment of some 100,000 troops. Improperly understanding the analogy could result in decision makers relying on success without having the infrastructure in place to enable that success. In addition, the raid against Osama bin Ladin “had the potential to produce important strategic and operational gains.”<sup>25</sup> Unless they draw a textured analogy—that is, unless they purposively analyze the likenesses and differences between the potential future situation and the past operation—decision makers could reference Operation Neptune Spear in choosing to launch a similarly risky mission without the prospect of such a strategic gain.

Jervis also explains that people tend to code historical events binarily into success or failure. Of the two, success can be the most dangerous: “With a successful outcome, relatively little attention is paid to the costs of the policy [or] the possibility that others might have worked even better....The result is that...policies that were followed by

success will be too quickly repeated in the future.”<sup>26</sup> As SOF have been utilized since 9/11, warrior-diplomats provide a complicated view of success or failure, and therefore do not present a very attractive analogy. NMF commandos, however, produce fantastic binary results: captured or killed HVTs. This is a simply-coded analogy; as such, the role of commandos carrying out direct action is more likely to endure through time to influence decision makers. In fact, according to Jervis’ theory, such missions are likely to be repeated too quickly and in an improper context.

In addition, the newfound analogy of SOF’s success will likely insulate the various departments and agencies involved in the approval of special operations from needing to learn from their mistakes. Allison and Zelikow note that “Dramatic organizational change occurs in response to major disasters.”<sup>27</sup> SOF have a culture of innovation, and historically outpace all of their civilian and military counterparts in this regard. SOF’s kinetic operations are risky, and the process that approves them should be constantly updated. Given the perceived lack of failure, the broader bureaucracy is unlikely to institute any change prior to a dramatic failure.

### RAISING THE BAR: HOW SOF SHIFT ASPIRATION LEVELS

Few decisions, and certainly not national security decisions, can be purely rational. “Studies of decision making in the real world suggest that not all alternatives are known, that not all consequences are considered, and that not all preferences are evoked at the same time.” Decision makers are constrained by attention, memory, comprehension, and communication.<sup>28</sup> One method to cope with these constraints is called satisficing. “Decision makers often seem to satisfice rather than maximize. Maximizing involves choosing the best alternative. Satisficing involves choosing an alternative that exceeds some criterion or target.”<sup>29</sup> In other words, satisficing involves finding a solution that is just “good enough.”

It is important to note that, “Under satisficing, a bundle that is better on each criterion will not be chosen over

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22 Jervis, *Perception and Misperception in International Politics*, 239-270. Jervis argues that people are most likely to draw analogies and learn from four types of experiences: first-hand experiences; events in early adult life; events important to that person’s state or organization; and when the range of available alternative analogies is limited. Jervis contends that when at least two of these conditions are in place, his model is sufficiently predictive.

23 “U.S. Special Operations Command Factbook 2012,” 48.

24 Comments made by General Martin E. Dempsey, “Major Budget Decisions Briefing from the Pentagon,” (Press Conference, The Pentagon, January 26, 2012), <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4962>.

25 Michele L. Malvesti, “Policy Considerations in Combating Terrorism: Decision-Making Under Conditions of Risk And Uncertainty,” *Combating Terrorism Center at West Point*, January 2012, 2.

26 Jervis, *Perception and Misperception in International Politics*, 232-233.

27 Graham Allison and Philip Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis* (New York: Longman, 1999), 144.

28 James G. March, *A Primer on Decision Making: How Decisions Happen* (New York: Free Press, 1994), 8.

29 *Ibid.*, 18.



another bundle that is good enough on each criterion if the latter bundle is considered first.”<sup>30</sup> The order in which decision makers consider options influences the satisficing process. As the evolution of SOF has led to the familiarity of decision makers particularly with NMFs in a direct action role, such activities are likely to be considered before other alternatives in the CT arena, to include the use of Theater SOF, not to mention general purpose forces or non-military means of power. If the commando option is considered earlier on in the process, it is increasingly likely to be selected as an option that is “good enough.”

When satisficing, decision makers tend to code events as either above or below an aspiration level. It is possible that the recent success of commando operations may have unintentionally raised the satisficing bar to a height unreachable by other elements of U.S. power.

The tendency to code alternatives as above or below an aspiration level or a status quo has important implications for decision making. Whether a glass is seen as half-empty or half-full depends on how the result is framed by aspiration levels and a decision maker’s history. The history is important because aspiration levels—the dividing line between good enough and not good enough—are not stable. In particular, individuals adapt their aspirations (targets) to reflect their experience. Studies of aspiration level adjustment in which data on the performance of others is lacking indicate that decision makers revise aspirations in the direction of past performance but retain a bit more optimism than is justified by that experience.<sup>31</sup>

NMFs have become adept capturers and killers of HVTs. Decision makers are increasingly keyed in to this process. If the new bar for success in U.S. CT policy is the elimination of a terrorist no matter where he is in the world, then the success of SOF in this role could effectively limit what should be a vast array of American CT tools. In some cases, the U.S. may be able to rely on partner nations to capture or kill HVTs, but NMFs are the only U.S. force capable of reaching what may be a new aspiration level.

30 Ibid., 19.

31 Ibid., 22.

## ENCOURAGING RISKY BEHAVIOR: CT FRAMED IN A DOMAIN OF LOSSES

According to prospect theory, “Choice can often be substantially affected by seemingly trivial manipulations in the framing and construction of available options.”<sup>32</sup> More specifically, the theory holds that decision makers will be risk-averse with respect to gains, and risk-acceptant with respect to losses. In international relations, people tend to take excessive risk to recover from losses, and after making gains tend to take excessive risk in order to defend those gains against subsequent losses. Moreover, decision makers are slow to accommodate to losses.<sup>33</sup>

The theory holds two implications that could result in SOF’s misuse. First: the President has at least since the mid-1990’s considered terrorism a threat to national security and therefore maintained the right to “apply all appropriate means to combat it.”<sup>34</sup> In the public discourse, however, before 9/11, terrorism was framed as a crime.<sup>35</sup> Since then, “the equation of terrorism with a fight against al Qaeda has pervaded much of the public discourse as well as the framing of public policy.”<sup>36</sup> That in today’s security environment, CT is more often framed as a fight, rather than a law enforcement activity, increases the likelihood that military force will be the weapon of choice.

In addition, in the current CT landscape, the U.S. is operating in a domain of losses. On 9/11, the U.S. lost its perceived sense of security. According to prospect theory, it is likely to engage in increasingly risky behavior to regain that loss. Of late, that risky behavior has been SOF in a direct action role. Indeed, framing can be a fickle thing. Especially with regard to a perceived sense of security, Americans’

32 Rose McDermott, *Risk-Taking in International Politics: Prospect Theory in American Foreign Policy* (Ann Arbor, MI: University of Michigan Press, 1998), 57.

33 Jack S. Levy, “Prospect Theory, Rational Choice, and International Relations,” *International Studies Quarterly* 41 (March 1997): 93.

34 Presidential Decision Directive/NSC-39, “U.S. Policy on Counterterrorism,” (June 21, 1995), accessed on February 2, 2013, <http://www.fas.org/irp/offdocs/pdd/pdd-39.pdf>.

35 Richard H. Shultz, Jr., “Showstoppers: Nine Reasons Why We Never Sent Our Special Operations Forces After Al Qaeda Before 9/11,” *The Weekly Standard*, January 26, 2004, accessed April 26, 2012, <http://www.weeklystandard.com/Content/Public/Articles/000/000/003/613twavk.asp#>.

36 Paul R. Pillar, “American Perceptions of Terrorism in the Post-9/11 Decade,” *Combating Terrorism Center at West Point* (September 26, 2011).

feelings about terrorism will change as more time elapses between spectacular attacks against the homeland.<sup>37</sup> Nonetheless, as it stands, the U.S. has yet to regain its loss and decision makers are therefore likely to carry on with their risk-acceptant behavior.

### THRIVING IN THE INTERAGENCY: THE BUREAUCRACY'S FONDNESS FOR SOF

Since 9/11, USSOCOM's budget has nearly tripled and its manpower has expanded by more than 25 percent.<sup>38</sup> Normally, such expansions are accompanied by decreased bureaucratic autonomy and increased rivalries.<sup>39</sup> It is true that SOF's "leaders and advocates should remain aware of the possible downsides of growth that could divert SOF from preparing for missions only they can conduct, conventionalize their experience, and potentially blunt their trademark innovative mindset."<sup>40</sup> When undergoing expansion, the executive of an organization is supposed to "discover a way by which different values can coexist."<sup>41</sup> SOF have done well in this regard. At present, however, SOF have so engrained themselves in and impressed the civilian and conventional military bureaucracies alike that the greatest risk is SOF's resultant overuse.

Traditionally, general purpose forces have looked down upon SOF. For a number of reasons, not least because the most senior commanders in the military came from conventional backgrounds, SOF were underutilized. There was a visceral distaste for SOF among their conventional masters. "When some 'special' force is required to deal with problems that defy treatment by conventional military methods, invariably such recourse to novel or elitist approaches implies criticism of the conventional military and makes hierarchies uncomfortable."<sup>42</sup> After 9/11, then Secretary of Defense Donald Rumsfeld undertook a number of personnel moves that placed former SOF personnel in Joint Chiefs of Staff (JCS) positions, and former JCS staffers into

leadership billets within USSOCOM. "A key part of Rumsfeld's campaign to bolster special forces [sic] [was] a concerted effort to reinvigorate and strengthen the bureaucracy that governs them."<sup>43</sup> This was done in addition to USSOCOM being given primary responsibility for "synchronizing the Department of Defense's planning for global operations against violent extremist organizations and networks."<sup>44</sup> Wilson explains that strong organizations align mission to jurisdiction: "A strong sense of mission implies an organizational jurisdiction coterminous with the tasks that must be performed and the resources with which to perform them."<sup>45</sup> Within the broader bureaucracy, not many other organizations have as strong a sense of mission as USSOCOM, especially with respect to counterterrorism. SOF's identity is infused with this mission, and thus the entire bureaucracy looks to them to act within the realm.

By way of example for how underutilized SOF had been within the defense bureaucracy prior to these reorganizations, "During Desert Storm, General Norman Schwarzkopf was reluctant to include SOF in his war plan. He did so only grudgingly, and kept SOF on a short leash."<sup>46</sup> The current Chairman of the JCS is willing to accept that SOF will have an increased role in an era of shrinking budgets.<sup>47</sup>

With regard to SOF's coordination with their civilian masters, the change is similar. In the case of the Battle of Mogadishu, "There was no single Washington-based authority [SOF] could have reported to that would have been able to provide definitive guidance and to change course quickly in light of developments in the field."<sup>48</sup> Civilian decision makers are now actively involved in the employment of SOF, particularly in deliberations about sending NMFs on risky HVT operations. One could point to images of the President and his team actively communicating to Admiral McRaven during Operation Neptune Spear. Formally,

37 Ibid.

38 Malvesti, *To Serve the Nation*, 32.

39 James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), 182.

40 Malvesti, *To Serve the Nation*, 7.

41 Wilson, *Bureaucracy*, 105.

42 Frank R. Barnett, B. Hugh Tovar, and Richard H. Shultz, *Special Operations in U.S. Strategy* (Washington, D.C.: National Defense University Press, 1984), 6.

43 Jennifer D. Kibbe, "The Rise of the Shadow Warriors," *Foreign Affairs* 83, no. 2 (April 2004), 110.

44 Admiral Eric Olson, "USSOCOM: Function and Focus," (remarks, Center for Strategic and International Studies Panel, Washington, D.C., April 1, 2010).

45 Wilson, *Bureaucracy*, 187.

46 Shultz, Jr., "Showstoppers," 5.

47 Dempsey, "Major Budget Decisions Briefing."

48 David Tucker and Christopher J. Lamb, *Restructuring Special Operations Forces for Emerging Threats*, (Washington, D.C.: Strategic Forum Institute for National Strategic Studies, January 2006), 5.

USSOCOM is accelerating its inclusion in the interagency process via the Interagency Partnership Program, which places USSOCOM personnel at a wide range of agencies within the U.S. bureaucracy.<sup>49</sup> In addition, USSOCOM is wired more tightly to the intelligence community than it ever has been. Title 10 SOF increasingly operate in Title 50 roles traditionally associated with the CIA; in the case of the raid that led to Usama bin Ladin's death, the SOF strike force was technically under CIA mission command.<sup>50</sup>

It is a good thing that SOF are working well with their interagency partners. But risk is also building up in the bureaucracy. "Political support is at its highest when the agency's goals are popular, its tasks simple, its rivals non-existent, and the constraints minimal."<sup>51</sup> No one else can do the sorts of missions that are carried out by SOF in terms of capturing and killing terrorists globally—so SOF have no competitors in this mission. Its goals are popular, and its tasks are simple. The only constraint on SOF is the limitation imposed by decision makers required to authorize their employment.

Now that more agencies are involved in the decision-making process, and therefore have equities in SOF's success, decision makers are less likely to disapprove a direct action mission. In the past, SOF failures meant that such operations were considered learned vulnerabilities.

Every organization, like every person, learns from experience what behavior will create big problems; but compared to people, organizations have longer institutional memories and are more risk averse. Once burned, forever shy....(The advantage of avoiding a learned vulnerability is that it minimizes the power of external stakeholders over the agency).<sup>52</sup>

When the analogies were Desert One and Mogadishu, the bureaucracy was hesitant to approve SOF to undertake risky missions. Alternatively, USSOCOM, and especially its NMFs, are now seen as a "viable organization," one that is "not merely a technical system of cooperation; it is an institution that has been 'infused with value' so that it displays a 'distinctive competence.'"<sup>53</sup> No other organization has such a distinctive competence with regards to CT. Because CT currently equates to direct action, in a bureaucracy devoid of many organizations considered as viable as SOF, their overemployment is increasingly likely.

In addition, Allison and Zelikow note that bureaucracies constrain rational choice and are naturally slow.<sup>54</sup> Innovation is imbued in SOF's culture. Now that such a nimble organization has a place at the table next to so many slow, lumbering bureaucracies, it may increase the likelihood that SOF are called upon to take action even when other arms of U.S. power would be a more appropriate solution.

SOF intentionally enmeshed itself within various departments and agencies, but it appears that SOF's increasing autonomy in U.S. CT policy is a case of bureaucratic drift, and the unfortunate consequence of NMF's carrying out their assigned missions with an unmatched efficiency. Nevertheless, of late, some have argued that USSOCOM is seeking an undue amount of autonomy—specifically in allegedly seeking greater authority to deploy its own forces as it sees fit without going through traditional bureaucratic channels.<sup>55</sup> These reports are premature and mildly alarmist. As the commander of USSOCOM said in a recent testimony: "There is nothing in my recommendations now nor will there ever be that talks about circumventing any of the geographic command or the Chief of Mission."<sup>56</sup> SOF have invested too much time and energy in building helpful interagency relationships to be so obtuse.

49 Malvesti, *To Serve the Nation*, 28.

50 Andru E. Wall, "Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities, and Covert Action," *Harvard National Security Journal* 85, no. 3 (2011). "The Title 10-Title 50 debate is essentially a debate about the proper roles and missions of U.S. military forces and intelligence agencies. 'Title 10' is used colloquially to refer to Department of Defense and military operations, while 'Title 50' refers to intelligence agencies, intelligence activities, and covert action."

51 Wilson, *Bureaucracy*, 181.

52 *Ibid.*, 191-192.

53 *Ibid.*, 91.

54 Allison and Zelikow, *Essence of Decision*, 143-196.

55 Eric Schmitt, Mark Mazzetti, and Thom Shanker, "Admiral Seeks Freer Hand in Deployment of Elite Forces," *The New York Times* (February 13, 2012), sec. A.

56 Andrew Feickert, *U.S. Special Operations Forces (SOF): Background and Issues for Congress*, CRS Report for Congress (Washington, D.C.: Congressional Research Service, March 23, 2012), 11. Quoting Admiral William McRaven.

This is not the movies—USSOCOM is a highly professional organization and it is not going to “go rogue.” And though it is better than it ever has been, SOF certainly still have their share of bureaucratic rivals. But the bureaucracy’s newfound enthusiasm for NMFs carrying out high-risk operations carries with it the potential for catastrophe. Wilson provides what could prove to be a chillingly prescient example.

A tragic example of the risks to which an organization with a strong sense of mission may be exposed can be found in the inquiry into the accident on January 28, 1986, that destroyed the space shuttle *Challenger* and claimed seven lives. NASA was imbued with an engineering culture that had so captivated the imagination of its adherents and had been responsible for so many extraordinary accomplishments that few if any doubted its value. (Many things contributed to the tragic crash), but these contributing factors may have been tolerated in part because of the confidence a highly mission-oriented organization had that it could meet any challenge, overcome any difficulty.<sup>57</sup>

It may be that national security decision makers have become enamored enough with SOF so as to have set the conditions for a failure. SOF will fail one day—no matter how good they are, the friction of war demands it. Given the nature of the missions undertaken by NMFs, failure will likely have strategic consequences for the U.S. well beyond the tragic loss of life, and may return SOF to the days of being a “learned vulnerability” in a bureaucracy where their capabilities are appreciated but misunderstood.

### ALTERING POLICYMAKERS’ CONSIDERATIONS

The previous section shows the potential effect of SOF’s success in direct action CT missions on the actors involved in national security decision making—namely that each of the four types of pressures discussed could cause individuals and groups to overenthusiastically approve such missions in the future. These pressures on decision makers also col-

57 Wilson, *Bureaucracy*, 104.

lectively alter the specific considerations policymakers take into account when deliberating approval of such missions, as well as their perception of the risk involved. “When faced with a decision to approve a Special Operation or a kinetic form of covert action in combating terrorism, presidents and their national security teams take into account a wide range of political and operational concerns.”<sup>58</sup> Six specific considerations are: confidence in the intelligence; challenges to sovereignty; sensitivity to casualties; assessments of effectiveness; comfort with the operational units; and pressures to take action.<sup>59</sup> This section will discuss how SOF’s recent success in executing commando-type missions, and the potential effects of this success on decision makers, may alter some of these considerations and could cause decision makers to favor riskier actions. In each case, the result is a likely bias for kinetic action in countering terrorism, even when it may not be warranted—this may in turn set the conditions for SOF’s misuse.

### COMFORT WITH OPERATIONAL UNITS

SOF are more accepted now in the interagency than they ever have been. Decision makers have approved kinetic CT activities more regularly than at any other time in the past. This reliance on direct action “has resulted in many policymakers and other key constituents, including those in Congress, becoming more familiar with National SOF than they are with Theater SOF.”<sup>60</sup> That is because

It has been easier for SOF to demonstrate their commando skills for senior government officials and other external advocates and constituencies through elaborate capabilities exercises and real-time operations; it is much more difficult to showcase warrior-diplomat activities to equally impressive effect.<sup>61</sup>

The logic here is simply that the more decision makers approve such missions, the more familiar they become with the units that carry out such missions. This could lead to NMFs being stressed over Theater SOF. USSOCOM has noted this bias, and its advocacy for its warrior-diplomats

58 Malvesti, *Policy Considerations in Combating Terrorism*, 5.

59 Ibid.

60 Malvesti, *To Serve the Nation*, 17.

61 Ibid., 25.

may be paying off. In a recent hearing, the Chairman of the House Subcommittee on Emerging Threats and Capabilities noted that, though the raid on Usama Bin Laden was a success, “SOCOM does so much more, often with little or no fanfare, as it should be. It may well be that the future of the command will require greater emphasis on some of those other mission areas, such as unconventional warfare and foreign internal defense.”<sup>62</sup>

## SENSITIVITY TO CASUALTIES

It is unclear whether Americans are sensitive to casualties, or just sensitive to failure.<sup>63</sup> Decision makers are less likely to fear either casualties or failure when considering kinetic CT action in the future. The first reason is technology: there is a public perception, for instance, that drones do not risk U.S. personnel on the ground.<sup>64</sup> In addition, if Operation Neptune Spear (where there were no U.S. casualties) becomes the new analogy when NMFs are called upon to capture or kill HVTs on the ground, then decision makers could be less worried about the possibility of casualties.

## PRESSURES TO TAKE ACTION

One such pressure is “public calls for action.”<sup>65</sup> This pressure is tied up with domestic political concerns. President Carter decided to launch the Iranian hostage rescue mission, in part, because of the “extent of domestic criticism of his inaction.”<sup>66</sup> With regard to Operation Neptune

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62 *The Future of U.S. Special Operations Forces: Ten Years After 9/11 and Twenty-Five Years After Goldwater-Nichols; Hearing Before Subcomm. on Emerging Threats and Capabilities of the Comm. on Armed Services House of Representatives*, 112 Congress 1 (2011) (statement of The Honorable Mac Thornberry, Chairman, Subcomm. On Emerging Threats and Capabilities).

63 This idea comes from Peter D. Feaver and Christopher Gelpi, *Choosing Your Battles: American Civil-Military Relations and the Use of Force* (Princeton, NJ: Princeton University Press, 2004), 97. The author first came across the idea when reading Malvesti. See Malvesti, *Policy Considerations in Combating Terrorism*, 13.

64 The word “perception” here refers to the fact that risk is merely pushed down to actors on the ground, whether American spies or host-nation spotters. Thus, the risk of casualties still exists.

65 Malvesti, *Policy Considerations in Combating Terrorism*, 20.

66 Steve Smith, “Policy Preferences and Bureaucratic Position: The Case of the American Hostage Rescue Mission,” In *The Domestic Sources of American Foreign Policy: Insights and Evidence*, ed. Eugene R. Wittkopf and James M. McCormick, 5th ed. (Lanham, MD: Rowman & Littlefield, 2008), 315.

Spear, President Obama “could have suffered politically if it ever leaked that the United States had actionable intelligence, however circumstantial, and decided not to act.”<sup>67</sup> As of January 2012, 65 percent of Americans “approved of the way Barack Obama is handling the threat of terrorism,” while only 28 percent disapproved.<sup>68</sup> It is going to be difficult for any President to walk back from the “tough” stance of President Obama—especially given how public it is when many HVTs are captured or killed. There is great risk of misuse here: Usama bin Ladin was a strategically significant target. “Toughness” could translate into taking risk when the strategic payoff is not as great.

## CHALLENGES TO SOVEREIGNTY

In the past, some key department and agency officials have been left out when it comes to deliberating a kinetic action against a nation with whom the U.S. is not at war. “When the Bay of Pigs invasion was being planned, at least two groups of experts in the United States government were not consulted—those in the intelligence branch of the CIA and on the Cuban desk in the State Department.”<sup>69</sup> This is simply not the case anymore—it is alarmist to assert that in today’s interagency environment the State Department and CIA would not have a role in whether or not to launch a kinetic SOF mission into the backwaters of Somalia, Yemen, or any other nation with which the U.S. is not technically at war.

The problem comes in misinterpreting the analogy provided by Operation Neptune Spear. That mission relied upon a massive enabling infrastructure in nearby Afghanistan.

SOF will need to build and maintain a persistent, low-visibility presence in several known or suspected terrorist operating areas around the world...an on-the-ground presence is essential not only for collecting tactical

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67 Malvesti, *Policy Considerations in Combating Terrorism*, 24.

68 “Pew Poll, Do You Approve or Disapprove of the Way Barack Obama Is Handling the Threat of Terrorism?” The Pew Research Center for the People & the Press Poll Database, accessed on January 1, 2012, <http://www.peoplepress.org/questionsearch/>.

69 Irving L. Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes*, 2nd ed. (Independence: Cengage Learning, 1982), 32.

intelligence and developing local situational awareness, but also for supporting partner security forces and responding rapidly...if and when HVTs are identified and located.<sup>70</sup>

If the U.S. wants to pursue a global CT policy centered around HVT operations, it will not work unless it is willing to expend the resources on a significant enabling infrastructure.

### CONCEPTION OF RISK

In addition to specific policymaker considerations, SOF's recent success in kinetic, direct action missions will alter decision makers' conceptions of such missions' riskiness. Risk can be defined in many different ways. Two such ways are most useful for the purposes here. The first definition calls risk: "The relative variance in outcome." By this standard, "choice is relatively risk seeking if it has greater outcome variance...than alternative options"<sup>71</sup> If risk is defined thusly: "Special Operations are intrinsically risky, given their variance in outcome: they can produce detrimental political and operational consequences if they fail, yet generate highly effective political and operational results when they succeed."<sup>72</sup> Policymakers accept much more risk when they rely on kinetic action in countering terrorism. When looking at various CT measures, to include law enforcement, conventional strikes, special operations, and covert action, the last two are the riskiest.<sup>73</sup>

Risk can also be defined by the likelihood of failure. In this case, risk is:

The likelihood of the materialization of validly predictable direct and indirect consequences with potentially adverse values...risk estimates have three dimensions: outcome values, the probability of these outcomes, and the con-

70 Robert Martinage, "Special Operations Forces: Challenges and Opportunities," (paper presented to the U.S. House of Representatives, Subcommittee on Terrorism, Unconventional Threats, and Capabilities, Washington, DC, March 3, 2009), 4.

71 McDermott, *Risk-Taking in International Politics*, 39.

72 Malvesti, *To Serve the Nation*, 24.

73 Michele L. Malvesti, "Risk-Taking in Countering Terrorism: A Study of US Presidential Decisions to Use Special Operations and Covert Action," (PhD Diss., Tufts University, 2002).

fidence with which the estimates of outcome values and probabilities are held by the decision maker.<sup>74</sup>

Because of the improper analogies likely to be drawn from SOF's recent success, decision makers could illegitimately discount the risk of failure in such missions. This is especially so if decision makers think of Operation Neptune Spear simply as a "success," and discount the reasons for that success.

### WHY THIS MATTERS: BAD POLICY

SOF's success could cause decision makers to have an unnecessary bias for using kinetic action as a tool in countering terrorism. Such a bias is not only unwitting but ultimately counterproductive. HVT campaigns are not sufficient to end terrorist groups—academics and policymakers know this.<sup>75</sup> USSOCOM itself even agrees—its two most recent commanders have made statements admitting as much.<sup>76</sup> However, given all the pressures on actors in the national security decision making system, other tools of power are less likely to be used.

SOF have been successful in capturing and killing terrorists. At this point, however, that success is insidious—to


74 Yaacov Y.I. Vertzberger, "Collective Risk Taking: The Decision-making Group," In *Beyond Groupthink: Political Group Dynamics and Foreign Policy-making*, ed. Paul T. Hart, Eric K. Stern, and Bengt Sundelius (Ann Arbor, MI: University of Michigan Press, 1997), 277.

75 See Seth G. Jones, and Martin C. Libicki, *How Terrorist Groups End: Lessons for Countering Al Qaeda* (Arlington, VA: RAND Corporation, 2008), xiii. The most recent academic literature contends that the majority of terrorist groups end by either joining the political process (43 percent) or law enforcement (40 percent). Military force alone was sufficient in only 7 percent of cases.

76 Admiral Olson, "USSOCOM: Function and Focus" (remarks, Center for Strategic and International Studies, Washington, D.C., April 1, 2010). "While the direct approach is required to mitigate immediate threats, the overall effects of the direct approach are not decisive. The direct approach is a holding mission that buys time and space for the indirect approach to achieve its long-term results." See also Admiral William H. McRaven, *The Future of U.S. Special Operations Forces: Ten Years After 9/11 and Twenty Five Years After Goldwater-Nichols* (Washington, D.C., 2011), 6. "Largely kinetic counterterrorism operations have had great effect disrupting Al Qaeda and its affiliates by providing space and time for the indirect approach to achieve its desired effect."

both SOF and U.S. CT policy. In the former case, NMFs are so concentrated on CT that other, more specialized and more vital activities may be suffering as a result. The U.S. could use many tools for countering terrorism; alternatively, NMFs alone can carry out complex CWMD activities.<sup>77</sup> Furthermore, history shows that decision makers tend to overgeneralize their analogies about SOF's success or failure. Right now, SOF are being used more than they ever have been. This potential overuse will likely lead to failure at some point, if only as the result of the friction of war. It is possible that such a failure will lead to the abandonment of SOF as a policy tool as they return to "learned vulnerability" status.

In the case of CT policy more broadly, overreliance on SOF's direct action mission shows a tactic substituting for a strategy. At the very least, a successful targeted killing campaign requires a long tail of enabling support. Deploying this infrastructure is a serious commitment of resources and can lead to policy drift—the U.S. desire to conduct safe-haven denial in the Afghanistan-Pakistan region, and its selection of SOF as the weapon of choice, may mean that a tactic is keeping the U.S. deployed in an area where otherwise its interests are no longer at stake. Moreover, targeted killing campaigns alone are not sufficient to end terrorist organizations<sup>78</sup>—but they can be extremely disruptive<sup>79</sup> and create the space for other elements of power

to deliver the finishing blow.<sup>80</sup> Alternatively, when those other elements of power do not use the space created, the result can be heightened terrorist recruitment.<sup>81</sup> SOF should continue to carry out direct action missions as a method of countering terrorism when the possible payoff is the capture or death of a target of supreme strategic value. Beyond such targets, SOF have done all they can in this role by creating the space necessary to pursue the final collapse of terrorist groups like al Qaeda. To be sure, that collapse will be long, slow, and iterative—but it is only possible if decision makers are willing to wean themselves of their convenient addiction to SOF's recent success. 

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77 Malvesti, *To Serve the Nation*, 34. Specifically, these include the ability to "locate, capture or destroy, or render safe weapons of mass destruction in a variety of situations and environments."

78 See Jenna Jordan, "When Heads Roll: Assessing the Effectiveness of Leadership Decapitation," *Security Studies* 18 (2009): 719–755, doi: 10.1080/09636410903369068. Decapitation strategies are most likely to result in the dissolution of a terrorist organization when the targeted group is relatively young and ideology-based. Older, religiously-motivated groups are less likely to be degraded by decapitation. In these cases, "decapitation does not increase the likelihood of organizational collapse beyond a baseline rate of collapse for groups over time."

79 See Alex S. Wisner, "Targeted Killings in Afghanistan: Measuring Coercion and Deterrence in Counterterrorism and Counterinsurgency," *Studies in Conflict and Terrorism* 33 (2010): 307–329, doi:10.1080/10576100903582543. In a study of targeted killings in Afghanistan, it was found that "Eliminations degraded Taliban professionalism, diminished the group's success rates, influenced their selection of targets, and weakened morale."

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80 Austin Long, "Assessing the Success of Leadership Targeting," *Combating Terrorism Center at West Point CTC Sentinel* 3, 11-12 (November 1, 2010), accessed January 1, 2012, <http://www.ctc.usma.edu/wp-content/uploads/2011/05/CTCSentinel-Vol3Iss11-129.pdf>. "In terms of President Barack Obama's declared goal of disrupting, dismantling, and defeating al-Qa'ida, leadership targeting, whether carried out by SOF in Afghanistan or drones in Pakistan, can create disruption and temporary dismantling, but it cannot defeat the organization."

81 Daniel Byman, *A High Price: The Triumphs & Failures of Israeli Counterterrorism* (Oxford: Oxford University Press, 2011), 377-378. Israeli CT efforts provide an interesting case study of this phenomenon. "By 2005 Israel had decimated Hamas as a military organization, rendering it far less effective. At the same time the unrelenting Israeli campaign had created a crop of martyrs that increased popular admiration for Hamas... Tactical successes that kill a particular leader or stop an attack can be invaluable, but if carried out at the wrong moment they can undercut a political force essential to Israeli security."