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Keeping the Peace—British, Israeli, and Japanese Legislative Responses to Terrorism

I. Introduction

In recent decades, the global community has been confronted with the phenomenon of terror as a means of protest. Even though terrorism is more commonplace in some regions than in others, all societies have become wary of its devastating impact. The threat posed by insurgents who seek to radically alter a nations' cultural, social, and political precepts has proven to be unpredictable, but efficient policy management can effectively safeguard potential targets and strengthen vulnerable weaknesses.

The United Kingdom, Israel, and Japan have each developed terrorism counteraction policies based upon legislation that specifically targets insurgent operations. While it is important that these initiatives be liberally construed in order to efficiently police terrorist behavior, it is equally important that these laws be narrowly tailored so as to protect individual liberties. Should these measures invade the sanctity of individual autonomy, terrorists will be better able to assert the myth that they are liberators of the oppressed and not violent insurrectionists.

This Comment will discuss different aspects of contemporary society which function as catalysts for terrorist violence and survey British, Japanese, and Israeli legislative initiatives that attempt to control the activities of terrorist organizations that actively operate in each nation. Part II will focus upon intrinsic obstacles, such as definitional inconsistencies, threat assessment, and contributing factors that effective policy management must surmount. Parts III, IV, and V will survey British, Israeli, and Japanese legislative countermeasures, respectively, and briefly profile terrorist cells operating within each nation. Part VI will compare each nation's initiatives and comment upon the future of terrorism in light of the

current state of British, Israeli, and Japanese antiterrorism legislation.

II. Framework for Legislative Control

Before undertaking a study of a particular nation's antiterrorism legislation, one should be familiar with several elements that will have a universal impact upon the effectiveness of such measures. This section will focus upon general areas that are significant to any study of terrorism.

It should be recognized that a comprehensive definition of the term "terrorism" is very elusive. Instead of searching for a catch-all explanation of the phenomenon, it would be more practical for a nation to identify terrorism's root causes in order to ascertain a faction's infrastructure, support bases, and potential targets before formulating the proper means for response. In this regard, emphasis should be directed toward distinguishing the contemporary components of society that create an environment conducive to terrorism.

A. *Definitional Obstacles*

Establishing a proper and comprehensive definition of terrorism is a complicated task that still induces extensive debate. The cliché "one man's terrorist is another man's freedom fighter" illustrates how easily the definition can be obscured.¹ In western society, the term elicits graphic and horrid images of criminal violence and brutality. However, organizations or nations that actively sponsor or directly engage in terrorism perceive violence as the most effective means of bringing about the particular transformations they seek. A complete definition of the term must take these two opposing viewpoints into account. In this respect, defining "terrorism" has proven to be troublesome.

Nations such as Japan and Israel have not adopted an explicit statutory definition of "terrorism," but others, such as the United

1. SEAN ANDERSON & STEPHEN SLOAN, HISTORICAL DICTIONARY OF TERRORISM 1 (1995).

States² and the United Kingdom,³ have developed such language.⁴ However, a particular definition will not shape a nation's terrorism counteraction policy as effectively as will its attitude toward terrorist violence. The antiterrorism measures of the United

2. U.S. government agencies employ their own definitions that essentially encompass the basic principles inherent in the American perspective on terrorism:

[T]he unlawful use or threatened use of force or violence by a revolutionary organization against individuals or property with the intention of coercing or intimidating governments or societies, often for political or ideological purposes. (U.S. Department of Defense).

[T]he unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. (U.S. Federal Bureau of Investigation).

[P]remeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents. (U.S. Department of State).

[V]iolent criminal conduct apparently intended: (a) to intimidate or coerce a civilian population; (b) to influence the conduct of a government by intimidation or coercion; or (c) to affect the conduct of a government by assassination or kidnapping. (U.S. Department of Justice).

Louis René Beres, Note, *The Meaning of Terrorism—Jurisprudential and Definitional Clarifications*, 28 VAND. J. TRANSNAT'L. 239, 240 (1995).

3. Terrorism is defined as "the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear." Prevention of Terrorism (Temporary Provisions) Act 1989, § 20(1) (Eng.).

4. Such definitions are still rather simplistic when compared to those of scholars who seek definitions that encompass all the potential facets of the insurgent mentality. For example:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-)clandestine individuals, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organisation), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

Alex P. Schmid, *The Response Problem as a Definition Problem*, in WESTERN RESPONSES TO TERRORISM 7, 8 (Alex P. Schmid & Ronald D. Crelinsten eds., 1993).

Kingdom, Japan, and Israel have been formed by both global trends and regional factors unique to their individual histories. When developing future policies, it is not any one particular definition that will guide these states, but a general attitude shaped by what each state has learned from experience.

For purposes of this Comment, a strict analysis of the definition of "terrorism" is unnecessary. The term, however, does have important implications that should be noted. For example, the aforementioned freedom fighter cliché is very misleading. Terrorists prefer to classify themselves as freedom fighters or guerrillas struggling for national liberation, social justice, or other ideals.⁵ In reality, a terrorist often directs violence at persons who have no connection with his or her alleged grievances.⁶ People are often targeted indiscriminately for the mere fact that they are vulnerable and innocent.⁷ Genuine freedom fighters generally do not deliberately attack children, a person passing by in the street, or people who merely have an ethnic or religious connection to a geographic area.⁸ True terrorists often target people who are not the cause of the oppression that a freedom fighter would struggle against and thus break down the boundaries of acceptable conflict and draw in a civilian population that is then victimized at random.⁹ Terrorists are also not guerrillas. Guerrillas are irregular soldiers who wage war on far superior military forces, not unarmed, unsuspecting, and defenseless civilians.¹⁰

Therefore, classifying terrorists as freedom fighters or guerrillas is a misconception that attempts to refute terrorism's implicit barbarity and legitimize outlandish criminal behavior. This manipulation is made possible by broad application of the term "terrorism." It does not merely apply to radical insurgent organizations that indiscriminately use violence as an ideological arm; instead it applies to any individual, group, or nation that utilizes

5. See Ramsey Kleff, *Terrorism: The Trinity Perspective*, in *TERRORISM & POLITICAL VIOLENCE: LIMITS AND POSSIBILITIES OF LEGAL CONTROL* 13, 13 (Henry H. Han ed., 1993).

6. Benjamin Netanyahu, *Defining Terrorism*, in *TERRORISM: HOW THE WEST CAN WIN* 7, 8 (Benjamin Netanyahu ed., 1986).

7. See Benzion Netanyahu, *Terrorists and Freedom Fighters*, in *TERRORISM: HOW THE WEST CAN WIN* 25, 27 (Benjamin Netanyahu ed., 1986).

8. *Id.*

9. See Netanyahu, *supra* note 6, at 9.

10. See *id.*

physical force as a medium to invoke or obstruct political and social transformations. With such an extensive base, it is understandable that terrorism has yet to be defined with boilerplate language. Although a concise or an entirely accurate statement may prove elusive, terrorism, when broken down to a simple principle, is basically "the threat of violence and the use of fear to coerce, persuade, and gain public attention."¹¹

B. Identifying the Threat

Geo-political controversies and ideological disagreements often serve as catalysts for terrorism. Violence directed against democratic states frequently results from political and social objectives that are so hopelessly extreme that the normal channels of democracy would not be likely to afford the radical results sought.¹² In non-democratic states, terrorists act out of desperation due to a lack of suitable means to obtain their desired objectives.¹³ Regardless of their theater of operation, terrorist groups are either reactionaries who wish to restore former conventions or revolutionaries who wish to replace existing structures.¹⁴

It is rare for independent terrorist cells to have significant external contacts for support or an infrastructure that will ensure their longevity.¹⁵ Such organizations are often limited in their capabilities, but may be able to contact other organizations that can provide them with necessary aid.¹⁶ Organizations that receive support from sovereign nations can better maintain the group's existence through access to training, weapons, safe harbor, and

11. NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON DISORDERS AND TERRORISM 3 (1976), cited in ANDERSON & SLOAN, *supra* note 1, at 3.

12. See LAWRENCE FREEDMAN ET. AL., TERRORISM AND INTERNATIONAL ORDER 57 (1986).

13. *Id.*

14. See John M. Collins, *Definitional Aspects*, in POLITICAL TERRORISM AND ENERGY 1, 11-12 (Yonah Alexander & Charles K. Ebinger eds., 1982).

15. KARL A. SEGER, THE ANTI-TERRORISM HANDBOOK 4 (1990).

16. *Id.* Such an example can be seen with the Japanese Red Army, a small Marxist organization that is now primarily supported and trained in the Middle East by the Popular Front for the Liberation of Palestine. See U.S. DEP'T OF STATE, PATTERNS OF GLOBAL TERRORISM: 1994 45 (1995) (hereinafter PATTERNS OF GLOBAL TERRORISM: 1994).

logistical and administrative support.¹⁷ Such support provides them with opportunities to travel internationally, obtain sophisticated weapons and explosives, and coordinate their objectives with other terrorist groups.¹⁸

Other nations may go so far as to directly organize, supply, and control terrorist cells for the purpose of creating a militant wing of a particular autocratic regime.¹⁹ These organizations do not face difficulties with regard to sustenance, leadership, and support; however, state-directed organizations are rare due to the risk of international condemnation.²⁰ Although any insurgent group, whether independent or state-operated, can be unpredictably dangerous, overlooking an organization's support base could limit effective evaluation of its potential capabilities.

The goal of a terrorism counteraction policy is to make the political, economic, and psychological climate in which terrorists operate increasingly hostile in order to reduce terrorism to a point where it cannot divert a nation from its stated policies.²¹ To achieve this end, an effective policy should focus upon a rule of law that delegitimizes terrorist activity. Further, it must make the practice of supporting terrorism unacceptable internationally in

17. SEGER, *supra* note 15, at 5. It is often difficult to determine when certain activities of a state actually support a terrorist organization. See DAVID E. LONG, *THE ANATOMY OF TERRORISM* 107 (1990). Sometimes a state will provide financial support for a political party reputed to have its own terrorist factions. *Id.* An example would be Saudi Arabia's support for the PLO through the Al-Fatah which, although linked with terrorism, is the political wing of the PLO. *Id.* An inimical example would be Libya's support of the PLO through splinter groups that are exclusively committed to terrorist violence. *Id.*

18. SEGER, *supra* note 15, at 5. State supported training for terrorist groups does not always involve military-style camps or drills. Such training can often be technical in nature, such as surveillance, counterfeiting, forgery, communications, and recruitment techniques. See LONG, *supra* note 17, at 108.

19. A striking example of state-directed terrorism occurred in 1984, when Iran developed a special forces unit comprised of 2500 men, each willing to undertake suicide missions in order to spread Islamic fundamentalism throughout the Middle East and North Africa. SEGER, *supra* note 15, at 5-6. According to former U.S. Secretary of State George P. Shultz, Syria, Libya, and North Korea have also been responsible for state-directed terrorism. See JOHN B. WOLF, *ANTITERRORIST INITIATIVES* 24 (1989).

20. It would be more expedient for a state to support, rather than directly operate a terrorist cell, in order to maintain a questionable distance from the terrorist act itself. See LONG, *supra* note 17, at 106.

21. L. Paul Bremer III, *The West's Counter-Terrorist Strategy*, in *WESTERN RESPONSES TO TERRORISM* 255, 257 (Alex P. Schmid & Ronald D. Crelinsten eds., 1993).

order to stifle financial and military assistance to insurgent groups.²² Due to each culture's unique ethnocentric differences, these efforts should focus upon vigorous international cooperation and negotiation.²³ However, rigorous legal standards do not guarantee compliance, so a nation must also employ localized measures by continually re-evaluating threats to potential target sites, and then work to improve their protection.²⁴ Specific assessments should indicate the potential sources of attack, motivation, and form of aggression expected.²⁵ Furthermore, tactical teams are needed to contain and diffuse hostile situations. Such preventive and reactive measures will supplement the legal initiatives that a state will employ to effectuate its goals for countering terrorism.

Without effective implementation, legislative mandates will only serve as bare and empty attempts at containment. However, overzealous enforcement may create an oppressive atmosphere, intrude upon individual liberties, and generate public resentment. It may then be easier for terrorists to gain sympathy from segments of a population that are similarly constrained by anti-terrorist initiatives. This is not to assert, however, that a nation should not

22. The late 1980s provide significant evidence that supports this assertion: the U.S. air strike on Libya in 1986 reduced the frequency of Libyan involvement in terrorist activities from 19 acts in 1986 to six in 1988; European Community-imposed sanctions against Syria led to the 1987 expulsion of Abu Nidal; the European Community simultaneously recalled its foreign ministers from Tehran and suspended all official high level exchanges with Iran after Ayatollah Khomeini's call for the execution of Salman Rushdie. *See id.* at 258.

23. The Western European community has established the TREVI Group (Terrorism, Radicalism, Extremism, and Political Violence) which is comprised of each state's Ministers of Justice and Interior to regularly produce an agreed upon assessment of terrorist threats facing European Community nations by exchanging information on the movement and operating methods of particular groups. *Id.* at 260. Similarly, the International Police Organization (INTERPOL) now alerts member states of FBI arrest warrants for certain terrorists. *Id.*

24. This practice needs to be adopted by the government as a whole and by individual entities in their respective capacities (military installations, defense contractors, municipal facilities, law enforcement, and the private sector). SEGER, *supra* note 15, at 35. Examples can be seen in the universal screening of airline passengers with metal detectors, increased security at diplomatic facilities, "watch lists" of terrorists for border police, and covert tactical operations. Bremer, *supra* note 21, at 261.

25. G. Davidson-Smith, *Counterterrorism Contingency Planning and Incident Management*, in DEMOCRATIC RESPONSES TO INTERNATIONAL TERRORISM 123, 125 (David A. Charters ed., 1991).

vehemently denounce terrorism and utilize its best combative resources. But policy-makers must acknowledge that terrorists often resort to violence because they feel constrained by the status quo; further suppression could make violent insurrection more attractive.

C. *Contributing Factors*

A nation will need to identify the factors that serve as catalysts for terrorist violence before it will be able to draft an effective terrorism counteraction policy. Although democratic states are frequently targeted for terrorist violence, the inherent strengths of such political systems make them insusceptible to many forms of terrorism. The ability to remove leaders through free elections, to protest freely through the media, and to resolve disputes in impartial courts reduces the necessity for violent social protest.²⁶

However, there are also many intrinsic weaknesses in democratic states that foster the conditions for insurgencies. The democratic right to freedom of association provides terrorists with more latitude than that allowed by authoritarian states.²⁷ Inadequately protected targets, such as mass transit systems, are abundant and readily accessible, and the legal system can be inhibited by witness intimidation and the requirement of strict proof for conviction.²⁸

The dilemma which democratic states face is that the only way to address such contributing factors is to curtail the freedoms inherent in their very existence.²⁹

Terrorists seek to turn a nation's power and strength against itself by exploiting the weaknesses and vulnerabilities of its

26. Alex P. Schmid, *Terrorism and Democracy*, in WESTERN RESPONSES TO TERRORISM 14, 17 (Alex P. Schmid & Ronald D. Crelinstein, eds., 1993). These factors will not reduce terrorism if they fail to work properly. *Id.* Terrorist violence incensed in Northern Ireland and in Sri Lanka when free elections were stifled through the gerrymandering of election districts. *Id.* Unrestrained police brutality has also provided for a recourse to violence as exemplified by an unpunished police killing of a West Berlin demonstrator which gave rise to the German June 2nd movement of 1967. *Id.* Another contributing element occurs when the media cannot vent the grievances of the public, such as in the Basque country under the Franco Regime in Spain. *Id.*

27. *Id.* at 18-19.

28. Schmid, *supra* note 26, at 18-19.

29. *Id.* at 15.

infrastructure,³⁰ but an attack will need publicity before it can trigger political or social transformations in the targeted culture. In this respect, targets are chosen for symbolic purposes and attacks are deliberately threatening and violent.³¹ With the capabilities of the modern media, the old Chinese proverb "kill one and frighten ten thousand" could now read "kill one and frighten ten million."³² The commercialization of violence has provoked increasingly spectacular operations in order to avoid monotony.³³ In order to transmit a more staggering psychological message, symbolism has taken precedence over substance with regard to target selection.³⁴ Nations such as the United Kingdom have realized the influential role of the media and have slowly enacted censorship laws to control the messages being broadcast.³⁵ Without such restrictions, the media can unwittingly contribute to the success of an operation.³⁶

Another catalyst for terrorist violence is an intensified freedom of movement that has developed on an enormous scale.³⁷ Access to mass transportation allows international terrorist organizations to strike at targets anywhere in the world by planting bombs and fleeing the area before detonation.³⁸ Modern superhighways and easy access to air travel have enabled domestic terrorists to

30. ROBERT H. KUPPERMAN & DARRELL M. TRENT, *TERRORISM: THREAT, REALITY, RESPONSE* 13 (1979).

31. Ninety-five percent of terrorist violence involves bombings, assassinations, armed assaults, kidnappings, hijackings, and hostage-taking, half of which are directed against American, French, Israeli, British, and Turkish targets. See Jeffrey Ian Ross, *The Nature of Contemporary International Terrorism*, in *DEMOCRATIC RESPONSES TO INTERNATIONAL TERRORISM* 17, 31-32 (David A. Charters ed., 1991).

32. SEGER, *supra* note 15, at 15. While a terrorist bombing that killed the governor of Idaho in 1905 took days to reach the world audience, a 1986 hijacking of a Karachi airliner was broadcast live on the morning news. *Id.*

33. Leonard Weinberg & William Eubank, *Political Terrorism and Political Development*, in *TERRORISM AND POLITICAL VIOLENCE: LIMITS AND POSSIBILITIES OF LEGAL CONTROL* 29-30 (Henry H. Han ed., 1993).

34. See Collins, *supra* note 14, at 12.

35. See generally CLIVE WALKER, *THE PREVENTION OF TERRORISM IN BRITISH LAW* 267-72, (2d ed. 1992).

36. In 1985, the press paid up to \$12,500 for interviews with the Amal Militia during its hijacking of TWA 847. See JAMES ADAMS, *THE FINANCING OF TERROR* (1986), reprinted in SEGER, *supra* note 15, at 15.

37. See Schmid, *supra* note 26, at 18.

38. See SEGER, *supra* note 15, at 16.

effectuate their plans with less chance of detection.³⁹ The volume of tourism and international migration in Western Europe is so enormous that keeping cross-border traffic under surveillance is beyond systematic control.⁴⁰ Restricting the ability to move freely throughout certain nations will generate disdain among many critics, but may be an unfortunate necessity for certain terrorism counteraction initiatives.

The differences between Western and non-Western perspectives on collective responsibility have also had a significant impact on terrorist violence. Western societies usually emphasize individual accountability and responsibility, while non-Western societies tend to hold all members of a social, ethnic, or religious group collectively responsible for assigned guilt.⁴¹ As a result, non-Western insurgents will often target an entire group or culture.⁴² Western insurgents, however, will target particular individuals, such as businessmen and politicians, more often than random passers-by.⁴³

The contemporary international community has also been influenced by a century of political, social, and religious movements that each espouse distinct ideologies and seek different transmutations. Due to the great diversity of terrorist groups, a regular scheme of comparative analysis must take into account distinct political beliefs, unique organizational features, motivations, and tactics of a group.⁴⁴ A terrorist's ideology and ultimate goal have significant relationships to his or her strategies and operations.⁴⁵

39. Modern transportation systems enabled members of the United Freedom Front to live in Ohio and travel to New Jersey, New York, Connecticut, and Massachusetts to rob banks, collect intelligence, and bomb targets. *Id.* These terrorists would leave on Monday morning and return undetected by Friday. *Id.* Members of the Brotherhood of Silence used vans and motor homes as safe houses and would travel U.S. interstate highways until a deadly confrontation with the authorities revealed a mobile arsenal of weapons, scanners, and tactical equipment. *Id.*

40. In 1987 alone, the Dutch borders were crossed by 30,000 trains, 229,000 aircraft, and 232,000 ships. VOLKSKRANT, July 12, 1988, at 1, *cited in* Schmid, *supra* note 26, at 14. Custom points were crossed by 114,000,000 people and almost 4000 weapons were confiscated. *Id.*

41. *Id.* at 31.

42. *Id.*

43. *Id.*

44. ANDERSON & SLOAN, *supra* note 1, at 16.

45. Bard E. O'Neill cites to the following seven basic types of strategic ideologies that have been adopted by terrorist groups over the century: 1)

Fundamentalist religions often perceive terrorist violence as a divine duty which ultimately relieves insurgents of the moral, political, and practical constraints that normally condemn indiscriminate and massive violence.⁴⁶ One terrorist may seek to completely obliterate a nation's government⁴⁷ whereas another may want only to change a particular practice rather than abolish an entire system.⁴⁸ Furthermore, a governing body itself may engage in terrorism in order to deter and weaken opposition.⁴⁹ As can be seen, the subjective factors that contribute to the identity of a terrorist cell vary greatly.

Anarchists are the most dangerous because they believe that all institutionalized political systems are illegitimate and should be eliminated; 2) Egalitarians seek to radically transform the social structure through a redistribution of equality and often advocate authoritarian and elitist regimes; 3) Traditionalists want to restore past systems and conventions based on ancestral heritage and religion; 4) Pluralists want to establish a system in which values of individual freedom, liberty, and participation will be emphasized, however there are few examples of such groups; 5) Secessionists renounce the nation state to which they are subjects and want to separate and establish an independent state; 6) Reformists aim to obtain more political, social and economic benefits for the people whom they claim to represent, but do not want to reject the current political system; and finally, 7) Preservationists seek to maintain the status quo by engaging in violence against non-ruling minorities. See Bard E. O'Neill, *The Strategic Context of Insurgent Terrorism*, in *TERRORISM AND POLITICAL VIOLENCE: LIMITS AND POSSIBILITIES OF LEGAL CONTROL 77-79* (Henry H. Han ed., 1993).

46. See Weinberg & Eubank, *supra* note 33, at 30.

47. Richard Schultz, *Conceptualizing Political Terrorism: A Typology*, in *INTERNATIONAL TERRORISM: CURRENT RESEARCH AND DIRECTIONS 9-15* (Alan D. Buckley & Daniel D. Olson eds., 1980) noted in *ANDERSON & SLOAN, supra* note 1, at 5. "Revolutionary Terrorism [is defined as] . . . the threat and/or development of extranormal forms of political violence, in varying degrees, with the object of successfully effecting a complete revolutionary change (i.e., a change of fundamental political-social processes) within the political system." *Id.*

48. *Id.* "Sub-Revolutionary Terrorism [is defined as] . . . the threat and/or employment of extranormal forms of political violence, in varying degrees, with the objective of effecting various changes in the particular political system The goal is to bring about certain changes in the body politic, not to abolish it in favor of a complete system change." *Id.*

49. *Id.* "Establishment Terrorism [is defined as] . . . the threat and/or employment of extranormal forms of political violence in varying degrees, by an established political system, against both external and internal opposition. *Id.* Specifically such means may be employed by an established political system against other nation-states and groups external to the particular political system, as well as internally to repress various forms of domestic opposition/unrest and/or to move the populace to comply with programs/goals of the state." Schultz, *supra* note 47, at 5.

It should be realized that there is no concrete remedy that will entirely eradicate terrorism. The preceding discussion regarding contributing factors is a general survey of major contemporary trends, not a standard that will envelop each root cause. However, if these factors go unrestrained, they will serve as a conduit for terrorist violence. Policy-makers must recognize the aforementioned factors in order to avoid overrating or underrating the threat of terrorism. There is a danger that a nation will unknowingly effectuate the fundamental goals of a terrorist movement by devising unnecessary initiatives that counter misperceived threats, and thereby alter the status quo.⁵⁰

III. United Kingdom

Antiterrorism legislation in the United Kingdom has been greatly, if not entirely, influenced by the ongoing controversy in Northern Ireland between the Catholic and Protestant populations.⁵¹ The ramifications of the political violence inherent in the struggle are staggering: among a population of 1.5 million, 3000 people have been killed since 1969.⁵² In addition, although this

50. See generally Grant Wardlaw, *The Democratic Framework*, in *THE DEADLY SIN OF TERRORISM* 5-11 (David A. Charters ed., 1994).

51. The underlying conflict that plagues Northern Ireland can be traced back as early as the 1600s. See JOHN E. FINN, *CONSTITUTIONS IN CRISIS* 47 (1991). Protestant British and Scottish colonists forcibly settled Ulster Plantation amidst Catholic uprisings. *Id.* The conflict later solidified when King William's Protestant army defeated King James' Catholic army in 1689. *Id.* In the ensuing centuries, severe prejudices developed between the Catholic and Protestant populations, the former demanding the establishment of an independent Irish state, the latter remaining loyal to the crown. *Id.* The demands for some form of national political independence were satisfied by the foundation of the Irish Free State in 1922. *Id.* However, this settlement left Northern Ireland, as formed under the Government of Ireland Act of 1920, subservient to the British and in the control of the Loyalist Protestant majority. *Id.*

52. David Bonner, *The United Kingdom's Response to Terrorism*, in *WESTERN RESPONSES TO TERRORISM* 174 (Alex P. Schmid & Ronald D. Chelinsten eds., 1993). The 1960s gave rise to a civil rights movement calling for reforms that would allow the Catholic minority to participate equally in the political and economic life of the province. See Brian J. Dorrian, Note, *Meeting "Clear and Present Dangers?" British Legal Responses to Violent Irish Nationalism* 50 *U. TORONTO FAC. L. REV.* 161, 163 (1993). The 1963 election of a moderate leader, Terrence O'Neill, significantly contributed to the progress of the civil rights movement and raised Catholic expectations, but also alienated the loyalist population. *Id.* The escalating violence culminated when the mainly Protestant police force opened fire on Catholic rioters in 1969. *Id.* Two nights of violent rioting ensued, and the British Army was subsequently summoned. *Id.*

Comment focuses mainly upon Irish-based terrorism in the United Kingdom, the United Kingdom has experienced domestic terrorism from other sources and has also been repeatedly victimized by foreign insurgents.⁵³ However, it is violent Irish nationalism that has had the most severe impact upon British antiterrorist legislation.

A. *Insurgent Organizations*

The Irish Republican Army (IRA) was established in the mid-19th century, but did not become so titled until the Dublin Easter Rebellion of 1916.⁵⁴ The IRA was disbanded upon the creation of the Irish Free State in 1922, but again became active in 1939 when it undertook a bombing campaign in London, Manchester, Glasgow, and Birmingham.⁵⁵

In 1969, internal disagreements over the group's Marxist ideology caused a split in the IRA.⁵⁶ One faction became the Official Irish Republican Army which renounced armed struggle in 1972, and eventually became the Worker's Party.⁵⁷ Although the Official Irish Republican Army has ceased using force and has developed a non-sectarian political approach to assert its views, it remains a proscribed organization in the United Kingdom.⁵⁸

The other faction formed the Provisional Irish Republican Army (PIRA)⁵⁹ in order to pursue the objectives of unifying

53. Great Britain has witnessed the hijacking and destruction of its aircraft abroad, the kidnapping and killing of its nationals abroad, as well as bombings, assassinations and attempted assassinations within its borders by foreign insurgents. *Id.* at 173. Terrorist incidents have surfaced in connection with the political affairs of India, Iran, Iraq, Israel, Libya, and Syria. *Id.* The British Isles have also seen domestic violence perpetrated by Welsh and Scottish nationalists, neo-Fascists, radical animal rights activists, and Anarchists such as the Angry Brigade. *Id.*

54. ANDERSON & SLOAN, *supra* note 1, at 148.

55. *Id.* Due to this resurgence of violence, both the United Kingdom and Ireland officially proscribed the IRA. *Id.*

56. *Id.*

57. *Id.*

58. See Bonner, *supra* note 52, at 175.

59. PIRA is the main Irish nationalist paramilitary and terrorist organization seeking to reunite the six counties of Northern Ireland with the rest of Ireland in order to form an "Irish Socialist Republic." ANDERSON & SLOAN, *supra* note 1, at 292. This objective is sought primarily through revolutionary armed struggle rather than through political or diplomatic means. *Id.* PIRA has resorted to terrorism aimed at inflicting maximum casualties and has targeted civilians as well as military personnel. *Id.*

Ireland under a socialist government and undermining British support for keeping Northern Ireland in the United Kingdom through military operations.⁶⁰ PIRA's terrorist campaign consists of bombings, assassinations, kidnappings, extortion, and robberies targeted against the British Army, Ulster security forces, prison and judicial officials, and Loyalist party members.⁶¹ The objectives of PIRA's campaign are to raise to unacceptable levels the economic and political costs to Britain of maintaining troops in Northern Ireland, to provoke British and Northern Irish military and police forces to violate the human and civil rights of PIRA suspects or ordinary Catholics in the hope that such abuses will outrage Britain's domestic civil libertarians and excite international condemnation, and to forcibly mobilize Northern Irish Catholics into the struggle.⁶² Financing has been generated through not only robberies of banks, post offices, and corporate payrolls,⁶³ but also through extortion, profits from small businesses, and defrauding the government.⁶⁴ Additionally, PIRA has been able to draw support from Irish Americans and Libya in the form of arms and money.⁶⁵

60. See *id.* PIRA has also used its political wing—the Provisional Sinn Fein headed by Gerry Adams—to accomplish such goals. Bonner, *supra* note 52, at 175. PIRA had as many as 1000 hard-core members in the 1970s, but internal disputes have since cut this figure to between 200 and 500 members. *Id.* Even though membership appears to be small, PIRA is able to draw upon much support through sympathy and intimidation. *Id.*

61. ANDERSON & SLOAN, *supra* note 1, at 294. From 1969 to 1982, members of PIRA have been convicted of 2269 murders, 7521 bombings resulting in 608 deaths, and at least 1000 "kneecappings" (summary executions and threats against family members). *Id.* PIRA is compartmentalized into Active Service Units whose members only know each other and the person issuing orders from above so as to minimize damages should a member be caught. DEPARTMENT OF DEFENSE, TERRORIST GROUP PROFILES 56-59 (1988) (hereinafter TERRORIST GROUP PROFILES). The Active Service Units are subordinate to localized Brigades which are ultimately responsible to the PIRA operational authority, the Northern Command. *Id.* PIRA attacks have occurred outside of Northern Ireland, the most notorious being the Brighton Bombing of 1984 which was designed to kill Margaret Thatcher. ANDERSON & SLOAN, *supra* note 1, at 295. PIRA operations have also been reported in western European nations such as West Germany and the Netherlands. *Id.* at 294.

62. *Id.* at 293-94.

63. TERRORIST GROUP PROFILES, *supra* note 61, at 57.

64. Bonner, *supra* note 52, at 175.

65. TERRORIST GROUP PROFILES, *supra* note 61, at 57. Libyan weapons were intercepted off the coasts of Ireland in 1973 and France in 1987. *Id.* Libya has also been reported to have given PIRA between one and two million British

A smaller Marxist group, the Irish National Liberation Army (INLA), was formed by dissidents of the Official IRA in 1975 and is considered to be the military arm of the Irish Republican Socialist Party, even though the party denies such a connection.⁶⁶ Feuding between the INLA and both wings of the IRA led to the murders of many members, including the group's founder, Seamus Costello.⁶⁷ In addition, subsequent internal fighting and arrests triggered by informants have severely weakened the group.⁶⁸ INLA attacks began in 1975 with shootings and bombings of British soldiers, Northern Ireland's security forces, Ulster government officials, and members of the Loyalist Party.⁶⁹ However, INLA received the most attention with the assassination of the British Conservative Party spokesman in 1979.⁷⁰ The group does not have international financial support and relies mainly on robberies of banks, trains, and payrolls for funding.⁷¹ However, INLA has made contacts with the West German Revolutionary Cells and French Direct Action Leftist groups.⁷²

Although terrorism within the United Kingdom is traditionally presumed to be executed only by Irish Catholics, Protestant cells have also been instrumental in shaping legislative responses. Loyalist terrorism has been limited to small groups that condemn links with the Irish Republic and resist political change.⁷³

The Ulster Defense Association (UDA) was formed in 1971 for the ostensible purpose of protecting Protestant neighborhoods from IRA attacks, but it is suspected of supporting smaller death squad units that assume names separate from the UDA.⁷⁴ The UDA receives effective state support from the Ulster Defense Regiment, which is an official security organization dominated by sectarian Protestant militiamen, and which continues to hold legal existence in Northern Ireland.⁷⁵

pounds. *Id.*

66. *Id.* at 50.

67. *Id.*

68. *Id.*

69. TERRORIST GROUP PROFILES, *supra* note 61, at 51-52.

70. *Id.*

71. *Id.* at 51.

72. ANDERSON & SLOAN, *supra* note 1, at 147.

73. Bonner, *supra* note 52, at 177.

74. ANDERSON & SLOAN, *supra* note 1, at 357.

75. *Id.* The UDA's legal status is due in large part to the fact that British security forces depend upon it for auxiliary support. *Id.*

The Ulster Volunteer Force (UVF) is a proscribed group that was briefly political in the 1970s, but is mainly known for bombings, robberies, and murdering members of the Catholic community.⁷⁶ It was formed from the unification of all Ulster Protestant militias in 1913 in order to oppose the grant of an autonomous government to Ireland in which Protestants would have formed a minority.⁷⁷ This group also had effective state support from the Ulster Defense Regiment.⁷⁸

The Ulster Freedom Fighters (UFF), which is basically a "counter terror" body that resists Catholic aggression and seeks to deteriorate the connection with the British government in order to establish an independent Northern Ireland.⁷⁹ The UFF splintered from the Ulster Defense Association and was proscribed in 1973, but continued to carry out numerous assassinations and bombings.⁸⁰ Although its targets have been IRA supporters and sympathizers, it has also carried out random attacks on prominent Catholics regardless of political affiliation in order to terrorize the Roman Catholic Community.⁸¹

B. Antiterrorism Legislation

The Prevention of Terrorism (Temporary Provisions) Act⁸² (PTA) is the current product of the British legislative response to terrorism. A barrage of violent Irish nationalism between 1972 and 1974 led to the somewhat hasty enactment of this initiative.⁸³ The

76. *Id.*

77. ANDERSON & SLOAN, *supra* note 1, at 359. The UVF ceased to exist officially in 1922 when most of its members joined the newly created Royal Ulster Constabulary. *Id.* However, the group reinstated itself in both 1966 and 1973 and declared war on all IRA members. *Id.*

78. *Id.*

79. Bonner, *supra* note 52, at 177.

80. ANDERSON & SLOAN, *supra* note 1, at 359.

81. *Id.* In one of its more notorious attacks, the UFF shot and wounded current Sinn Fein President Gerry Adams as he was driving through Belfast. *Id.*

82. Prevention of Terrorism (Temporary Provisions) Act 1989 (Eng.).

83. See WALKER, *supra* note 35, at 31. The Birmingham bombings of November 21, 1974, in which twenty-one people were killed and 184 injured, are often thought to have prompted the passage of the PTA. *Id.* However, both the Provisional and Official IRA had engaged in over 150 attacks in the two years preceding the PTA's creation. *Id.* Although the PTA has been deemed "panic legislation," it was modeled after the Northern Ireland (Emergency Provisions) Act 1973, the Prevention of Violence (Temporary Provisions) Act 1939, and the Immigration Act of 1971. *Id.* at 31-32. Nevertheless, the PTA is criticized because

PTA has been renewed and amended since its enactment in 1974 with the most recent alteration taking effect in 1989. Emergency legislation specific to Northern Ireland has also been enacted with the passage of The Northern Ireland Emergency Provision Act⁸⁴ (EPA). The most current revision was completed on June 17, 1996, and went into effect on August 25, 1996.⁸⁵ Critics point out that these two initiatives overlap both each other⁸⁶ and the common law.⁸⁷ Notwithstanding such criticism, both Acts remain at the forefront of British legislative responses to both domestic and international terrorism.

The EPA focuses on a system of scheduled offenses considered to be commonly committed in pursuit of terrorist activities and as such are given special treatment as to the mode of commitment, trial, and sentencing.⁸⁸ Some of these offenses can be certified out of EPA treatment and addressed in the normal manner if the Attorney General agrees that the commission of a particular offense has no connection with the purposes of the EPA.⁸⁹ Under the PTA, if a person is connected with the commission of a terrorist activity, the Secretary of State is granted the power to issue exclusion orders against him or her.⁹⁰ Such orders can

of the design defects that stem from its rapid passage.

84. Northern Ireland (Emergency Provisions) Act 1996 (Eng.).

85. An official review of the 1991 revision of the legislation recommended that a new statute be enacted with a number of changes. See generally J.J. ROWE, REVIEW OF THE NORTHERN IRELAND (EMERGENCY PROVISIONS) ACT 1991, Q.C., Cm.2706 (Feb 1995) (the Rowe Report) as cited in Kersi B. Shroff, *The United Kingdom*, in TERRORISM: FOREIGN/INTERNATIONAL LEGAL RESPONSES IN SELECTED FOREIGN COUNTRIES 122 (Report for Congress, 1995) (analyzes the 1991 form of the EPA, but remains consistent with the 1996 revision).

86. WALKER, *supra* note 35, at 41.

87. See Bruce W. Warner, *Great Britain and the Response to International Terrorism*, in THE DEADLY SIN OF TERRORISM 20 (David A. Charters ed., 1994).

88. Shroff, *supra* note 85, at 124. Schedule 1, Part I, of the EPA lists substantive offenses such as murder, manslaughter, rioting, kidnapping, false imprisonment, conspiracy to murder, causing explosions, escaping from lawful custody, theft, robbery, burglary, intimidation, throwing a petrol bomb, criminal damage to property, possession of illegal firearms, aircraft hijacking, taking of hostages, financial assistance to terrorism, and breach of exclusion orders. *Id.*

89. *Id.* at 124. Murder, manslaughter, theft, and intimidation can be certified out whereas rioting, causing grievous bodily harm by explosions and escaping from lawful custody cannot. See also Northern Ireland (Emergency Provisions) Act 1996, Sch. 1, Pt. I: Substantive Offenses (Eng.).

90. Prevention of Terrorism (Temporary Provisions) Act 1989, §§ 4-8, Sched. 2, (Eng.).

exclude a person from entering either Great Britain, Northern Ireland, or the entire United Kingdom.⁹¹

The EPA proscribes ten paramilitary organizations⁹² and the PTA proscribes two organizations.⁹³ In this respect, the media has been prohibited from broadcasting words spoken by representatives of proscribed organizations, or any statements supporting pro-

91. *Id.* An order lasts for three years but can be revoked by the Secretary of State before the period expires. *Id.* at Sched. 2(1) and (2). A British citizen cannot be excluded from the entire United Kingdom. *Id.* at § 7(4). A British citizen also cannot be excluded from Great Britain if he or she has been a resident of Great Britain throughout the last three years and is currently excluded from Northern Ireland. *Id.* at § 5(4)(a) and (b). Likewise, a British citizen cannot be excluded from Northern Ireland if he or she has been a resident of Northern Ireland throughout the last three years and is currently excluded from Great Britain. *Id.* at § 6(4)(a) and (b). Exclusion orders are used when there is sufficient information that indicates that an individual is involved with terrorism but where that individual cannot be prosecuted because of a lack of admissible evidence. See ROWE, *supra* note 85, at 6. Sixty-five people have been excluded from the entire United Kingdom, 410 from Great Britain, and seven from Northern Ireland. See C.A. GEARTY & J.A. KIMBELL, *TERRORISM AND THE RULE OF LAW* 34 (1995) as cited in Shroff, *supra* note 85, at 129.

92. See Northern Ireland (Emergency Provisions) Act 1996, Sched. 2. Organizations proscribed by the EPA are the Irish Republican Army, Red Hand Commandos, Cumann na mBan, Fianna Na mBan, Saor Eire, Ulster Freedom Fighters, Ulster Volunteer Force, Irish National Liberation Army, Irish People's Liberation Organization, and the Ulster Defence Force. *Id.* at § 30(3). The Secretary of State may add or remove organizations from this list. *Id.* at § 30(4). When an organization is listed, it becomes illegal for any person to: a) belong to the organization; b) solicit support for the organization; c) solicit membership or carry out orders of the organization; d) address any meeting of three or more persons knowing that the meeting is to: i) support a proscribed organization; ii) further the activities of a proscribed organization; or iii) be addressed by a member of a proscribed organization. *Id.* at § 30(1)(a)-(d). It is also illegal to publicly wear any item of dress or display any article that arouses reasonable apprehension that he or she is a member or supporter of a proscribed organization (*Id.* at § 31(a) and (b)) or to publicly conceal one's identity with a mask or a hood. *Id.* at § 35. Furthermore, it is an offense to possess any article that could reasonably be assumed to be connected with the commission, preparation, or instigation of an act of terrorism connected with the affairs of Northern Ireland. *Id.* at § 32(1).

93. See Prevention of Terrorism (Temporary Provisions) Act 1989, Sched. 1 (Eng.). The PTA has only proscribed the Irish Republican Army (no specification is made between the Provisional IRA and the Official IRA) and the Irish National Liberation Army. See *id.* The language of PTA § 2, relating to membership, support, and meetings of proscribed organizations, and PTA § 3, relating to the display of public support, mirrors the language of EPA §§ 30 and 32. However, no provisions of the PTA address the wearing of masks or hoods to conceal one's identity.

scribed organizations.⁹⁴ However, the British government has appeased the media by ensuring the availability of official sources of information.⁹⁵

The EPA also subjects private security services in Northern Ireland to intense scrutiny in order to prevent terrorist infiltration of such enterprises in order to extort funds from the public.⁹⁶ A constable is authorized to enter any premises where a business involving the provision of security services is operated and inspect employment records.⁹⁷ Any person who knowingly or recklessly furnishes false or misleading information during the certification process commits an offense.⁹⁸

The EPA grants the police and armed forces broad powers of search, arrest, and detention which can be exercised without a warrant or reasonable suspicion.⁹⁹ Although the EPA gives similar authority to both constables and the army, any member of the armed forces on duty may detain suspected offenders for a maximum of only four hours.¹⁰⁰ The PTA also grants broad

94. See generally WALKER, *supra* note 35, at 267-78.

95. Shroff, *supra* note 85, at 132.

96. *Id.* at 127; see also Northern Ireland (Emergency Provisions) Act 1996, Part V: Regulation of the Provision of Private Security Services (§§ 37-44) (Eng.).

97. Shroff, *supra* note 85, at 127. The EPA requires a certification process for private security services through which certificates must be renewed every 12 months (see Northern Ireland (Emergency Provisions) Act 1996, § 39(3) (Eng.)) and a certificate holder must notify the Secretary of State of a change of employees within 14 days of the change. See *id.* at § 40. The Secretary of State may refuse to issue a certificate or revoke an existing certificate if he has reason to believe that a proscribed organization would benefit from the certificate or if the applicant or certificate holder has persistently failed to comply with the requirements of Part V (Regulation of the Provision of Private Security Forces). See *id.* at § 39(1) and (5).

98. Shroff, *supra* note 85, at 127; see also Northern Ireland (Emergency Provisions) Act 1996, § 38(2), (Eng.).

99. Shroff, *supra* note 85, at 123. For example, both the police and armed forces may: 1) enter and search buildings, other than a dwelling house and seize any munitions or radio transmitters and receivers found therein; 2) stop and search persons in public places and seize any munitions or radio transmitters and receivers; 3) enter a non-dwelling building to search for and seize explosives; 4) stop and search persons in public places and seize explosives; 5) enter any premises to search for detained persons; 6) stop and question a person anywhere to ascertain identity, movements or knowledge of terrorist incidents; and, 7) enter any premises in the course of operations for preservation of peace or maintenance of order. *Id.*; see also Northern Ireland (Emergency Provisions) Act 1996, §§ 17-24 (Eng.).

100. See Northern Ireland (Emergency Provisions) Act 1996, § 19 (Eng.) (Powers of arrest and seizure by members of Her Majesty's forces).

investigatory powers to the British police over the commission, preparation, instigation, or financing of terrorism.¹⁰¹ For example, if a constable has reasonable suspicion that a person is simply connected with terrorist activity, the constable may arrest him or her without a warrant even though the person is not suspected of committing a specific crime.¹⁰² Additionally, the PTA allows immigration and customs officials to examine and search persons and articles to determine if they are connected to terrorist activity.¹⁰³ Although the authorities are granted sweeping powers of arrest and detention under the EPA, evidence of admissions and confessions will not be admitted into court if there is unchallenged evidence of torture, inhumane treatment, violence, or threats of violence used to coerce a suspect into making a statement.¹⁰⁴

The EPA establishes two forms of committal proceedings in Northern Ireland: a preliminary investigation in which the testimony of prosecution witnesses is obtained by the court under oath, and a preliminary inquiry in which written depositions are consi-

101. Shroff, *supra* note 85, at 130. A person is guilty of an offense if he or she: a) discloses to another person information that is likely to prejudice an investigation; b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to an investigation. Prevention of Terrorism (Temporary Provisions) Act 1989, § 17(2) (Eng.). An exception is made for disclosures by a legal adviser to a client or representative of a client or to any person in contemplation of or in connection with legal proceedings. *Id.* at § 2C.

102. Shroff, *supra* note 85, at 130. Such a person may be detained for up to 48 hours, which may be extended for an additional five days with the permission of the Secretary of State. See Prevention of Terrorism (Temporary Provisions) 1989, § 14(4) and (5) (Eng.); see also *R. v. Officer in Charge of Police Office, Castlereagh, ex parte Lynch*, [1980] N.I. 126, 131, as cited in Shroff, *supra* note 85, at 130.

103. Shroff, *supra* note 85, at 130. Immigration and customs officials may arrest a person without reasonable suspicion and subsequently detain him or her for up to 12 hours, which may be extended to 48 hours if there is reasonable suspicion. *Id.* Detention may also be extended for an additional five days with the permission of the Secretary of State. *Id.*; see Prevention of Terrorism (Temporary Provisions) Act 1989, § 16 and Sched. 5, § 1(b) and (c) (Eng.).

104. Northern Ireland (Emergency Provisions) Act 1996 § 12(2)(b) (Eng.). After 1981, a number of trials were based on evidence obtained from accomplices turned informers under the promise of immunity ("Supergrasses"). See S.H. BAILEY, ET AL, CIVIL LIBERTIES 263 (1991) as cited in Shroff, *supra* note 85, at 126. Such trials were abandoned in 1986 when it was noted that judges were not sufficiently discriminating in the use of uncorroborated evidence. *Id.*

dered by the court.¹⁰⁵ A person accused of a scheduled offense may only be granted bail by a judge of the High Court or the Court of Appeal,¹⁰⁶ but a magistrate may remand such an offender into custody for a maximum of 28 days.¹⁰⁷ Scheduled offenses are tried before a judge sitting without a jury to prevent the intimidation of witnesses and jurors.¹⁰⁸ However, the judge must give reasons for a conviction and a defendant is given a right of appeal on any ground without the leave of court or a certificate from the trial court judge.¹⁰⁹

The PTA also criminalizes financial assistance to acts of terrorism or proscribed organizations.¹¹⁰ The PTA absolves bankers and financial advisors from breaching any rules of confidence in order to encourage voluntary disclosure of any information based upon suspicion of funds being used to finance activities connected with terrorism.¹¹¹ In this respect, it is an offense to fail to disclose knowledge or suspicion of financial assistance of terrorism gained within the course of business

105. Shroff, *supra* note 85, at 124. The latter proceeding requires the consent of both the court and the defendant. *Id.* Because defendants would often withhold their consent by refusing to recognize the court, a provision was enacted whereby the court is obliged to proceed, if it is not unjust to do so, without the defendant's consent if the prosecution wishes to conduct a preliminary inquiry for a scheduled offense. *Id.*; see also Northern Ireland (Emergency Provisions) Act 1996, § 2 (Eng.).

106. See Northern Ireland (Emergency Provisions) Act 1996, § 3(2) (Eng.). Magistrates are no longer used for bail hearings in terrorist cases because it was the practice of the defendant's supporters to mob the courtroom and create a threatening atmosphere and subsequently intimidate the court. See ROWE, *supra* note 85, at 12.

107. See Northern Ireland (Emergency Provisions) Act 1996, § 5 (Eng.).

108. See *id.* at § 11; Shroff, *supra* note 85, at 124. Critics of this system argue that a judge will become biased against defendants after continually reviewing cruel and horrifying evidence. See GEARTY & KIMBELL, *supra* note 91, at 51. Statistics since 1980 show acquittal rates ranging from 29% to 50%. *Id.* However, the latest review of this provision found that intimidation still poses a threat to jury trials and that the current system should not yet be abandoned. See ROWE, *supra* note 85, at 15.

109. Northern Ireland (Emergency Provisions) Act 1996, § 11(5) and (6) (Eng.).

110. See generally Prevention of Terrorism (Temporary Provisions) Act 1989, §§ 9-13 (Eng.). These provisions are not applicable to acts committed outside the United Kingdom unless the omission of such acts would constitute a triable offense in the United Kingdom. *Id.* at § 9(4).

111. Shroff, *supra* note 85, at 130.

dealings.¹¹² Furthermore, the EPA has provisions that allow for the confiscation of proceeds of terrorist activities.¹¹³

Although the PTA does not apply to offenses committed outside of the United Kingdom, section 4 of the Suppression of Terrorism Act of 1978 grants jurisdiction over offenses committed in countries that are members of the European Convention on the Suppression of Terrorism.¹¹⁴ Jurisdiction is also granted over activities related to aviation and maritime security¹¹⁵ and the taking of hostages.¹¹⁶

C. Observations

The United Kingdom has uniformly addressed terrorism under initiatives designed to control the domestic struggle in Northern Ireland. The PTA may have been frantically enacted under the duress of a seemingly uncontrollable IRA bombing campaign of the early 1970s, but it has also been molded into a powerful declaration of the United Kingdom's antiterrorist policy. Similar to the EPA, the PTA is a temporary measure that may one day be repealed entirely. As the United Kingdom attempts to mend its domestic troubles in the future, it will become necessary for the British Government to determine when to retire its temporary antiterrorism legislation altogether. But in the wake of developments of the past century, total abandonment of the Acts could prove unwise and a permanent legislative policy may better serve the interests of the United Kingdom.

112. See generally Criminal Justice Act, 1993, § 51 (Eng.), as cited in Shroff, *supra* note 85, at 130.

113. Shroff, *supra* note 85, at 127. If a conviction is obtained for intimidation, financial assistance for terrorism, or assisting another to retain the proceeds of terrorist-related activities, the court may also issue a confiscation order. *Id.* at 128. The court is allowed to assume that any property transferred to the defendant in the six years prior to the proceedings was the result of terrorist-related activities. *Id.*

114. *Id.* at 131. Such offenses "include murder, manslaughter, kidnapping, abduction, causing explosions with intent to endanger life or property, and possessing firearms with an intent to injure." *Id.*

115. Aviation Security Act, 1982 (Eng.); Aviation and Maritime Security Act, 1990 (Eng.), as cited in Shroff, *supra* note 85, at 131.

116. Taking of Hostages Act, 1982, § 4 (Eng.) as cited in Shroff, *supra* note 85, at 131. Also, the Internationally Protected Persons Act of 1978 grants extraterritorial jurisdiction over offenses committed against diplomats and government officials. *Id.*

The United Kingdom faces a unique problem in that it must cope with terrorism in essentially two environments. Great Britain has suffered through significant insurgencies, especially those which gave rise to the PTA, but on a scale quite different from that of Northern Ireland. With regard to Northern Ireland, the scars left by centuries of religious discrimination will not be healed by a withdrawal of the British military. There are no legislative initiatives that will be able to reverse the extreme bitterness and hatred between Catholics and Protestants. Furthermore, the presence of heavily armed British soldiers in Northern Ireland over the past two decades has not contributed to the development of a society in which political and social grievances are to be remedied through non-violent processes. The EPA constitutes perhaps the most efficient policy of countering violence that one can expect to be implemented in such an environment. But as its title states, the EPA is an emergency provision and not permanent. One hopes that the emergencies that have necessitated the implementation of the EPA will not only subside in the coming century, but serve as examples of what the people of Northern Ireland must work to avoid in the future.

IV. Israel

Similar to the United Kingdom, Israel's antiterrorism legislation has been shaped by internal threats resulting from centuries of conflict between Jews and Palestinians.¹¹⁷ The fall of the Ottoman Empire on the eve of World War I gave rise to zealous

117. This conflict is grounded in the Biblical histories of Canaan (now Israel) and the Hebrew exodus from Egypt in the thirteenth century B.C. See FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, ISRAEL: A COUNTRY STUDY 6, 17 (Helen Chapin Metz ed., 1990) (hereinafter ISRAEL: A COUNTRY STUDY). The Palestinians (the Biblical Philistines) began their military push into Canaan around 1050 B.C., but were repelled by an increasingly powerful Israelite army commanded by King David. *Id.* However, in the sixth century B.C., the Babylonians conquered Jerusalem, thereupon scattering the Hebrew people into exile. *Id.* The Persian defeat of Babylonia in the mid-sixth century B.C. enabled the Jews to return to Israel, but the Roman Empire, upon conquering the Persians enveloped Israel in 332 B.C. *Id.* The Arab-Muslim conquest of 638 A.D. ended the rule of the Roman Empire, and the region, now Palestine, was subjected to Arab rule until Western Europe launched the Crusades of 1100 A.D. *Id.* The Arabs again took control of Jerusalem in 1291 A.D. *Id.* In 1516, the region was incorporated into the Ottoman Empire which remained in power until World War I. *Id.*

Palestinian and Zionist independence movements,¹¹⁸ both of which were further fueled by the rule of the British Mandate.¹¹⁹ Israel officially came into being on May 14, 1948, and was immediately declared war upon by the Arab League.¹²⁰ An armistice was agreed upon the following year,¹²¹ but major wars again erupted in 1956-57,¹²² 1967,¹²³ 1969-70,¹²⁴ 1973,¹²⁵ and 1982.¹²⁶ These intense conflicts led to the Israeli antiterrorism measures in place today.

Palestinian terrorists generally seek to eradicate Israeli society as a whole rather than merely a single political entity or elite.¹²⁷ In this respect, Arab states are able to work against Israel, without

118. See ISRAEL: A COUNTRY STUDY, *supra* note 117, at 17-38.

119. See *id.* at 38-44. The founding of the World Zionist movement took place in the late nineteenth century and contributed to increased Jewish immigration to Palestine. *Id.* Following the Holocaust of World War II, the movement for a sovereign Jewish state was met with violent opposition from Arab nationalists. *Id.*

120. See BERNARD REICH, HISTORICAL DICTIONARY OF ISRAEL lv-lvi (1992).

121. See *id.* at lvi.

122. Israel captured from Egypt both the Sinai Peninsula and the Gaza Strip in the summer of 1956, but eventually withdrew when United Nations peacekeepers were deployed to the Suez Canal region. See *id.* at lvii.

123. Upon Egyptian President Nasser's call for the removal of United Nations forces, Israel launched a preemptive strike which subsequently drew Jordan, Syria, Iraq, and other Arab nations into the war. See *id.* at lviii-lviii. Israel's ultimate victory resulted in its occupation of the Sinai Peninsula, the Gaza Strip, the West Bank, East Jerusalem, and the Golan Heights. *Id.*

124. Between February 1969 and August 1970, Egypt launched attacks against Israeli forces at the Suez Canal, but agreed to accept a U.N. Security Council Resolution devised by U.S. Secretary of State William Rogers after the Soviet Union began supporting Israel. See ISRAEL: A COUNTRY STUDY, *supra* note 117, at 62-63.

125. In what came to be known as the "Yom Kippur War," Syria and Egypt launched a surprise attack against Israel at its northern and southern borders. See *id.* at 64. Israel was eventually able to drive the invading armies back into their respective countries. See *id.* at 65. Israel entered into Syria and Egypt and threatened to overtake Damascus and the Egyptian Army, thus provoking Soviet intervention which prompted a cease fire negotiated by the United States. See *id.* at 66.

126. Israel launched a major military action against the Palestine Liberation Organization (PLO) which was encamped in Lebanon in order to secure Israel's northern border and destroy the PLO infrastructure. REICH, *supra* note 120, at lx. Although the border was secured and the PLO withdrew from Lebanon, Israeli troops stationed in Lebanon were targeted for violent terrorist operations. *Id.*

127. See Noemi Gal-Or, *Countering Terrorism in Israel*, in THE DEADLY SIN OF TERRORISM 139 (David A. Charters ed., 1994) citing Gabriel Ben-Dor, *The Strategy of Terrorism in the Arab-Israeli Conflict: The Case of Palestinian Guerrillas*, in TERRORISM, SURPRISE AND CONTROL 139 (Yair Evron ed., 1979).

being in a state of war, by supporting the activities of radical groups.¹²⁸ The recent peace movement has not been received with far-reaching support, especially from radical factions of the Palestine Liberation Organization (PLO) and organizations like Hamas and the Islamic Jihad. Nor has the Israeli government's cooperation with the Palestinians been widely supported by Israeli militants, as demonstrated by the assassination of Yitzak Rabin by a radical Jewish student. Achieving a lasting peace in this region will be a painstakingly long process that undoubtedly will be challenged by both Israeli and Palestinian terrorists.

A. *Insurgent Organizations*

Until 1993, the PLO operated under the Palestine National Charter¹²⁹ which explicitly states that the only way to liberate Palestine is through armed struggle.¹³⁰ The PLO, however, has since agreed to assume responsibility for public order and security in Gaza and Jericho, and to work toward preventing acts of terrorism, crime, and other hostilities.¹³¹ This change in policy was made possible by the September 13, 1993, Peace Accord between the PLO and Israel, which "allow[ed] mutual recognition and the eventual creation of an autonomous Palestinian government under PLO auspices within the West Bank and Gaza Strip."¹³²

Prior to this peace agreement, groups affiliated with the PLO pursued policies of terrorism designed to eradicate the Jewish State. The Al-Fatah,¹³³ formed by Palestinian exiles in Kuwait in 1957, mounted border raids into Israel in 1965 and became the military

128. *Id.*

129. This Charter was adopted by the Palestine National Council of the PLO, on July 17, 1968. See THE ARAB-ISRAEL CONFLICT AND ITS RESOLUTION: SELECTED DOCUMENTS 136 (R. Lapidot & M. Hirsch eds., 1992).

130. *Id.* at 137, art. 9.

131. See Agreement on the Gaza Strip and Jericho Area, Cairo, May 4, 1994, arts. VIII and XVIII (Government of Israel, Ministry of Foreign Affairs, Jerusalem).

132. ANDERSON & SLOAN, *supra* note 1, at 109.

133. In addition to numerous attacks on civilian targets, different factions of Al-Fatah, such as Black September, Force-17, and the Hawari Group, were responsible for the assault on Israeli athletes at the Munich Olympics, the assassination of Jordan's Prime Minister, and the takeover and sabotage of several embassies. TERRORIST GROUP PROFILES, *supra* note 61, at 12-13; ANDERSON & SLOAN, *supra* note 1, at 113.

arm of the PLO under the direction of Yassir Arafat in the late 1960s.¹³⁴ The Israeli invasion of Lebanon in 1982, and an air raid on the PLO's Tunisian headquarters in 1985, forced the Al-Fatah to relocate in several Mid-East countries.¹³⁵ Al-Fatah received some diplomatic leverage when, in 1988, Arafat reiterated the group's renunciation of terrorism and acknowledged Israel's right to exist before the United Nations.¹³⁶ But this international goodwill was damaged when Al-Fatah openly sided with Iraq during the Gulf War.¹³⁷

Internal divisions over the Palestinian-Israeli peace agreements still plague the Popular Struggle Front (PSF),¹³⁸ which rejoined the PLO in 1991 after suspending its membership in 1974.¹³⁹ The Democratic Front for the Liberation of Palestine (DFLP),¹⁴⁰ which has always advocated the position that the formation of a Palestinian state does not require the destruction of Israel, had been coping with internal struggles and break-away factions prior to the Peace Accord.¹⁴¹ The Popular Front for the Liberation of Palestine (PFLP),¹⁴² whose inflexible Marxist ideology generated

134. TERRORIST GROUP PROFILES, *supra* note 61, at 12-13.

135. *Id.*

136. ANDERSON & SLOAN, *supra* note 1, at 113.

137. *Id.*

138. U.S. DEP'T OF STATE, PATTERNS OF GLOBAL TERRORISM: 1995 61 (1996) (hereinafter PATTERNS OF GLOBAL TERRORISM: 1995). After splitting from the PLO, the PSF not only attacked Israeli and Arab targets, but PLO targets as well.

139. ANDERSON & SLOAN, *supra* note 1, at 289. The PSF numbers around 300 members and, in addition to several notorious attacks in the 1970s and the kidnapping of U.S. Army Colonel Ernest Morgan, it has claimed unconfirmed responsibility for other attacks. *Id.*

140. An early break-away group from the Popular Front for the Liberation of Palestine, the DFLP has been involved only in border raids since 1988, but was responsible for the Ma'alot schoolhouse massacre in 1974, in which 27 children were killed and 134 people were wounded. PATTERNS OF GLOBAL TERRORISM: 1994, *supra* note 16, at 37-38.

141. See Kenneth Katzman, TERRORISM: MIDDLE EASTERN GROUPS AND STATE SPONSORS 15 (CRS Report for Congress, 1995). The DFLP split into two factions in 1991. *Id.* The Hawatmeh faction opposes the Declaration of Principles signed between the PLO and Israel in 1993 while the other faction is loyal to Arafat. *Id.* The Hawatmeh faction, which has since suspended its membership in the PLO, is now affiliated with ten other peace-rejectionist groups based in Damascus. *Id.*

142. The PFLP was formed after the 1967 war and received its notoriety through several ruthless hijackings and killings in the 1970s. TERRORIST GROUP PROFILES, *supra* note 61, at 25-26. The PFLP was responsible for the bombings of several civilian airliners and buses, was the force behind the Japanese Red

several internal disputes which led to the formation of other terrorist organizations, such as the PFLP-General Command (PFLP-GC)¹⁴³ and the Arab Organization of 15 May,¹⁴⁴ has suspended its participation in the PLO to continue a campaign of violence.¹⁴⁵

A number of organizations not affiliated with the PLO continue to support the violent eradication of Israel. The Hizballah,¹⁴⁶ which is primarily directed from Iran,¹⁴⁷ seeks to rid the Lebanese region of all non-Islamic influences through a vigorous campaign of terrorism.¹⁴⁸ HAMAS,¹⁴⁹ a loosely-structured orga-

Arm's attack on Lod Airport, and has undertaken rocket, grenade, and knife attacks against Israeli civilians. *Id.*

143. The PFLP-GC split from the PFLP to pursue the development of a conventional military, as can be seen in numerous attacks utilizing hang-gliders, hot air balloons, assault rifles, and anti-tank and anti-aircraft rockets. The PFLP-GC successfully engineered the release of 1150 Palestinian prisoners in exchange for three Israeli soldiers. *See id.* at 26-27; PATTERNS OF GLOBAL TERRORISM: 1995, *supra* note 138, at 60-61. The PFLP-GC's violent opposition to the PLO led to a further split which established the foundation of the Palestine Liberation Front (PLF). PATTERNS OF GLOBAL TERRORISM: 1995, *supra* note 138, at 58-59. The PLF further split into pro-Libyan, pro-Syrian, and pro-PLO factions. *Id.* The pro-PLO faction led by Abu Abbas is responsible for the attack on the cruise ship Achille Lauro. *Id.* An arrest warrant for Abu Abbas is still outstanding in Italy. *Id.*

144. The 15 May Organization, was formed in 1979 and has never been affiliated with the PLO. TERRORIST GROUP PROFILES, *supra* note 16, at 8-9. It disbanded in 1984 after several bombings of U.S. and Israeli targets. *Id.*

145. *See* Katzman, *supra* note 141, at 14-15.

146. Lebanese Shiite clerics who subscribe to the Islamic revolutionary ideology of Ayatollah Khomeini founded the Hizballah after the Israeli invasion of Lebanon in 1982. *Id.* at 4-5. The organization's original goal was to form an Islamic republic in Lebanon, but it has since concentrated its efforts on disrupting the Israeli-Palestinian peace process. *Id.* The Hizballah is also trying to integrate into the Lebanese political system and now holds eight of 128 seats in the national assembly. *Id.*

147. Reports have indicated that Iranian diplomats posted in Lebanon, Syria, and Sudan provide the Hizballah with logistical support. Iran is also reported to finance the organization with \$60 to \$100 million per year. *Id.*

148. The Hizballah has conducted several notorious anti-Western attacks, such as bombings of the U.S. Marine Barracks, the U.S. Embassy, and the U.S. Embassy annex in Beirut. Katzman, *supra* note 141, at 4-5. It is also responsible for the hijacking of a TWA airliner, two Israeli-targeted bombings in Buenos Aires, and the detention of Western hostages in Lebanon. *Id.*

149. HAMAS, which grew out of a Palestinian uprising in 1987, generally opposes the peace process, but does appear to be willing to participate in the newly formed Palestinian Authority which has resulted from the peace agreement. *Id.* at 6. The organization has a military wing, known as the Izz ad-Din al Qassam Brigades, but also engages in peaceful political activity, provides social services,

nization that works primarily through mosques to recruit members, raise money, organize activities, and distribute propaganda, has become Al-Fatah's rival since its formation in 1987.¹⁵⁰ Militant factions of Hamas, whose strength is focused in the West Bank and the Gaza Strip, have conducted many attacks against Israel civilian and military targets, suspected Palestinian collaborators, and Al-Fatah rivals.¹⁵¹ The Palestinian Islamic Jihad (PIJ) is actually a cohesive group of several factions which advocate the creation of an Islamic state and the destruction of Israel through holy war.¹⁵² Because the PLO has not been able to successfully control these fundamentalist groups, Israel will be forced to stay alert to continued violence.

Palestinian groups, though a major threat, have recently been overshadowed by the emergence of militant Jewish fundamentalists who also seek to destroy the peace process. The assassination of Yitzak Rabin by a radical Jewish student has forced Israel to re-evaluate its policies on Jewish extremist groups.¹⁵³ However, even before Rabin's assassination, the extremist groups Kach¹⁵⁴ and Kahane Chai¹⁵⁵ were declared to be terrorist organizations after voicing support for a Kach affiliate who attacked an Islamic

supports charities, and finances education to needy Palestinians. *Id.*

150. See PATTERNS OF GLOBAL TERRORISM: 1994, *supra* note 16, at 41. The number of hardcore members is unknown, but HAMAS has tens of thousands of sympathizers who lend both political and financial support. *Id.*

151. *Id.*

152. See *id.* at 53-54. In addition to bus attacks and cross-border raids against Israeli targets in the Gaza Strip and the West Bank, the PIJ has threatened to attack U.S. interests in both Jordan and Egypt due to its strong support of Israel. *Id.*

153. Although Jewish extremists have used terrorism against Palestinian civilians in the West Bank and the Gaza Strip, the Israeli government has not been swift in responding to the problem. See P. Marcus, *The Treatment of Terrorists in the Israeli Occupied Territories* 3(2) AMER. U. J. INT'L. & POL'Y. 457 (1988) as cited in Ruth Levush, *Israel*, in TERRORISM: FOREIGN/INTERNATIONAL LEGAL RESPONSES IN SELECTED FOREIGN COUNTRIES 69, 70 (Report for Congress, 1995).

154. This organization was founded by Rabbi Meir Kahane who was assassinated in the United States in 1990. Katzman, *supra* note 141, at 11. Kahane was responsible for the creation of the Jewish Defense League in 1968, which operated in the United States, primarily for the protection of Orthodox Jews in New York City neighborhoods. See ANDERSON & SLOAN, *supra* note 1, at 169-71. The Kach Party is an ultranationalist group favoring expulsion of the Arabs from both Israel and the West Bank and the Gaza Strip. *Id.*

155. Founded by Meir Kahane's son, Binyamin, this group split from the Kach party following Meir Kahane's assassination. See Katzman, *supra* note 141, at 11.

mosque.¹⁵⁶ Jewish extremists have proved to be a danger to a peaceful coexistence with Palestinians and have now been brought to the forefront of Israeli attention with Yitzak Rabin's assassination.¹⁵⁷

B. Antiterrorist Legislation in Israel

The Prevention of Terrorism Ordinance,¹⁵⁸ which is only applicable to internationally-recognized Israeli borders, Jerusalem,¹⁵⁹ and the Golan Heights,¹⁶⁰ was the first antiterrorist legislation to be enacted by the state of Israel.¹⁶¹ The Ordinance has no effect in the West Bank and the Gaza Strip.¹⁶² It does not define terrorism; rather, it describes a "terrorist organisation" as: "a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence."¹⁶³ Supporting a terrorist organization is punishable by a maximum of three years imprisonment and a fine of one-

156. See PATTERNS OF GLOBAL TERRORISM: 1995, *supra* note 138, at 51. A Kach affiliate killed 40 people and wounded 150 people worshipping at a mosque in Hebron on February 25, 1994. Katzman, *supra* note 141, at 11. These groups have also claimed responsibility for several shootings in the West Bank and Hebron. *Id.* Israel banned both groups on March 13, 1994 in an effort to stem the furor caused by the Hebron massacre. ANDERSON & SLOAN, *supra* note 1, at 172.

157. Jewish terrorist groups were not considered to be a threat to the Israeli Defense Forces as of 1988. ISRAEL: A COUNTRY STUDY, *supra* note 117, at 279-80. The Gush Emunim Underground launched several terrorist operations against Arab targets in the early 1980s. *Id.* Other smaller groups were responsible for less notorious attacks. *Id.*

158. 1 L.S.I. 76, (1948). This Ordinance only applies during a state of emergency as declared by § 9 of the Law and Administration Ordinance, 1948, 1 L.S.I. 7, (1948).

159. See Law and Administration Ordinance (Amendment No. 11) Law, 1967, 21 L.S.I. 75, (1966-67); and Municipal Ordinance (Amendment No. 6) Law, 1967, 21 L.S.I. 75-76, (1967), as cited in Levush, *supra* note 153, at 72.

160. See Golan Heights Law, 1981, 36 L.S.I. 7, (1981-82), as cited in Levush, *supra* note 153, at 72.

161. The Ordinance was enacted after the assassination of United Nations mediator Count Folke Bernadotte. Noemi Gal-Or, *Countering Terrorism in Israel*, in THE DEADLY SIN OF TERRORISM 137, 149 (David A. Charters ed., 1994). Although its intention was to eradicate domestic Jewish terrorism, the Ordinance also applies to foreign terrorism. *Id.*

162. Levush, *supra* note 153, at 72. These territories were never officially annexed by Israel and military regulations apply to all people living within their jurisdictions; however, for common offenses, Jordanian law applies to the West Bank, Egyptian law applies to the Gaza Strip, and Israeli law applies to all of Israel. *Id.*

163. Prevention of Terrorism Ordinance, 1948, 1 L.S.I. 76, (1948), § 1.

thousand pounds,¹⁶⁴ membership in a terrorist organization is an offense warranting a maximum prison sentence of five years,¹⁶⁵ and activity in a terrorist organization is subjected to a maximum term of twenty years imprisonment.¹⁶⁶

The Ordinance requires that the government post notice in the Official Gazette stating that a particular group has been designated a terrorist organization.¹⁶⁷ If no such notice has been posted, the government must prove that one or more of a group's members is responsible for acts or threats of violence on behalf of or by order of the organization, or that one or more of a group's members claimed responsibility for acts or threats of violence on behalf of or by order of the organization.¹⁶⁸ An organization's property may also be confiscated by order of a district court in response to a request by the Inspector General.¹⁶⁹ The Inspector General is

164. *Id.* at § 4. A person who supports a terrorist organization: a) publishes, in writing or orally, words of praise, sympathy or encouragement for acts of violence calculated to cause death or injury to a person or for threats of such acts of violence; or b) calls for aid or support for acts of violence calculated to cause death or injury or threat of such; c) possesses propaganda materials; d) gives money or money's worth for the benefit of a terrorist organisation; e) puts a place at the disposal of a terrorist organisation as a place of action, meeting, propaganda, or storage; or f) puts an article at the disposal of a terrorist organisation. *Id.* Israel passed the Prevention of Terrorism (Amendment) Law, 1980, 34 L.S.I. 211, (1980), which adds: g) identifies with or supports a terrorist organization in a public place.

165. Prevention of Terrorism Ordinance, 1948, 1 L.S.I. 76, (1948), § 1. "[M]ember of a terrorist organisation' means a person belonging to it and includes a person participating in its activities, publishing propaganda in favour of a terrorist organisation or its activities or aims, or collecting moneys or articles for the benefit of a terrorist organisation or its activities." *Id.*

166. *Id.* at § 2. This offense includes:

performing a function in the management or instruction of a terrorist organisation or participating in the deliberations or the framing of the decisions of a terrorist organisation or acting as a member of a tribunal of a terrorist organisation or delivering a propaganda speech at a public meeting or over the wireless on behalf of a terrorist organisation.

Id.

167. *Id.* at § 8. In any legal proceeding, such notice serves as proof that the posted body of persons is a terrorist organisation unless the contrary is proven. *Id.* Furthermore, a final judgment which determines that a body of persons is a terrorist organization can be used as prima facie evidence that the group is a terrorist organization in any other legal proceeding. *Id.* at § 11(a).

168. See Prevention of Terrorism Ordinance, 1948, 1 L.S.I. 76, (1948), § 7; see also Levush, *supra* note 153, at 75.

169. See Prevention of Terrorism Ordinance, 1948, 1 L.S.I. 76, (1948), § 5; see also Levush, *supra* note 153, at 74.

further authorized to close any facility that serves a terrorist organization or its members.¹⁷⁰

The Penal Law¹⁷¹ can also be applied to offenses committed in the course of a terrorist attack. Because offenses against the person, such as causing death or endangering life and health, are not excused if the offense is committed in connection with a political or religious motive, the Penal Law is equally applicable to terrorist activity.¹⁷² Capital punishment may not be requested for regular offenses, but military courts are given the option of imposing the death penalty.¹⁷³ There are also special provisions in the Penal Law addressing unlawful associations and assemblies that supplement the Prevention of Terrorism Ordinance.¹⁷⁴ Certain provisions also provide for extraterritorial jurisdiction over

170. Prevention of Terrorism Ordinance, 1948, 1 L.S.I. 76, (1948), § 6(a). A property owner affected by such an action may appeal to a district court within fifteen days of receiving knowledge of the shut down. *Id.* at § 6(b).

171. LAWS OF THE STATE OF ISRAEL, SPECIAL VOLUME, 5737-1977, as cited in Levush, *supra* note 153, at 72.

172. *Id.*

173. The death penalty has only been implemented in the Adolf Eichmann war crimes case. Levush, *supra* note 153, at 73.

174. Penal Law, 5737-1977, art. 2, reprinted in Levush, *supra* note 153, at 73, states:

- (1) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates, incites or encourages any of the following unlawful acts:
 - (a) the subversion of the political order of Israel by revolution or sabotage;
 - (b) the overthrow by force or violence of the lawful government of Israel or of any other state, or of organized government;
 - (c) the destruction or injury of property of the State or of property used in commerce within the State or with other countries.

Id.

offenses against humanity,¹⁷⁵ offenses against the state,¹⁷⁶ and offenses causing injury to nationals or residents of Israel.¹⁷⁷

Upon conquering the West Bank and the Gaza Strip in 1967, the Commander of the Israeli Defense Forces issued the Proclamation on Law and Administration,¹⁷⁸ which declared that the British Mandate Defence (Emergency) Regulations, 1945,¹⁷⁹ which had been maintained by previous occupiers, would remain in force. The Defence (Emergency) Regulations list various terrorist offenses that fall under the title of Unlawful Associations and warrant a fine and imprisonment of one to ten years.¹⁸⁰ Unlike the domestic laws of Israel, the Defence (Emergency) Regulations grant the military far-reaching powers, such as administrative

175. Penal Law, 5737-1977, § 4, as cited in Levush, *supra* note 153, at 76-77.

176. Penal Law, 5737-1977, § 5(a), reprinted in Levush, *supra* note 153, at 77, states:

The courts in Israel are competent to try under Israeli law a person who committed abroad an act which would have been an offense had it been committed in Israel and which injured or was intended to injure the State of Israel, its security, property or economy or its transport or communication links with other countries.

Id.

177. Penal Law, 5737-1977, § 7(a), reprinted in Levush, *supra* note 153, at 77, states:

The courts in Israel shall be competent to try under Israeli Law a person who committed abroad an act which would have been an offense had it been committed in Israel and which injured or was intended to injure the life, person, health, freedom or property of an Israeli national or resident of Israel.

Id.

178. M. SHAMGAR, MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980, THE LEGAL ASPECTS 450 (1982), as cited in Levush, *supra* note 153, at 75, states:

The law in existence in the Region on June 7, 1967, shall remain in force, insofar as it does not in any way conflict with the provisions of this Proclamation or any Proclamation or Order which may be issued by me, and subject to modifications resulting from the establishment of government by the Israel Defense Forces in the Region.

Id.

179. Government of Palestine, The Defence (Emergency) Regulations, 1945, as amended until Mar. 2, 1947, as cited in Levush, *supra* note 153, at 75.

180. See British Mandate Defence (Emergency) Regulations, 1945, arts. 84 and 85. With regard to unlawful associations, memberships, management, holding office, and working for the association is prohibited; in addition, to affording a meeting place, fundraising, and publishing or distributing materials is impermissible. Levush, *supra* note 153, at 76.

detention, travel restrictions, expulsions, and the demolition of a residence known to belong to a terrorist.¹⁸¹

In addition to these principal laws, Israel has also enacted specific laws to aid in the state's plan of terrorism counteraction. The Explosives Law¹⁸² forbids the manufacture, trade, and transport of explosives without a permit granted by an authorized government Minister.¹⁸³ The Extradition Law¹⁸⁴ provides for the extradition of an individual from Israel to another state except in cases where the substantive offense is political in character¹⁸⁵ or if the offender is an Israeli citizen.¹⁸⁶ Under the Law of Return¹⁸⁷ an immigrant may be denied a visa if the Minister of the Interior determines that the individual has engaged in an activity directed against the Jewish people, may endanger public health, public safety, or state security,¹⁸⁸ or has a criminal past and is

181. R. SHEHADEH, OCCUPIER'S LAW, ISRAEL AND THE WEST BANK 184 (1985) as cited in Levush, *supra* note 153, at 76.

182. Explosives Law, 1953, 8 L.S.I. 57, (1953-54) as cited in Levush, *supra* note 153, at 77.

183. Levush, *supra* note 153, at 78. Israel does not have any specific regulations regarding nuclear materials even though it is speculated that it will have nuclear capabilities in the near future. *Id.*

184. Extradition Law, 1954, 8 L.S.I. 144 (1953-54), reprinted in Levush, *supra* note 153, at 78. Section 2 states that an individual may be extradited if:

(1) An agreement providing for reciprocity as to the extradition of offenders exists between Israel and the state requesting his extradition . . .

(2) he is accused or has been convicted in the requesting state of an offense of a non-political character and which, had it been committed in Israel, would be one of the offenses set out in the Schedule to this Law.

Id.

185. An example can be found in *Nakash v. State of Israel*, 40(4) P.D. 78, in which the appellant argued that his murder of an Arab night club owner in France was of a political character since it was in response to the French authorities' failure to adequately protect Jews from attacks organized by Arab organizations. Levush, *supra* note 153, at 78. The court authorized the extradition because the substance of the offense was not political in nature and held that the subjective motives of the appellant were irrelevant. *Id.*

186. 8 DINIM (Laws) 4733 (1991-), cited in Levush, *supra* note 153, at 78. A citizen will be extradited if he or she committed the offense before acquiring Israeli citizenship. *Id.*

187. Law of Return, 1950, 4 L.S.I. 114, (1950), reprinted in FUNDAMENTAL LAWS OF THE STATE OF ISRAEL 156 (Joseph Badi ed., 1961).

188. *Id.*

likely to endanger public welfare.¹⁸⁹ Furthermore, deportation is only permissible with regard to an individual who is in Israel without a permit of residence.¹⁹⁰

The most striking Israeli legislation is that concerning assistance to victims of terrorism. Pensions will be granted to citizens who are injured by acts of terrorism within the state and abroad,¹⁹¹ as is true of visa and permit holders who are injured by acts of terrorism within the state and areas controlled by the Israeli Defense Forces.¹⁹² Israel will also provide victims of terrorism with funeral expenses,¹⁹³ medical expenses,¹⁹⁴ and subsidies for vocational education, health insurance, and guaranteed loans.¹⁹⁵

C. Observations

Israel's experience with terrorism bears resemblance to that of the United Kingdom in that it has grown from centuries of religious and cultural turmoil. The Israeli-Palestinian peace agreement is a significant step toward ending disputes over geographic boundaries that have been the subject of numerous terrorist attacks, but the social strife inherent in the region will continue to plague any peace accord. Those who do press for further compromise will be not only challenged by radical terrorist organizations, but will also face resistance from militant civilians and communities that are ingrained with a hatred that will not diminish in their lifetimes. The Netanyahu administration is now facing these obstacles. Like Northern Ireland, Israel will not be able to enact legislation that will quell the enmity that has been the driving force behind

189. Law of Return (Amendment), 1954, 8 L.S.I. 144, (1954), *reprinted in* FUNDAMENTAL LAWS OF THE STATE OF ISRAEL 332 (Joseph Badi ed., 1961).

190. Entry into Israel Law, 1952, as amended, 6 L.S.I. 161 (1951-52), *cited in* Levush, *supra* note 153, at 79. An individual will not be deported if they are an Israeli national or if they are in possession of an immigrant visa granted under the Law of Return, 5710-1950. *Id.*

191. *See* Victims of Hostile Action (Pensions) Law, 1970, 24 L.S.I. 131 (1969-70), *cited in* Levush, *supra* note 153, at 79.

192. *See* Pensions for Victims of Hostile Actions (Definition of Area Held by the Israel Defense Forces), 1971, 31 DINIM 20409 (1993-), *cited in* Levush, *supra* note 153, at 79.

193. *See* Victims of Hostile Action (Burial Expenses) Regulations, 1978, 31 DINIM 20385 (1993-), *cited in* Levush, *supra* note 153, at 79.

194. *See* Victims of Hostile Action (Burial Expenses) Regulations, 1978, 31 DINIM 20395 (1993-), *cited in* Levush, *supra* note 153, at 79.

195. *See* Victims of Hostile Action (Burial Expenses) Regulations, 1978, 31 DINIM 20399 (1993-), *cited in* Levush, *supra* note 153, at 79.

terrorist violence in Israel. Unless Israelis and Palestinians can control their mutual animosity, current peace efforts will be in vain and terrorism will continue to afflict the region. The next century will be instrumental in healing ancient wounds that have compelled the terrorist violence of past decades.

V. Japan

Japan's antiterrorist policies have their foundation in statutory laws that date back to the late nineteenth century. However, it was sizable Communist-inspired demonstrations, many of which culminated in riotous disorders in the early 1950s, that brought the issue of terrorism before the legislature.¹⁹⁶ Unlike the United Kingdom and Israel, Japan has not experienced terrorism on an extensive scale. For this reason, Japan has adopted a practice of enacting antiterrorism legislation *ex post facto*. However, recent developments may compel Japan to enact initiatives that uniformly address the problem of terrorism.

A. *Insurgent Organizations in Japan*

The Japanese Red Army (JRA)¹⁹⁷ is comprised of a small number of former student activists who now operate in conjunction with the Popular Front for the Liberation of Palestine (PFLP) in Lebanon's Bekaa Valley.¹⁹⁸ The group is believed to have

196. Sung Yoon Cho, *Japan, in TERRORISM: FOREIGN/INTERNATIONAL LEGAL RESPONSES IN SELECTED FOREIGN COUNTRIES* 89, 97 (Report for Congress, 1995).

197. The JRA wishes to incite a world-wide Marxist-Leninist revolution by uniting leftist Japanese forces to eliminate imperialism and establish a "People's Republic" in Japan. *TERRORIST GROUP PROFILES*, *supra* note 61, at 118.

198. See *TERRORISM AND DEMOCRACY* 170-85 (Peter Janke ed. 1992). The origins of the JRA are found in the Sekigun-Ha, a militant student group organized in 1969, which disbanded when the police detected plans to overtake the official residence of the Prime Minister. *Id.* at 172. Fifty-four members were arrested, and the remaining members, in search of international support, hijacked JAL flight Yodo-Go on March 31, 1970, and forced it to fly to North Korea. *Id.* at 175. However, the North Korean government restricted the group from conducting any activities and forced the hijackers to remain in North Korea until the late 1980s. *Id.* at 176. Soon after the hijacking, the Japanese police arrested 200 people in efforts to suppress the remainder of the group, but when Fusako Shigenobu was released from prison, she left Japan with a small number of followers. *Id.* They traveled to Lebanon where they reorganized as the Arab Red Army in order to gain strength as a faction of the Popular Front for the Liberation of Palestine, but soon changed their name to the Japanese Red Army. *Id.*

between twenty and thirty hard-core members encamped in Lebanon and a financial support base of 100-150 in Japan.¹⁹⁹ Financial assistance is mainly provided by the PFLP, other Palestinian terrorist groups, and Libya.²⁰⁰ The most infamous of the JRA's activities was the 1972 attack of Lod Airport in Israel,²⁰¹ and the takeover of the American embassy in Kuala Lumpur.²⁰² The group's activity subsided in 1977, but its members re-emerged in 1986 in connection with other Asian terrorist organizations.²⁰³ However, group fragmentation, apathy, and police arrests have severely limited the organization's activities.

The Chukaku-Ha,²⁰⁴ comprised of approximately 3500 members, a political party, and a covert action wing (the Kansai Revolutionary Army),²⁰⁵ is the largest and most powerful of

199. TERRORIST GROUP PROFILES, *supra* note 61, at 118.

200. PATTERNS OF GLOBAL TERRORISM: 1994, *supra* note 16, at 44.

201. See TERRORISM & DEMOCRACY, *supra* note 198, at 176-77. Three members, while still under the name of the Arab Red Army, attacked passengers with machine guns and grenades on May 30, 1972. *Id.* at 176. Twenty-four people were killed, many of whom were on a religious pilgrimage from Puerto Rico, and two of the terrorists committed suicide in the process. *Id.* at 177. The third member, Koza Okamoto, was arrested and sentenced to life imprisonment, but was released along with 1150 Palestinian guerrillas in exchange for three Israeli soldiers held by the PFLP in 1985. *Id.* The purpose of this attack, though believed to have been to prove the JRA's loyalty to the PFLP, is still unknown. *Id.* at 176. See WILLIAM A. FARRELL, BLOOD AND RAGE: THE STORY OF THE JAPANESE RED ARMY 138-44 (1990) for a detailed account of the Lod Airport Massacre.

202. TERRORIST GROUP PROFILES, *supra* note 61, at 119. In August of 1975, ten members took over the U.S. Consulate in Kuala Lumpur, Malaysia, and took 52 people hostage. *Id.* The terrorists demanded that seven JRA members be set free from Japanese prisons and transported to the Middle East. *Id.* Although Japan intended to release all seven JRA members, only five expressed willingness and were transported to Tripoli, Libya, via Kuala Lumpur. *Id.* The Japanese government later released nine imprisoned terrorists and paid six million dollars in exchange for 159 people taken hostage when the JRA hijacked a Japan Airlines plane in Bombay and forced it to land in Dhaka, Bangladesh in 1977. *Id.* Upon the release and payment, the hijackers were flown to Algeria. *Id.*

203. See TERRORISM & DEMOCRACY, *supra* note 198, at 182-83. Evidence revealed that JRA members were believed to be behind the formation and subsequent activities of the Anti-Imperialist International Brigade and the Anti-war Democratic Front. *Id.*

204. Also known as the Middle Core or Nucleus Faction, this organization wants to terminate the current constitutional democracy in Japan, the monarchy, and United States-Japanese relations. TERRORIST GROUP PROFILES, *supra* note 61, at 115.

205. PATTERNS OF GLOBAL TERRORISM: 1995, *supra* note 138, at 44.

several ultra-leftist factions.²⁰⁶ Funds derived from membership dues, sale of the Zenshin newspaper, and fundraising campaigns are channelled to support 200 core members who have no other source of income.²⁰⁷ The Chukaku-Ha's attacks, usually conducted with crude rockets, incendiary devices, and flamethrowers,²⁰⁸ are targeted at property damage rather than human casualties.²⁰⁹

Within the past year, the Aum Shinrikyo (Cult of the Supreme Truth) has been designated as a "violence-prone organization."²¹⁰ The cult, comprised of 10,000 members in Japan²¹¹ is most notorious for its gas attacks on the Tokyo subway system.²¹² The cult has also been held responsible for other crimes, including murder, kidnappings, illegal weapons manufacture, torture, and child abuse.²¹³ The cult's guru, Asahara Shokou, along with 100 members, have since been arrested.²¹⁴

206. ANDERSON & SLOAN, *supra* note 1, at 66-67. It is the largest and most militant of 23 factions that make up the Japanese New Left movement. *Id.* The group also rejects the "Japanese corporate state" as evidenced by "frequent attacks on the construction of the New Tokyo International Airport and against the subway and railroad mass-transit systems." *Id.*

207. TERRORIST GROUP PROFILES, *supra* note 61, at 116.

208. PATTERNS OF GLOBAL TERRORISM: 1994, *supra* note 16, at 37.

209. See TERRORIST GROUP PROFILES, *supra* note 61, at 117. The group has been linked to the beating death of a railway trade union official in September of 1986, but other attacks have not produced human casualties. *Id.* For example, truck-mounted flamethrowers have been used to burn buildings, bombs have destroyed homes of executives and have been used to delay construction of the expanding Narita airport, and rocket-bombs and projectiles have been fired at targets such as the Imperial Palace and airports. *Id.*

210. Cho, *supra* note 196, at 98.

211. *Master of Terror*, ASIaweek, Dec. 22, 1995 / Dec. 29, 1995, at 43; available in LEXIS, NEWS Library, ASIawk File. In addition to its Japanese contingent, the cult also claims to have 100,000 member overseas, primarily in Moscow, but also in New York, Bonn, and Colombo. *Id.*

212. See Steven R. Bowman, *Chemical Agent Attacks in Japan*, CRS REPORT FOR CONGRESS May 4, 1995. In June of 1994, seven people were killed by a release of Sarin Gas in the cult's home town of Matsumoto. *Id.* On March 5, 1995, nineteen passengers on the Yokohama subway were hospitalized for eye and respiratory pain from unidentified fumes. *Id.* The most lethal attack came on March 20, 1995, when Sarin leaked from packages placed aboard five cars in Tokyo's subway system which killed 12 people and injured more than 5000. *Id.* One month later, April 19, 1995, 400 people were hospitalized following a "copy-cat" attack with tear gas. *Id.*

213. *Master of Terror*, *supra* note 211, at 43.

214. *Id.* Shokou's trial began in early May and could continue for another five years. *Trial of the Century*, ASIaweek, May 10, 1996, at 7; available in LEXIS, NEWS Library, ASIawk File. In addition to the Japanese trial, a Russian court has ordered the cult to pay \$4 million to families of cult members. *Justice for All*,

B. Antiterrorism Legislation

The basic foundation for terrorism counteraction in Japan can be found within the Criminal Code of 1907.²¹⁵ Under the Code, crimes such as insurrection, homicide, assault, kidnapping, destruction of property, and rioting²¹⁶ can be prosecuted as acts of terrorism.²¹⁷ Furthermore, the Code's extraterritorial jurisdiction provisions, which were revised in 1987,²¹⁸ can also be used to bring acts of terrorism committed abroad within the jurisdiction of Japanese courts.²¹⁹ Although the Code is applicable to the basic common crimes inherent in terrorism, Japan has found it necessary to enact additional legislation to enhance its terrorism counteraction policy.

ASIaweek, April 28, 1995; available in LEXIS, NEWS Library, ASIawk File. This money is to be used to build a rehabilitation center for brainwashed cult members. *Id.*

215. Law No. 45 of 1907, amended by Law No. 31 of 1991, cited in Cho, *supra* note 196, at 89.

216. *Id.* at 90. Generally, a person is guilty of rioting under the Code if he assembles in a crowd for the purpose of using violence or intimidation (art. 106); however, rioting will be prosecuted as a terrorist offense if two or more people assemble for purposes of jointly causing injury to life, limb, or property (art. 208-2). *Id.* at 92. These assembly provisions also have been supplemented by the Law Concerning Punishment of Violent Acts, Law No. 60 of 1926, amended by Law No. 31 of 1991, arts. 5-7., which enhance the Code provisions to aggravated offenses which carry a maximum punishment of ten years of penal servitude. *Id.*

217. See Cho, *supra* note 196, at 90. Additionally, attempts and conspiracies to commit such crimes also fall under the Code's terrorism provisions. *Id.*

218. Under revised art. 4-2, if a crime observed by an international convention corresponds to a provision of the Criminal Code, Japan is obligated to punish anyone who commits the crime outside of the country. See K. Itoh, *The 1987 Penal Code and Other Special Criminal Amendments Law: A Response to the Two UN Conventions Against International Terrorism* 32 JAP. ANN. INT'L. 18 (1989), cited in Cho, *supra* note 196, at 95.

219. Cho, *supra* note 196, at 94. Art. 1, § 2, grants jurisdiction over anyone who "commits a crime on board a Japanese vessel or a Japanese aircraft outside Japan." *Id.* Art. 2 grants jurisdiction over anyone who commits a designated crime (insurrection, counterfeiting, and forgery of public documents) that threatens Japan. *Id.* Art. 3 grants jurisdiction over any Japanese national who commits a designated major crime (murder, bodily injury, kidnapping, and arson) outside of the country. *Id.* Finally, Art. 4 grants jurisdiction over any Japanese public official who is guilty of official corruption or drafting false official documents outside of Japan. *Id.*

Following World War II, Japan enacted the Subversive Activities Prevention Law of 1952²²⁰ to control the activities of the Japanese Communist Party.²²¹ Even though suppression of the Communist Party was this law's original purpose, it can be utilized to suppress any terrorist organization.²²² Common crimes²²³ normally addressed under the Criminal Code will be prosecuted under the Subversive Activities Prevention Law if committed with an objective of "the promotion or support of or opposition to any political doctrines or policy."²²⁴ Additionally, the Subversive Activities Prevention Law will also be applied to treasonable offenses which the Criminal Code designates as subversive activities per se.²²⁵ However, to be prosecuted under the Subversive Activities Prevention Law, a defendant must be affiliated with a subversive organization; otherwise he or she will face normal criminal proceedings under the Criminal Code.²²⁶

An organization's members who are convicted under the provisions of the Subversive Activities Prevention Law are subject to a maximum of seven years imprisonment or penal servitude.²²⁷ The organization itself can be completely dissolved or be restricted

220. Law No. 240 of 1952, amended by Law No. 89 of 1993, cited in Cho, *supra* note 196, at 89.

221. See John M. Maki, *Japan's Subversive Activities Prevention Law*, VI W. POL. Q. 489-92 (1953).

222. Subversive Activities Prevention Law, Law No. 240 of 1952, amended by Law No. 89 of 1993, art. 1, reprinted in Cho, *supra* note 196, at 91, states that the law's purpose is:

[T]o contribute to the preservation of public safety by establishing regulatory procedures for taking action against organizations which have carried out terroristic activities as organizational activities and supplementing the Criminal Code with additional penalties.

Id.

223. Such crimes are riot, arson, the setting off and use of explosives, endangering the passage of or wrecking public conveyances, murder, robbery, interference in the exercise of duties and coercion of public officials. Maki, *supra* note 221, at 493.

224. *Id.*, citing art. 4, § 1, ¶ B.

225. Cho, *supra* note 196, at 91. Subversive activities per se are crimes related to insurrection and treason, such as inducement of foreign aggression, and providing assistance to enemies. Maki, *supra* note 22, at 492-93.

226. Cho, *supra* note 196, at 91.

227. Subversive Activities Prevention Law, Law No. 240 of 1952, amended by Law No. 89 of 1993, art.38, ¶ 1, construed in Cho, *supra* note 196, at 91.

from engaging in specific activities for a specified length of time.²²⁸ The Public Security Investigation Agency may designate an organization as a danger and appropriate for surveillance and investigation, and may also request that the Public Security Commission dissolve the organization entirely.²²⁹

The Subversive Activities Prevention Law has not been without controversy. Arguments have been made, albeit unsuccessfully, that it infringes upon the constitutional guarantee of freedom of speech,²³⁰ and critics have warned against possible infringement of the right to freedom of religion.²³¹ Demonstrators arrested during disturbances in the 1960s and 1970s were commonly tried under the riot provisions of the Criminal Code instead of the Subversive Activities Prevention Law.²³² The language of the Subversive Activities Prevention Law limits its application to situations in which there is a danger that the group will continue to repeat subversive activity in the future, and even then it will be applied "only within the minimum extent necessary to assure the

228. Subversive Activities Prevention Law, Law No. 240 of 1952, *amended by* Law No. 89 of 1993, arts. 5-7, *construed in* Cho, *supra* note 196, at 92.

229. Cho, *supra* note 196, at 97. Sixteen groups have been targeted for surveillance and investigation under the Subversive Activities Prevention Law, but none have been dissolved. *Id.*

230. Cho, *supra* note 196, at 93. In four separate cases, members of the Communist Party were indicted on charges of printing and distributing Communist literature in violation of art. 38, ¶ 2, but challenged the Law's constitutionality as in violation of Article 21 of the Japanese Constitution. *Id.* Although the defendants were ultimately acquitted on other grounds, the constitutionality of the Act was upheld by the lower courts, three of which were affirmed by the Japanese Supreme Court. *Id.*, *citing* the Gifu Case, 396 HANREI JIHO 19 (1959)(affirmed by the Supreme Court, Dec. 21, 1964); Tsu and Kyoto Cases, 496 HANREI JIHO 69 (1967)(affirmed by Supreme Court, July 20, 1967, and Sept. 22, 1967, respectively); and the Kushiro Case, 74 HANREI JIHO 21 (1956)(affirmed by the Sapporo High Court, Mar. 30, 1956).

231. Cho, *supra* note 196, at 98. The Aum Shinrikyō, which has been designated as a violence-prone organization, has been subjected to the Subversive Activities Prevention Law. *Id.* Critics have asserted that putting a religious organization under surveillance could be a violation of the Japanese Constitution's guarantee of freedom of religion. *Id.*

232. *Id.* at 97. However, eight members of an ultra-nationalistic organization were indicted on charges of preparation of homicide and incitement to riot in violation of Articles 39 and 40 of the Subversive Activities Prevention Law. *See* 603 HANREI JIHO 94 (1970), *cited in* Cho, *supra* note 196, at 93-94.

public safety."²³³ To many critics, it appears that the Subversive Activities Prevention Law has been largely ineffective.²³⁴

Japan has further attempted to curtail the activities of subversive organizations, mainly the Japanese Mafia, through the enactment of the Law Preventing Illegal Activities by Members of Underground Organizations.²³⁵ A group usually will be designated an underworld organization if its members have extensive criminal records.²³⁶ This being the case, they will be banned from engaging in a number of specified activities.²³⁷

In the absence of an extradition treaty with a nation,²³⁸ foreign terrorists can be extradited under the Law for the Extradition of Fugitive Criminals,²³⁹ except in cases of a political nature.²⁴⁰ In this respect, an immigrant who is determined by the Minister of Justice to be a danger to the public peace or national interest can be deported under the Immigration Control and Refugee Recognition Law.²⁴¹

Japan has also countered the threat of terrorism by passing laws that restrict the use of explosives and nuclear materials. The

233. Subversive Activities Prevention Law, Law No. 240 of 1952, amended by Law No. 89 of 1993, art. 2, cited in Cho, *supra* note 196, at 91.

234. Cho, *supra* note 196, at 97.

235. Law No. 77 of 1991, amended by Law No. 89 of 1993, cited in Cho, *supra* note 196, at 93.

236. Cho, *supra* note 196, at 93.

237. The ban covers activities ranging from terroristic threats to extorting protection money. *Id.* at 93. Engaging in a banned activity can result in one year's imprisonment and a fine of up to one million yen. *Id.*

238. An example is the extradition treaty between Japan and the United States that entered into force on May 26, 1980. Treaty on Extradition, May 26, 1980, U.S.-Japan, 31 UST 892, cited in Cho, *supra* note 196, at 96.

239. Law No. 68 of 1953, amended by Law No. 89 of 1993, cited in Cho, *supra* note 196, at 96.

240. *Id.* An example is a case in which a Chinese national hijacked a Chinese aircraft flying from Beijing to New York and forced it to land at Fukuoka Airport in Japan on December 16, 1989. Y. Kiyoshi, *Political Offenses and Hijacking with the Japanese Law for the Extradition of Fugitives from Justice*, 34 JAP. ANN. INT'L L. 69 (1991), construed in Cho, *supra* note 196, at 96. The terrorist claimed he was fleeing from arrest due to his involvement in the Tianamen Square demonstration, but it was revealed in court that he had actually been arrested for embezzlement. *Id.* Because this was not a political offense, the terrorist was extradited to China on April 24, 1990. *Id.*

241. Cabinet Order No. 319 of 1951, amended by Law No. 94 of 1991, cited in Cho, *supra* note 196, at 97.

Explosives Decree of 1884²⁴² was revised in 1918 to supplement the Criminal Code with heavier penalties.²⁴³ However, milder penalties have been instituted for the manufacture, sale, and import of explosives without permission under the Law Concerning the Control of Explosives and Similar Substances.²⁴⁴ Japan enacted additional legislation to control explosives in 1972 with the Law for Punishment for the Use of Glass-Bottle Grenades²⁴⁵ which makes the use, possession, or manufacture of gasoline bombs a criminal offense.²⁴⁶ In 1988, Japan amended the Law for Control of Nuclear Source Material, Nuclear Fuel Material and Reactors²⁴⁷ to ratify the Convention on the Physical Protection of Nuclear Material.²⁴⁸

Most recently, Japan passed the Law Concerning the Prevention of Bodily Harm Caused by Sarin Gas²⁴⁹ in response to a

242. Decree of the Dajokan, Law No. 3 of 1884, *amended by* Law No. 34 of 1918, *cited in* Cho, *supra* note 196, at 89.

243. The amended Decree provided for the death penalty, penal servitude, or seven years to life incarceration. *Id.*

244. Violations could result in a sentence of penal servitude not exceeding three years and fines not exceeding one million yen Law No. 290 of 1950, *amended by* Law No. 89 of 1993, art. 58, *cited in* Cho, *supra* note 196, at 92.

245. Law No. 17 of 1974, *cited in* Cho, *supra* note 196, at 92. Anyone who endangers another's life or property through the use of a gasoline bomb is subject to a sentence of up to seven years of penal servitude whereas anyone charged with the possession or manufacture of a gasoline bomb can be fined up to 100,000 yen or sentenced to up to three years of penal servitude. *Id.*

246. Cho, *supra* note 196, at 89. This legislation was passed in response to the "Molotov cocktail struggle" in which mass protests and demonstrations were inspired by left-wing student organizations and radical elements from various labor unions. *Id.*

247. Law No. 166 of 1957, *amended by* Law No. 89 of 1993, *cited in* Cho, *supra* note 196, at 95-96. This revision incorporated new articles to make it an offense for any person to handle specified nuclear material without authority, to cause death, injury, or damage to property with a fission chain reaction or by diffusing radiation. Cho, *supra* note 196, at 96. Anyone guilty of such an offense or even attempting such an offense can be sentenced to penal servitude of up to ten years. *Id.* Any person who threatens to harm life, limb, or destroy property with nuclear material, or who demands that others not perform their duties or refrain from exercising their rights by threatening to steal nuclear material is subject to a minimum of three years penal servitude. *Id.*

248. See INTERNATIONAL TERRORISM: A COMPILATION OF MAJOR LAWS, TREATIES, AGREEMENTS, AND EXECUTIVE DOCUMENTS 510 Comm. Print 1991, *cited in* Cho, *supra* note 196, at 95.

249. Cho, *supra* note 196, at 93. The Law Concerning the Prevention of Bodily Harm Caused by Sarin Gas was enacted on April 19, 1995. *Id.*

number of terrorist attacks undertaken by Aum Shinrikyo.²⁵⁰ The use of Sarin or other lethal chemicals warrants a maximum penalty of penal servitude for life²⁵¹ while production or possession carries a sentence of penal servitude of up to seven years.²⁵²

Furthermore, Japan has been active in subscribing to the resolutions of various international conventions. In recognition of the 1970 Convention for Suppression of Unlawful Seizure of Aircraft²⁵³ and the 1971 Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation,²⁵⁴ Japan enacted the Law Concerning Punishment for Unlawful Seizure of Aircraft and Similar Crimes²⁵⁵ and the Law Concerning Punishment of Activities Endangering Aircraft.²⁵⁶ Japan also has ratified the 1973 Convention for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents²⁵⁷ and the 1979 International Convention Against the Taking of Hostages²⁵⁸ by enacting the Law Concerning Punishment for Hostage-Taking.²⁵⁹

C. Observations

As can be seen, Japan has enacted legislation to address specific terrorist threats rather than a uniform act to counter terrorism. Japan's current experiences with terrorist organizations

250. *Id.* at 94. Police raids of the cult's facilities have revealed large quantities of chemicals necessary for the production of Sarin gas as well as gun parts and machinery. *Id.*

251. The Law Concerning Prevention of Bodily Harm Caused by Sarin Gas, Art. 5, *cited in* Cho, *supra* note 196, at 93.

252. The Law Concerning the Prevention of Bodily Harm Caused by Sarin Gas, Art. 3, *cited in* Cho, *supra* note 196, at 93.

253. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, U.S.-Japan, 22 UST 1641, *cited in* Cho, *supra* note 196, at 95.

254. Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation, 24 UST 567, *cited in* Cho, *supra* note 196, at 95.

255. Law No. 68 of 1970, amended by Law No. 48 of 1978, *cited in* Cho, *supra* note 196, at 90.

256. Law No. 87 of 1984, amended by Law No. 82 of 1977, *cited in* Cho, *supra* note 196, at 90.

257. Convention for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 28 UST 1975, *cited in* Cho, *supra* note 196, at 95.

258. INTERNATIONAL TERRORISM: A COMPILATION OF MAJOR LAWS, TREATIES, AGREEMENTS, AND EXECUTIVE DOCUMENTS, *supra* note 248, at 510.

259. Law No. 48 of 1978, amended by Law No. 52 of 1987, *cited in* Cho, *supra* note 196, at 90.

can be addressed by either the Subversive Activities Prevention Law or the Criminal Code for prosecution. However, it appears that Japan will continue to enact specific legislation that directly addresses immediate threats, will subscribe to international conventions, and will rely upon the Criminal Code for enforcement of its antiterrorist policies. As long as such practices are effective in combatting future threats of terrorism, it would be unnecessary for Japan to expand in new directions.

VI. Conclusion

The antiterrorism legislation of the United Kingdom, Israel, and Japan has been seasoned by regional phenomena. In this respect, it is easy to dismiss each law as distinctively influenced. However, terrorist violence is an adhesive that will continue to bond each nation's current initiatives. The United Kingdom and Israel hold in common a territorial struggle seared by centuries of religious and cultural turmoil. Japan, though not troubled by the same degree of religious strife, has been the target of violent leftist political campaigns which have conceived a legislative response of similar effect. Each nation has criminalized the implements of terrorism through uniform and specific legislation. Furthermore, each nation has enacted legislation which prohibits the existence of the principle organizations responsible for terrorism. The efforts of all three nations are unique in framework, but analogous in essence.

The United Kingdom's quandary may only be resolved with independence for Northern Ireland. However, this is an unlikely option. Furthermore, independence will not ameliorate the religious schism in the population; the struggle will continue regardless of sovereignty. Negotiations between the British government and the IRA may curb the violence from a political perspective, but it will do little to improve relations between Catholics and Protestants. Therefore, the United Kingdom will have to look to the law to control further violence. However, legislation cannot extinguish the prejudices that continue to fuel the violence to which Northern Ireland has become accustomed. It is not only the terrorists who are instilled with animosity, but the population itself. Therefore, the PTA and the EPA will do little to solve the dilemma and continue to be criticized as meager means to an unattainable end.

The situation in Israel is comparable to that of the United Kingdom, but current political themes appear to be somewhat effective in pacifying the region's violent tendencies. What has now surfaced is a wave of violence aimed at corrupting the process of compromise. Like Northern Ireland, legislation will not be able to eradicate the abhorrence that is uniformly embraced by the opposing cultures occupying the region. As the Israeli military begins to withdraw from the Occupied Territories, the Gaza Strip and the West Bank will hopefully be able to relax the emergency measures that have been necessary to this day. However, the Jewish population that remains will still be militant, as will the Palestinians who both passively and actively support the Islamic campaign of terrorism. The Prevention of Terrorism Ordinance and the Defence (Emergency) Provisions mirror the British initiatives in form and substance. Although these laws have accomplished their basic purposes, it is naive to consider them solutions to the problem of terrorism. Each nation will continue to develop policies to supplement the tattered legislation that has valiantly attempted to prevent violent protest.

Unlike Northern Ireland and Israel, Japan enjoys an existence devoid of the everyday apprehension of impending violence. In this respect, it has been possible for Japan to rely upon its uniform Criminal Code to address terrorist infractions. The Subversive Activities Prevention Law has not been utilized to the same degree as the Criminal Code, and it is unlikely it will do so in the future. Japanese Leftist groups may very well pass from existence now that Communism's influence is dissipating from the global panorama. Furthermore, the Japanese Red Army has been effectively excluded from the country and is beginning to deteriorate as a major terrorist threat. Japan has been successful in controlling its national security with initiatives that criminalize behavior that sporadically erupts into violence. It is unlikely that Japan will ever have to undergo the legislative transformations attributable to Israel and the United Kingdom.

Terrorism will undoubtedly vex the international community as it progresses into the next century; however, the legislative initiatives of nations like the United Kingdom, Israel, and Japan have significantly contributed to a global condemnation of terrorism. Advances in policy management, target security, and tactical responses have also curtailed the threat of terrorist activity. A firm antiterrorist policy is in the best interest of most every

nation, but its measures should create an environment hostile to terrorist behavior, not a system that hinders the daily operations of the general public. A nation's citizens should realize the extent of contemporary society's vulnerability and be willing to make concessions to successfully implement terrorism counteraction policies. However, incessant paranoia and initiatives that reach far beyond the relative threats posed by contemporary terrorists will only work against the status quo. If the global community does not observe this balance, society will be altered, and the terrorist will have triumphed.

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