

# Counterterrorism

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*From the Cold War to the  
War on Terror*

*Volume 1: Combating Modern Terrorism (1968–2011)*

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Praeger Security International



AN IMPRINT OF ABC-CLIO, LLC  
Santa Barbara, California • Denver, Colorado • Oxford, England

# **International Law, Human Rights, and Counterterrorism**

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The relationship among international law, human rights, and counterterrorism has been organic, still to be fully determined, and heavily influenced by events of the 20th century and the first decade of the 21st century. Among other things, there has yet to be a universal definition for *terrorism*, and though the phrase “one man’s terrorist is another man’s freedom fighter” applies to today’s realpolitik world (Rosand 2003), there is also some amount of agreement among states in recent years. Generally

speaking, terrorism is defined as (1) an attack committed against civilians with the intention of causing death or serious bodily injury, (2) hostage taking, or (3) damaging of property (such as an attack on a power plant or even cyberterrorism) with the purpose of inciting terror among the general population, or part of the population, or compelling a government or organization to abstain from a certain act (Universiteit Leiden 2007).

## BACKGROUND

International law as related to counterterrorism has been mainly reactive and developed through cycles influenced by historical events. Antiterrorism norms were vague until the 1950s, by which time hijacking, kidnapping of diplomats, and attacking of airports, inter alia, had been outlawed. Exceptions, however, were allowed in such agreements for the next 40 years for those fighting against occupied armies and colonizers. But increased acts of terror such as more sophisticated and deadly car bombings and suicide bombings in the Middle East, and the 9/11 attacks in 2001, led to a new cycle of change and ratification of antiterrorism treaties (Stiles 2009).

The international community's nominal or *de jure* counterterrorism and human rights norms are reflected in a number of United Nations (UN) guidelines intended to link and balance human rights and combat terrorism, while a number of resolutions adopted by the UN's General Assembly, Security Council, and Commission on Human Rights stress that states are obliged to ensure that counterterrorism measures comply with states' obligations under international law, including compliance with human rights principles (Palti 2004). Both international humanitarian law and human rights law can be applicable to acts of terrorism, but there is no consensus as to the conditions under which they are applicable. There are huge disagreements, for example, on the rules surrounding the taking of life while combating terrorism, the notion of collateral damage, and the controversial issue of detention (Universiteit Leiden 2007). And though torture has been described as "contrary to every relevant international law, including the laws of war" with no "other practice except slavery [being] so universally and unanimously condemned in law and human convention" (Shue 1978, 124), it has also been used on detainees by many states as a counterterrorism tool.

## HUMAN RIGHTS

Human rights have had a multi-thousand-year history of evolution. The Persian king Cyrus's Declaration of the Rights of the Nations (538 BCE), the U.S. Bill of Rights (1789 CE), and the French Declaration of the Rights of Man and Citizens (1789 CE) have all given individuals "special and inalienable protections." What has changed as of the latter part of the

20th century has been that human rights have become a legitimate part of international politics and global discourse. The first all-encompassing international document on human rights was the 1948 Universal Declaration of Human Rights, described as a “secularized” formal “agreement across cultures,” which intentionally left out details and deeper justifications to individual states. Later on, the signing of two more UN treaties—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—provided for more precision, benchmarks, and definitions for what constitutes international human rights. In principle, it is agreed that democracies and richer states (especially those with low income disparity) have shown themselves to be far less likely to repress their populations, while economic development on the whole is not necessarily a prerequisite to political freedoms. Still, the global norm changes in favor of human rights remain primarily rhetorical, with neither the norm changes being necessarily nonreversible nor the acquired human rights norms being fully implemented and applied to practice (Schmitz and Sikkink 2002).

## COUNTERTERRORISM

In 1934 the king of Yugoslavia, Alexander I, was assassinated in France by a Bulgarian national, resulting in the rebuke of states for not having monitored the extremist organization the assassin belonged to. This act of terrorism, along with others, led the League of Nations to urge states to take coordinated counterterrorism measures. Two collective actions were taken: the 1937 Convention for the Prevention and Punishment of Terrorism and the Convention for the Creation of an International Criminal Court. The 1937 convention, signed by 25 states, defined *terrorism* as “criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public” (Stiles 2009, 113).

In the 1960s, acts of air piracy grew, and by 1971, the International Civil Aviation Organization included language in its treaty to penalize member states that did not sufficiently protect international travel. Other acts of violence that many categorized as terrorism had also risen, especially in the colonies of European powers. In 1972, the UN General Assembly commissioned a study on terrorism, though unanimity was missing given the assembly’s division (between developing states, the East, and the West). The developing wing, for example, asked that acts “worse than terrorism,” such as hegemony, military aggression, use of nuclear bombs, imperialism, colonialism, poverty, and civilian casualties, fall under “state terrorism.” Others, such as the nonaligned countries and the Organization of Islamic Cooperation, sought to exempt what would normally be categorized as hostage taking if it applied to “national liberation against colonial

rule, racist and foreign regimes, by liberation movements recognized by the United Nations” (Stiles 2009, 117).

Given the perceived political use of the term, by the mid-1970s, a General Assembly resolution (33/14) had been passed only through the removal of the term *terrorism*, while in 1985 the assembly passed another resolution condemning “all acts of terrorism that endangered human lives or fundamental freedoms.” By this time, terrorism was still “both condemned and officially tolerated, depending on the motives of the perpetrators and the political interests of states” (Stiles 2009, 118). An attitude shift began to take shape, however, thanks to changes in the Soviet Union and the appearance of Mikhail Gorbachev, and by the latter part of the 1980s, terrorism began to be formally viewed as a crime by the international community. Following the bombings of American and French barracks in Lebanon and deaths of hundreds of young soldiers in 1983, the American National Security Directive 138, under the administration of President Ronald Reagan, sought a more heavy-handed counterterrorism strategy. Later, a reaction to the implication of Libyan involvement in the 1986 discotheque bombing in Berlin, which killed four people, including three U.S. soldiers, led to the 1986 U.S. air strikes on Libya. The events of the era also led to the U.S. Omnibus Diplomatic Security and Antiterrorism Act, whereby counterterrorism became increasingly militarized worldwide (Stiles 2009). President Reagan had described the Central Intelligence Agency (CIA)–funded Nicaraguan contra army, which many in Latin America and the United States called a terrorist entity, as the “moral equivalent” of the U.S. founding fathers (presumably equivalent to Benjamin Franklin, George Washington, and John Adams, *inter alia*). Reagan also referred to the Afghan mujahideen, another group known for its use of terror, as “freedom fighters.” Ironically, among the mujahideen were individuals such as Sheikh Omar Abdel Rahman and Osama bin Laden, individuals later implicated in the planning and implementation of terrorist bombings in the United States in 1993 and 2001, respectively.

## POST-9/11 ERA

In the immediate aftermath of the 9/11 terrorist attacks, the United States managed to persuade the international community to support the General Assembly’s Resolution 56/1 and Security Council Resolution 1368 (September 12), and “for a brief time, the international community [even] reached consensus on a definition of terrorism—especially its exclusion of any political justifications” (Stiles 2009, 126). Subsequently, Security Council Resolution 1373 (September 27) stood against the financing of terrorism, criminalized any form of abetting by member states and their territories, favored the prosecution of all individuals engaged in terrorism, and aimed to prevent movement of terrorists through international

borders. Resolution 1373 also led to the formation of “enforcement structures,” chief among them the UN Counter-terrorism Committee (CTC). The resolution asked all UN member states to submit a report to the CTC listing their antiterrorism initiatives. In the years following, nearly one-third of member states stalled in their reporting requirements, however, and thus hindered the CTC’s verification system. Hesitation by uncooperating states is thought to have been due to a perception of potential violation of their sovereignty, because of the required CTC verification step in such sensitive areas as money laundering, policing, immigration, and arms control and transfer (Palti 2004).

Despite some convergence among states on reaction to terrorism, 9/11 once again widened the gap between international law, human rights, and counterterrorism. In 2004, the International Court of Justice stated that “in some countries the ‘war against terrorism’ has given greater legitimacy to long-standing human rights violations carried out in the name of national security” with such consequences as “increasingly militarizing judicial functions” and the transfer of “substantial judicial police powers to the armed forces without any judicial control” (Palti 2004, 27). A common practice in the post-9/11 era has been the use of *extraordinary rendition*, entailing the detention and forced transfer of a suspect to nonjudicial authorities in a manner outside of normal or any treaty and legal processes. Rendition is normally done to expedite arrest and interrogation and to circumvent any constitutional rights that the renditioned individual may have in the location of arrest or under international treaties. The renditioned person often becomes a “ghost detainee” with little, if any, access to legal protection from domestic or international laws (McKenzie Millar 2008). The Bush administration’s choice of the phrase “unlawful enemy combatants” is thought to have been a way to ignore both the Geneva Conventions and U.S. civil rights law and to legitimize the use of indefinite “detention without charge and without full due process anywhere in the world” (Stiles 2009, 136).

Despite its widespread use during the immediate post-9/11 years by the United States and its many allies in Western Europe and the Middle East, extraordinary rendition has led to a number of blowback consequences. Aside from serving as excellent propaganda for terrorist organizations such as al-Qaeda, who have been able to refer to such Western tactics and utilize them as a recruiting tool for enraged Muslim youth already frustrated with their own authoritarian governments, renditions have also caused headaches for the security apparatuses of Western states, which at times carried out second-rate operations leaving behind evidence to reveal their direct involvement. In 2009, for example, an Italian court convicted 23 CIA agents and operatives, having found them guilty of kidnapping a Muslim cleric, Osama Moustafa Hassan Nasr (aka Abu Omar), from Milan in 2003 and renditioning him to Egypt for imprisonment, interrogation, and torture by that state’s notorious secret police (Donadio 2009).

A more classic case of blowback involving terrorism and human rights violations is that of a suspected al-Qaeda member, Ibn al Sheikh al-Libi, who was captured shortly after 9/11 in Pakistan. Even though al-Libi was initially questioned by the Federal Bureau of Investigation (FBI) using "traditional psychological interrogation methods," and even though the FBI was optimistic of eventually gaining valuable information from him through noncoercive tactics, influential American officials under President Bush's administration, eager to expedite the extraction of information from captured "terrorists," turned al-Libi over to the CIA, which in turn renditioned him to Egypt for interrogation. Among their many torture tricks, the Egyptians threatened to harm al-Libi's family and later used waterboarding on him; it is said that they buried him in a tomblike structure for hours and subsequently severely beat him. Torture used on al-Libi eventually led to his "confession," yet given his supposed training in enduring torture and a chemical engineering background, he was able to convey false but convincing information on the supposed existence of weapons of mass destruction in Saddam Hussein's Iraq, a country and state he had no history of contact with. Al-Libi's torture-extracted false confession was used in the closing argument of American secretary of state General Colin Powell's persuasive 2003 UN speech, which initially justified the subsequent invasion of Iraq (McKenzie Millar 2008). Later, to punish al-Libi for having lied to his Egyptian torturers, he was handed over to his native country of Libya (from which he had presumably been away since the 1980s Cold War jihad against the Soviet Union). Al-Libi was reported to have committed suicide in a Libyan prison in 2009.

## HUMAN RIGHTS APPROACH

According to the UN General Assembly, terrorism spreads due to unresolved conflicts, lack of rule of law, human rights violations, ethnic and religious discrimination, political exclusion, socioeconomic marginalization, and lack of good governance. Counterterrorism has throughout the years been approached from a military and law enforcement prism, thus the justification for the use of heavy-handed techniques. That said, a human rights approach in fighting terrorism is at least rhetorically expressed by international bodies. The UN recommendations for countering terrorism were reflected in Secretary-General Kofi Annan's 2005 speech at the International Summit on Democracy, Terrorism, and Security, wherein he articulated the UN's counterterrorism strategy in the form of the "five Ds" of *dissuading* individuals from becoming involved in terrorism as a political tool, *denying* them the means to carry out attacks, *detering* states from supporting terrorism, *developing* states' capacity for preventing terrorism, and *defending* human rights while fighting terrorism. The five Ds, in turn, fall into four counterterrorism models: military, law enforcement, political, and human rights models. The military model

is supported by Article 51 of the UN Charter, while the law enforcement model is reflected in international criminal law and antiterrorism conventions and allows the use of civilian and security personnel to investigate and share critical information to prevent the spread of terrorism (Kielsgard 2006). The political model is that of viewing terrorism as an “armed rebellion to be resolved through negotiation and the political process” (Fenwick 2008, 259), while the human rights model relies on international humanitarian law and human rights conventions (Kielsgard 2006).

The human rights approach is dualistic: both standalone and integrated. The standalone approach provides material, social, and political relief to communities (e.g., infrastructure development, public health, education, etc.) and addresses political grievances while respecting local cultures. The integrated approach establishes human rights norms as an integral or mainstream component in the military, law enforcement, and political counterterrorism models. The human rights approach encourages seeking out the reasons and motivations behind terrorism and attempting to address and alleviate root causes. The mere use of force against individual terrorists “whose children are starving, whose homes are bombed, and who live under the yoke of political or economic tyranny” (Kielsgard 2006, 296), or against individuals who use violence to deter such conditions for others, is from this perspective ineffective in doing away with terrorism and may even exacerbate it. Many believe that without a “counter-terrorism solution grounded in human rights, the cure will result in greater depravation of civil liberties and in a Pandora’s Box of atrocities” (Kielsgard 2006, 297).

## CONCLUSION

A key challenge to the human rights approach in counterterrorism remains the continuing pull and push between counterterrorism efforts and human rights protection. Former UN high commissioners for human rights Sergio Vieira de Mello and Mary Robinson have urged the CTC to appoint a human rights expert to monitor states’ compliance with human rights norms as related to counterterrorism (Rosand 2003), while another high commissioner, Louise Arbour, has been of the opinion that in the long term, “a commitment to uphold respect for human rights and rule of law will be one of the keys to success in countering terrorism—not an impediment” (Kielsgard 2006, 250).

*See also:* **Volume 1, Part III:** Ideology That Spawns Islamist Militancy; Just War Doctrine; Multidisciplinary Approach to Combating Terrorism; Preemption: Moral and Ethical Considerations. **Part IV:** Ethical and Legal Issues in Democratic Societies: National Security and Civil Liberties; United Nations Global Counterterrorism Strategy: Significance and Limitations. **Part VI:** Multilateral Approach



to Counterterrorism: Issues, Problems, Responses; Preemptive Counterterrorism: The Need for a Global Integrated Approach; Public Support and Education Campaigns; Regional Challenges: Promoting Stability through Economic, Social, and Political Reforms

## REFERENCES

- Donadio, Rachel. "Italy Convicts 23 Americans for C.I.A. Renditions." *New York Times*, November 4, 2009. <http://www.nytimes.com/2009/11/05/world/europe/05italy.html>.
- Fenwick, Helen. "Proactive Counter-terrorist strategies in Conflict with Human Rights." *International Review of Law Computers & Technology* 22, no. 3 (2008): 259–70.
- Kielsgard, Mark D. "A Human Rights Approach to Counter Terrorism." *California Western International Law Journal* 36, no. 2 (2006): 250–303. <http://www.cwsl.edu/content/journals/Kielgard.pdf>
- McKenzie Millar, Sangitha. "Extraordinary Rendition, Extraordinary Mistake." ANTI-WAR.com, September 1, 2008. <http://www.antiwar.com/orig/millar.php?articleid=3389>.
- Palti, Leslie. "Combating Terrorism while Protecting Human Rights." *UN Chronicle* 4 (2004): 27–28.
- Rosand, Eric. "Security Council Resolution 1373, the Counter-terrorism Committee, and the Fight against Terrorism." *American Journal of International Law* 97, no. 2 (2003): 333–41.
- Schmitz, Hans Peter, and Kathryn Sikkink. "International Human Rights." In *The Oxford Handbook of International Relations*, edited by Christian Reus-Smit and Duncan Snidal, 516–37. Oxford: Oxford University Press, 2002.
- Shue, Henry. "Torture." *Philosophy and Public Affairs* 7, no. 2 (1978): 124–43.
- Stiles, Kendall W. "Terrorism: Reinforcing States' Monopoly on Force." In *International Norms and Cycles of Change*, edited by Wayne Sandholtz and Kendall Stiles, 109–39. New York: Oxford University Press, 2009.
- United Nations General Assembly. [Resolution] 60/288. The United Nations Global Counter-Terrorism Strategy. September 20, 2006. <http://www.un.org>.
- Universiteit Leiden. "Counter-terrorism Strategies, Human Rights and International Law: Meeting the Challenges." Final report, Poelgeest Seminar, May 31, 2007.