

FREEDOM OF EXPRESSION AND THE WAR ON TERRORISM: A FOCUS STUDY ON JORDAN

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I. Executive Summary

Caught between a rock and hard place, is an adage that portrays the reality of freedom of expression in Jordan as shaped by the aftermath of 11 September 2001 attacks on the United States. Amidst international panic of terrorism accompanied by the radicalization of societies, and the opportunism of states in manipulating these fears to enact laws that infringe on civil and political rights, freedom of expression has been one of the casualties of the “war on terror.” The thesis examines the effects of counter-terrorism laws on freedom of expression and whether and how they are used for the suppression of political dissent in Jordan. The paper reviews past and current theoretical literature on national security, freedom of expression, and contemporary discourse on counter-terrorism, in addition to analyzing relevant domestic laws and international human rights instruments. Post 9/11, there has been a growing trend among states to adopt far-reaching counter-terrorism laws penalizing incitement speech, a practice which poses risks of having a chilling effect on the exercise of this right. In Jordan, expanded counter-measures limiting the scope of freedom of expression prove to be counter-productive and repressive, particularly as they are used to pressure and discredit state’s opponents.

II. Introduction

Following the 11 September 2001 attacks on the United States, the international community, namely the United Nations, demanded states to introduce laws on the domestic level, to prevent, repress and punish acts of financing, planning or supporting terrorism. Countries were called on to address speech inciting to terrorism and adopt measures to prevent and prohibit it. Amidst worldwide alarm of terrorist acts and the promotion of extremist ideologies to recruit new members and foster community support; numerous states enacted broad anti-terrorism legislation raising concerns about their effect in curtailing international civil and political rights. The adoption of vague counter-terrorism policies and their method of enforcement by authorities, have given rise to skepticism about the proclaimed objectives of states in ensuring national security and their utilization by non-democratic and democratic governments alike, to crack down on state opponents.

Although there is considerable literature on the legislative, political and military reactions of states to terrorism post the 9/11 attacks, and their impact in undermining certain rights, such as the right to fair trial and privacy, little research has been carried out on the effect of counter-terrorism laws in silencing political dissent, especially in states with authoritarian systems of ruling. Much of the research carried out pertaining to freedom of expression and national security have focused on Western democratic states and the influence of anti-terrorism laws on the free speech principle indispensable to liberal democracies. Furthermore, with the growing trend among states to penalize speech glorifying terrorism as means to combat radical ideologies, especially those of Muslim extremists, studies have focused on the chilling effect of such laws on Muslim communities in Western countries and their possible alienation. However, less focus has been directed towards studying how counter-measures are implemented in predominantly

Muslim states with repressive forms of government and what their influence is on country politics and opposition groups.

The thesis aims to explore the relationship between counter-terrorism legislation and freedom of expression, and their impact on political dissent, specifically in Jordan. In light of an international initiative of revitalizing and enacting anti-terrorism laws, it is critical to investigate the effectiveness and legality of these tools in countering terrorism and the risks they pose on human rights. In the context of Jordan, where there is limited research on the effect of counter-measures on freedom of expression, the thesis topic is essential for understanding how counter-measures are used in non-democratic states and what implications do they have on political expression, especially opposition. Thus, the thesis examines the question of what are the effects of counter-terrorism laws on freedom of expression and whether and how they are used for the suppression of political dissent in Jordan. For the purposes of this study, I will only focus on the “freedom to impart information and ideas” protected under the International Covenant of Civil and Political Rights.

The thesis will begin by shedding a light on past and contemporary global trends concerning freedom of expression, national security and counter-terrorism in order to place the topic in context. The first chapter will examine how countries in times of national instability adopt laws proscribing certain forms of incitement speech, most recently speech “glorifying terrorism.” The chapter goes on to explore how national security measures and current vaguely worded anti-terrorism laws proscribing incitement speech, possibly serve as tools for silencing political opposition.

The second chapter focuses on the controversial issue of defining terrorism in international law and its implications on human rights, while the following section discusses the

international standards of freedom of expression and the legitimate grounds for its limitation. The chapter continues to examine the resolutions of the United Nations post 9/11, relating to speech inciting to terrorism and their influence on regional instruments. The second chapter concludes with reviewing the Arab Convention for the Suppression of Terrorism, as Jordan is party to it. In the third chapter, the thesis will provide background information about Jordan's system of government, geopolitical context and relevant legal instruments, both domestic and international, concerning freedom of expression and counter-terrorism. This chapter will analyze related emendations of Temporary Law No. 54 of 2001 imposed on the Jordanian Penal Code, in addition to the Prevention of Terrorism Law, which were both adopted to strengthen the country's legal framework to respond to terrorism. The chapter will examine the manner in which anti-terrorism laws are enforced and their influence on the right to freedom of expression in relation to political speech, as well as their conformity with international standards. Finally, the last chapter will propose some steps for dealing with political dissent in Jordan and fighting terrorism while upholding human rights obligations.

The research methodology focuses on reviewing relevant theoretical literature related to freedom of expression and counter-terrorism. The thesis reviews past and current theoretical discourse on national security, freedom of expression, and contemporary literature on counter-terrorism, in addition to analyzing relevant domestic laws and international human rights instruments. Due to the limited availability of literature and access to cases in Jordan, especially those tried by the State Security Court, information researched about the cases in the thesis, is based on credible information outlets and the reports of international human rights organizations.

III. CHAPTER 1: Literature Review

The relationship between human rights and national security has been a source of much contention in international law. Severe laws adopted during times of war have often had the effect of compromising several rights, among which is freedom of expression. A research article by David Cole, examines the legislative approach of the United States in past wars and its current response to terrorism. The author illustrates how during the World War I, the US censored free speech under the Sedition Act, making it a crime to utter speech insulting or abusive to the US government or its Constitution. Under the Act, thousands of individuals were prosecuted for their opposition to the war. The article debates the claims suggesting that the US mechanisms of fighting against today's terrorist threats have been altered to the advantage of protecting civil rights. Although some past state violations did not reoccur, such as interning people based on their racial origins; yet states' preventative techniques have evolved through expanding criminal liability.

As a result, broad laws criminalizing the provision of material support to proscribed organizations have been introduced, marking a shift in the US conventional approach of censoring speech to punishment based on guilt by association. In practice, Cole contends, both "censorship of abusive language and guilt by association,"¹ have a wider chilling effect on individuals, and renders them distrustful of participating in political activities for fear of being penalized. The writer asserts that even though on rare occasions speech was criminalized by the US for opposing the recent war on terrorism; it was often done by non-state actors, such as

¹ David Cole 'The New McCarthyism: Repeating History in the War on Terrorism', Harvard Civil Rights-Civil Liberties Law Review, p.5.

universities.² One of the limitations of the article is that it does not sufficiently explore the reasons behind the US avoidance of criminalizing dissent against its war on terrorism and the fact that universities or other non-state actors, on the contrary, have done so. On the other hand, the article identifies one of the prominent trends of current anti-terrorism legislation, the preventative law enforcement model, which extends criminal responsibility under broad legal frameworks, enabling states to prosecute a wide array of conduct while escaping the criminal process.

In an article examining the outcomes of post 9/11 responses on freedom of expression, Dinah PoKempner, who is a general council at Human Rights Watch, concludes that free speech has been subject to increased limitations by newly adopted ambiguous counter-terrorism laws. Under the pretext of terrorism, states have had the opportunity to crack down on journalists, extremists, and dissenters. Additionally, multiple countries have enacted laws proscribing “glorification of terrorism” and hate speech. PoKempner suggests that there is a proliferation of laws proscribing both direct and indirect incitement speech. The writer clarifies that states traditionally punished speech inciting to violence that “generally requires that the message directly encourage the commission of a crime, and that the speaker intend this, whether or not a criminal act results.”³ Yet, the writer indicates the emergence of a common state practice in passing overly broad laws penalizing indirect incitement, which entails the “criminalization of speech which is thought to have some potential to incite criminal action, but which may be less targeted in message or audience and less obviously a proximate cause of actual criminal acts.”⁴

² David Cole, p.4. The case of the science Professor, Sami Al-Arian, who was dismissed from the University of South Florida after Fox television aired clips of his speeches in pro-Palestinian off-campus rallies in which he chanted “Death to Israel”.

³ Dinah PoKempner, A Shrinking Realm: Freedom of Expression Since 9/11, Human Rights Watch World Report, 2007, p.67.

⁴ Ibid.

The writer sheds a light on the strategies of several countries and the legislative adaptations made to proscribe speech, while highlighting their infringement on international human rights protections. Furthermore, the author refers to the United Kingdom's Terrorism Act of 2006 which criminalizes speech "glorifying terrorism" and highlights its possible effect in targeting Muslims for expressing unconventional, yet protected political speech. The article deals with several core issues related to limiting freedom of expression as one of the after-effects of the 9/11 attacks on the US. However, it lacks pointing out and investigating the issue of ideological suppression as one of the aims of counter-terrorism laws in proscribing speech.

In another study, Laura Donohue, author of the "Cost of Counterterrorism, the: Power, Politics, and Liberty" which offers a critical assessment of US and UK counter-terrorism laws, compares counter-terrorism laws, terrorism and state-terrorism in attempt to draw lines between these phenomena. The writer asserts that like terrorism, counter-provisions seek to instill fear and use violence against terrorists. Under the cover of national security, states are empowered to employ aggressive measures against who authorities categorize as terrorists. Donohue asserts the subjectivity of states in designating groups as terrorists and emphasizing their immorality and "otherness." Hence, the writer suggests that state counter-terrorism measures are often used to underline the state's political legitimacy by highlighting the "otherness" and delinquency of those who use violence against it. Consequently, it becomes justified to use harsh measures against them as their guilt is predetermined.

The author indicates how counter-terrorism laws are employed not only to target those who commit violent acts but also community support and state sponsors. What is of significance in the article is the author's analysis of how counter-terrorism laws are directed against criminalizing what the state labels as terrorists. Therefore, the power of authorities to designate

individuals, namely state opponents, as terrorists demonstrates the state's ability of manipulating counter-laws to discredit political dissent and spread fear among those who support them. One of the shortcomings of the chapter is the lack of distinguishing between the practices of authoritarian and democratic systems of government. Even though Donohue suggests that the difference between these two systems in dealing with terrorism and employing aggressive measures is blurry, the topic needs further exploration in order to understand the dynamics and functions of such laws in democratic and non-democratic societies.

The thesis also draws on international and regional human rights instruments and counter-terrorism laws in order to provide information about international standards and obligations. Additionally, the reports of international human rights organizations have been used as a resource in the study. The materials reviewed for the thesis elucidate some of the main theoretical discourse regarding the challenges pertaining to human rights and the war on terrorism, which are relevant to Jordan and other parts of the world. However, the focus on new offences such as speech "glorifying terrorism" and indirect incitement in general, and their influence on societies is still a field that needs to be further investigated.

IV. CHAPTER 2: Freedom of Expression and the War on Terrorism

2.1. Freedom of Expression, Terrorism and National Security

“So the way forward can never be the ballot. The [way] forward is the bullet.”-Trevor William Forest (AKA Abdullah Al Faisal)⁵

When one thinks of the “war on terrorism” declared by the Bush administration following the 9/11 attacks in 2001, what might initially come to mind are the images of torture in Guantanamo Bay, administrative detentions and a war in Afghanistan which has no end in sight. These realities have come to be known as some of the evident consequences of the war on terror. Simultaneously, although less at the center of public attention, is the erosion of certain rights and freedoms, such as freedom of expression, as a way to combat extremist ideology and radicalism. Offences related to speech inciting to terrorism have been adopted in several countries so as to criminalize the propagation of terrorist thought, hinder the recruitment of members and delegitimize those who sympathize with their cause.

Fighting against the ideology of extremists, their words and messages has been one of the central dimensions of the “war on terrorism,” a battle that is not confined to the borders of a state, place or time. Speech, calling for the destruction of Western democracies, ending Western oppression in Afghanistan and Iraq and legitimizing the killing of non-Muslims, has been a powerful weapon utilized by radical Muslim Imams for recruiting new members and gaining the support of those who share their views and feel they are being terrorized by the Western invasion

⁵ R. v. Al-Faisal, [2004] EWCA Crim 456. Abdullah Al-Faisal, a Jamaican Muslim cleric living in the UK, was charged with three counts for soliciting to murder under Paragraph 4 of the Public Order Act 1986. The conviction of Al-Faisal was based on his recording of several tapes preaching racial hatred and urging his audience to kill non-Muslims especially Americans, Jews and Hindus.

of Muslim countries. In a speech following the July London attacks in 2005, Tony Blair highlighted this danger, describing the threat of terrorism that the United Kingdom and the world are confronting as “an evil ideology...a battle not just about the terrorist methods but their views. Not just their barbaric acts, but their barbaric ideas. Not only what they do but what they think and the thinking they would impose on others.”⁶

After the London bombings, the UK introduced offences criminalizing the “encouragement” and “glorification of terrorism” under the Terrorism Act of 2006, which proscribes expression that directly or indirectly encourages others to commit acts of terrorism.⁷ The legislation was seen as a response to the radical speech of several Muslim preachers in the UK who were accused of inciting their listeners to take part in “Jihad” against the UK and other Western countries, especially in light of the British support of the US led invasion of Iraq. Mosques and preachers in the UK were heavily attacked after the London bombings, for preaching hate and being centers for militants’ recruitment. Germaine Lindsay, one of the bombers who was 19 years old when committing the attacks, was said to have been heavily influenced by a Muslim cleric, Abdullah Al Faisal, who preached that killing kafers (non-believers) was a ticket to paradise.⁸ Additionally, the UK’s tolerance of extremist preachers and their non-punishment was perceived as an enabling atmosphere for recruiting members for Al-

⁶ Tony Blair, ‘Full text: Blair speech on terror’, BBC (16 July 2005)

<http://news.bbc.co.uk/2/hi/uk_news/4689363.stm> accessed 7 October 2009.

⁷ UK Terrorism Act 2006 (Chapter 11), Part 1, para.3 (a) & (b): ‘For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which—

(a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and

(b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.’

⁸ R. v. Al-Faisal, [2004] EWCA Crim 456.

Qaeda and helped transform London into a home-base for terrorists who participated in attacks in Madrid, Saudi Arabia and other countries.⁹

Prior to the “war on terrorism,” countries facing terrorist threats such as Spain, Turkey and the Russian Federation adopted laws criminalizing sympathetic speech that is supportive of violence, violent terrorist groups or terrorist objectives. In Spain, although the Penal Code provided for a general definition of apologie- provocation to commit an offence-¹⁰ it was later amended by Organic Act No. 7 of 2000 that provided for the criminalization of glorification of terrorism under Article 578.¹¹ The law makes it an offense to broadcast or publicly express any ideas or doctrines that justify or glorify terrorist crimes or their perpetrators. Punishment for the offence of glorifying terrorism ranges from one to two years of imprisonment.

Similarly, Turkey, which has experienced acts of violence in the southeastern part of the country carried out by the Kurdistan Workers’ Party (PKK)- a proscribed terrorist organization in the European Union (EU) and US- has taken several measures to penalize incitement to terrorism. In 2002, Turkey altered Article 7 of the Anti-Terrorism Law to prohibit propaganda crimes inciting to terrorist action in addition to supporting terrorist organizations and propaganda for them.¹² The Anti-Terrorism Law also criminalizes oral, visual and written propaganda which purpose is to destroy the territorial integrity or political unity of the country.¹³ In implementation of the Anti-Terrorism Law, former MP and the Sakharov human rights prize-winner, Leyla Zana, was sentenced to ten years of imprisonment for violating Article 7(2) of the Anti-Terrorism Law

⁹ Elaine Sciolino and Don Van Natta Jr., ‘For a Decade, London Thrived as a Busy Crossroads for Terror’ New York Times 10 July 2005, <<http://www.nytimes.com/2005/07/10/international/europe/10qaeda.html>> accessed 20 September 2009.

¹⁰ Article 18 (1), Spanish Penal Code (1995).

¹¹ Article 578, Spanish Penal Code as amended by Organic Act No 7/2000.

¹² Article 7.1 & 7.2, Anti-Terrorism Law as amended by Law No. 4744 of February 2002.

¹³ Article 8, Anti-Terrorism Law as amended by Law No. 4744 of February 2002.

by allegedly spreading terrorist propaganda for the PKK in several speeches, signaling in return state's abuse of such laws to quash PKK members and supporters.

The phenomenon of restraining free speech specifically, and freedom of expression generally, is not unique to counter-terrorism legislation and measures. As freedom of expression is a qualified right, major international and regional human rights instruments allow for states to impose specific restrictions on it.¹⁴ Such limitations on freedom of expression can be placed for particular aims among which are national security and public order. Furthermore, many constitutions and domestic laws allow for restricting freedom of expression for the interest of national security.

National security concerns facing the US since the earliest days of the American republic made the Federalists sanction free speech, which later became protected under the First Amendment of the American Constitution.¹⁵ Due to the increased Republican criticism of the Federalist government during the war with France, the Alien and Sedition Acts were enacted in 1798, making it a high misdemeanor to provide “false, scandalous and malicious writing” with the intention to attack the government and incite hatred and opposition against them.¹⁶ The Sedition Act, which was amended in 1918 to include additional offenses, was used during World War I to criminalize those who willfully “utter, print, write or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the US or the Constitution, or the military or naval forces.”¹⁷ More than two thousand people were convicted under this law for publicly opposing the war.¹⁸

¹⁴ See Article 19 of the ICCPR and Article 10 of the European Convention on Human Rights.

¹⁵ The Constitution of the United States, Amendment I.

¹⁶ Section 2, the Sedition Act (1798).

¹⁷ Section 3, the Sedition Act (1918), was repealed in 1921.

¹⁸ David Cole ‘The New McCarthyism: Repeating History in the War on Terrorism’, Harvard Civil Rights-Civil Liberties Law Review, 1, p.4.

In *Schenck v. United States*, the Supreme Court upheld the conviction of the defendant under the Espionage Act, which made interference in the recruitment and enlistment of soldiers illegal. Schenck, the General Secretary of the Socialist Party, was found guilty for distributing printed circulars suggesting the repeal of the Conscription Act and that the draft was a form of slavery.¹⁹ Delivering the judgment of a unanimous court, Justice Holmes stated that “the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”²⁰ Still, Holmes acknowledged that in “ordinary times” such speech would have found constitutional protection under the First Amendment and that the circumstances of war, which necessitated soldier recruitment, allowed for abridging free speech for the interest of national security.²¹ Another aspect of the Supreme Court’s Decision in *Schenk* is that the restriction of free speech was based on the intent and tendency to affect the willingness of Americans to join the army rather than the actual result of causing “substantive evil.”²² As a result, the Supreme Court decision in *Schenck* empowered the Congress to ban political criticism of war and the discouragement of people to join the draft.

Although laws governing wartime and terrorism are distinct, in both situations laws adopted by states seek to punish crimes, in addition to prevent them from occurring. Preventive justice, which is based on predictions of what someone might do rather than on the actual commission of crime, has been no less a feature of anti-terrorism laws aiming to prosecute people for what they say without having concrete proof of their engagement in definite harmful

¹⁹ Stone et al., *Constitutional Law*, Fifth edition, 2005, p.1065

²⁰ *Ibid*, 525.

²¹ *Schenck v. United States*, 249 U.S. 47 (1919). Justice Holmes said: When a nation is at war many things that might be said in times of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight.

²² Michael Kent Curtis, ‘Free Speech, “The People’s Darling Privilege”: Struggles for Freedom of Expression in American History’, 2000, p.391.

conduct.²³ As a result of the application of preventive law enforcement, states have been able to escape the judicial guarantees afforded to defendants by criminal law protections. One of the obvious elements that have fallen prey to the preventative justice is the presumption of innocence.

Dinah PoKempner argues that in the aftermath of 9/11, there has been an emerging trend among states not to only criminalize direct incitement to violence-which is a specific provocation, in public, of another to commit a criminal act-²⁴ but more so indirect incitement.²⁵ The former constitutes expression that might be understood to possibly incite to criminal action despite the lack of a clear causation that can be traced between the expression and the actual commission of crime.²⁶ She further suggests that the vagueness of laws has made it problematic to understand what speech is penalized; whether it is speech that “portrays[s] terrorism or terrorists...in a favorable light to an outside observer, or whether it must be specifically intended to spur violent criminal acts.”²⁷ The introduction of ambiguous and far-reaching laws has been coupled with an attempted elimination of some of the standard elements of criminal liability, such as *mens rea* which requires the presence of the intention to motivate others to commit a crime.²⁸ For example, under the UK Terrorism Act 2006, the offence of encouragement of terrorism includes those statements which are published with recklessness to “whether members of the public will be directly or indirectly encouraged” to commit terrorist acts.²⁹ As worded, one could face a sentence up to seven years of imprisonment even if it was unintended, and

²³ David Cole, ‘The New McCarthyism: Repeating History in the War on Terrorism’, Harvard Civil Rights-Civil Liberties Law Review, p.4.

²⁴ Elihu Lauterpacht, International Law Reports, Cambridge University Press; 1 edition, 2008, p.279

²⁵ Dinah PoKempner, A Shrinking Realm: Freedom of Expression Since 9/11, Human Rights Watch World Report, 2007, p.67.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Claire De Than, International criminal law and human rights, 2003, p.80.

²⁹ UK Terrorism Act 2006 (Chapter 11), Article 2(b) (ii) and Article 7(a).

maybe unimaginable, for the person that their published statements might encourage the public to commit a terrorist offence.

An additional characteristic of counter-terrorism legislation, in relation to the preventative justice paradigm, is the adoption of broad definitions of liability and expansion of the scope of responsibility so as to enable governments to cast a wide net on potential offenders and criminalize an extensive range of conduct, which would be otherwise legal. Amid the increased demands of the United Nations (UN) following 9/11 on states to establish sufficient mechanisms for criminalizing terrorists and the absence of an internationally accepted definition of terrorism, the majority of states introduced laws or redefined terrorism and terrorist offences vaguely and broadly. Adding to the uncertainty of newly adopted anti-terrorism offences is the adoption of some states, namely Jordan, of multiple laws under which terrorist charges can be brought.³⁰ Criminal law statutes have to be sufficiently clear and unambiguous in order to provide potential offenders with a clear notice of the act prohibited and the penalty imposed. However, the ambiguity of counter-terrorist legislation jeopardize the safeguards of criminal law and render individuals vulnerable to state abuse and the arbitrary application of the law.

The lack of the legal certainty in state regulations resulting from the adoption of preventative justice puts at stake the principles of fairness and promotes a culture of fear. In terms of freedom of expression, these laws have a chilling effect on speech and the meaningful exchange of ideas, especially those which are unpopular. Still, what looms as a real concern as more “preventive states” are emerging,³¹ is to what extent will pervasive and intrusive laws come to be part of our reality and an established norm? How much will these laws be utilized to repress dissenting voices rather than protect people?

³⁰ Both the Jordanian Penal Code and the Prevention of Terrorism Law can be used to punish terrorist offences.

³¹ Carol S. Steiker, ‘Foreword: The Limits of the Preventive State’, 1998, p.774

One can only speculate how far-reaching the counter-terror reactions will be. However, it is easy to foresee that these reactions have the potential to move towards a new separation of powers arrangement and to a restructuring of fundamental rights. The emerging paradigm is one of a preventive state...In the aftermath of 9/11, this preventive paradigm became increasingly applicable to the measures and practices that are taken against terrorism, but which affect the whole society (footnote omitted)...The measures are, to a great extent, not new. The new development is that the crossing of thresholds is becoming routine...Equally important for the emergence of the preventive state is that the border-crossing measures, which are being made permissible in the terrorism context, may become acceptable outside the global terrorism context, not simply for anti-crime purposes but also for the general administrative purposes of the welfare state.³²

2.2. National Security, Counter-Terrorism, and Repression

History does not fail to tell of how governments in times of war, emergencies and most recently terrorism, have the tendency to clamp down on their opponents by enacting laws which rhetorically serve to uphold national security. One could find proximity in the reactions of the US government, for example, during the Red Scare period in the 1940's, and current legal approaches to terrorism employed by states and which offer a cover for quashing opposition. During the Cold War with Russia, the US federalist government faced the threat of American communists' involvement in acts of espionage and the promotion of communist ideologies. Charges were brought against pro-communists, who are now perceived as not to have posed a real threat to the US, to suppress unfavorable anti-capitalist ideologies of Marxism and Leninism.

³² Andras Sajó, 'Symposium: Terrorism, Globalization and the Rule Of Law: From Militant Democracy to the Preventive State?', Yeshiva University, March, 2006, p.6.

Communist leaders were prosecuted for organizing a group ideologically committed to the idea of termination of the American capitalist system at some wholly undefined future point. As a practical matter, the prosecutions were brought to punish commitment to ideas, because the government found those ideas to be offensive. Nothing could be more inconsistent with the fundamental premises of democratic theory and free expression.³³

Although numerous prosecutions for the crime of espionage were held at that time, the state targeted a large number of communism advocates by charging them of uttering speech that was found to surpass the protections of the First Amendment.³⁴ These convictions were made possible under the Smith Act of 1940 that made it a criminal offence to conspire to teach the advocacy of the violent overthrow of government.³⁵ It was not only conspiring to violently overthrow the government that was prosecuted under the Smith Act, but rather conspiring to organize and indoctrinate others with the principles of communism, which were equated with calling for the dismantlement of the US system of government.³⁶

The constitutionality of the Smith Act was first tested in *Dennis v. United States*, in which eleven leaders of the Communist Party were charged with conspiring to organize an assembly of persons who teach and advocate the destruction and overthrow of the US government.³⁷ In a plurality opinion, the Supreme Court found that the Smith Act did not violate the First Amendment and that the defendants' actions created a substantial threat to national security. The Court's decision was criticized by Justice Black, who in his dissenting opinion,

³³ Martin H. Redish, 'Unlawful Advocacy and Free Speech Theory: Rethinking the Lessons of the McCarthy Era', 2004, p.13.

³⁴ Find law, 'Maintenance of National Security and the First Amendment, U.S. Constitution: First Amendment', <<http://caselaw.lp.findlaw.com/data/constitution/amendment01/13.html>> accessed 18 October 2009.

³⁵ Section 2 (a.1) of the Alien Registration Act or Smith Act of 1940: "Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government." <<http://www.law.cornell.edu/uscode/18/2385.html>> accessed 18 October 2009.

³⁶ Martin H. Redish, 'Unlawful Advocacy and Free Speech Theory: Rethinking the Lessons of the McCarthy Era', 2004, p.13.

³⁷ *Dennis V. United States*, 341 U.S. 494 (1951).

concluded that “[T]o believe that petitioners and their following are placed in such critical positions as to endanger the Nation is to believe the incredible.”³⁸

In the age of terrorism, counter-measures seemingly designed to preserve national security, have come to be regarded as manipulative tools directed at silencing political opposition. Governments, with little popularity, or which fear losing ground for alternative political, economic or religious ideologies, have utilized counter-terrorism laws to delegitimize dissenting voices. After the 9/11 attacks, the Chinese authorities moved to label the Uighur Muslim minority in Xinjiang as terrorists and employed anti-terrorism laws to suppress separatist messages and their religious practice.³⁹ This increased state control on Uighurs and gave way for numerous arrests and executions for what authorities deemed as prohibited religious and separatist activities.⁴⁰ In Saudi Arabia, anti-terrorism measures have resulted in prolonged and arbitrary detention of security suspects and the denial of their right to legal council. Since 2001, thousands of victims have suffered from anti-terrorism measures, including a number of human rights defenders and political reform advocates.⁴¹

The state’s prerogative to designate certain people, groups and acts as terrorist denotes the subjectivity in classifying terrorists and determining what constitutes terrorism. Laura Donohue argues that counter-terrorism measures not only function to uphold and bolster state legitimacy, but also reinforces the “otherness” of individuals and groups which the state labels as terrorists.⁴² Donohue suggests that the “otherness” of these individuals is emphasized by their vilification by the state and predetermined guilt; which in return validates the employment of

³⁸ *Dennis V. United States*, 341 U.S. 494 (1951).

³⁹ Human Rights Watch, ‘Devastating Blows: Religious Repression of Uighurs in Xinjiang’ (11 April 2005), p.16.

⁴⁰ *Ibid*, p.6.

⁴¹ Amnesty International, ‘Saudi Arabia: Countering Terrorism with Repression’ (11 September 2009) AI Index: MDE 23/025/2009, p.2.

⁴² Victor V. Ramraj, Michael Hor and Kent Roach (eds.), ‘Global Anti-Terrorism Law and Policy’, 2005, p.22-23.

harsh strategies adopted under a national security approach. Moreover, just as terrorism aims to reach a broader audience, so do counter-terrorism provisions; relying on the element of instilling fear among potential offenders, state sponsors and sympathizers, the state adopts measures targeting supporters in addition to those who carry out violent attacks.⁴³

States' tactics of utilizing legal instruments to target and suppress political opposition offers a cloak of legitimacy to counter-measures implemented by them. After all, state authorities practice their legitimate powers when criminalizing behavior that is deemed to jeopardize the state's citizenry and welfare. On one hand, the categorization of political opponents as a threat to national security and their punishment under anti-terrorism legislation, serves as a means to discredit dissenters, their messages, opinions and agendas. Through this method the state imposes on them the label of criminals; making their outlawing a justifiable, if not a necessary measure to protect state security. Designating political dissenters in the same category of those who commit terrorist acts essentially creates hesitance and fear among the public from exhibiting support and publicly identifying with their causes. Furthermore, it empowers the state to widen the notion of liability related to terrorist offences; thus allowing for the penalization of individuals who express sympathy to the motivations and ends claimed by opposition groups. The previous contributes to the political marginalization of government adversaries in light of weakened community support, thus rendering political dissenters as pariahs.

On another hand, the authority of the state and its legitimacy are reinforced by ostensibly responding to national security threats through employing a "rule of law" paradigm, under which terrorism is established as a crime and is subject to criminal prosecution.⁴⁴ Unlike what terrorists resemble, the state conveys to the public that it is more moral and just in its methods of holding

⁴³ Victor V. Ramraj, Michael Hor and Kent Roach (eds.), 'Global Anti-Terrorism Law and Policy', 2005, p.23.

⁴⁴ Abeer Ghazi Jarrar, 'Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism', 2009, p.14.

accountable those posing a national threat and in meeting its responsibilities of maintaining state stability and security. Professor in Political Science and author of several publications on state repression, Christian Davenport, contends that initially state coercive tactics are taken with the approval of the public in the existence of threats to national security.⁴⁵ People view repressive state behavior as legitimate and necessary to maintain stability in times of crisis. Yet, the writer claims that the existence of dissent usually generates increased repressive state strategies, in order for authorities to reinforce their political power.

When behavior takes place that threatens the safety of citizens and/or the security of government personnel, policies and institutions (e.g., demonstrations, acts of terrorism or civil war), it is expected that relevant political agents will apply repressive behavior in an effort to eliminate the challenging activity and to restore domestic order; this is commonly referred to as the “Threat Model”. For over 30 years, quantitative analyses have supported this relationship. Across time, space, measures and statistical methods, dissent has increased repression in every single investigation of the topic.⁴⁶

Davenport argues that the public relies on authorities to maintain the status quo and eradicate impediments experienced by the state. Consequently, people are prone to accept the application of state restrictive measures to control, for example, widespread demonstrations or terrorist acts,⁴⁷ in return of restoring public order. At another level, Davenport suggests that countering threatening behavior improves the state’s chances of surviving politically and underlines its authority.⁴⁸ However, the author underscores that responses adopted by authorities might be excessive and unproportional to the dangers posed before the state;⁴⁹ this can prove to be a slippery slope as authorities can claim their need for, what might be deemed as, unnecessary

⁴⁵ Christian Davenport, ‘A License to Kill: Dissent, Threats and State Repression in the United States’, paper presented at the 101st Annual Meeting of the American Political Science Association, 2000, p.7.

⁴⁶ Ibid, p.3.

⁴⁷ In his paper ‘A License to Kill’, Christian Davenport refers to boycotts, demonstrations and acts of terrorism as behavioral threats as opposed to political threats such as statements by political leaders, congressional hearing and creating laws which might pose potential future threats. See p.7-8.

⁴⁸ Christian Davenport, ‘A License to Kill: Dissent, Threats and State Repression in the United States’, paper presented at the 101st Annual Meeting of the American Political Science Association, 2000, p.7.

⁴⁹ Ibid, p.4.

repressive strategies, to meet challenges which they portray as imminent. Such opportunistic state behavior holds especially true in cases in which governments seek to eliminate their adversaries by exploiting situations of crisis and instabilities to their advantage. For instance, after the bombings in Jordan in 2005 took place, the government enacted a series of laws that infringed on freedom of expression while simultaneously expanding the definition of terrorism and terrorist offences. The introduction of such laws made government opponents vulnerable to being penalized for publicly criticizing state policies and led to the prosecution of numerous journalists and politicians.

The enactment of counter-terrorism laws of repressive nature on the domestic level must be understood within the context of the international legal order, which to an extent sanctioned governments to strengthen their efforts in combating terrorism while ignoring human rights commitments. This has had the effect of undermining human rights guarantees and enabled states to apply manipulative laws to quash voices critical of governments and their policies.

V. CHAPTER 3: International and Regional Instruments: Protections and Dilemmas

The current popular practice among states of introducing far-reaching anti-terrorism laws that could potentially result in suppressing freedoms can be partially attributed to the shift in international and regional laws aimed at countering terrorism in the aftermath of 9/11. International bodies, such as the UN, have adopted several binding and non-binding resolutions to affirm states' responsibility and demand the prosecution of a wide range of terrorist related activities, among which is incitement to terrorism. Such measures have influenced the laws adopted by regional bodies, such as the Council of Europe, and helped shape the responses of states in combating terrorism. Amid the absence of a universally acceptable definition of terrorism, states have had greater flexibility and power in proscribing terrorist offences and expanding the notion of criminal liability. Consequently, several individuals, such as political opponents and migrants, have been exposed to human rights abuses under the pretext of countering terrorism.

3.1 Terrorism in International Law

For decades, reaching a universally acceptable definition of terrorism has been a struggle for states and organizations seeking to outlaw terrorism at the international level. The lack of political consensus among states regarding what acts constitute terrorism and which actors should the law aim to punish, hindered efforts of drawing a general definition of terrorism.

Several states have argued against considering acts of national armed struggle carried out in pursuance of the right to self-determination as terrorism crimes.⁵⁰ Simultaneously, others have objected to excluding armed resistance from a definition of terrorism. Additional political divergence among states has stemmed from whether a definition of terrorism should address the issue of state terrorism inflicted on civilians.⁵¹ To date, the questions of freedom fighters and state terrorism continue to dominate discussions relating to the adoption of a universal definition of terrorism.⁵²

Until recently, the UN has been inclined to elude from outlining a definition of terrorism, while at the same time adopting conventions that specifically aim to prohibit certain criminal acts related to it, beginning with the Convention on Offences and Certain Other Acts Committed on Board Aircraft in 1963.⁵³ So far, thirteen universal anti-terrorism legal instruments have been developed by the UN and its specialized agencies.⁵⁴ However, the first convention that attempted to define terrorism was the International Convention for the Suppression of the Financing of Terrorism (ICSFT) which was adopted in 1999, stating that:

Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, 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 to abstain from doing any act.⁵⁵

⁵⁰ Christian Walter, 'Terrorism as a challenge for national and international law: security versus liberty?', 2004, p.35.

⁵¹ Philip Alston, Ryan Goodman, Henry J. Steiner (eds.), 'International Human Rights in Context: Law, Politics, Morals', 3rd edition (2007), p.376.

⁵² Christian Walter, 'Terrorism as a challenge for national and international law: security versus liberty?', Springer, Berlin, 2004, p.33.

⁵³ Ibid.

⁵⁴ UN Action to Counter Terrorism, International Instruments to Counter Terrorism, <<http://www.un.org/terrorism/instruments.shtml>> accessed 21 October 2009.

⁵⁵ UN General Assembly, International Convention for the Suppression of the Financing of Terrorism (9 December 1999) No. 38349, Article 2, para 1(b).

The first requirement under the definition of terrorism is the intention to commit physical violence against persons. Departing from an ongoing practice amongst several states to proscribe, under national anti-terrorism legislation, destructive violence against objects and public facilities; the Convention declines from including such acts under its framework defining terrorism.⁵⁶ For example, the UK Terrorism Act of 2000 proscribes as a terrorist offence, acts that “involve the serious damage of property” or “interfere with or seriously to disrupt an electronic system.”⁵⁷ However, intimidating the public, a classical element of terrorism, is no longer a necessary requirement for an act to qualify as terrorist. Compelling governments or international organizations to do or refrain from doing certain acts has been made interchangeable with the element of causing fear and intimidation among the public.

The Convention follows a restrictive approach in defining terrorism compared to other counter-terrorism instruments, such as the Arab Convention for the Suppression of Terrorism (ACST), which adopts a broader formulation covering acts of “violence or threats of violence.”⁵⁸ Hence, under the Arab Convention it is not necessary for violence to occur for an act to amount to terrorism. Moreover, the ICSFT necessitates the existence of two subjective elements; first the element of criminal intent has to be present; secondly, the motivation behind the act, which is to produce public intimidation or compel the government. The objectives of terrorist acts as determined by the Convention involve solely the previous two purposes underlying the commission of terrorism. Yet, under other anti-terrorism initiatives that adopt a wide definition of terrorism, other motivations are incorporated.⁵⁹ For instance, the Council of Europe

⁵⁶ Christian Walter, ‘Terrorism as a challenge for national and international law: security versus liberty?’, 2004, p.34.

⁵⁷ UK Terrorism Act 2000, Part I, Article 1, para 2(A).

⁵⁸ Arab Convention for the Suppression of Terrorism (ACST), Article 1(2).

⁵⁹ Helen Duffy, ‘The ‘War on Terror’ and the Framework of International Law’, 2005, p.33.

Framework Decision on Combating Terrorism recognizes as terrorist crimes those acts which goal is to “seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization.”⁶⁰ Additionally, the ICSFT does not demand that terrorists have an ideological or political motivation.

It can be discerned that the Convention draws on the most common and minimal requirements enacted under most domestic legal orders defining terrorism in order to avoid controversy.⁶¹ Prior to 11 September 2001, merely four states had ratified the ICSFT. Following the attacks on the US, the UN called on countries to join the Convention; today there are up to 171 states that are party to it.⁶² Still, the ratification of this legal instrument did not eliminate issues of controversy between states regarding a universal definition of terrorism, as numerous states made reservations to the Convention. Jordan, namely, declared that the government “does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people’s right to self-determination as terrorist acts within the context of paragraph 1(b) of article 2 of the Convention.”⁶³ It can be construed that conflicting state views regarding what constitutes terrorism has afforded states with more space to enact ambiguous anti-terrorism laws to meet challenges specific to their context. Yet, it has also presented authoritative states with an opportunity to enact counter-measures at the expense of human rights safeguards and obligations.

⁶⁰ Article 1, Council Framework Decision on Combating Terrorism, (2002/475/JHA), 13 June 2002.

⁶¹ Christian Walter, ‘Terrorism as a challenge for national and international law: security versus liberty?’, 2004, p.33.

⁶² United Nations (UN) Treaty Collection, Status of the International Convention for the Suppression of the Financing of Terrorism <http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en> accessed 14 November 2009.

⁶³ UN Treaty Collection, Status of the International Convention for the Suppression of the Financing of Terrorism <http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en> accessed 14 November 2009.

3.2 United Nations Human Rights Norms

Under major international human rights instruments and principles, freedom of expression is a qualified right that can be subjected to specific limitations. Article 19 of the ICCPR defines the right to free expression as the freedom to “seek, receive and impart information and ideas” whether it is “orally, in writing or in print, in the form of art, or through any other media.”⁶⁴ State restrictions on freedom of expression can be justified on the grounds of national security, public order, public morals or health or the respect of the reputation of others.⁶⁵

In General Comment No.10 on Article 19, the Human Rights Committee highlighted that restrictions on freedom of expression should be tailored narrowly and not to put at stake the right itself.⁶⁶ Controls imposed by states have to be strictly “provided by law and necessary” to achieve the legitimate aims of national security and public order.⁶⁷ However, national security cannot serve as a pretext for the arbitrary interference in the right to freedom of expression. Thus, states are required to ensure that laws proscribing expression are in place, accessible, unambiguous and that individuals can foresee whether a certain act is illegal. Additionally, countries have to show that the measures taken are least restrictive means possible for achieving the legitimate aim in question and that limitations will have the effect of diminishing or eliminating the threat claimed.⁶⁸

⁶⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 19 (2).

⁶⁵ Ibid, Article 19 (3).

⁶⁶ UN High Commissioner for Human Rights, CCPR General Comment No. 10: Freedom of expression (Art. 19), 19th Sess., 29/06/83, (1983), para 4.

⁶⁷ Ibid.

⁶⁸ Sandra Coliver, ‘Secrecy and liberty: national security, freedom of expression, and access to information’, 1999, p.4.

The state bears the burden of demonstrating that the expression prohibited poses a threat to its security and that restrictions imposed are not in pursuance of other unrelated objectives. The Siracusa Principles, a non binding document which resulted from the work of international experts interpreting limitations and derogation provisions of the ICCPR,⁶⁹ explain that “[N]ational security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”⁷⁰ The Principles further affirm that state limitations which aim at “suppressing opposition ... or at perpetrating repressive practices against its population” do not qualify as a legitimate ground for curtailing expression for the aim of national security.

On one hand, Article 4 of the ICCPR permits states to temporarily derogate from particular rights, such as freedom of expression, in times of public emergency. Under the Covenant, states have wide discretion in enacting legislation for the protection of national security and countering terrorism. On the other hand, the ICCPR provides for substantive and procedural frameworks which states have to uphold when proclaiming emergencies in order to protect against the abuse of rights and freedoms. General Comment No. 29 of the Human Rights Committee highlights that not every public unrest or catastrophe amounts to a public emergency; Article 4 can only be invoked where there is a danger that “threatens the life of the nation.”⁷¹ The ICCPR conditions states to “officially proclaim” the state of emergency before making any derogations under Article 4.⁷²

⁶⁹ Curtis Francis Doebbler, ‘International Human Rights Law: Cases and Materials’, CD Pub., 2004, p. 301

⁷⁰ UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984), para 19.

⁷¹ ICCPR, Article 4(1&3).

⁷² ICCPR, Article 4.

States are required to justify the measures taken in implementation of the derogation and show that they are legitimate and necessary in light of the circumstances.⁷³ Therefore, the ICCPR allows only for derogating measures that are proportionate and “strictly required by the exigencies of the situation.”⁷⁴ Furthermore, Article 4 paragraph 1 necessitates that limitations imposed on the derogable rights are not discriminatory “solely on the grounds of race, color, sex, language, religion or social origin.” The Article does not prohibit any form of discrimination on the mentioned grounds; measures that are arbitrary and unjustifiable are contrary to ICCPR. Consequently, if there is a specific group threatening the national security of other communities, derogatory measures can target them explicitly.⁷⁵

Although expression inciting to terrorism can be justifiably restricted under the limitation clause of Article 19 (3) of the ICCPR and Article 20, which prohibits advocating for “national, racial or religious hatred” inciting to “discrimination, hostility or violence,” following the 9/11 attacks, the UN called for additional steps to be taken by states to suppress terrorism. In Resolution 1373, which was unanimously adopted, the United Nations Security Council (UNSC) demanded states to establish criminal liability to punish persons involved in the different areas of financing, planning and supporting terrorist acts.⁷⁶ Paragraph 5 of the Resolution further declares the incompatibility of knowingly inciting to terrorism with the aims and principles of the UN.⁷⁷ The Resolution also established the Counter-Terrorism Committee (CTC) to follow up on legislative measures taken by states to fight terrorism and enhance international cooperation in

⁷³ UN, General Comment No. 29: States of Emergency (article 4), CCPR/C/21/Rev.1/Add.11, 2001, para 4.

⁷⁴ Ibid.

⁷⁵ Philip Alston and Ryan Goodman, ‘International Human Rights in Context: Law, Politics, Morals’, 3rd edition, 2008, p.388.

⁷⁶ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, 2(e): All States shall: Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

⁷⁷ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 5.

the area of security.⁷⁸ However, the resolution did not address human rights issues and their protection in the context of terrorism; simultaneously the CTC early on failed to evaluate whether states' counter-terrorism measures were in harmony with human rights laws and standards.⁷⁹ The previous led to the criticism of Resolution 1373 for having a negative impact on human rights and giving authoritative and opportunistic countries an excuse to enact laws violating civil and political rights in the name of fighting terrorism.

The London bombings in 2005 brought about the non-binding UNSC Resolution 1624 condemning incitement to terrorism and the glorification of terrorism. The resolution highlighted the responsibility of all states in fighting against extremism, intolerance and the incitement to terrorism.⁸⁰ The UN encouraged states to introduce appropriate measures which “prohibit by law incitement to commit a terrorist act,” “prevent such conduct” and “deny safe haven” for persons thought to be guilty of such action.⁸¹ Unlike Resolution 1373, state measures taken in pursuance of Resolution 1624 had to observe human rights laws and commitments under international law, “in particular international human rights law, refugee law, and humanitarian law.”⁸²

Still, due to the increased concern about human rights restraint and manipulation of anti-terrorism strategies, the UNSC acting under mandatory Chapter VII of the Charter of the UN adopted Resolution 1566 which further required states to comply with human rights laws in fighting and prosecuting terrorist acts.⁸³ Later in 2004, the UN Commission on Human Rights appointed an independent expert to assist the UN High Commissioner for Human Rights in

⁷⁸ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, para 6.

⁷⁹ Rosemary Foot, ‘The United Nations, Counter Terrorism, and Human Rights: Institutional Adaptation and Embedded Ideas’, 2007, p. 496.

⁸⁰ UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624, para 1.

⁸¹ Ibid.

⁸² Ibid, para 4.

⁸³ UNSC Res 1566 (8 October 2004) UN Doc S/RES/1566 (2004), para 2.

promoting and protecting human rights and fundamental freedoms while fighting terrorism.⁸⁴ In his report, independent expert Robert Goldman recognized some of the inadequacies of the UN's initial approach to terrorism, stating that:

In the wake of the 11 September 2001 attacks, the Security Council on 28 September 2001 adopted resolution 1373 (2001), which obligated States, inter alia, to implement more effective domestic counter-terrorism measures and created the Counter-Terrorism Committee to monitor those measures. That resolution, regrettably, contained no comprehensive reference (footnote omitted) to the duty of States to respect human rights in the design and implementation of such counter-terrorism measures. This omission may have given currency to the notion that the price of winning the global struggle against terrorism might require sacrificing fundamental rights and freedoms.⁸⁵

It is argued that the UN disregard of human rights in its early responses and the ineffective role of the CTC in observing the compliance of anti-terror laws with human rights standards have contributed to state practices in suppressing freedoms and targeting their opponents.⁸⁶ Despite the current efforts of the UN to emphasize the centrality of protecting human rights in the fight against terrorism, the former UN strategies helped shape both domestic and regional instruments and empowered states to enact vague laws for proscribing speech inciting to terrorism with negative impacts on the right to freedom of expression.

3.3 Regional Instruments

3.3.1 Standards in the Council of Europe

The review of the Council of Europe standards in this chapter, aims to illustrate the influence of the UN on regional bodies and how it trickles down to domestic legal orders. In

⁸⁴ UNCHR Res 2004/87 (21/04/2004) UN Doc E/CN.4/RES/2004/87, para 10.

⁸⁵ UNCHR, Sixty-first session, 'Report of Robert K. Goldman, independent expert on the protection of human rights and fundamental freedoms while countering terrorism' (7 February 2005) E/CN.4/2005/103, para 6

⁸⁶ Rosemary Foot, 'The United Nations, Counter Terrorism, and Human Rights: Institutional Adaptation and Embedded Ideas', 2007, p.499-501.

2005, the Council of Europe adopted the Convention on the Prevention of Terrorism (CoECPT), which came into force in 2007. Currently, the Convention is signed by 23 countries and ratified by 20.⁸⁷ Guided by the UN resolutions, the CoECPT addresses mainly the issues of public provocation to commit terrorist offences and the recruiting and training of terrorists. The Convention is the first terrorist-related regional instrument that specifically prohibits direct and indirect incitement to terrorism. Although incitement to violence constitutes an offence in most jurisdictions, the Convention aims to criminalize speech that supports and condones terrorism. The report of the Committee of Experts on Terrorism concerning “incitement to terrorism” identifies “public expression of praise, support, or justification of terrorists and/or terrorist attacks” as forms of indirect public provocation that amount to incitement.⁸⁸ Thus, the CoECPT goes beyond the proscription of speech directly inciting to violence by rendering unlawful the public provocation to commit a terrorist offense.⁸⁹ The previous offence is defined as the:

Distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.⁹⁰

The Explanatory Report addresses the limitations of the scope of Article 5, which entails the presence of specific intention to incite to terrorism and that the message made available to the public “causes a danger” of terrorist acts to be carried out.⁹¹ Yet it is not necessary for a terrorist

⁸⁷ Council of Europe Convention on the Prevention of Terrorism (CoECPT) (CETS No. 196), Chart of Signatures and Ratifications, Status as of 22/11/2009
<<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=196&CM=8&DF=22/11/2009&CL=ENG>>
accessed 22 November 2009.

⁸⁸ CoE Committee of Experts on Terrorism (CODEXTER), 3rd meeting (6-8 July 2004), p.5.

⁸⁹ David Banisar, 'Speaking of Terror', Media and Information Society Division, Directorate General of Human Rights and Legal Affairs, Council of Europe (November 2008), p.8.

⁹⁰ CoECPT (CETS No. 196), Article 5.

⁹¹ CoECPT (CETS No. 196), Explanatory Report, para 99.

offence to be committed for the act to constitute a crime.⁹² Protections against the abuse of the Convention for restraining freedoms are another dimension that narrows the scope of Article 5. The CoECPT highlights the importance of respecting human rights in the fight against terrorism. Article 12 necessities that states uphold human rights obligations under the ICCPR and European Convention on Human Rights (ECHR), in particular those pertaining to freedom of expression, association and religion.

The ECHR adopts a somewhat similar definition to freedom of expression as the ICCPR. Under Article 10 of the ECHR, freedom of expression is the “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”⁹³ The second paragraph of Article 10 specifies “interests of national security, territorial integrity or public safety” as legitimate grounds for restricting freedom of expression.⁹⁴ Limitations on freedom of expression have to be prescribed by law and meet the principle of legal certainty. Further, the interference has to “necessary in a democratic society” and “proportional to the legitimate aim pursued.” In its interpretation of Article 10, the European Court of Human Rights (ECtHR) on freedom of expression emphasized that speech that is of offensive nature is entitled to the protection of the ECHR:

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.⁹⁵

⁹² CoECPT (CETS No. 196), Article 8.

⁹³ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended by Protocol No. 11) (ECHR), Article 10.

⁹⁴ ECHR, Article 10(2).

⁹⁵ *Ceylan v. Turkey* (Application no. 23556/94) (1999), para. 32.

In a recent judgment in 2008, *Leroy v. France*, the Court examined the right to freedom of expression in relation to glorification of terrorism.⁹⁶ The applicant, a cartoonist, published a drawing in a Basque magazine on the 13 September 2001, depicting the attack on the twin towers with the caption: “We have all dreamt of it... Hamas did it.” He contended that the drawing aimed to demonstrate the fall of American imperialism and that he did not reflect on the human suffering caused by the attacks. The applicant and the magazine publisher were convicted for complicity in condoning terrorism under the French Press Act of 1881. The French court fined each of them with EUR 1,500.⁹⁷

The applicant filed a complaint to the ECtHR against France for violating Article 10 of the Convention. The Court found that the conviction of the applicant amounted to an interference in his right to freedom of expression, but that it pursued the legitimate aims of preserving public order and prevention of disorder and crime.⁹⁸ In a unanimous decision, the Court concluded that there was no violation of the applicant’s rights under Article 10. According to its reasoning, the applicant, through the drawing and the caption added, expressed approval and support for the perpetrators of 9/11 attacks and the violent destruction of American imperialism.⁹⁹ The timing of publishing the drawing and the place in which it was published, were considered by the Court as factors which increased the responsibility of the applicant and their effect on stirring violence and public disorder in a volatile region of the Basque.

The concerns raised about the CoECPT serving as a reason for European state members to lower the bar permitted for freedom of expression, resounds when one considers how *Leroy v.*

⁹⁶ *Leroy v. France* (Application no. 36109/03) (2008).

⁹⁷ Dirk Voorhoof, ‘European Court of Human Rights: where is the ‘chilling effect’? Conviction of cartoonist for drawing 9/11-cartoon condoning terrorism is not a violation of freedom of expression as guaranteed by Article 10 of the Convention’, 2008, p.1.

⁹⁸ *Ibid*, p.2.

⁹⁹ *Ibid*.

France decision will shape the future of speech deemed as condoning terrorism and what expression will find protection under the ECHR. The judgment of the Court was criticized for its negative implications on freedom of expression, in particular its chilling effect on journalistic works that are politically charged and provocative.¹⁰⁰ Although the cartoon may be offensive, it is questionable whether it has the impact of inciting to violence in a way that would encourage people to support or take part in terrorism. Additionally, the Court does not seem to be consistent with its previous case-law and position in protecting shocking and offensive ideas. Consequently, the Court's finding risks impeding on the critical reporting and treatment of news and events.

In reality, the CoECPT was used by some member states to validate the adoption of broad legal measures proscribing unpopular, yet legitimate speech, and condemn extremist thought under the cover of incitement to terrorism. In the House of Lords debate on the UK Terrorism Act 2006, the Minister of State justified introducing the glorification of terrorism offence, explaining that it was incumbent on the UK to adopt such provisions in order to ratify the Convention and fill a legal vacuum in British law.¹⁰¹ Meanwhile, Human Rights Watch expressed that the Bill duplicated other legislation criminalizing expression inciting to terrorism.¹⁰² The report highlighted the existence of legal frameworks criminalizing incitement, which made it possible for the UK to convict hate preacher, Abdullah el-Faisal, for his provocative speech encouraging the killing of non-Muslims, prior to introducing the Terrorism Act of 2006.¹⁰³

¹⁰⁰ Dirk Voorhoof, 'European Court of Human Rights: where is the 'chilling effect'? Conviction of cartoonist for drawing 9/11-cartoon condoning terrorism is not a violation of freedom of expression as guaranteed by Article 10 of the Convention', 2008, p.3.

¹⁰¹ Hansard HL, cols1386-7 (21 Nov 2005).

¹⁰² Human Rights Watch, 'Briefing on the terrorism bill 2005, Second Reading in the House of Lords' (November 2005) <<http://www.hrw.org/legacy/backgrounder/eca/uk1105/uk1105.pdf>> accessed 14 April 2009, p.8.

¹⁰³ Public Order Act 1986 which makes it an offence to use 'threatening, abusive or insulting words or behavior with the intention of stirring up racial hatred'.

3.3.2 The Arab Convention for the Suppression of Terrorism

One of the instruments that have influenced Jordan in defining terrorism is the Arab Convention for the Suppression of Terrorism (ACST) adopted by the Arab League. The League was established in 1945 to facilitate political, cultural and economic collaboration between Arab countries. The Charter of the Arab League, which was drafted and signed by the representatives of independent Arab states,¹⁰⁴ articulates that the purpose of forming the Arab League is to increase cooperation between Arab states, promote relations between them and safeguard their independence and sovereignty.¹⁰⁵ Currently, there are twenty-two Arab states that are party to the Arab League. In 1998, the ACST was adopted by the Arab League member states and came into force in May 1999. Although the Charter of the Arab League does not refer to human rights or the UN;¹⁰⁶ the ACST affirms the Arab League's commitment to "the tenets of the Islamic Shari'a," "the humanitarian heritage of the Arab Nation" and "the Charter of the United Nations and all the other international convents and instruments to which the Contracting States to this Convention are parties."¹⁰⁷ The ACST defines terrorism as:

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.¹⁰⁸

¹⁰⁴ Syria, Lebanon, Jordan, Iraq, Egypt, Yemen and Saudi Arabia drafted the Charter of the Arab League and it was first signed by these states. A representative of Palestinian parties took part as an observer. Arab League website: <http://www.arableagueonline.org/las/arabic/details_ar.jsp?art_id=185&level_id=60> accessed 10 November 2009.

¹⁰⁵ Charter of the Arab League (1945), Article 2.

¹⁰⁶ The lack of reference to the United Nations and human rights instruments in the Charter of the Arab League can be attributed to the fact that the Arab League was founded prior to the United Nations.

¹⁰⁷ Preamble of the Arab Convention for the Suppression of Terrorism.

¹⁰⁸ ACST, Article 1(2).

On an initial reading, the law seems to offer a broad definition of terrorism by its inclusion of the element of “threat of violence,” coupled with the absence of a definition of what constitutes violence. The notion of violence extends to acts against the environment and public and private property, in addition to those against persons. Consequently, it allows for an extensive interpretation, and proscription of acts, that are legal, but nevertheless might qualify as terrorism under the legal framework of the ACST. For instance, large-scale demonstrations resulting in minor damages in public facilities can be deemed as terrorist offences. Moreover, the incorporation of the “threat of violence” broadens the criminal responsibility of individuals, who may not have actually committed violence, but are presumed by the state to pose a threat of using violence. The previous, renders political opponents vulnerable as they could be targeted for organizing political activities, such as rallies, that the state might deem as advancing criminal ends, especially if such events accidentally result in violence.

Article 2 goes on to list attacks on “kings, heads of state or rules” or “crown, princes, vice presidents, prime ministers or ministers” of member states as terrorist offences.¹⁰⁹ The Convention stipulates that such offences are not political crimes even if they are politically motivated. What amounts to an attack is left undefined by the Convention; expression criticizing the mentioned personas could be construed as an attack on them, hence constituting a terrorist offence. The ACST places an obligation on states to arrest and prosecute individuals accused of committing terrorist offences.¹¹⁰ Further, it permits the extradition of those convicted of terrorism subject that it’s in harmony with the Convention’s provisions.

A report by Amnesty International concluded that the broad and vague definition of terrorism under the Convention fails to comply with the requisite of legal certainty in human

¹⁰⁹ ACPT, Article 2 (b. (i & ii)).

¹¹⁰ ACPT, Article 3 (II.1).

rights and humanitarian law.¹¹¹ It also expressed concern about the possibility of abusing the ACST in infringing on freedoms of assembly and expression.¹¹² While the ACST has taken positive steps to proscribe and condemn terrorism, its failure to explicitly demand member states' observance of human rights and humanitarian law in applying its provisions, poses a threat to the human rights of individuals charged with terrorism. This can be demonstrated by requiring states to arrest and prosecute those convicted of terrorism, with no reference to international human rights standards that guarantee the right to a fair trial and due process.

To date, seventeen Arab countries ratified the ACST.¹¹³ In practice, the Convention had a significant influence on domestic measures and legislation enacted by Arab states to fight against terrorism. Jordan's newly adopted Prevention of Terrorism Law and emendations to its Penal Code, draw closely on the definition of terrorism adopted by the Convention. Clearly, the adoption of a similar paradigm to the Convention in Jordan promised to present various challenges for preserving and promoting human rights in the country.

¹¹¹ Amnesty International, 'The Arab Convention for the Suppression of Terrorism: A serious threat to human rights' (9 January 2002) AI Index IOR 51/001/2002, p.18.

¹¹² Ibid, p.42.

¹¹³ Countries that ratified the Arab Convention for the Suppression of Terrorism are: Palestine, Bahrain, United Arab Emirates, Egypt, Saudi Arabia, Algeria, Jordan, Tunisia, Sudan, Libyan Arab Jamahiriya, Yemen, Oman, Lebanon, Syrian Arab Republic, Morocco, Djibouti and Qatar. See General Assembly, Security Council, A/58/730, 10 March 2004, Fifty-eighth session, Agenda item 156, Measures to eliminate international terrorism. <<http://domino.un.org/UNISPAL.NSF/1ce874ab1832a53e852570bb006dfaf6/1928e24a0e1b2d9985256e68006ee40d?OpenDocument>> accessed 10 November 2009.

VI. CHAPTER 4: Jordan and Countering Terrorism

Since its independence, Jordan has been subject to several national security threats. Due to its geopolitical situation, the country has been vulnerable to conflicts and economic instabilities which have required it at times to take stringent measures to ensure domestic stability. Yet, this has often been at the expense of the rights of Jordanian citizens. As a response to the “war on terrorism”, Jordan passed Temporary Law No. 54 of 2001 altering the definition of terrorism while curtailing the right to freedom of expression and assembly. Moreover, in 2005, Jordan adopted its first counter-terrorism act expanding crimes which fall under terrorism. The Jordanian government’s practices under counter-measures have been questioned by political opponents, citizens and international human rights organizations at large, who feel that the laws are working against Jordanians and placing their rights in danger.

4.1 Background Information about Jordan

Jordan gained independence from the British Mandate in 1946. The Jordanian Constitution was passed in 1952 organizing the government as a hereditary monarchy with a parliamentary system.¹¹⁴ The executive power vests in the King who appoints the prime minister and his cabinet and has power to dismiss them.¹¹⁵ Jordan has a bicameral parliament which consists of the Senate and Chamber of Deputies.¹¹⁶ The Senate, who should be no more than half of the members of the Chamber of Deputies, is appointed by the King, while the lower house is

¹¹⁴ Article 1, Constitution of Jordan (1952).

¹¹⁵ Ibid, Article 35.

¹¹⁶ Ibid, Article 25.

elected directly by the general public. The King convenes and adjourns the National Assembly and also has the authority to dissolve both houses.¹¹⁷ Among the powers of the National Assembly are that domestic laws and international agreements have to be approved by both houses before they come into force. The Chamber of Deputies can initiate legislation in addition to its prerogative to review, amend, reject or accept draft laws.¹¹⁸ Although ministers are appointed by the King, the Chamber of Deputies can cast a vote of no confidence given that it is by an absolute majority of all its members.¹¹⁹

After the Arab-Israeli war in 1967, King Hussein imposed martial law in Jordan, leading to the introduction of military courts and suspension of parliamentary politics for twenty two years. The adoption of martial law aimed to respond to the country's political instabilities, threats of terrorism and security risks posed by Palestinian armed groups.¹²⁰ During that period, freedom of assembly and speech were greatly curtailed; the state controlled newspapers and press and publications were subject to censorship.¹²¹ Separatist, nationalist and communist political opponents, who took the streets to express their opinion, were quashed by security and army forces. Eventually, many of the political opposition members were either imprisoned or exiled.¹²² Growing tensions between the Palestinian guerilla and Jordanian authorities post the 1967 war culminated in the Black September civil war in 1970.¹²³ The conflict between West Bank Jordanians and authorities was considered to pose a threat to the sovereignty of the state,

¹¹⁷ Article 34 s.3, Constitution of Jordan (1952).

¹¹⁸ Ibid, Article 91.

¹¹⁹ Ibid, Article 53.

¹²⁰ Abeer Ghazi Jarrar, 'Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism', 2009, p.15.

¹²¹ NY Times, 'Jordan Plans to Lift Martial Law', (20 December 1989), <<http://www.nytimes.com/1989/12/20/world/jordan-plans-to-lift-martial-law.html>> accessed 1 November 2009.

¹²² Kathrine Rath, 'The Process of Democratization in Jordan', Middle Eastern Studies, 1994, p.534.

¹²³ Ibid.

which entailed King Hussein to deploy the army to confront Palestinian fighters, who were later expelled along with the Palestinian Liberation Organization (PLO).

In 1989, Jordan started the process of political liberalization following a series of protests which spread from the southern city of Ma'an to other areas in the country. Demonstrations sparked amidst the suppression of political freedoms and International Monetary Fund (IMF) structural reforms resulting in increases in the prices of bread and fuel.¹²⁴ Public unrest in Ma'an was met with army intervention and gun battles with the residents of the area, leading to the death of five people and injury of thirty-four.¹²⁵ The riots signaled the need for democratization and reintroduction of parliamentary elections, prompting King Hussein to declare the end of martial law and call for full parliamentary elections for the first time in more than twenty two years. However, the elections resulted in the domination of the Islamist bloc in the lower house, who comprised forty-three per cent of the Chamber of Deputies.¹²⁶ The growth in the popularity of Islamists in the 1970's onwards, was due to their heavy involvement in the Jordanian street and the political and economic instabilities caused by the Israeli invasion of south Lebanon. Jordanians lacked confidence in Leftists and Nationalists and considered them incapable of providing solutions to the country's political and economical dilemmas.¹²⁷ The success of the Islamists marked the beginning of tensions between the government and Muslim Brotherhood and their attempted marginalization in the political arena.

In 1994, the Jordanian government signed a peace treaty with Israel, stirring much public disdain and opposition. The Jordanian-Israeli agreement remains to date a source of public

¹²⁴ Kathrine Rath, 'The Process of Democratization in Jordan', Middle Eastern Studies, 1994, p.534.
, p.535.

¹²⁵ Alan Cowell, '5 Are Killed in South Jordan as Rioting Over Food Prices Spreads', New York Times (April 20, 1989) <<http://www.nytimes.com/1989/04/20/world/5-are-killed-in-south-jordan-as-rioting-over-food-prices-spreads.html>> accessed 1 November 2009.

¹²⁶ Kathrine Rath, 'The Process of Democratization in Jordan', Middle Eastern Studies, 1994, p.545

¹²⁷ Ibid.

outrage and has ignited several confrontations with authorities which have usually resulted in the suppression of peace treaty opponents. In the era of King Abdullah II, the successor of King Hussein, promises of promoting civil and political freedoms and the participation of Jordanians in public policies, evaporated with the 9/11 attacks, US lead war on Iraq and continuing Palestinian-Israeli conflict. The geopolitical context provided for continuing Jordan's practices in clamping down on political dissent and government criticism.

Yet recently, Jordan's predominantly military approach in confronting internal opposition and threats of terrorist nature has been substituted with the criminal justice model prosecuting terrorist crimes as established within the rule of law.¹²⁸ Threats to state security and terrorism were traditionally punished under the Jordanian Penal Code;¹²⁹ however, in 2005, Jordan adopted the Prevention of Terrorism Law (PTL) in addition to amending the Penal Code, widening the scope of offences which fall under terrorism and putting further at risk civil liberties and freedoms. More worrying has been the use of these legal venues by the state to prosecute opposition and enhance state control over the media and freedom of expression; by that violating the constitutional rights of Jordanians and the state's international human rights commitments.

4.2 Relevant Legal Frameworks and Counter-Terrorism Legislation

4.2.1 The Jordanian Constitution and Jordan's International Obligations

At the time of passing the Jordanian Constitution, it was perceived as a progressive legal instrument which encompasses a wide array of civil, political and social rights. Nonetheless, the

¹²⁸ Abeer Ghazi Jarrar, 'Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism', 2009, p.10.

¹²⁹ Article 147, Jordanian Penal Code No. 16 of 1960.

overarching executive powers, and limited role of the parliament played a role in hindering the full involvement of the public in shaping governmental policies and enjoyment of the rights articulated in the Constitution. Chapter two of the Constitution lists the rights and responsibilities of Jordanian citizens, among which is freedom of expression. Article 15 of the Constitution guarantees freedom of expression stating that:

The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law.¹³⁰

Regulations pertaining to freedom of expression are provided by other legislation, namely, the Press and Publications Law and Jordanian Penal Code. The Press and Publications Law, outlines the procedures and rules governing publishers, journalistic work, content material and penalties imposed for violating the law. In 2007, the Parliament repealed a contentious article allowing imprisonment for publishing material offending religions recognized by the Constitution, slandering prophets, insulting religious sensitivities or inciting to sectarianism or racism.¹³¹ Nevertheless, it remains possible to incarcerate journalists for publishing prohibited material under other laws, such as the Penal Code.¹³²

Jordan is party to number of human rights instruments and treaties relating to terrorism. In 1975, Jordan ratified the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). To date, Jordan has joined seven international treaties regarding terrorism, namely the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, the International Convention against the Taking of Hostages

¹³⁰ Article 15 of the Constitution of Jordan provides for:

(ii) Freedom of the press and publications shall be ensured within the limits of the law.

(iii) Newspapers shall not be suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law.

(iv) In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law.

(v) Control of the resources of newspaper shall be regulated by law.

¹³¹ Law No. 27 of 2007 amending Article 38 of the Press and Publications Law No.8 of 1998.

¹³² Article 150, Jordanian Penal Code No. 16 of 1960.

and the Convention on Offences and Certain other Acts Committed Onboard Aircraft.¹³³ Also, Jordan is a signatory of the International Convention of the Suppression of the Financing of Terrorism.¹³⁴ At the regional level, Jordan is party to the Arab Convention for the Suppression of Terrorism.

4.2.2 Redefining Terrorism under the Penal Code

In 2002, the renowned Muslim theologian, Issam Al-Uteibi, also known as Sheikh Al-Maqdisi, was arrested by the Jordanian authorities for “conspiring to commit terrorist acts.”¹³⁵ This was not the first time for Al-Uteibi behind Jordanian prison bars; in 1994, Al-Uteibi shared the prison cell with Al-Zarqawi, becoming his spiritual mentor. Both, Al-Uteibi and Al-Zarqawi were later released in 1999 upon a pardon issued by the government. The Atlas of Militant Ideology report by the Combating Terrorism Center, categorizes Al-Uteibi as one of the most influential contemporary Jihadi theorists, who has gained popularity among clerics and Muslims worldwide, through his website, Tawhid, the biggest online database for Jihad literature.¹³⁶

The arrest of Al-Uteibi in 2002 came after publicly rebuking, before domestic and Arab media, the politics of the US in the Muslim world and defending Palestinian resistance against Israel.¹³⁷ In 2004, Al-Uteibi was tried before the State Security Court, a military tribunal, and

¹³³ Jordan is also joined the following conventions: the Convention for the suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation and the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

¹³⁴ Law No. 83 of 2003 ratifying the United Nations Convention for the Suppression of the Financing of Terrorism.

¹³⁵ Article 148, Jordanian Penal Code No. 16 of 1960.

¹³⁶ Combating Terrorism Center, ‘Militant Ideology Atlas’, 2006, p.8

¹³⁷ UNCHR Working Group on Arbitrary Detention, ‘Opinion No. 18 of 2007 (Jordan) addressed to the Government on 4 June 2007 concerning Mr. Issam Al-Uteibi, p.2.

was acquitted after it failed to establish his guilt. Nevertheless, following the court decision, he continued to be detained in a secret security intelligence facility for six months before being released. Soon after, in July 2005, Al-Uteibi was arrested again following an interview with Al-Jazeera TV station, during which he affirmed the legitimacy of fighting against Israel and Western occupation of Muslim countries, such as Iraq and Afghanistan.¹³⁸ When asked about his past arrests, Al-Uteibi replied that “Jordanian authorities did not find any explosives with me, but they saw my thoughts as weapons.”¹³⁹ Afterwards, Al-Uteibi was held by officials, without an arrest warrant or notification of charges against him. In fact, it was not until July 2007 that Al-Uteibi was informed of being accused of conspiring to commit terrorist acts.¹⁴⁰

In the government observations to the Working Group on Arbitrary Detention, the government contended that Al-Uteibi’s extremist ideology “constituted a platform that has been widely used by radical groups propagating hatred and intolerance.” The Working Group on Arbitrary Detention concluded that Al-Uteibi’s arbitrary arrest and detention for criticizing the government violated Article 19 of the ICCPR and was in breach of Jordan’s international commitments.¹⁴¹ Finally, Al-Uteibi was released in 2008 on the condition that he remains under house arrest and does not make any statements to the media.

Al-Uteibi represents one of an array of cases in which the right to freedom of expression, including the right to fair trial, was compromised by Jordan’s anti-terrorism measures adopted after the attacks on New York in 2001. The events of 9/11 had the effect of reshaping international responses and states’ strategies in countering terrorism. In late September, the

¹³⁸ Yasir Abu Hilala, ‘Interview with Abu Muhammad Al-Maqdisi’ Al-Jazeera (10 July 2005) <<http://www.aljazeera.net/Channel/archive/archive?ArchiveId=129776>> accessed 23 September 2009.

¹³⁹ Ibid.

¹⁴⁰ ¹⁴⁰ UNCHR Working Group on Arbitrary Detention, ‘Opinion No. 18 of 2007 (Jordan) addressed to the Government on 4 June 2007 concerning Mr. Issam Al-Uteibi’, para.14.

¹⁴¹ Ibid, para.17.

UNSC acting under mandatory Chapter VII, adopted resolution 1373 requiring all states to take legal, financial and regulatory measures against persons involved in financing, planning, preparing or supporting terrorist acts.¹⁴² Following a global trend, Jordan sought to modify its laws to establish criminal liability to new terrorist related offences. Thus in 2001, while the parliament was dissolved, the government issued Temporary Law No. 54 redefining terrorism and expanding crimes against state security under the Jordanian Penal Code. In an act described as opportunistic by Human Rights Watch,¹⁴³ the temporary law also introduced restrictive changes to civil and political freedoms protected under Jordan's Constitution and its international commitments.

The dissolution of the parliament by King Abdullah II on 16 June 2001, which lasted until June 2003, came amidst increased political unrest resulting from economic reforms, the ongoing Israeli-Palestinian conflict and public anti-sentiment towards the US. Tensions mounted to several protests against price hikes in basic commodities and demonstrations against the normalization of relations with Israel.¹⁴⁴ In response, King Abdullah ordered the reorganization of the government led by Prime Minister Ali Abu Al-Ragheb, to deal with the growing economic and political instabilities. However, the government was later criticized for its corruption and

¹⁴² UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373, Article 2 (e) states: "(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts".

¹⁴³ Human Rights Watch, 'Opportunism in the Face of Tragedy: Repression in the name of anti-terrorism' <<http://www.hrw.org/legacy/campaigns/september11/opportunismwatch.htm>> accessed 10 September 2009.

¹⁴⁴ Ma'an sit-in on 10 December 2000, held by hundred of demonstrators protesting against price increase of basic commodities and calling for severing ties with Israel. Also, demonstrations were held in May 2001 marking the 53rd anniversary of the Israeli occupation. For more information see Middle East and North Africa Report 2004, Routledge, 50th edition, 2001, P.634-5.

anti-democratic policies resulting in issuing a series of temporary laws which had the effect of quelling public dissent.¹⁴⁵

Temporary laws can be issued by the government when the parliament is dissolved only when it is a necessary measure that cannot be delayed.¹⁴⁶ According to the Jordanian Constitution such laws have to be presented to the national assembly in its following session in order to review, amend, approve or reject the legislation. Till their revision by the parliament, provisional laws have the force of law. Still, from 2001 till 2003 over 200 temporary laws were issued.¹⁴⁷ Furthermore, only until 2007 did the parliament approve, with minor adjustments, Temporary Law No. 54 which entailed the curtailment of expression.

Following the model of the Arab Convention for the Suppression of Terrorism,¹⁴⁸ the amended Article 147-1 of the Penal Code under Temporary Law No. 54 and as passed by the parliament, altered the definition of terrorism to mean:

¹⁴⁵ See article by Editor in Chief of Al Majd Newspaper, Fahd Al-Rimawi: 'A Government with no Popularity' in Arabic, published on 7 January 2002. Also see, Toujan Al-Faisal open letter to King Abdullah II published in the Arab times internet website on 6 March 2002 accusing the government of Ali Abu Al-Ragheb of corruption. Charges were later brought against both Fahd Al-Rimawi and Toujan Al-Faisal under the new amendments to the Penal Code by Temporary Law No. 54 of 2001.

¹⁴⁶ Article 94 of the Constitution of Jordan states: (i) In cases where the National Assembly is not sitting or is dissolved, the Council of Ministers has, with the approval of the King, the power to issue provisional laws covering matters which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement. Such provisional laws, which shall not be contrary to the provisions of the Constitution, shall have the force of law, provided that they are placed before the Assembly at the beginning of its next session, and the Assembly may approve or amend such laws.

In the event of the rejection of such provisional laws, the Council of Ministers shall, with the approval of the King, immediately declare their nullity, and from the date of such declaration these provisional laws shall cease to have force provided that such nullity shall not affect any contracts or acquired rights.

(ii) Provisional laws shall have the same force and effect as laws enacted in accordance with paragraph (ii) of Article (93) of this Constitution.

¹⁴⁷ Arab Organization for Human Rights in Jordan, 'Annual Report on Human Rights in Jordan' (14 February 2003) <[http://members.lycos.co.uk/aohrjo/ARreport/report 2003.pdf](http://members.lycos.co.uk/aohrjo/ARreport/report%202003.pdf)> accessed 20 September 2009.

¹⁴⁸ Article 2, Arab Convention for the Suppression of Terrorism, defining terrorism as: 'Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.'

The use of violence by any means or the threat of the use of violence, whatever its motives and purposes, occurring in implementation of an individual or collective crime, which is aimed at jeopardizing the safety and security of society where such is of nature to spread fear among the public or intimidate them or expose their lives to danger, or to cause damage to the environment and public or private property or international facilities or diplomatic missions or occupy or seize any of them or endangering national resources or compelling any government or international or regional organizations to do any act or restrain.

As drafted, the legislation provides for vaguely defined acts which may be considered terrorist. At the first glance, acts that might be deemed “violent” are not specified, resulting in this term being open for interpretation by government officials and the public.¹⁴⁹ One of the effects of the law, given the lack of a clear criteria and definition of “violence” is that it can lead to abusing the law by charging political opponents and activists of terrorism, for engaging in protests that could unintentionally cause minor damages to the environment, since these acts can be construed as “violent.” Adding to the ambiguity of the law is the inclusion of the “threat” to use violence in the definition of terrorism. Such addition increases the risk of accusing individuals who are not engaged in terrorist acts, but are affiliated with opposition groups which use violence, of being involved in terrorism.¹⁵⁰ Consequently, the law jeopardizes criminalizing lawful non-violent political activity based on the assumption that an individual intends to pursue an association’s illegal aims by their mere association with it.

In its communication to the Jordanian government, the Special Rapporteur of the UN Human Rights Council expressed concern about the over breadth and problematic wording of Article 147-1 stating that:

¹⁴⁹ Amnesty International, ‘Jordan: Security Measures Violate Human Rights’ (5 February 2002) AI Index MDE 16/001/2002, p.3.

¹⁵⁰ Ibid.

[147 paragraph 1 of the Jordanian Penal Code's] sweeping nature is revealed by the fact that an act may be qualified as terrorist regardless of the motives or purposes for carrying out the act as well as the references to damage, even partial, carried out against public or private property and facilities...The Jordanian definition suffers from the absence of two of these cumulative conditions for classifying a crime as a terrorist crime: there is no requirement of a specific aim to further an underlying political or ideological cause and some acts are qualified as terrorist without the intention of causing death or serious bodily injury.¹⁵¹

For example, peaceful demonstrations in universities or in front of embassies might fall within the ambit of terrorism since the definition is stretched to cover "occupying or seizing private or public property [...] or diplomatic mission." The possibility of such action being penalized under the Penal Code is augmented by not requiring the element of intention to commit a terrorist crime in addition to an aim of causing death or intimidating the public for an act to meet the criteria of terrorism.

Limitations on freedom of assembly, a right that is closely related to freedom of expression, ought to be also examined in connection with Temporary Law No. 45 of 2001 on Public Gatherings that was approved by the parliament in 2004 as Law No. 7 of 2004. With the outbreak of the second Intifada (up rise) in September 2000, Jordan experienced nation-wide demonstrations, dozens of which ended in violent clashes with the police and lead to the arrest of almost 300 people, death of two persons and injuring over fifty people.¹⁵² On 6 October 2000, the country witnessed one of the largest protests with approximately 30,000 people taking part in an anti normalization rally but were dispersed by police tear gas and batons amidst fears of reaching the Israeli embassy in Amman.¹⁵³ Following that incident, the King issued a ban on public demonstrations and in August 2001, legislation placing limitations on freedom of

¹⁵¹ Human Rights Council, Fourth Session, Agenda Item 2, Implementation of General Assembly Resolution 60/251 of 15 March 2006, p.19.

¹⁵² Jillian Schwedler, 'More Than a Mob: The Dynamics of Political Demonstrations in Jordan', Middle East Report No. 226, 2003, p.21

¹⁵³ Middle East and North Africa Report 2004, 50th edition, 2003, p.633.

assembly was enacted by the government.¹⁵⁴ In 2004, the parliament passed Law No. 7 of 2004 organizing public gatherings.

In contrast with the former Law No. 60 of 1953 on Public Gathering which only required notifying authorities 48 hours in advance before holding a public meeting,¹⁵⁵ under Law No. 7 of 2004 organizers have to obtain a written authorization from the administrative governor three days prior to holding any public assembly.¹⁵⁶ The governor should inform the assembly organizers of his acceptance or refusal to issue an authorization at least 48 hours before the planned public gathering, leaving them little time to promote it and inform participants. Moreover, the law does not require providing a justification in case of refusing to issue a permit in addition to the absence of a mechanism to appeal the decision. Anyone violating the law can face up to three months of imprisonment or a fine no more than one thousand Jordanian Dinars (\$1410) or both punishments.¹⁵⁷

Freedom of expression and assembly are granted by the Jordanian Constitution and international human rights instruments that the kingdom is party to, such as the ICCPR. However, with the new law on public gatherings, numerous demonstrations were denied authorization resulting in the increased suppression of public opinion and the resort of some opposition groups to organizing unlicensed rallies. In a recent example, opposition parties and professional syndicates organized several marches during January 2009 to express anger towards Operation Cast Lead by Israel in Gaza. Although over 400 rallies were carried out over the

¹⁵⁴ Temporary Law on Public Meetings No. 45 of 2001, referred to the National Assembly which made some adjustments on it to become Law No. 6 of 2004.

¹⁵⁵ Article 3, Law on Public Gatherings No.60 of 1953.

¹⁵⁶ Article 4, Temporary Law on Public Gatherings No. 45 of 2001.

¹⁵⁷ In the original draft of Temporary Law on Public Gathering No. 42 of 2001, before being passed by the parliament in 2004, the governor had to inform the organizers of the public gathering of his acceptance or refusal to issue an authorization 24 hours prior to the planned public assembly. Additionally, individuals who violated the law faced a punishment of imprisonment up to six months, or a fine not exceeding three thousand Jordanian Dinars (\$4230), or both.

country,¹⁵⁸ authorities refused to permit demonstrations close to the Israeli embassy. On 9 January 2009, despite failing to obtain a permit, planned marches to the Israeli embassy took place but were prevented by riot police who used tear gas and batons. Tens of people were injured, among them Yasir Abu-Hilala,¹⁵⁹ chief of Al-Jazeera Bureau in Amman in addition to four of his colleagues.

4.2.3 Emendations of the Penal Code and Freedom of Expression

Free speech is yet another casualty of Jordan's legal response to terrorism. Laws tightening press censorship and incriminating dissenting opinions were imposed leading to heightened self-censorship and decline in the political engagement of Jordanians. A poll conducted by the Center of Strategic Studies in Jordan on freedom of expression, shortly after enacting a number of temporary laws in 2001, found that seventy-nine per cent of the study respondents feared publicly criticizing the government, while seventy-four per cent reported refraining from participating in political activities to avoid negative repercussions.¹⁶⁰ In practice, several individuals were convicted for their opinions including journalists, political party members and parliamentarians, under the newly adopted measures, justifying the existing concerns of citizens.

¹⁵⁸ AlGhad Newspaper, 'Human Rights Watch Criticizes Jordan's Prohibition of Demonstrations In front of the Israeli Embassy' (23 January 2009) <<http://www.alghad.jo/?news=391053>> accessed 20 September 2009.

¹⁵⁹ Human Rights Watch, 'Gaza Crisis: Regimes React with Routine Repression' (January 21, 2009).

¹⁶⁰ The Arab Association for Human Rights, 'Report on the Status of the Freedoms of Press and Expression' (3 May 2003)<<http://www.jccso.net/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=128&NrIssue=1&NrSection=2>> accessed 13 October 2009.

One of the first people to suffer from the stringent limitations on freedom of expression placed by Temporary Law No. 54 is Toujan Al-Faisal, the first female parliamentarian in Jordan. In an interview with Al-Jazeera TV station and a published online article on the “Arab Times” website, Al-Faisal accused Prime Minister, Ali Abu Al-Ragheb, of corruption through benefiting financially from a governmental decision increasing car insurance costs.¹⁶¹ She was sentenced by the State Security Court to 18 months of imprisonment for “tarnishing the Jordanian state” and “publishing and broadcasting false information abroad which could be detrimental to the reputation of the state.”¹⁶² Additional charges of “seditious libel and slander” were brought against Al-Faisal under Article 150(1) of the Penal Code, which was altered by provisional law No. 54, to state:

Notwithstanding the provisions of any other legislation, it shall be punishable by imprisonment any writing, speech or act, broadcast by any means whatsoever or publishing news in a newspaper or any other form of printed material that might harm national unity or incite to crime or sow seeds of hatred and discord among society members or incite sectarian strife or racism, or harm the dignity of individuals, their reputations and personal freedoms, or destabilize the basic conditions of society by promoting to delinquency or corruption of morals, or publishing false information or rumors or inciting to unrest or sit-ins or holding public meetings in contravention with the provisions of the legislation in force, or any act which would harm the prestige of the state, reputation or dignity.¹⁶³

Those liable for violating the law are sentenced to prison for up to six months or fined for JD5000 (\$7,000), or both penalties. Charges brought under Article 150 are tried before the State Security Court, which is a special court, established in accordance with the Jordanian Constitution,¹⁶⁴ and specializes in crimes against state security.¹⁶⁵ Article 2 of the State Security Court Law of 1959, gives the prime minister power to form State Security Courts; each court

¹⁶¹ Al-Jazeera, ‘Arresting Toujan Al-Faisal for Charges of Tarnishing the Reputation of the State’ (16 March 2002) <<http://www.aljazeera.net/News/archive/archive?ArchiveId=28402>> accessed 16 July 2009.

¹⁶² Article 19, ‘Jordan: First Jordanian Woman Parliamentarian Sentenced to 18 Months Imprisonment for Defamation’, (2006) <<http://www.article19.org/pdfs/other/jordan-defamation-case-study.pdf>> accessed 12 October 2009.

¹⁶³ Article 150 (1), Penal Code as amended by Temporary Law No. 54 of 2001.

¹⁶⁴ Article 99 & 100, Constitution of Jordan, 1956.

¹⁶⁵ Article 3(1), State Security Court Law No. 22/2004.

consists of three judges, either civil judges or military judges, or a mixed panel.¹⁶⁶ Evidently, the structure of the State Security Court fails to comply with international human rights standards that require defendants to have a fair trial and independent and impartial judiciary.¹⁶⁷

Moreover, at the time of Al-Faisal's conviction, the State Security Court Law of 1959 was amended by a temporary law, denying those convicted of misdemeanors, from the right to appeal State Security Court judgments.¹⁶⁸ Therefore, convictions under Article 150, which count as a misdemeanor, were final. In Al-Faisal's case, her conviction cost her, her political career and sentenced her to retirement from Jordanian politics. Although later she was granted a special pardon by the King, her criminal record remained, thus disqualifying her from running for public office position.¹⁶⁹

Other provisions of Article 150 as amended by Temporary Law No. 54, yielded additional controversy as it gave way to penalizing newspaper owners and editors-in-chief for publishing any material prohibited under the first section of Article 150.¹⁷⁰ The law also empowered the State Security Court to order the temporary or permanent closure of the newspaper or printed publication issuing proscribed material. In effect, journalists became casual victims of the laws in place; reporters and newspapers publicly disapproving of government policies became routinely harassed by public officials and were subject to prosecution.¹⁷¹

¹⁶⁶ Article 2, State Security Law, 17/1959.

¹⁶⁷ ICCPR, Article 14.

¹⁶⁸ Temporary Law Amending the State Security Court Law, referred to the National Assembly, passed with adjustments and given No. (22) for the year 2004. The parliament repealed the temporary law section concerned with the right of appeal for misdemeanor convictions.

¹⁶⁹ Abeer Ghazi Jarrar, 'Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism', 2009, p.24.

¹⁷⁰ Article 150(2) of the Penal Code No.16 of 1960 states: 'If the material was published by a newspaper or printed publication, the newspapers' editor-in-chief-and owner will be accountable for the published material.'

¹⁷¹ Committee for the Protection of Journalists, 'Attacks on the Press 2002: Jordan' (31 March 2003) <<http://cpj.org/2003/03/attacks-on-the-press-2002-jordan.php>> accessed 2 September 2009.

On 13 January 2002, shortly after modifying the Penal Code, charges were brought against editor-in-chief of Al-Majd weekly newspaper, Fahd Al-Rimawi, for “writing and publishing false information that may harm the prestige and reputation of the state” and its officials.¹⁷² Al-Rimawi’s accusation followed publishing an article critical of the practices of Abu Al-Ragheb’s government in subjugating public opinion and free press.¹⁷³ After three days of detention he was released for a bail out amount of JD 5,000 (\$7,000).¹⁷⁴ In another attack on Al-Majd newspaper, the State Security Court ordered the injunction of the newspaper’s March issue in 2002, for containing articles exposing the government’s involvement in financial corruption. The court conditioned the release of the newspaper issue subject to removing the articles in question.¹⁷⁵

In a similar application of Article 150, editor of Al-Bilad weekly newspaper was detained in 2002, for publishing an article insinuating that officials would profit from the government’s decision to increase car insurance.¹⁷⁶ He was released on bail after two weeks of being held for investigations by authorities.¹⁷⁷ The sweeping nature of charges under Article 150, negation of intent and obscure wording of offences, brought much domestic and international disapproval.¹⁷⁸ In 2002, the Jordanian Press Association and a number of editors-in-chief and newspaper owners, challenged the constitutionality of the amendments of Temporary Law No. 54,

¹⁷² Amnesty International, ‘Jordan: Security Measures Violate Human Rights’ (5 February 2002) AI Index: MDE 16/001/2002.

¹⁷³ Fahed Al-Rimawi, ‘A Government with no Popularity’, AlArab News (7 January 2002) <<http://www.alarabnews.com/alshaab/GIF/18-01-2002/20.htm>> accessed 7 September 2009.

¹⁷⁴ Ibid.

¹⁷⁵ See Committee for the Protection of Journalists report, ‘Attacks on the Press 2002: Jordan’ <<http://cpj.org/2003/03/attacks-on-the-press-2002-jordan.php>> accessed 2 September 2009.

¹⁷⁶ Hashem AlKhalidi, Editor of Al-Bilad weekly newspaper was accused of publishing “false information” and harming the “honor or reputation of the government and its officials.” For more see Committee for the Protection of Journalists, ‘Press Crackdown Continues’ (20 March 2002) <<http://cpj.org/2002/03/press-crackdown-continues.php>> accessed 7 September 2009.

¹⁷⁷ Ibid.

¹⁷⁸ Human Rights Watch, ‘Opportunism in the Face of Tragedy: Repression in the name of anti-terrorism’ <<http://www.hrw.org/legacy/campaigns/september11/opportunismwatch.htm>> accessed 10 September 2009.

especially those imposed on Article 150, before the High Court of Justice.¹⁷⁹ However, the court found that there was no standing for the applicants in the case, concluding the debate on the constitutionality of the provisional legislation. Over time and with the conviction of several journalists and shutting down of news stations for challenging the government;¹⁸⁰ the credibility of measures adopted in the name of fighting terrorism vanished, and more Jordanians saw them as means for governmental control. Finally, in 2003, Article 150 was repealed by a temporary law,¹⁸¹ which reinstated the old formulation of the provision entailing that:

Every writing, speech or act intended to, or results in, stirring up sectarianism or racism or incitement to conflict between sects and different elements of the nation is punishable by imprisonment for a period of six months to three years and a fine not exceeding fifty Jordanian Dinars.¹⁸²

However, revoking the contentious changes imposed on Article 150 and reintroducing its old wording did not necessarily result in seizing to employ it for stifling free speech. On 12 June 2006, four parliamentarians from the Islamic Action Front were arrested for paying condolences to Abu Musab Al-Zarqawi's family, following his death in an American operation in Iraq. Parliament members, Mohammed Abu Faris, Jafar Hourani, Ibrahim Al-Mashoukhi and Ali Abu Sukkar were detained in Al-Jafr prison and referred to the State Security Court for violating Article 150. The charges were brought against them based on expressing sympathy and support to Al-Zarqawi, who was accused of coordinating the Amman bombings on 9 November 2009.

¹⁷⁹ Asharq Al-Awsat, 'Jordan Press Association loses a legal battle against the Temporary Penal Code Law' (17 July 2002) <<http://www.aawsat.com/details.asp?section=4&issueno=8632&article=113533&feature=>> accessed 20 September 2009.

¹⁸⁰ In August 2002, the Minister of Information revoked the license of the Amman bureau of Al-Jazeera TV station for broadcasting an episode of a debate program criticizing Jordan's relations with Israel. Check Committee for the Protection of Journalists, 'CPJ protests government closure of Al-Jazeera's Amman bureau', (2 August 2002) <<http://cpj.org/2002/08/cpj-protests-government-closure-of-aljazeeras-amma.php>> accessed 4 September 2009.

¹⁸¹ Temporary Law No. 45 of 2003, repealing the amendment of Temporary Law 54 of 2001 on Article 150 and reintroducing the former wording of the law.

¹⁸² Article 150, Penal Code No.16 of 1960.

Parliamentarian, Abu Faris, purportedly described Al-Zarqawi as a “martyr and warrior” in a speech at Al-Zarqawi’s house of mourning.¹⁸³

While one of the defendants was acquitted, the indictment stated that the actions and speeches of the three other parliamentarians were supportive of Al-Zarqawi and provided justification for terrorism and Al-Zarqawi’s actions. Thus, their actions encouraged people to emulate his behavior and incite to conflict between members of the nation.¹⁸⁴ On 7 August 2006, the State Security Court issued its judgment finding two of the parliamentarians guilty for “undermining national unity by stirring up sectarian strife and racism and inciting to conflict in society.”¹⁸⁵ The court sentenced Abu-Faris to two years of imprisonment and a JD400 (560\$) fine; Abu-Sukkar got a year and half of prison time and was fined for JD200 (280\$).¹⁸⁶ In September, the king granted both of them a royal amnesty, yet, similar to Al-Faisal’s case, their criminal records were not cleared and they were not able to regain their positions in parliament or run for public office.

A joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression in addition to other experts from international bodies, asserts that:

¹⁸³ Human Rights Watch, ‘Jordan: Rise in Arrests Restricting Free Speech’ (16 June 2006)

<<http://www.hrw.org/en/news/2006/06/16/jordan-rise-arrests-restricting-free-speech>> accessed 1 October 2009.

¹⁸⁴ Al Ghad Newspaper, ‘The State Security Court commences the trial of three parliamentarians from the Islamic Action Front after condoling Al-Zarqiwi’s family’ (19 July 2006) <<http://www.alghad.com/?news=108910>> accessed 3 November 2009.

¹⁸⁵ Asharq AlAwsat Newspaper, ‘State Security Court sentences Two Parliamentarians and Acquits One’ (7 August 2006) <<http://www.aawsat.com/details.asp?section=4&issueno=10114&article=376832&feature=>>> accessed 1 October 2009.

¹⁸⁶ Ibid.

Governments should refrain from introducing legislation which makes it an offence simply to exacerbate social tensions. Although it is legitimate to sanction advocacy that constitutes incitement to hatred, it is not legitimate to prohibit merely offensive speech. Most countries already have excessive or at least sufficient ‘hate speech’ legislation. In many countries, overbroad rules in this area are abused by the powerful to limit non-traditional, dissenting, critical, or minority voices, or discussion about challenging social issues. Furthermore, resolution of tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. Free speech is therefore a requirement for, and not an impediment to, tolerance.¹⁸⁷

The manner in which Article 150 was enforced in the case of the four parliamentarians, despite its reformulation, presents an unprecedented stretch to the scope of this provision. It can be inferred that the court sought to punish expressing support to those involved in terrorism and speech that is understood as justifying their acts. The interpretation of the law extended to punish not only incitement speech but also expression that authorities deemed as justifying and encouraging terrorism, under the pretext of “stirring up sectarian strife and racism” and “incitement to conflict” among society.

The previous demonstrates the possible breadth of application of the law and the potentiality of utilizing it to condemn adverse behavior that is not explicitly made illegal. Moreover, the charges brought against the parliamentarians for paying condolences to Al-Zarqawi’s family appear to be politically motivated as they aimed to condemn ideological identification with terrorists. On one hand, it seems that the prosecution of the parliamentarians was to set an example and intimidate supporters of violent resistance. On the other hand, as the parliamentarians accused were members of the Muslim Action Front, the party politics became questionable; undermining their position and power among Jordanians who sympathized with the families of the victims of the Amman bombings.

¹⁸⁷ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression, International Mechanisms for Promoting Freedom of Expression (21 December 2005), p.2.

Still, the Penal Code went through more emendations under Temporary Law No. 54, resulting in expanding the *lèse majesté* offence of Article 195. Two offences were added to the original law, making it punishable for up to three years to send electronic messages to the King or attribute to him any words or deeds that he did not utter or do.¹⁸⁸ On, 2005, Riyadh Al-Nawayseh, a lawyer and former parliamentarian, was charged with slander for praising the resistance of Iraqi's against the American invasion in Al-Faluja and condemning Jordanian-Israelis relation in a speech at the trade union's complex. Tens of lawyers silently protested his trial in the State Security Court that also specializes in charges brought under Article 195. Later he was released after the court could not find enough evidence to sustain his guilt.¹⁸⁹

A study by the World Press Freedom Committee examining defamation and “insult law” across countries concluded that such laws have a crippling effect on freedom of expression and were incompatible with the principles of democracy.¹⁹⁰ Further, the study affirmed that insult laws serve as vehicles for oppression and suffocating critical expression:

Insult law prosecutions are fundamentally political. Where the defendants are overwhelmingly editorial critics of the ruling party, dissenters, minority voices, or activists in an opposition party, the conclusion is inescapable that the insult law is an important weapon in the armory of the powerful to punish and thus chill expressions of opposition.¹⁹¹

¹⁸⁸ Article 195(1) of the Penal Code No.16 of 1960 states: 1-It shall be punishable by imprisonment from one to three years to:

A - Be proven to have dared to slander His Majesty the King.

B - Send a written or oral or electronic letter or any picture or comic illustration to the King, or display the message or image or drawing in a way that would result in harming the dignity of His Majesty or to that effect. The same penalty shall apply for encouraging another to do any of the actions above.

C – To broadcast by any means any of what is mentioned in section (b) of paragraph (1) of this article and spread it among people.

D – To gossip or attribute to His Majesty any words or deeds which the King did not utter or do, or acting to broadcast such information and spread it among people.

¹⁸⁹ Asharq Al-Awsat, ‘Jordanian lawyers protest the trail of their colleague whose charged of slander’ (6 June 2005) <<http://www.aawsat.com/details.asp?section=4&article=304010&issueno=9687>> accessed 20 September 2009.

¹⁹⁰ World Press Freedom Committee, ‘It’s a Crime: How Insult Laws Stifle Press Freedom’, 2006, p.11.

¹⁹¹ Ibid.

The penalization of political figures and journalists for speech that is critical of the government or even provocative, as some might consider in the case of the parliamentarians, illustrates the political nature of these prosecutions. The fact that these charges are brought under national security laws shows how such provisions are being utilized for aims that do not conform to their declared function. Although restricting speech for the protection of national security is a legitimate aim under the ICCPR; when examining the previous cases and how the Penal Code provisions are enforced, it can be construed that none of the expression made by the individuals charged did pose a national security threat. In practice, the prosecutions were aimed at suppressing ideologies opposing the government and delegitimizing its opponents by labeling them criminal.

In reality, the amendments imposed on the Penal Code laws have resulted in further steering away policy makers and the public from openly discussing critical domestic matters for fear of being penalized. A survey in 2009, carried out by the Centre for Defending the Freedom of Journalists showed that ninety-four per cent of journalists exercised self censorship and refrained from writing about religious and political issues for fear of being penalized.¹⁹² Even when government opponents escape the shackles of prosecution under the Penal Code's controversial provisions; the government techniques of arrest and investigatory measures appear to function as a deterrent message and means to intimidate dissenters. Moreover, parallel to Jordan's approach in the past of granting royal amnesty to diffuse political tension,¹⁹³ special pardons were issued in the situation of Toujan Al-Faisal and the parliamentarians to control the

¹⁹² Hani Hazaimah, 'Majority of journalists practice self-censorship - survey', The Jordan Times (3 May 2009) <<http://jordantimes.com/?news=16359>> accessed 24 November 2009.

¹⁹³ Abeer Ghazi Jarrar, 'Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism', 2009, p.16.

political damage resulting from their arrest and conviction. Nevertheless, their prosecution wrote them off the political scene; setting an example for future potential offenders.

The wording and application of the Penal Code provisions pertinent to proscribing expression ostensibly diverts from international human rights standards and commitments. The previously discussed prosecutions brought under Article 150 demonstrate its elasticity and catch-all nature, hence putting freedom of expression at stake due to its arbitrary enforcement. In principle, any limitation imposed on freedom of expression should not profoundly compromise the right itself.¹⁹⁴ Yet, the penalization of individuals based on broad laws for criticizing government practices, jeopardizes people's ability to meaningfully exercise this right by publicly reflecting on and assessing the policies which govern them. Moreover, the State Security Court, which has jurisdiction over Article 150 and 195, as they fall under national security crimes, fails to correspond with Jordan's international obligations under the ICCPR.¹⁹⁵ Trying charges brought under these specific Penal Code provisions in a predominantly military court denies individuals from their right to a fair trial.

Another central international requirement when subjecting rights to limitations is that they must be provided by law. This obligation entails that the law is clear and precise about what behavior is being prohibited so that individuals have sufficient understanding of how to regulate their behavior.¹⁹⁶ The broad language of Article 150, coupled with its far-reaching method of implementation, fails to provide individuals with a precise understanding of what expression is banned; consequently violating the principle of legal certainty articulated in human rights

¹⁹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 19 (2).

¹⁹⁵ ICCPR, Article 14.

¹⁹⁶ UN High Commissioner for Human Rights, Fact Sheet No. 32, 'Human Rights, Terrorism and Counter-terrorism', ISSN 1014-5567, p. 23.

instruments.¹⁹⁷ In the case of the four parliamentarians, the law was used to criminalize what authorities considered expression supportive of terrorism. However, their prosecution under Article 150, which does not proscribe such behavior, led to the arbitrary interference in their right to expression and their penalization.

One specific example in this context [of counter-terrorism] is respect for the principle of legality, which is enshrined in article 15 of the International Covenant on Civil and Political Rights and is non-derogable, even in times of public emergency. (footnote omitted) It implies that the imposition of criminal liability is limited to clear and precise provisions, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would unduly broaden the scope of the proscribed conduct. Overly vague or broad definitions of terrorism may be used by States as a means to cover peaceful acts to protect inter alia labour rights, minority rights or human rights or, more generally, to limit any sort of political opposition.¹⁹⁸

In drawing lines between states' strategies adopted or revitalized against speech inciting to terrorism, namely the UK, and Jordan, it is worth considering which speech is being outlawed. Since the 11 September 2001 attacks, the UK has strengthened its grip in fighting speech inciting to violence and racial and religious hatred. One of the people convicted for incitement speech is Abdullah Al-Faisal, a Muslim cleric who preached killing non-Muslims and was later considered to have influenced one of the bombers who carried out the London attacks. In 2003, he was convicted and imprisoned for soliciting the murder of Jews and Hindus.¹⁹⁹

In 2006, the UK enacted the Prevention of Terrorism Act, proscribing speech that glorifies terrorism. Although the legislation was heavily criticized for its chilling effect on speech, especially in Muslim communities, to date there has been no charges brought under this law. In an effort to clarify what speech is illegal and non-tolerable, the Home Office issued a list with the names of sixteen people banned from entering the UK based on their radical speech. Eight people from the list were considered to have uttered speech glorifying terrorism and

¹⁹⁷ ICCPR, Article 15.

¹⁹⁸ UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-terrorism', Fact Sheet No. 32, p.39-40.

¹⁹⁹ BBC, 'Profile: Sheikh Abdullah al-Faisal' (25 May 2007) <http://news.bbc.co.uk/2/hi/uk_news/6692243.stm> accessed 24 November 2009.

encouraging terrorist acts. It is worth noting that out of the eight people accused of glorifying terrorism, six of them are Muslim.²⁰⁰ To an extent, this might be interpreted to validate the fears of alienation as expressed by the Muslim community.

[T]he proposal on “inciting, justifying or glorifying terrorism,” as currently formulated, could lead to a significant chill factor in the Muslim community in expressing legitimate support for self-determination struggles around the world and in using legitimate concepts and terminology because of fear of being misunderstood and implicated for terrorism by authorities ignorant of Arabic/Islamic vocabulary—e.g., a speech on “jihad” could easily be misunderstood as “glorifying terrorism.”²⁰¹

The UK and Jordanian legislations have the potential of chilling speech and suppressing vulnerable groups. Still, the Jordanian government’s approach in countering-terrorism has been geared towards using such laws to impede on free speech, especially that which is adverse to authorities. Nevertheless, the effects of the UK legislation on Muslim communities and other marginalized groups needs to be further explored.

4.2.4 The Prevention of Terrorism Law

On 9 November 2005, three hotels in Amman were bombed killing 60 people and injuring nearly 100 others.²⁰² The bombings that were later claimed by Al-Qaeda and defended by Abu Musab Al Zarqawi prompted the Jordanian government to adopt its first counter-terrorism law.²⁰³ Jordanian authorities justified the need for an anti terrorism legislation as a preventative measure to deter and prosecute people involved in terrorism before actually committing terrorist

²⁰⁰ Guardian, ‘The Home Office list of people banned from the UK’ (5 May 2009) <<http://www.guardian.co.uk/uk/2009/may/05/list-of-people-banned-from-uk>> accessed 24 November 2009.

²⁰¹ UK Home Office, ‘Preventing Extremism Together, Working Gorups’, (August-October 2005) p.77.

²⁰² BBC, ‘Al-Qaeda’ claims Jordan attacks’ (10 November 2005) <http://news.bbc.co.uk/2/hi/middle_east/4423714.stm> accessed 20 September 2009.

²⁰³ BBC, ‘Zarqawi’ defends Jordan attacks’ (18 November 2005) <http://news.bbc.co.uk/2/hi/middle_east/4450590.stm> accessed 20 September 2009.

acts. On 1 November 2006, the Prevention of Terrorism Law (PTL) was passed among much national debate and international criticism for eroding rights that are constitutionally protected and its nonconformity with Jordan's international agreements.

The Islamic Action Front, one of Jordan's political parties, and several independent parliamentarians expressed that the PTL infringed on freedom of peaceful assembly granted in the constitution and would charge citizens on mere suspicion while allowing for their arbitrary arrest and detention.²⁰⁴ Amnesty international, echoing similar concerns, said that the extensive definition of terrorism and overly broad scope of the PTL threatened to limit freedom of expression and failed to comply with international human rights.²⁰⁵

Under the new law a specific result should not necessarily occur for a person to be convicted of terrorism. The objective element, which is the commission of crime, is not defined by the law.²⁰⁶ Rather the offence refers to "any intentional act," be it individual or collective, which causes killing or physical harm or damage to property or even a "threat to violence" as defined by Article 147 of the penal code.²⁰⁷ The PTL departs from the traditional paradigms of defining terrorism by expanding the scope of acts classified as terrorist activities.

Any intentional act committed by whichever means that leads to killing or causing physical harm or inflicting damages to public or private property or transportation or environment or infrastructure or international entities premises or diplomatic missions if the intention of that action was to disturb public order and endanger public safety and security or impede the implementation of the law or Constitution or to influence state or government's policy or force it to act or restrain or endanger national security by fear or terror or violence.²⁰⁸

²⁰⁴ AlGhad Newspaper, 'Parliamentarians, media representatives and civil society activists criticize the draft of the Prevention of Terrorism Law' (27 August 2006) <<http://www.alghad.jo/?news=117132>> accessed 21 October 2009.

²⁰⁵ Amnesty International, 'Jordan's anti-terrorism law opens door to new human rights violations' (7 November 2006) AI Index MDE 16/012/2006, p.1.

²⁰⁶ Christian Walter, 'Terrorism as a challenge for national and international law', 1st edition, 2004, p.87.

²⁰⁷ Article 147 of the Penal Code No.16 of 1960, defines terrorism as follows: 'Terrorism shall mean the use of violence or threat of use thereof, whatever its motivations and purposes, occurring in implementation of an individual or collective criminal plot aimed at disturbing public order or jeopardizing the safety or security of society, where such is of a nature to spread fear among the people or frighten them or to expose their lives and security to danger, or to cause damage to the environment, or to cause damage to, occupy or take over public facilities and realty or private realty, international facilities and diplomatic missions, endangering national resources or thwarting the provisions of the Constitution and laws.'

²⁰⁸ Article 2, Prevention of Terrorism Law (PTL) No.55 of 2006.

Analogous to the definition of terrorism in Article 147-1 in the Penal Code, the use of serious violence against persons as a means of terrorist action, which is one of the required elements in defining terrorism under the UN's ICSFT, is no longer a necessary criterion for an act to be considered a terrorist activity. Under Article 2, the notion of terrorism is extended to the destruction of objects; damage to private property or public facilities by violent or non-violent means fall within the ambit of terrorist activity. The broadened legal framework jeopardizes the penalization of public protests that might result in minor damages to property and which authorities might consider as intended to endanger public safety or disturb public order.²⁰⁹

The wording of the legislation suggests that any act even those that are non-violent, such as speech, can be prosecuted. Political dissent and opponents of the government can be targeted through the application of the law if their activities involve holding peaceful demonstrations “to influence the government’s policy” which might result unintentionally in harming the infrastructure or international entities premises. Another standard set in the ICSFT and international law that has been dropped under the Jordanian legislation is the presence of the subjective element, which refers to the intentions of the perpetrators, of intimidating the population. As a result, an activity can be labeled as terrorist without necessarily intending to cause insecurity among a population or a group of people. The intention of causing fear and insecurity among people has been traditionally linked with the intention of compelling or coercing the government.²¹⁰ However, the new definition does not require a connection between them. It is worth noting that the legislation only requires the aim of “influencing state or government’s policy” rather than its coercion; marking another departure from international standards and lowering the gravity of acts considered to count as terrorist.

²⁰⁹ Amnesty International, ‘Jordan's anti-terrorism law opens door to new human rights violations’ (7 November 2006) AI Index MDE 16/012/2006, p.1.

²¹⁰ Walter Christian, ‘Terrorism as a challenge for national and international law’, 1st edition, 2004, p.29

While the perpetrator's intentions of causing fear among the public is a sufficient but not a necessary component in defining terrorism, the separation between the intention of intimidating the population and the purpose of "influencing" the government might be problematic in a scenario where a serial killer is on the loose. Although the serial killer will cause fear among the public, it would be controversial if the perpetrator were convicted under the PTL. Further the act does not take into account the political, ideological or religious motives of the perpetrators. Without considering the motives of the perpetrators, the serial killer scenario or acts of organized crime can constitute a form of terrorism. Although approaches requiring political or ideological motivations for an act to be of terrorist nature vary among legal orders and international instruments,²¹¹ in the absence of such a requirement acts which are not of terrorist nature, such as organized crimes can fall under the terrorism law.

Article 3 goes on to prohibit offences of financing, forming, recruiting or membership in associations that may perform acts of terrorism as described in PTL.²¹² It is not necessary that the group or organization is designated as a terrorist organization or has engaged in terrorist activities. Article 3(c) criminalizes "forming whatever group or organization or association or being affiliated to it with the intention to commit terrorism acts in the kingdom or against its citizens or interests abroad."²¹³ Persons who provide lawful support to groups or associations that act as fronts for terrorist organizations can be deemed as terrorists without their prior knowledge about the organization's engagement in terrorist activities.²¹⁴ Moreover, non-active members or persons who are no longer affiliated to such organizations might be criminally liable under such a wide definition. Consequently, the legislation proscribes "guilt by association" in

²¹¹ Duffy Helen, 'The "war on terror" and the framework of international law', 2005, p.32

²¹² Article 3, PTL No.55 of 2006.

²¹³ Article 3 (c), PTL No.55 of 2006.

²¹⁴ Abeer Ghazi Jarrar, 'Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism', 2009, p.43.

the past, present and future, without evidence that the person specifically intended to take part in the illegal aims of the association.

Individuals who commit offences listed under Article 3 face punishment with hard labor, which ranges from three to fifteen years, unless the law provides for a harsher sentence in other law provisions.²¹⁵ However, Article 148 of the Penal Code provides for a penalty of hard labor for a minimum of five years for acts of terrorism and death penalty if such acts lead to the death of a person.²¹⁶ The possibility that upon ones conviction a longer sentence might be imposed under other criminal law provisions results in legal uncertainty.

The broad framework of the PTL, which allows for penalizing acts that are not terrorist in nature, though they might be criminal, runs contrary to the international norms of defining terrorism. A fact sheet by the UN High Commissioner for Human Rights elucidates the centrality of protecting human rights while countering terrorism and the safeguards states should adhere to while proscribing terrorism, asserting that:

The important objective of countering terrorism is often used as a pretext to broaden State powers in other areas.(footnote omitted) Offences which are not acts of terrorism, regardless of how serious they are, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of other counter-terrorism measures, even if undertaken by a person also suspected of terrorist crimes.²¹⁷

Although to date, no one has been prosecuted under the PTL,²¹⁸ the existence of the legislation has contributed to making political opponents highly susceptible to being accused under national security legislation. Several members of the Muslim Brotherhood viewed the law as transforming Jordan into a police state and expressed fear of being marginalized and targeted

²¹⁵ Article 7 (a), PTL No.55 of 2006.

²¹⁶ Article 148 (2) & (4), Penal Code No.16 of 1960.

²¹⁷ UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-terrorism', Fact Sheet No. 32, p.24.

²¹⁸ Human Rights Council, Universal Periodic Report, A/HRC/11/29, 3 March 2009
<http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/A_HRC_11_29_JOR_E.pdf> accessed 16 November 2009, p.4-5.

by it.²¹⁹ Lawyer Zuhair Abu Al-Ragheb, articulating the same concerns, stated that: “[T]he Prevention of Terrorism Bill would put every free citizen under ‘intimidation’ of this legal project, especially those supporting national issues in any part of the Arab world, will be listed as terrorists and punished by hard labor.”²²⁰

On one hand, even though anti-terrorism legislation might be successful in silencing extremists in the public arena, it can prove to be counter-productive in preventing terrorism and deterring potential perpetrators from continuing their activities secretly, especially with all the technological advancements. One of the implications of the legislation is alienating extremists and pushing them into private corners, thus, making it harder for authorities to combat radical ideologies. On the other hand, increased political control over freedom of assembly and expression, present an atmosphere conducive for spreading radical ideologies and the recruitment of members, as individuals feel that they are being suppressed and manipulated by their governments. As for political opponents, the PTL has the effect of fostering distrust between authorities and dissenters and creating a culture of fear. Consequently, efforts to democratize Jordan and developing its political structures are rendered unsuccessful with the absence of dialogue and the implementation of draconian laws.

²¹⁹ Muhammed Mustafa Aloush, ‘The increasing tensions between the Brotherhood and Jordanian authorities’, Al-Akhbar (4 October 2007) <<http://www.al-akhbar.com/ar/node/49096>> accessed 24 November 2009.

²²⁰ Mohammed Amer, ‘Press and controversial bills’, <http://www.ammannet.net/look/eom/eom_jo.tpl?IdLanguage=18&IdPublication=3&NrArticle=8497&NrIssue=5&NrSection=26> accessed 24 November 2004.

VII. CHAPTER 5: The Way Forward

The application of broad preventative laws, which escape criminal law protections and lend themselves to oppressive mechanisms, has detrimental effects on societies and the ability of members to exercise their rights. In the case of Jordan, the government's techniques of repressing political dissent under anti-terrorism measures has proven to be counter-productive in facing challenges of radicalization and promoting democratic values. More efforts have to be directed towards exploring and dealing with the root causes of radical ideologies and support of extremism among members of the Jordanian community. Creating an environment of openness and dialogue can facilitate reaching those underground societies which terrorists utilize for recruitment and spreading their principles. Opening channels for communication, rather than deploying laws for punishing and criminalizing extremists, offers an opportunity for their inclusion in society and the political discourse.

The development of political processes to represent the diversity of political opinions and parties is necessary for engaging Jordanians in shaping the country's policies. Responding to political dissent by silencing them through legal measures detaches citizens from participating in the countries political life and voicing their opinions. In effect, it can lead to resenting authorities. During the past months Jordan has witnessed increased aggression and attacks against police officials; this can serve as evidence to the tensions existing in the Jordanian street against authorities.²²¹ The political arena has to offer a space in which critical views of government are debated and dealt with. Labeling individuals who oppose the government as

²²¹ Check Jordan Times, "Ajloun tribal dispute still unresolved" (14 October 2009) <<http://www.jordantimes.com/?news=19410>> accessed 29 November 2009. An article on the rise of violence and police attacks on citizens is by Muhammad Abu Rumman, "The events in Al-Tafialah neighborhood: When the citizen and security guards become the victims of political failure!" (9 November 2009) <<http://www.alghad.com/?article=15217>> accessed 29 November 2009.

criminals in order to discredit them exacerbates divisions among society members and plays a role in promoting a culture of violence.

On one hand, stringent and overbroad laws governing freedom of expression have to be reviewed, in light of the geopolitical and domestic conditions in order to ensure the meaningful and honest participation of Jordanians. On the other hand, in keeping up with its human rights obligations under the ICCPR, Jordan has to revoke excessively restrictive and vague measures imposed on freedom of expression. The previous entails Jordan to harmonize its domestic laws with international human rights instruments which it is party to. At the Universal Periodic Review of Jordan in 2009, the HR Committee noted that the Constitution does not contain specific provisions as to the relationship between international conventions and domestic laws.²²² An initial step is to enact legislation that specifically provides for the incorporation of international conventions ratified by Jordan on the local level. International bodies and non-governmental organizations (NGOs) should pressure Jordan to sign the first optional protocol of the ICCPR which allows for individuals to complain to the Human Rights Committee about violations of the Convention.²²³

The role of non-governmental organizations (NGO's) and media is paramount in exposing governmental abuse. More media outlets and NGO's have gotten involved and active in covering issues relating to government policies and human rights violations. Although the government has tightened its grip on NGOs' work and sources of funding, forcing organizations to avoid confronting authorities and reporting on human rights violations, overtime there has been more organizations dedicated to following up on such issues. These organizations have also

²²² Human Rights Council, Working Group on the Universal Periodic Review, Fourth session, Geneva, 2-13 February 2009, A/HRC/WG.6/4/JOR/2 (21 November 2008), p.2.

²²³ First Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

been useful in providing citizens with information regarding their rights and the complaint mechanisms available to them in cases where their rights have been subject to abuse by governmental authorities. Thus, creating a more conscious atmosphere among Jordanians and assisting victims of abuse in accessing their rights.

While it is understandable in times of fear to enact laws that respond to national security threats and dangers of terrorism, the use of counter-measures against political opponents have to be reconsidered due to their failure in providing sustainable solutions and their violation of international law. In fighting terrorism, Jordan has to find the right balance between security and freedoms, rather than its approach of sacrificing human rights to ensure a vulnerable state of stability. The words of the UN Secretary General, Kofi Anan, addressing the UNSC on the occasion of the CTC's one-year anniversary in 2002, continue to resonate as he warned about the dangers of anti-terrorism laws, saying that: "By their very nature, terrorist acts are grave violations of human rights. Therefore to pursue security at the expense of human rights is short-sighted, self-contradictory, and, in the long run, self-defeating."²²⁴

²²⁴ UN Press Release, 'Secretary-General Kofi Annan Addressing Security Council', (4/10/2002) UN Doc SG/SM/8417, SC/7523.

VIII. Conclusion

One of the repercussions of the 11 September 2001 attacks is the increased demands of the international community on states to strengthen their measures in fighting terrorism in addition to speech that incites to terrorism. Soon after the attacks, the United Nations passed resolution 1373, which was unanimously adopted, entailing states to establish offences criminalizing the support and finance of terrorist acts and inciting to terrorism. However, the resolution's disregard of demanding that such measures should uphold human rights standards was seen as an opportunity for states to enact overly broad laws, putting at risk civil and political rights, namely freedom of expression. The United Nations' approach also paved the way for regional instruments such as the Council of Europe's Convention on the Prevention of Terrorism, to establish public provocation to terrorism as an offense, encouraging the United Kingdom to make illegal expression "glorifying terrorism" under ambiguous laws. The effect of such laws in alienating Muslim communities is yet to be explored.

Following a global trend, Jordan introduced counter-terrorism laws expanding criminal responsibility by redefining terrorism and amending its Penal Code to enact harsh laws abridging freedom of expression and assembly. Prosecutions, which are politically driven, targeted opponents and journalists critical of government policies. State tactics of labeling opposition members as criminals and prosecuting them under national security laws ostensibly aims to discredit dissent in addition to weaken their community support. However, state strategies have resulted in the disengagement of Jordanians from political participation and increased self-censorship. Moreover, aggressive state measures failing to address extremism, have provided a suitable environment for the spread of radical ideologies.

Therefore, Jordan has to reconsider its approach and initiate political processes and dialogue with extremists while at the same time refraining from employing national security laws for silencing dissent. On the level of its international obligations, Jordan has to harmonize its laws with human rights treaties it is party to and sign the optional protocol of the International Covenant on Civil and Political Rights allowing for individual complaints. The role of non-governmental organizations and the media in reporting human rights abuses has to be emphasized in order to promote human rights and their observance.

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