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Ashley M. Gregg

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Shoot to Kill—How Far is Too Far in Protecting Citizens?: A Comparative Discussion of the “Shoot-to-Kill” Orders Given in London after the Subway Bombings and those Given in the Aftermath of Hurricane Katrina

Ashley M. Gregg*

I. Introduction

“They shot my cousin like a dog—seven bullets to the head from less than 30 centimetres [12 inches]—whilst he was being restrained.”¹ Alex Pereira described the shooting of his cousin, 27 year-old Jean Charles de Menezes. The Metropolitan Police shot Menezes, a suspected terrorist, to death on July 22, 2005 in the London subway.² On July 7, 2005, bombs wreaked havoc in the London underground and on a

* Juris Doctorate Candidate, The Dickinson School of Law of the Pennsylvania State University, expected May 2007; Bachelor of Arts, Dickinson College, Carlisle, Pennsylvania, 2004. Special thanks to my fiancé, David Galloway, who not only gave me the idea for this Comment but also tolerated me during the writing process. Also, thank you to my family for always encouraging and believing in me. Lastly, this Comment is dedicated to the victims of the London subway bombings and Hurricane Katrina.

1. “*Shoot-to-Kill*” *Not Being Widened*, BBC NEWS (UK ED.), Oct. 27, 2005, available at <http://news.bbc.co.uk.edgesuite.net/1/hi/uk/4378974.stm> (last visited July 14, 2006).

2. See “*Shoot-to-Kill*” *Not Being Widened*, BBC NEWS (UK ED.), Oct. 27, 2005, available at <http://news.bbc.co.uk.edgesuite.net/1/hi/uk/4378974.stm> (last visited July 14, 2006). See also Alan Cowell & Don VanNatta, Jr., *Britain Says Man Killed by Police Had No Bomb Tie*, N.Y. TIMES, July 24, 2005, at 11; Elaine Sciolino, *Bombings in London: Scotland Yard; Regrets, but No Apology, in London Subway Shooting*, N.Y. TIMES, July 25, 2005, at A12; Victor R. Caivano, *U.K. Police Defend Shoot-to-Kill After Mistake: Police officials apologize to relatives for shooting death of Brazilian man*, MSNBC, July 24, 2005, <http://www.msnbc.msn.com/id/8655541/> (last visited July 14, 2006).

London double-decker bus, killing fifty-four [54] people,³ wounding countless others,⁴ and shattering the city's confidence in its public transportation system.⁵ Then, on July 21, 2005, a failed bombing attempt occurred in the London subway.⁶ Although unsuccessful, this attempt increased anxiety in an already tense country.⁷

Immediately following the first attack, the Metropolitan police began a countrywide search for suspected terrorists, terrorist sympathizers, and those who may have harbored the terrorists prior to the bombings.⁸ The police also revived a shoot-to-kill policy, first implemented in 2002, known as Operation Kratos.⁹ The shoot-to-kill policy calls for all suspected terrorists to be shot in the head if they do not heed police warnings.¹⁰ The police investigation following the July 21st attack led officials to believe Menezes may have been associated with the failed bombing attempt.¹¹ While the police were conducting their surveillance, they followed Menezes from his home to the London subway.¹² Police became increasingly suspicious when they noticed Menezes wearing a heavy coat in the middle of the summer and carrying a large backpack resembling those used in earlier bombing attacks.¹³ This suspicion was compounded when Menezes reportedly did not yield to police directions and warnings.¹⁴ As a result, police shot Menezes in the head five times, killing him immediately.¹⁵

3. See *New Arrest in London Bombings*, CBS NEWS—WORLD, July 15, 2005, <http://www.cbsnews.com/stories/2005/07/07/world/main707053.shtml> (last visited July 14, 2006).

4. See *More than 50 Dead in London Attacks: Safety Concerns Hinder Investigators from Reaching Some Bodies*, CNN, July 8, 2005, <http://www.cnn.com/2005/WORLD/europe/07/08/london.attacks/index.html> (last visited July 14, 2006) [hereinafter *More than 50 Dead*]; see also Jeremy Last, *London Bombings: Burying the Dead*, EUROPEAN JEWISH PRESS, July 21, 2005, <http://www.ejpress.org/article/news/uk/1841#> (last visited July 14, 2006).

5. See *More than 50 Dead*, *supra* note 4.

6. See Cowell & VanNatta, *supra* note 2, at 11.

7. See Cowell & VanNatta, *supra* note 2, at 11; see also Sciolino, *supra* note 2, at A12.

8. See *More than 50 Dead*, *supra* note 4.

9. See Tim Shipman, *Blair 'did know' of Shoot to Kill*, DAILY MAIL (LONDON), Sept. 20, 2005, at 37.

10. See *id.*

11. See Cowell & VanNatta, *supra* note 2, at 11.

12. See Cowell & VanNatta, *supra* note 2, at 11.

13. See Cowell & VanNatta, *supra* note 2, at 11.

14. See Cowell & VanNatta, *supra* note 2, at 11. See also *London on Edge*, CBC NEWS INDEPTH, Aug. 11, 2005, available at http://www.cbc.ca/news/background/London_bombing/ (quoting Metropolitan Police Commissioner Sir Ian Blair's response to the shooting, "I need to make clear that any death is deeply regrettable. . . . As I understand the situation, the man was challenged and refused to obey police instructions").

15. See Sciolino, *supra* note 2, at A12.

A little more than a month later, Kathleen Babineaux Blanco, the Governor of Louisiana¹⁶, acting under a state of emergency declaration in response to Hurricane Katrina's devastation,¹⁷ instituted a shoot-to-kill policy against looters and other "hoodlums" to restore order to the streets of New Orleans.¹⁸ On August 31, 2005, Hurricane Katrina slammed into the Gulf Coast with sustained winds of 125 miles per hour,¹⁹ one of the strongest hurricanes to hit the United States in the last 100 years.²⁰ It left hundreds of thousands of people without food, water, clothing, or shelter,²¹ and claimed the lives of over 1,800 people.²² In New Orleans, the levees that kept Lake Pontchartrain and the Mississippi River in their banks were breached, and water filled eighty percent of the city.²³ In the aftermath, looting and other crimes were rampant in the city.²⁴ To quell the destruction and unrest,²⁵ Governor Blanco ordered the National

16. Louisiana became the 18th state to join the United States of America in the year 1812. See *A Brief History of Louisiana Under 10 Flags*, LOUISIANA.GOV: THE OFFICIAL WEBSITE OF THE STATE OF LOUISIANA, available at <http://www.sos.louisiana.gov/around/brief/brief-1.htm> (Last visited July 10, 2006) [hereinafter *Louisiana.gov*].

17. See *Martial Law Clarified*, NEW ORLEANS TIMES-PICAYUNE, Aug. 30, 2005, available at http://nola.com/weblogs/print.ssf?/mtlogs/nola_Times-Picayune/archives/print075262.html (last visited July 14, 2006).

18. See "*Shoot-to-kill*" Orders For New Orleans, HERALD SUN (AUSTRALIA), Sept. 2, 2005, available at http://www.heraldsun.news.com.au/common/story_page/0,5478,16466908%255E23109,00.html (last visited July 14, 2006).

19. See *Summary of Hurricane Katrina*, NAT'L CLIMATIC DATA CTR., Dec. 29, 2005, available at <http://www.ncdc.noaa.gov/oa/climate/research/2005/katrina.html> (last visited July 14, 2006).

20. See *id.*

21. See Evan Thomas, *The Lost City*, NEWSWEEK, Sept. 12, 2005, at 42; Joseph B. Treaster & N.R. Kleinfield, *Hurricane Katrina: The Overview; New Orleans is Inundated as Two Levees Fail; Much of Gulf Coast is Crippled; Toll Rises*, N.Y. TIMES, Aug. 31, 2005, at A1.

22. See Robert Lindsay, *Katrina Death Toll Surges to 1,836*, <http://robertlindsay.blogspot.com/2006/05/katrina-death-toll-surges-to-1836.html> (last visited July 10, 2006) (citing Hurricane Katrina's official death toll of 1,323 people). However, the official death toll only includes storm-related deaths, the definition of which varies by state. See Janet McConnaughey, *Katrina's Official Death Toll Incomplete*, ABC NEWS, <http://abcnews.go.com/US/print?id=1395826> (last visited July 14, 2006). In Georgia, storm-related deaths do not include evacuee deaths from heart attacks, while in Louisiana these deaths count if they occurred before October 1, 2005. See *id.* Therefore, the actual number of deaths related in some way to Hurricane Katrina is potentially much higher. See *id.* The official death toll may rise even further since 6,644 people are still reported missing from Katrina. See Kevin Johnson, *6,644 are Still Missing After Katrina; Toll May Rise*, USA TODAY, available at http://www.usatoday.com/news/nation/2005-11-21-katrina-missing_x.htm (last visited July 14, 2006).

23. See Thomas, *supra* note 21, at 42.

24. See Treaster & Kleinfield, *supra* note 21, at A1.

25. See *Bush Vows to Step up Katrina Aid*, BBC NEWS, Sept. 2, 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/4208986.stm> (last visited July 14, 2006).

Guard into the city with an order to shoot-to-kill if necessary,²⁶ stating, “these troops know how to shoot and kill and they are more than willing to do so if necessary and I expect they will.”²⁷ Pursuant to this order, two people were killed in Louisiana.²⁸

This Comment is comprised of six primary parts. Part I of this Comment introduces martial law and shoot-to-kill policies generally and presents an overview of the recent tragedies that occurred in London and Louisiana that led to an implementation of these policies in the United Kingdom and the United States. Part II provides an in-depth discussion of martial law and shoot-to-kill policies in both countries. Part III presents a more focused examination of the United States’ policy individually and the events that led to its most recent implementation, while Part IV focuses its examination on the United Kingdom’s policy and events leading to its reinstatement. Part V of the Comment compares both of the policies and the ramifications facing the authorities as a result of the actions taken, and it analyzes whether shoot-to-kill policies controvert the inalienable rights of “life, liberty, and the pursuit of happiness”²⁹ declared in the United States’ Declaration of Independence³⁰ and guaranteed by the Constitution³¹ and the United Kingdom’s Magna Carta.³² Lastly, Part VI addresses whether the International Covenant on Civil and Political Rights (ICCPR) permits countries to use these shoot-to-kill policies as a law enforcement measure in times of crisis.

II. Discussion of Martial Law/Shoot-to-Kill Policies

Martial law occurs when the military assumes police powers because local authorities are not functioning effectively.³³ In the United

26. See “Shoot-to-kill” Orders For New Orleans, *supra* note 18.

27. See *id.*

28. See *Mysterious Deaths During Katrina Puzzle Police: More than 20 Victims Were Killed by Gunshot Wounds, Stabbings*, MSNBC, Dec. 12, 2005, available at <http://www.msnbc.msn.com/id/10440492/from/RSS/> (last visited July 14, 2005) [hereinafter *Mysterious Deaths*].

29. See THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776) (“We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. . .”). *Id.*

30. See *id.*

31. See U. S. CONST. amend. V.

32. THE MAGNA CARTA, art. XXXIX, Eng. (1215).

33. See Steve Mount, *Constitutional Topic: Martial Law*, U.S. CONST. ONLINE, Sept. 7, 2005, http://usconstitution.net/consttop_mlaw.html (last visited July 14, 2006); Keelin McDonell, *What is Martial Law?*, SLATE, Sept. 2, 2005, at <http://slate.msn.com/id/2125584> (last visited July 14, 2006); Martial Law, ENCYCLOPAEDIA BRITANNICA, Jan. 9, 2006, available at <http://www.britannica.com/eb/article?tocId=9371422> (last visited Jan. 10, 2006).

States, restrictions have been placed on authorities' ability to declare martial law since the late 19th Century.³⁴ Only Congress, the President, or, in extreme situations, a local commander has the ability to declare martial law.³⁵

In the United Kingdom, the Home Secretary³⁶ has the ability to declare a State of Public Emergency, essentially vacating the right to a writ of habeas corpus³⁷. Parliament is also able to suspend the writ of habeas corpus and does so only in times of social unrest.³⁸

Martial law in the United States is also rooted in the suspension of habeas corpus.³⁹ Article 1, Section 9 of the United States Constitution bars the suspension of habeas corpus, except in times of rebellion, invasion, or when public safety requires it.⁴⁰

A state of emergency is comparable to a declaration of martial law in both the United States and the United Kingdom.⁴¹ In the United States, a state of emergency differs from martial law in that the military operates only at the discretion of the government during states of emergency, not in place of it.⁴² For example, in Louisiana, Kathleen Babineaux Blanco, Governor of Louisiana, had the discretion to use the National Guard.⁴³ The President of the United States, state governors, or local mayors have the authority to declare a state of emergency within their jurisdiction.⁴⁴ When the President declares a state of emergency, the Federal Emergency Management Agency (FEMA) is empowered to

34. See McDonell, *supra* note 33.

35. See McDonell, *supra* note 33; Mount, *supra* note 33.

36. Home Secretary Dr. John Reid MP is the Home Secretary, the head of the Home Office. Home Office, *Home Secretary Dr. John Reid*, available at <http://www.homeoffice.gov.uk/about-us/organisation/ministers/john-reid/> (last visited July 14, 2006) [hereinafter Home Secretary]. The Home Secretary has overall responsibility for the work of the entire Home Office. See *id.* He has particular responsibility for: civil emergencies, security, terrorism, expenditure, and civil renewal. See *id.*

37. Habeas corpus is the inability of the government to detain an individual without a valid reason. See Mount, *supra* note 33. See Mike Wendling, *U.K. Declares 'State of Public Emergency'*, CYBERCAST NEWS SERV., Nov. 12, 2001, available at <http://www.cnsnews.com/ViewPrint.asp?Page=/ForeignBureaus/archive/200111/FOR2001> (last visited Jan. 10, 2006).

38. See *A Brief History of Habeas Corpus*, BBC NEWS, Sept. 3, 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/magazine/4329839.stm> (last visited Jan. 10, 2006) [hereinafter *History of Habeas Corpus*].

39. See Mount, *supra* note 33.

40. See U.S. CONST. art. 1, § 9, cl. 2; see also Mount, *supra* note 33.

41. See U.S. CONST. art. 1, § 9, cl. 2; see also Mount, *supra* note 33.

42. See McDonell, *supra* note 33.

43. See McDonell, *supra* note 33; "Shoot-to-kill" Orders For New Orleans, *supra* note 18.

44. See McDonell, *supra* note 33; Mount, *supra* note 33.

deal with the emergency situation.⁴⁵ Federal monetary assistance is also available to areas declared to be in a Federal State of Emergency.⁴⁶ State governors may call on their respective National Guard to administer aid and keep the peace during emergencies.⁴⁷

In Louisiana, there was confusion over whether a declaration of martial law or a declaration of a state of emergency was made.⁴⁸ Early news reports stated martial law was declared,⁴⁹ but the Louisiana Attorney General's office refuted those claims.⁵⁰ Then, the White House Press Secretary reissued statements that martial law had been declared.⁵¹ National Guard Lieutenant General H. Steven Blum finally settled the issue by announcing that the term "martial law" does not exist in Louisiana, but is instead replaced by a "state of public health emergency."⁵²

In the United Kingdom, Ministers of the Crown⁵³ are authorized to make emergency regulations under the Civil Contingencies Act of 2004.⁵⁴ The Ministers of the Crown may make emergency regulations if there is a serious threat to human welfare, or the environment, or in times of war or terrorism.⁵⁵

Because a declaration of martial law and a declaration of a state of emergency are so similar,⁵⁶ civil liberties may be infringed under either policy.⁵⁷ Under both declarations, the military can arrest and try

45. See *Federal Emergency Management Agency*, MSN ENCARTA, 2005, http://encarta.msn.com/text_761569608__0/Federal_Emergency_Management_Agency.html (last visited July 14, 2006).

46. See *Response and Recovery*, FEMA, Sept. 3, 2005, <http://www.fema.gov/rr/> (last visited Jan. 21, 2006).

47. See McDonell, *supra* note 33; *Martial Law*, *supra* note 33.

48. See *Martial Law Clarified*, *supra* note 17; McDonell, *supra* note 33.

49. See Bernard Hibbitts, *BREAKING NEWS—Martial Law Declared in New Orleans as Levees Break*, JURIST—PAPER CHASE, Aug. 30, 2005, <http://jurist.law.pitt.edu/paperchase/2005/08/breaking-news-martial-law-declared-in.php> (last visited Jan. 22, 2006).

50. See McDonell, *supra* note 33.

51. See McDonell, *supra* note 33.

52. See McDonell, *supra* note 33; Mount, *supra* note 33. "In the dystopia that is New Orleans [], martial law is a utopian aspiration." George F. Will, *The Last Word, Leviathan in Louisiana*, NEWSWEEK, Sept. 12, 2005, at 88.

53. A Senior Minister of the Crown is defined as either: the First Lord of the Treasury—the Prime Minister, Her Majesty's Principal Secretaries of State and the Commissioners of Her Majesty's Treasury. See *Civil Contingencies Act*, 2004, c.36, § 2(20)(1-3)(Eng.).

54. See *Civil Contingencies Act*, 2004, c.36, §2(20)(1-3)(Eng.) (stating Her Majesty the Queen or a Senior Minister of the Crown may develop emergency regulations under this Act).

55. See *id.*

56. See Mount, *supra* note 33.

57. See *Martial Law Clarified*, *supra* note 17; Mount, *supra* note 33; *Martial Law*, *supra* note 33.

civilians, seize private property, institute curfews, and implement other emergency powers intended to protect the public.⁵⁸ These policies may encroach upon basic civil liberties, such as the right to congregate.⁵⁹ However, just as the exigent circumstances warrant the implementation of martial law or a state of emergency,⁶⁰ the end of those circumstances must lead to the restoration of power in the original government and other local authorities.⁶¹ When local governments and courts administer justice on their own again, military involvement must cease.⁶²

III. United States' Policies

The United States recognizes that both martial law and states of emergency serve as a means of using the military, if necessary, to ensure the performance of the normal administration of government when local authorities either are not functioning properly or are ill-equipped.⁶³ An essential goal of martial law is preserving the public order,⁶⁴ and it is linked with the privilege of the writ of habeas corpus in the United States.⁶⁵ According to the Constitution, the right to a writ of habeas corpus may not be suspended except in the case of rebellion, invasion, or when public safety may require it.⁶⁶

A. Past Declarations of Martial Law in the U.S.

Martial law has been declared several times throughout the history of the United States.⁶⁷ During the War of 1812, Major General Andrew Jackson imposed martial law on the liberated encampment of New Orleans, as well as the four-mile radius surrounding the camp.⁶⁸ That martial law declaration was not relinquished until Jackson received official notice that the war had ended.⁶⁹ The most notable use of martial law was during the Civil War, however.⁷⁰ President Lincoln imposed

58. See McDonell, *supra* note 33; *Martial Law Clarified*, *supra* note 17.

59. See McDonell, *supra* note 33; Mount, *supra* note 33.

60. See *Ex Parte Milligan*, 71 U.S. 2, 126-27 (1866). See also McDonell, *supra* note 33.

61. See *Ex Parte Milligan*, 71 U.S. at 126-27.

62. See *id.* at 127-28. See also McDonell, *supra* note 33.

63. See Mount, *supra* note 33; McDonell, *supra* note 33; *Martial Law*, *supra* note 33.

64. See *Martial Law*, *supra* note 33; see also U.S. CONST. art. 1, § 9, cl. 2.

65. See Mount, *supra* note 33, at http://usconstitution.net/consttop_mlaw.html.

66. See U.S. CONST. art. 1, § 9, cl. 2. See also Mount, *supra* note 33, at http://usconstitution.net/consttop_mlaw.html.

67. See Mount, *supra* note 33.

68. See *id.*

69. See *id.*

70. See *id.*

congressionally-authorized martial law on prisoners of war, spies, and those suspected of aiding and abetting the South, thus allowing the suspension of habeas corpus in that region and the Midwest for the duration of the war.⁷¹ In 1892, the Governor of Idaho declared martial law when mine workers in Coeur d'Alene blew up a mill and fired shots at strikebreaking workers.⁷²

In 1906, San Francisco was placed under martial law, despite the absence of a formal declaration, following a massive earthquake that rocked the city.⁷³ Similar to the situation in New Orleans involving Hurricane Katrina, military troops were instructed to shoot looters, and the troops took their orders from local government authorities.⁷⁴ Nearly ten years later, President Woodrow Wilson declared martial law in 1914 to quell violence that had broken out in the coalmines of Colorado.⁷⁵ In 1934, California Governor, Frank Merriam, did the same on the San Francisco docks due to riots that had resulted from a dockworker strike.⁷⁶ In 1941, immediately following the attacks on Pearl Harbor, Governor Joseph Poindexter placed Hawaii under martial law.⁷⁷ President Franklin D. Roosevelt confirmed that decision, and Hawaii remained under the declaration until 1944.⁷⁸

B. Limitations on the Use of Martial Law

In response to President Lincoln's widespread imposition of martial law during the Civil War,⁷⁹ the United States Supreme Court limited its application in *Ex Parte Milligan*.⁸⁰ The Court held that martial law could not be imposed when civilian courts were in operation.⁸¹ Lamdin P. Milligan, a U.S. citizen, was arrested on October 5, 1864, for conspiring against the government of the United States, affording aid to rebels, inciting insurrection, and violating the laws of war.⁸² Milligan was found guilty by a military court and sentenced to death by hanging.⁸³ The Court determined that the President of the United States could declare

71. See *id.*; McDonell, *supra* note 33.

72. See Mount, *supra* note 33.

73. See *id.*

74. See *id.*; see also "Shoot-to-kill" Orders For New Orleans, *supra* note 18.

75. See Mount, *supra* note 33.

76. See *id.*

77. See *id.*; McDonell, *supra* note 33.

78. See *id.*

79. See *Ex Parte Milligan*, 71 U.S. at 2; Mount, *supra* note 33.

80. See *Ex Parte Milligan*, 71 U.S. at 2.

81. See *id.* at 127.

82. See *id.* at 107.

83. See *id.*

martial law when civil authorities could not operate effectively.⁸⁴ However, trying Milligan in a military court when civil courts were still operational was unconstitutional.⁸⁵ The Court stated that where civil courts were incapacitated, not only would use of martial law be constitutional, it would be a necessity.⁸⁶ In 1878, the ability to declare martial law was restricted further when Congress passed the *Posse Comitatus* Act.⁸⁷ That legislation prevents military involvement in domestic affairs unless first approved by Congress.⁸⁸

C. Event Requiring the Shoot-to-Kill Policy

Hurricane Katrina prompted federal disaster and emergency declarations in the states of Louisiana, Mississippi, Alabama, Florida.⁸⁹ Emergency declarations were also made in Texas and Arkansas, along with forty-three other states, as a result of the weather attributed to Hurricane Katrina and the subsequent displacement of evacuees.⁹⁰ In Louisiana, the declared state of emergency allowed Governor Blanco to suspend laws, order mandatory evacuations of certain areas, and restrict the sale of alcohol and firearms.⁹¹

The declaration of the state of emergency enabled Governor Blanco to implement a shoot-to-kill policy that permitted police and national guards to shoot rioters and looters if they failed to obey commands to cease their behavior and surrender willingly to police custody.⁹² In addition, the police must have reasonably feared for the public's safety to carry out the shoot-to-kill orders,⁹³ since the use of martial law and states of emergency are conditioned upon the necessity of the actions and the

84. See *id.* at 127.

85. See *Ex Parte Milligan*, 71 U.S. at 127.

86. See *id.*

87. See 18 U.S.C. § 1385 (2006).

88. See *id.*

89. See *2005 Federal Disaster Declarations*, FEMA, Jan. 16, 2006, <http://www.fema.gov/news/disasters.fema?year=2005> (last visited July 14, 2006); McDonell, *supra* note 33.

90. See *2005 Federal Disaster Declarations*, *supra* note 91. Those forty-three states are: Delaware, New York, New Hampshire, New Jersey, Maine, Rhode Island, Montana, Massachusetts, Maryland, Ohio, Wisconsin, California, North Dakota, Connecticut, Nebraska, Idaho, Nevada, Minnesota, Arizona, Virginia, Iowa, Indiana, Alabama, Kansas, Pennsylvania, South Dakota, South Carolina, Missouri, Kentucky, Illinois, New Mexico, Oregon, Washington, District of Columbia, Michigan, Colorado, Utah, North Carolina, West Virginia, Florida, Oklahoma, Georgia, and Tennessee. *Id.*

91. See "*Shoot-to-kill*" *Orders For New Orleans*, *supra* note 18.

92. See *id.*; *Bush Vows to Step up Katrina Aid*, *supra* note 25.

93. See "*Shoot-to-kill*" *Orders For New Orleans*, *supra* note 18 (issuing this warning to all citizens of New Orleans, "these troops know how to shoot and kill and they are more than willing to do so if necessary and I expect they will").

threat to the public.⁹⁴

D. Constitutional Concerns

Since the United States' establishment,⁹⁵ the American people have recognized inalienable rights to "life, liberty and the pursuit of happiness."⁹⁶ These rights were specifically enumerated in the Declaration of Independence.⁹⁷ In 1789, the passage of the Bill of Rights signified a formal recognition of these rights in the America.⁹⁸ The Fifth Amendment of the United States Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law."⁹⁹ However, during times of martial law or states of emergency, where the government can freely implement shoot-to-kill policies against its citizens, the rights granted by the Fifth Amendment are seemingly suspended.¹⁰⁰

Although no one has yet complained that his rights have been infringed by the shoot-to-kill policy used in New Orleans, in the time since Katrina, the tactic has not been forgotten.¹⁰¹ Whether citizens or civil rights groups will complain about this policy will not be determined until some semblance of normalcy returns to New Orleans.

IV. United Kingdom's Policies

The United Kingdom also relies heavily on the principles of habeas corpus¹⁰² and the ability to issue writs to protect this right.¹⁰³ Recorded use of the writ of habeas corpus pre-dates the passage of the Magna Carta in 1215.¹⁰⁴ Due to rampant detention of British citizens without legal authority to do so¹⁰⁵ and refusal to produce them for trial,¹⁰⁶

94. See *Ex Parte Milligan*, 71 U.S. at 126-27. See also McDonell, *supra* note 33.

95. See THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776).

96. *Id.* (quoting "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable Right, that among these are Life, Liberty, and the pursuit of Happiness. . . .").

97. See *id.*

98. See U. S. CONST. amend. V.

99. *Id.*

100. See McDonell, *supra* note 33; *Martial Law*, *supra* note 33; Mount, *supra* note 33.

101. See Guardian Unlimited, *News Blog—Hurricane Katrina: How You Can Help*, http://blogs.guardian.co.uk/news/archives/2005/09/02/hurricane_katrina_how_you_can_help.html (last visited July 10, 2006).

102. See *History of Habeas Corpus*, *supra* note 38.

103. See *id.*

104. See *id.*

105. See Paul Halsall, *Modern History Source Book: Habeas Corpus Act 1679*, Apr. 1998, <http://www.fordham.edu/halsall/mod/1679habeas Corpus.html> (last visited Jan. 22, 2006).

Parliament guaranteed the right to habeas corpus in 1679 with the passage of the Habeas Corpus Act.¹⁰⁷

A. Past Declarations of Martial Law in the U.K.

Although the importance of habeas corpus is tantamount to the citizens of the United Kingdom,¹⁰⁸ the government has periodically suspended this right throughout history.¹⁰⁹ To thwart parliamentary reformers from causing a revolution,¹¹⁰ Secretary of State, William Pitt, suspended habeas corpus after France declared war on Great Britain in 1793.¹¹¹ The Defense of the Realm Act suspended habeas corpus against people of German descent at the start of World War I in 1914.¹¹² Habeas corpus was deferred for Irish citizens suspected of participating in the “Easter Uprising” of 1916.¹¹³ In addition, habeas corpus was postponed against German descendants during World War II.¹¹⁴ Habeas corpus was suspended again in the 1970’s and 1980’s as a result of the conflict in Northern Ireland.¹¹⁵ Most recently, Parliament deferred habeas corpus for suspected terrorists in the aftermath of the attack on the United States on September 11, 2001.¹¹⁶

B. Limitations of the Use of Martial Law

The Home Secretary has the ability to declare a State of Public Emergency in times of social unrest,¹¹⁷ but only Parliament, by vote, can suspend the writ of habeas corpus if the situation demands such action.¹¹⁸ Although Parliament is the only body able to suspend habeas corpus,¹¹⁹ high-ranking officials of the London Metropolitan Police may alter, implement, and discontinue police policies and practices, including shoot-to-kill policies.¹²⁰ According to the Home Office,¹²¹ while prime

106. See Habeas Corpus Act, 1679, 15 Car. 2, (Eng.).

107. See *History of Habeas Corpus*, *supra* note 38.

108. See *id.*

109. See *id.*; *Habeas Corpus*, MSN ENCARTA, 2005, http://encarta.msn.com/text_761579036_0/Habeas_Corpus.html (last visited July 14, 2006).

110. See *History of Habeas Corpus*, *supra* note 38.

111. See *id.*

112. See *id.*

113. See *id.*

114. See *id.*

115. See *History of Habeas Corpus*, *supra* note 38.

116. See *id.* (citing the Anti-Terrorism, Crime and Security Act 2001).

117. See Wendling, *supra* note 37.

118. See *History of Habeas Corpus*, *supra* note 38.

119. See *id.*

120. See Shipman, *supra* note 9, at 36.

121. The Home Office is the government department responsible for internal affairs in England and Wales. Home Office, *Home Secretary John Reid*, available at

ministers are informed of changes in police policy,¹²² they need not approve them.¹²³

C. *Event Requiring the Shoot-to-Kill Policy*

After September 11, 2001, the United Kingdom, a country known for its unarmed “bobbies,”¹²⁴ transitioned from an “aim-to-wound” tactic to a “shoot-to-kill” policy when dealing with suspected suicide bombers.¹²⁵ The Metropolitan Police implemented Operation Kratos,¹²⁶ a “shoot for the head” tactic for suspected suicide bombers who failed to surrender to police.¹²⁷ Aiming for the head was encouraged to prevent the discharge of explosives that might be strapped to the suspect’s body.¹²⁸

Relying upon the authority granted by the adoption of Operation Kratos,¹²⁹ on July 22, 2005, armed Metropolitan Police shot to death a 27 year-old Brazilian man, Jean Charles de Menezes, an alleged suspect tied to the failed London subway bombing of July 21, 2005.¹³⁰ The police later discovered that Menezes had no connection to, or involvement in, the failed attacks.¹³¹ Immediately after the shooting of Menezes, Sir Ian Blair, the London Metropolitan Police Commissioner,¹³² and other public officials, notably Ken Livingstone, Mayor of London and long-time champion of civil liberties,¹³³ staunchly defended the shoot-to-kill policy, arguing that police routinely face split-second decisions in times of great

<http://www.homeoffice.gov.uk/about-us/> (last visited July 14, 2006) [hereinafter Home Office].

According to the Home Office, this is the government department responsible for ensuring society is safe, just and tolerant. *See id.* The Home Office is responsible for the police in England and Wales, national security, the justice system and immigration. *See id.*

122. *See* Shipman, *supra* note 9, at 37.

123. *See id.* When asked whether the Prime Minister would address the use of Operation Kratos to kill Jean Charles de Menezes, his spokeswoman stated, “Mr. Blair [is] ‘kept updated on all developments, but this is a matter for the Metropolitan Police. We have nothing to add.’” Cowell & VanNatta, *supra* note 2, at 11.

124. British police officers. *See London England*, Woodlands Junior High School, <http://www.woodlands-junior.kent.sch.uk/customs/questions/london/crime.htm> (last visited July 10, 2006). *See* Cowell & VanNatta, *supra* note 2, at 11.

125. *See id.*

126. *See* Shipman, *supra* note 9, at 37.

127. *See id.*

128. *See* Cowell & VanNatta, *supra* note 2, at 11; Sciolino, *supra* note 2, at A12.

129. *See id.*; Shipman, *supra* note 9, at 37.

130. *See ‘Shoot-to-Kill’ not Being Widened*, *supra* note 1. *See also*, Cowell & VanNatta, *supra* note 2, at 11; Sciolino, *supra* note 2, at A12; Caivano, *supra* note 2.

131. *See* Cowell & VanNatta, *supra* note 2, at 11.

132. *See id.*

133. *See id.*

danger.¹³⁴

However, not everyone in the United Kingdom is supportive of the policy.¹³⁵ Human civil rights groups,¹³⁶ like the Islamic Human Rights Commission,¹³⁷ are concerned that the policy could lead to further innocent victims,¹³⁸ such as Jean Charles de Menezes.¹³⁹ Menezes' family shares this fear.¹⁴⁰ Maria Otone de Menezes, Jean Charles de Menezes' mother,¹⁴¹ hopes the British government realizes that "a human being needs to be respected and treated as a citizen in any country in the world."¹⁴² The public also seems hesitant about the police's shoot-to-kill policy.¹⁴³ Amy Bowles, a musician in London, states, "there needs to be strong policing, but not hysterical policing."¹⁴⁴

D. Constitutional Concerns

Like the American Constitution,¹⁴⁵ the English Magna Carta is a document that serves as a foundation for the United Kingdom's government and the rights granted to all of its citizens.¹⁴⁶ The Magna Carta has served as a template for constitutional forms of government throughout the world,¹⁴⁷ including the United States.¹⁴⁸ Article 39 of the

134. See Sciolino, *supra* note 2, at A12; Cowell & VanNatta, *supra* note 2, at 11.

135. See Cowell & VanNatta, *supra* note 2, at 11.

136. See *Britain Says Man Killed by Police Had No Bomb Tie*, N.Y. TIMES, July 24, 2005, at 11 [hereinafter *Man Killed Had No Bomb Tie*]; Caivano, *supra* note 2; Press Release: IHRC Calls Upon Sir Ian Blair to Resign, ISLAMIC HUMAN RIGHTS COMMISSION, Aug. 18, 2005 [hereinafter *Press Release*].

137. See Cowell & VanNatta, *supra* note 2, at 11 (stating the Islamic Human Rights Commission feared "innocent people may lose their lives due to the new shoot-to-kill policy of the Metropolitan Police.")

138. See Sciolino, *supra* note 2, at A12 (quoting Celso Amorim, Brazil's Foreign Minister, as saying, "even in the fight against terrorism, we should also be cautious to avoid the loss of innocent life."); Cowell & VanNatta, *supra* note 2, at 11.

139. See Sciolino, *supra* note 2, at A12; Cowell & VanNatta, *supra* note 2, at 11; see also Caivano, *supra* note 2; Alan Cowell, *A Fleeing Man and a Burst of Gunfire: Britons Look Into Their Collective Conscience*, N.Y. TIMES, July 25, 2005, at A13; *Press Release*, *supra* note 136; Shipman, *supra* note 9, at 37.

140. See Sciolino, *supra* note 2, at A12; Cowell & VanNatta, *supra* note 2, at 11; see also Caivano, *supra* note 2; Gibby Zobel, *Slain Brazilian's Family Slam London Police*, ALJAZEERA, Nov. 13, 2005, available at <http://english.aljazeera.net/NR/exeres/1E700166-8E8C-463F-A1A3-0C3D27EFE88C.htm> (last visited July 14, 2006).

141. See Zobel, *supra* note 140.

142. See *id.*

143. See Sciolino, *supra* note 2, at A12; *A Fleeing Man*, *supra* note 139, at A13; *'Shoot-to-Kill' not Being Widened*, *supra* note 1.

144. See *A Fleeing Man*, *supra* note 139, at A13.

145. See U. S. CONST. pmbl.

146. See THE MAGNA CARTA, Eng. (1215).

147. See Emily Zack Tabuteau, *Magna Carta*, Microsoft Encarta Online Encyclopedia, 2005, available at http://encarta.msn.com/encyclopedia_761565830/Magna_Carta.html (last visited July 14, 2006).

original Magna Carta, which dates back to 1215,¹⁴⁹ provides that, “no free man shall be arrested, or imprisoned, or deprived of his property, or outlawed, or exiled, or in any way destroyed, nor shall we go against him or send against him, unless by legal judgment of his peers, or by the law of the land.”¹⁵⁰ From the point at which human rights were recognized and codified in English society, the government acknowledged that it could not deprive a person of his life or liberty without due process of law.¹⁵¹

Although the Magna Carta appears to prevent the surreptitious taking of life, liberty, or property without due process,¹⁵² the shoot-to-kill policies implemented in the wake of September 11, 2001, seem to controvert that granted protection.

V. Comparative Discussion

Due to the close historical connection between the United States and the United Kingdom, it is not surprising that their shoot-to-kill policies and their unwillingness to institute them are remarkably similar. The United States relies on shoot-to-kill policies only in times of extreme danger,¹⁵³ such as the danger faced during the extensive unrest following Hurricane Katrina.¹⁵⁴ Similarly, the United Kingdom has instituted its shoot-to-kill policy in the wake of September 11, 2001, to prevent terrorists from detonating bombs and killing scores of people.¹⁵⁵ The scope of both countries’ policies applies only to the purpose for which they are instituted¹⁵⁶ and solely to the extent that they achieve the desired result,¹⁵⁷ namely the maintenance of public safety.¹⁵⁸

Top government officials in both countries and the highest-ranking police officers in the United Kingdom are able to declare a state of emergency or martial law,¹⁵⁹ thus allowing for shoot-to-kill policies.¹⁶⁰ The major difference between a state of emergency declaration in the

148. *See id.*

149. *See generally* THE MAGNA CARTA, Eng. (1215).

150. THE MAGNA CARTA, art. XXXIX, Eng. (1215).

151. *See* Tabuteau, *supra* note 147.

152. *See* THE MAGNA CARTA, art. XXXIX, Eng. (1215).

153. *See* Mount, *supra* note 33.

154. *See id.*

155. *See* Cowell & VanNatta, *supra* note 2, at 11.

156. *See* Bush Vows to Step up Katrina Aid, *supra* note 25; ‘Shoot-to-Kill’ not Being Widened, *supra* note 1.

157. *See id.*

158. *See id.*

159. *See* McDonell, *supra* note 33; Mount, *supra* note 33; *History of Habeas Corpus*, *supra* note 38.

160. *See* McDonell, *supra* note 33; Mount, *supra* note 33; Wendling, *supra* note 37; *History of Habeas Corpus*, *supra* note 38.

United States versus that declaration in the United Kingdom is that in the United Kingdom, Parliament must vote on the suspension of habeas corpus,¹⁶¹ while in the United States, the President, or even a state governor or local mayor may declare a state of emergency or martial law in the respective jurisdictions.¹⁶² Because only a few officials can declare martial law or a state of emergency in both the United States and the United Kingdom, a substantial limit is imposed on the potential for widespread abuse of using the military to conduct the business of a town, state, or country.¹⁶³ The United Kingdom places a further check on this power by requiring Parliament to vote to suspend habeas corpus.¹⁶⁴

Ultimately, neither the United States nor the United Kingdom has an extensive history of rampant use of martial law or shoot-to-kill policies.¹⁶⁵ The use of these policies has been restricted to instances that involve significant social unrest or immediate public danger.¹⁶⁶ Both countries recognize that their citizens have an inherent right to life.¹⁶⁷ Because of that right, and the zealotry with which that right is generally protected,¹⁶⁸ it is unlikely that shoot-to-kill policies will remain in practice beyond what is necessary.¹⁶⁹

Widespread distrust of armed police already exists in the United Kingdom,¹⁷⁰ and citizens fear that the police will become over-zealous,¹⁷¹ allowing shoot-to-kill policies to spread into new areas of policing beyond counter-terrorism,¹⁷² despite assurances from the Metropolitan Police Chief that this will not occur.¹⁷³ The United Kingdom is accustomed to unarmed police officers.¹⁷⁴ Out of the more than 30,000 officers in London,¹⁷⁵ only 2,000 police are authorized to carry weapons.¹⁷⁶ A growing disgruntlement about the arming of the police

161. See *History of Habeas Corpus*, *supra* note 38.

162. See McDonell, *supra* note 33; Mount, *supra* note 33.

163. See McDonell, *supra* note 33; Mount, *supra* note 33; Wendling, *supra* note 37; *History of Habeas Corpus*, *supra* note 38.

164. See *History of Habeas Corpus*, *supra* note 38.

165. See Mount, *supra* note 33; *History of Habeas Corpus*, *supra* note 38.

166. See *id.*

167. See U. S. CONST. amend. V.; THE MAGNA CARTA, art. XXXIX, Eng. (1215).

168. See *History of Habeas Corpus*, *supra* note 38.

169. See Vikram Dodd, *Police Rethink Shoot to Kill Policy*, THE GUARDIAN, Aug. 20, 2005, available at <http://www.guardian.co.uk/attackonlondon/story/0,16132,1552976,00.html> (last visited July 14, 2006).

170. See *Man Killed Had No Bomb Tie*, *supra* note 136, at 11.

171. See *A Fleeing Man*, *supra* note 139, at A13.

172. See *'Shoot-to-Kill' not Being Widened*, *supra* note 1.

173. See *id.*

174. See *Man Killed Had No Bomb Tie*, *supra* note 136, at 11.

175. See *id.* (stating only seven percent of police officers have weapons training, which is also required for the use of taser stun guns).

176. See *id.*

and shoot-to-kill policies in use in London is circulating among civil rights organizations in the United Kingdom.¹⁷⁷

Citizen discussion of the shoot-to-kill policies arising after both tragedies is a distinction between the United Kingdom and the United States. The United States has not yet experienced a comprehensive discussion of shoot-to-kill tactics employed after Katrina. However, it is almost inevitable that a discussion will begin once the impact of the devastation of the storm subsides.

VI. International Ramifications

As members of the international community,¹⁷⁸ the United States and the United Kingdom participate in treaties that concern the welfare of their citizens.¹⁷⁹ On March 23, 1976, thirty-five countries adopted the International Covenant on Civil and Political Rights (CCPR) to recognize the inherent dignity and the inalienable rights of all human beings.¹⁸⁰ The number of signatories to the CCPR has grown to 152 countries, with only eight countries in the United Nations left to sign the document.¹⁸¹ The United Kingdom and the United States are among the 152 signatories to the Covenant¹⁸² and as such, these countries have agreed to uphold this agreement. *Pacta sunt servanda* is a phrase used in international law that means treaties that have been concluded must be observed.¹⁸³ In addition, treaties are not valid unless the parties have *opinio juris*, a conviction that the parties have a legal duty to comply with the treaty.¹⁸⁴ It is certain both countries intend to be bound by and

177. See *id.* See also *A Fleeting Man*, *supra* note 139, at A13; *Press Release*, *supra* note 136. Some of the concerned civil rights organizations are: the Islamic Human Rights Commission, Liberty, and the Islamic Society of Britain. See *Man Killed Had No Bomb Tie*, *supra* note 136, at 11.

178. See *List of Member States*, THE UNITED NATIONS, available at <http://www.un.org/Overview/unmember.html> (last visited July 14, 2006). The United Kingdom of Great Britain and Northern Ireland became a member state on October 24, 1945. *Id.* The United States of America became a member state on October 24, 1945. *Id.*

179. See, e.g., International Covenant on Civil and Political Rights, March 23, 1976, 999 U.N.T.S. 171. See also Office of the United Nations High Commissioner for Human Rights, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES, available at <http://www.unhchr.ch/pdf/report.pdf> (last updated June 9, 2004) [hereinafter *Status of Ratification*].

180. See International Covenant on Civil and Political Rights, art. IV § 1, March 23, 1976, 999 U.N.T.S. 171.

181. See *Status of Ratification*, *supra* note 179.

182. See *id.*

183. See BLACK'S LAW DICTIONARY 1109 (6th ed. 1990) (defining *pacta sunt servanda* as "agreements of the parties must be observed").

184. William E. Butler, John Edward Fowler Distinguished Professor of Law, The Dickinson School of Law of the Pennsylvania State University, Law of Treaties Seminar Lecture (Jan. 11, 2006).

comply with the CCPR, because both the United States and the United Kingdom are signatories of the Covenant.¹⁸⁵

Article Four of the CCPR allows states to deviate from some of the rights guaranteed by the Covenant during times of public emergency.¹⁸⁶ However, any deviations from obligations under the treaty must only be to the extent “strictly required by the exigencies of the situation.”¹⁸⁷ These deviations must also be announced to the Secretary-General of the United Nations by the State that deviated from the Convention.¹⁸⁸ Nevertheless, Article Four prohibits any derogation from seven enumerated articles,¹⁸⁹ including Article Six, which grants every human being the inherent right to life.¹⁹⁰

Article Four’s prohibition of deviation from the seven articles listed¹⁹¹ acts as a *jus cogens*, an imperative rule of law from which no derogation is permitted under any circumstances.¹⁹² The shoot-to-kill policies of both the Metropolitan Police in the United Kingdom and the Governor of Louisiana in the United States appear to be in direct conflict with the inalienable right to life granted by Article Six of the International Covenant on Civil and Political Rights.¹⁹³ Because the CCPR grants every person the inherent right to life,¹⁹⁴ and because both the United States and the United Kingdom are signatories of this treaty,¹⁹⁵ these two states cannot arbitrarily deprive an individual of life.¹⁹⁶ Most important, even in times of social unrest or public emergency, the inherent right to life cannot be taken away under Article Four.¹⁹⁷

The shoot-to-kill policies in Louisiana and London rob citizens of their inherent right to life as guaranteed by the International Covenant on Civil and Political Rights,¹⁹⁸ and the deaths that resulted from the shoot-to-kill policies should not go unnoticed. However, the looting and

185. See *Status of Ratification*, *supra* note 179.

186. See International Covenant on Civil and Political Rights, art. IV § 1, Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter *ICCPR*].

187. See *ICCPR*, *supra* note 186, at art. IV § 3.

188. See *id.*

189. See *id.*

190. See *ICCPR*, *supra* note 186, at art. IV § 2 (providing that “no derogation from article[] 6 . . . may be made under this provision”).

191. See *id.*

192. Butler, *supra* note 184.

193. See *ICCPR*, *supra* note 186, at art. VI.

194. See *id.*

195. See *Status of Ratification*, *supra* note 179.

196. See *ICCPR*, *supra* note 186, at art. VI.

197. See *ICCPR*, *supra* note 186, at art. IV § 2 (providing that “no derogation from article[] 6 . . . may be made under this provision”).

198. See *ICCPR*, *supra* note 186, at art. VI.

lawless violence that occurred in Louisiana¹⁹⁹ and the risk of terrorism in London²⁰⁰ are severe threats to the public welfare.²⁰¹ These perils must be eradicated swiftly, before danger ensues.²⁰² Especially in the case of terrorism, sometimes the only viable option to save life is to take life.²⁰³

Unfortunately, even if the United States and the United Kingdom were in breach of the CCPR, the Covenant's enforcement procedures, and the consequences imposed for any country that violates the provisions of this Act are severely lacking.²⁰⁴ Any country that believes another country has not given full effect to the provisions of the Covenant may notify the non-performing country of its deficiencies in upholding the aims of the treaty.²⁰⁵

The Covenant established a Committee to maintain and promulgate its provisions.²⁰⁶ If the complaining State's confrontation of the non-performing State is ineffective,²⁰⁷ the former may notify the Committee of the latter's failure to meet its duties adequately under the Covenant.²⁰⁸ If this is ineffective,²⁰⁹ the Committee will act only if all "domestic remedies have been invoked and exhausted."²¹⁰ The Committee may hold private hearings to find a "friendly solution" to the controversy.²¹¹ Lastly, the Committee can issue reports on their findings and the solution reached by the parties.²¹² The Covenant lists no penalties for a breach of the provisions, rendering the document ineffective for preventing contraventions of inalienable human rights and useless for punishing offenders.²¹³

Therefore, even if the United States and the United Kingdom are violating the CCPR with their shoot-to-kill policies, another State would

199. See *Bush Vows to Step up Katrina Aid*, *supra* note 25; "Shoot-to-kill" Orders For New Orleans, *supra* note 18.

200. See Sciolino, *supra* note 2, at A12.

201. See *Bush Vows to Step up Katrina Aid*, *supra* note 25; "Shoot-to-kill" Orders For New Orleans, *supra* note 18; Sciolino, *supra* note 2, at A12.

202. See Sciolino, *supra* note 2, at A12.

203. See *A Fleeing Man*, *supra* note 139, at A13. Ken Jones, of the Association of Chief Police Officers in London, states that "armed officers . . . fire only to take life to save life." *Id.*

204. See *ICCPR*, *supra* note 186, at art. XXXXI-XXXII.

205. See *id.* at art. XXXXI(a).

206. See *id.* at art. XXVIII.

207. See *id.* at art. XXXXI(b).

208. See *id.* "If the matter is not adjusted to the satisfaction of both State Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State." *Id.*

209. See *ICCPR*, *supra* note 186, at art. XXXXI(b).

210. *Id.* at art. XXXXI(c).

211. See *id.* at art. XXXXI(e).

212. See *id.* at art. XXXXI(h).

213. See generally *ICCPR*, *supra* note 186, at 999 U.N.T.S. 171.

have to bring it to the attention of the Committee²¹⁴ and no real ramifications for the violations would result.²¹⁵ While it is unlikely that the United States or the United Kingdom is facing complaints against them from other countries for violating the Covenant, no statute of limitations exists for a country to bring a claim against another.²¹⁶ Consequently, only time will tell whether the United States and the United Kingdom will have to answer for their shoot-to-kill policies on the international stage.

In the future, the Covenant should be amended to provide appropriate penalties for states that break the provisions of the CCPR. Penalties for minor infractions should include oral reprimand of the violating State during the General Assembly of the United Nations, loss of membership on the CCPR Committee, or trade embargos or boycotts of the violating State. However, penalties for more egregious and repetitious violations of the Covenant should include loss of membership on United Nations Committees, such as the War Council, prosecution in the International Court of Justice, suspension from the United Nations, and possible expulsion from the United Nations.

VII. Conclusion

The bombing of the London subway and a double-decker bus on July 7, 2005 left the United Kingdom reeling in shock and anxiety.²¹⁷ That unease was compounded when the subway was once again the target of another bombing attempt on July 21, 2005.²¹⁸ Fearing for the country's safety, the Metropolitan Police revived Operation Kratos, a shoot-to-kill policy for suspected terrorists implemented after September 11, 2001.²¹⁹ Operating under the mandates of this policy, police shot and killed Jean-Charles de Menezes in the subway after he failed to heed police warnings.²²⁰

On August 31, 2006, Hurricane Katrina slammed into the Gulf Coast of the United States and was one of the strongest storms recorded in history.²²¹ Hundreds of thousands of people were displaced from their

214. *See id.* at art. XXXXI(a).

215. *See id.* at art. XXXXI-XXXII.

216. *See id.* at art. XXXXI(a).

217. *See* New Arrest in London Bombings, *supra* note 3; More than 50 Dead, *supra* note 4.

218. *See* Cowell & VanNatta, *supra* note 2, at 11.

219. *See* Shipman, *supra* note 9, at 37.

220. *See* Cowell & VanNatta, *supra* note 2, at 11.; *see also* London on Edge, CBC NEWS INDEPTH, Aug. 11, 2005, available at http://www.cbc.ca/news/background/London_bombing/ (last visited Jan. 23, 2006); Sciolino, *supra* note 2, at A12.

221. *See Summary of Hurricane Katrina*, *supra* note 19.

homes with little to no food, water, or clothing to sustain them.²²² Lawless violence and looting broke out in New Orleans amidst the devastation,²²³ making rescue efforts even more difficult.²²⁴ To restore order to the streets of New Orleans, Governor Blanco implemented a shoot-to-kill policy for the riotous gangs.²²⁵ Two people were killed as a result of that policy.²²⁶

The shoot-to-kill policies implemented in the United States after Hurricane Katrina and in the United Kingdom after the subway bombings of London²²⁷ have sparked a renewed debate on the balance of civil liberties and public safety.²²⁸ Those who defend the use of shoot-to-kill policies to combat terrorism in the United Kingdom agree with a statement written in a newspaper that asserted, “we are living in unique times of unique evil, at war with an enemy of unspeakable brutality, and I have no doubt that now, more than ever, the principle is right despite the chance, tragically, of error.”²²⁹ Others argue that “[b]eing normal means being free. And that, in turn, means ensuring that the laws and principles which enshrine liberty are not overturned in the months to come.”²³⁰ In the United States, President George W. Bush has reiterated that “[e]very life is precious,”²³¹ but the United States has not yet been determined whether the shoot-to-kill policy used after Hurricane Katrina controverts that statement.

In addition, both the United States and the United Kingdom are signatories to the International Covenant on Civil and Political Rights.²³² Although they have assumed a duty to uphold all provisions of the Covenant,²³³ one of which grants every human being the inherent right to life,²³⁴ both have breached this responsibility with the implementation and use of their shoot-to-kill policies.

Times of severe insurrection or uprising, like those faced in New Orleans in the aftermath of Hurricane Katrina, and extreme danger, like the threat of terrorism in London, may justify the use of shoot-to-kill policies. The danger of unrestricted use of these policies is miniscule

222. See Thomas, *supra* note 21, at 42; Treaster & Kleinfeld, *supra* note 21, at A1.

223. See Treaster & Kleinfeld, *supra* note 21, at A1.

224. See “Shoot-to-kill” Orders For New Orleans, *supra* note 18.

225. See *id.*

226. See *Mysterious Deaths*, *supra* note 28.

227. See Shipman, *supra* note 9, at 37; “Shoot-to-kill” Orders For New Orleans, *supra* note 18.

228. See Caivano, *supra* note 2.

229. See Sciolino, *supra* note 2, at A12.

230. See *A Fleeing Man*, *supra* note 139, at A13.

231. ‘Shoot-to-Kill’ not Being Widened, *supra* note 1.

232. See *Status of Ratification*, *supra* note 179.

233. Butler, *supra* note 184.

234. See *ICCPR*, *supra* note 186, at art. VI.

with only a small group of people able to implement them in both the United States and the United Kingdom.²³⁵ These policies are only used when extreme circumstances make it a necessity.²³⁶ Terrorist acts against innocent civilians and public unrest during natural disasters are examples of the extreme circumstances for which shoot-to-kill policies were implemented to combat. In the words of Ken Jones, a member of the Association of Chief Police Officers in the United Kingdom, “Opening fire is the last act in a play that we hope we would never come to.”²³⁷

235. See McDonell, *supra* note 33; Mount, *supra* note 33; *History of Habeas Corpus*, *supra* 38.

236. See Mount, *supra* note 33; *History of Habeas Corpus*, *supra* note 38.

237. See *A Fleeing Man*, *supra* note 139, at A13.

