

Special Issue

Terrorism, Organized Crime  
&  
Law-Enforcement

Pakistan Journal of Criminology

Pakistan  
Journal  
of Criminology

Volume 2 / Number 1 / Jan 2010

Volume 2 / Number 1 / Jan 2010



PAKISTAN SOCIETY OF CRIMINOLOGY (PSC)  
<http://www.pakistansocietyofcriminology.com>

# Pakistan Journal of Criminology

Volume 2, No. 1, January 2010

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## Editorial

Terrorism as a political issue has overshadowed terrorism as a criminal activity in both the academic literature of criminology as well as in the popular press.

There has been a tremendous growth of interest in the topic of terrorism over the past decade, in both the academic literature as well as in the popular press. Unfortunately, the empirical has been somewhat overlooked. There are many anecdotes and sweeping generalizations, but there has been a paucity of solid empirical research in this arena, particularly with respect to cause and effect. Such an understanding would, of course, be of immense value to the law-enforcement community as well as national-level strategic planners.

I would further add that the global debate on this issue has generally focused around the intricacies of international relations, military operations, intelligence and surveillance, and the humanitarian and operational costs of the “war” on terror. The dynamics of these contexts are continually shifting, and as a result, the strategies and approaches implemented to combat terrorism are continuously changed, which subsequently gives rise to inconsistent and uneven responses, and significant levels of confusion.

The situation is similar with respect to Pakistan's response to organized crimes in Pakistan. While there are two specialized agencies tasked to focus on organized crime, there is still no national data bank on organizational crimes. This greatly hampers law enforcement efforts to effectively and efficiently respond to this threat.

While Pakistan has an un-wavering commitment to combat terrorism and organized crime, it lacks the capacity at present to have much of a sustained, affirmative impact. The fact that we lack a comprehensive counter terrorism policy at a national level is also somewhat disconcerting. This is all the more troublesome considering the fact that Pakistan is the frontline state in the global war on terror, and a source and transit country of much organized crime activity. There is an enormous need for both academics and practitioners to address the many unattended issues in these arenas.

The Pakistan Society of Criminology seeks to contribute to and learn from, the international body of knowledge that is now beginning to coalesce around the general topics of terrorism and organized crime. We seek to uncover and share, the best policies and practices, and to further develop an indigenous body of criminological knowledge with respect to these and other relevant topics in the field, and to engage in meaningful dialogue in this era of the interactive learning environment. The current issue is an attempt on our part to achieve these aims. We are thankful to all contributors, both from abroad and our local experts. The topics of terrorism and organized crime will likely, and unfortunately, be issues of concern for many decades to come, and will continue to be explored in upcoming issues of the *Pakistan Journal of Criminology*. Our special thanks go to the Honourable Mr. Habibullah Khan, Additional Chief Secretary FATA and Mr. Paul Petzschmann,

Norwegian Institute of International Affairs (NUPI) for their generous and kind contribution for this special issue.

Finally, we wish to dedicate this special issue to the memory of the late Surgeon General of Pakistan, Lieutenant General Mushtaq Ahmad Baig, who regretfully and tragically lost his life in a suicide attack in Pakistan in February of 2008.

***Fashiuddin (PSP)***

Editor-in-Chief

## Loose Talk of Just War

*John Braithwaite*

I congratulate the criminological community of Pakistan on establishing the Pakistan Journal of Criminology. I have been impressed by the early issues and commend the editor in this issue for tackling the difficult and critical issue of terrorism. I loved my visit to Pakistan seven years ago and was impressed by the spirit of the people and the sophistication of the Pakistan debate on connecting ancient traditions of dispute resolution in Pakistan to modern traditions of rights-based restorative justice that include the empowerment of women. The quality and openness of that dialogue, including with those who were strong supporters of Sharia law as the only state law, in that Peshawar conference on restorative justice and peace building, left me with a strong affection for the people of Pakistan. My travels into the tribal territories of the Northwest Frontier Province in 2003 with the police and military also gave me respect for those I met in the difficult situation they were dealing with since the invasion of Afghanistan.

The topic of this brief paper is that invasion. I do not have strong views on contemporary policy for the Afghanistan conflict. Were I a policymaker in one of the regional governments entangled in this war, or in the US, I would struggle to know what to suggest. But I do have a strong view on the initial invasion. I warned against hasty invasion in talks in the US in 2001. I happened to be at New York University between August and December 2001, glimpsing the first plane fly up Fifth Avenue from my office window, the second strike the Twin Towers while I stood in the street, and observing the campaign of the media barons for a strike against Afghanistan persuade the people of New York, who were mostly sad and pacific in their reaction to the tragedy at first.

My view then and now was not that a NATO incursion into Afghanistan would be wrong in principle, but that the US was being far too quick to opt for this course. This was the same analysis I had of the first invasion of Iraq in 1990. It was not wrong in principle to use force to reverse the invasion of a nation. But the options for signalling the inevitability of invasion unless Kuwait was freed were poorly executed in US diplomacy (Braithwaite 1991a, 1991b, 2002).

Both botched invasions of Iraq and the invasion of Afghanistan by the two Bush presidencies have left an horrific legacy in violence and in disrespectful relationships between the Muslim world and the west. What a relief it was to experience the hope of the election of Barack Obama, a leader with palpable respect for Islam, a man with the integrity to stand against the Bush administration and vote against the 2003 invasion of Iraq. From his first campaign speeches, however, I

worried that he sought to temper his policy of withdrawal from Iraq with the “balance” of promising a more robust military approach to Afghanistan. As I have said, I am unsure what is a sensible policy; I simply worried that campaign speeches were glib on Afghanistan.

While continuing to be agnostic on contemporary Afghanistan policy and to be full of hope and admiration for the Obama presidency, I do think the President erred in allowing himself to be nominated for the Nobel Peace Prize. He might have done better to ask for a few years to prove that his peacemaking earned it. Then he compounded that error with an appalling Nobel acceptance speech which argued that Afghanistan was a “just war.”

Whether contemporary US policy in Afghanistan is just or unjust, the initial invasion of Afghanistan clearly did not satisfy the ethical strictures of the just war doctrine. This is a doctrine of ancient origin dating at least to the speeches of Cicero in Rome during the first century before Christ, then given prominence in early Christian philosophy in the thought of Augustine of Hippo and Thomas Aquinas, among others. *The Catechism of the Catholic Church* in paragraph 2309 provides the most authoritative contemporary summary of the doctrine, listing four strict conditions of legitimate defense by military force:

- the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;
- all other means of putting an end to it must have been shown to be impractical or ineffective;
- there must be serious prospects of success;
- the use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition.

The invasion of Afghanistan so soon after the September 11 2001 attack on New York does not pass the test of this just war doctrine. There is room for argument on all four of the conditions, but I will focus on just the second. The United States did not explore peaceful strategies that might have led to the arrest and trial of those responsible for the attack on New York. This would seem to have been the leadership of Al Qaeda, as opposed to the Taliban leadership of Afghanistan who were offering hospitality to that Al Qaeda leadership. Admittedly, Al Qaeda had a military capability that was deployed to back the incumbency of the Taliban regime that Osama bin Laden supported because of its religious doctrines. The Al Qaeda and Taliban leadership had, moreover, fought together against the Soviet occupation of

Afghanistan. Both were actively supported in that campaign by the US. But during the Clinton years, after the collapse of the Soviet Union, US State Department policy shifted to seeking to persuade the Taliban to break with Al Qaeda (Richard Clarke 2004: 274), as Sudan had done when the Al Qaeda leadership fled from there to Afghanistan.

This aspect of the counterterrorist policy of the State Department seemed well conceived. While the Bush Administration decisively rejected it after 9/11, fusing the Taliban and Al Qaeda into one enemy, evidence that the Clinton policy had made some progress emerged both in the months before and the months after 9/11. This evidence suggests an alternative to invasion that should have been explored, according to just war theory.

The capture of the Al Qaeda leadership was not the only justification given for the invasion. Prime Minister Blair of Britain made much of the secondary objective of stemming opium exports to Europe. I do not take this too seriously as a major motivation for the invasion; Blair went in with no strategy for reducing opium exports and in fact they went up dramatically in the years after the invasion.

The just war question is whether negotiation with the Taliban in the shadow of a threatened invasion might have done better by the objective of reducing Al Qaeda terrorism (and reducing opium exports). Another question little asked at the time or since was whether international law required this. The Taliban Foreign Minister Wakil Ahmed Muttawakil warned the US Consul General in Peshawar, David Katz, of an impending attack on the US in July 2001 and had offered to negotiate concerning the possibility of a handover of the Al Qaeda leadership to prevent Al Qaeda from bringing the Taliban government down (Kate Clark 2002). The Taliban Foreign Minister sent an aide to tell the US Consul-General and another US official who was possibly an intelligence officer that bin Laden was planning a 'huge attack' inside the US. The leader in whose safe house the meeting occurred has confirmed the aide's account that the meeting did occur. When the aide reported back that the US had no interest in striking bin Laden or taking the warning seriously in any way, the Foreign Minister instructed him to take the same message to the UN leadership in Afghanistan, which he did. The Taliban Foreign Minister feared bin Laden would provoke a US attack that would bring them all down. 'The guests are going to destroy the guesthouse', he is reported to have told his aide.

*The Independent* story (Clark 2002) on this also reveals that after September 11 an Afghan religious council had recommended that bin Laden be forced to leave Afghanistan. As early as 1998 Wakil Ahmed Muttawakil was in regular communication with US officials about handing over bin Laden. A US State Department report of 28 November, 1998 says that according to Muttawakil, 'Taliban leaders are caught between "a rock and a hard place" since, if they expel



Bin Laden without cause they will have internal problems and, if they do not, they will have external ones due to the US. Ahmed [Muttawakil] suggests that the Saudis have a key to the solution. Afghan and Saudi religious scholars could convene a joint meeting and issue a ruling that bin Laden had acted illegally...He could then be expelled without this causing internal unrest in Afghanistan' (Cooperative Research History Commons 1998). My colleague and respected Afghanistan scholar, William Maley, does not think this could have been accomplished and it may indeed have been a naïve view. My own thought is that, even if there would have been a 90 per cent probability of failure, these negotiations should have been attempted. Certainly the US can make no claim that this is a just war in the absence of a good faith attempt to explore this option.

Perhaps the greatest reason the NATO invasion of Afghanistan was not a success was that there was a haven on the Northwest frontier of Pakistan from which forces hostile to the new government of President Karzai could pull at any number of strands of the fragile fabric of Afghan democracy to destabilise it. The Taliban and Al Qaeda had adequate contingency plans to retreat there when the US attacked. Commanders of the time tell me if the 2001 campaign had been better resourced and more painstakingly planned, they would have killed and captured many more than they did, but that no amount of military resources was going to prevent a large number of fighters from escaping through the mountains. The successful flight to the mountains of hundreds of prison escapees in June 2008 would seem to affirm this diagnosis. However, this diagnosis also opens up the possibility that a delay in launching the invasion might have enabled more careful planning to maximise the cut-off of escapes across the frontier while secret negotiations went on with the Taliban Foreign Minister and others in the regime sympathetic to a bin Laden handover to the courts of a third nation.

Hence, even if diplomacy failed, the delay during negotiations may have allowed the laying of a better planning foundation for the military alternative. The rushed imperatives in the invasion were about the politics of retribution and the politics of distraction from the intelligence failures that allowed the New York atrocity. They were not about the justice, legality or effectiveness of the war strategy. Negotiation with the Taliban in 2001 was the just and effective strategy, just as it is part of strategy today, and part of any strategy likely to be effective in future.

## **Conclusion**

The mess that war leaves is very costly and very hard to clean up. Preventing wars, solving problems without recourse to them, is generally easier than repairing the harm wars cause, such as the terrorism that is the subject of this issue of the Pakistan Journal of Criminology. Afghanistan is but the latest example of this

lesson. It is a lesson nations will not learn if their leaders suppress an honest history of decisions to invade. The fact is that in Afghanistan, as in both Iraq wars and the war in Vietnam, the US crippled the nations they invaded and enfeebled their own economy by failing to carefully explore all the diplomatic alternatives before they invaded. War as a last resort, just like punishment as a last resort in crime control, is not a glib slogan. It is a doctrine that requires rigour, exhaustive exploration of alternatives, in its application.

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## Upgrading The Security Scene

The Kerry-Lugar financial dispensation has a declared component for the up gradation of the civilian security agencies. It is now realized that for any fruitful engagement with the galloping downswing in the security area in this country the Police, the Courts and the Prison System has to be strengthened, supported, and made more effective. Civilized society has found, over several centuries of recent history that 'due process' is the only way any crime can be controlled, if not totally eliminated.

For the next ten years, therefore, we have the financial space to improve all three of the sub-systems of the Criminal Justice System. Needless to say, that unless we spend this money wisely, we may end up having wasted it yet again. And whereas the recent wave of terrorism is looked upon as a 'phenomenon of our times', criminologists treat it as yet another 'organized crime' and suggest the same strategy for its solution as any other activity in this broad area.

So we are on the threshold of an exciting time where much public good can be done if we put our act together and plan doable projects. The long suffering people of Pakistan need the leadership to understand that unless they are provided the basic safety of life, property and honor, there can be no human resource development so necessary for the economic take-off where the country is posed now.

Since the creation of Pakistan there have been at least six attempts at Police Reforms, beginning with the Cornelius Report to the Police Order of 2002. Among these the best was the Mitha Commission Report of 1969, which was approved by the Government of the day, but trashed by the Bureaucracy of the time. The most recent again has been sabotaged by a combination of politics and finance.

For any improvement in the Police there need to be three component activities. Firstly, the quality of manpower has to be improved by a ban on the recruitment at the Constable level and induction at the Assistant Sub-inspector level for the next ten years. Secondly, Police housing, both public and private has to be made secure, comfortable and adequate.

Thirdly, the infrastructure of telecommunications and databases has to be up graded to enable a networked response to emergencies. All these activities need to be done separately at the National level with the Ministry of Interior in the lead role. Two 'five- year' plans need to be conceptualized and yearly work-plans organized and followed through. It is a huge challenge for the present Police leadership, and I know that there is enough talent there to execute all of these schemes provided the right political leadership.

An old homily in Police folklore states that there are only three really effective ranks in the service, namely the SHO, the SP, and the IG. All others are in a support role! Now, homilies do not take root unless they are borne on long experience and

are culturally and politically correct. Thus all three of these Police institutions should be re-instated in their place of glory.

The Chief Justice of Pakistan is taking very keen personal interest in the working of the Law Commission. His lordship may consider the use of the USA funds in improving the effectiveness of the system which he himself heads. The encouraging news is that all the negative perceptions about the Judiciary are being met on merit.

Improvements in the working of the courts will have a very salutary and positive result in that these will reduce the number of under-trial prisoners in custody. This population forms the bulk of inmates, being over seventy percent in some provinces. Here again the Ministry of Interior has to take the lead to establish a humane regime in the prisons with a view to Reformation, rather than Retribution or Revenge. Much work has been done in this area already, and designed plans are available which can be executed quickly.

The law and order situation cannot be improved without the input of the Intelligence Agencies. It is therefore essential that the Special Branches in the provinces and the Intelligence Bureau at the Federal level are given the human, material, and legal resources to properly engage the bad boys. Another homily which comes to mind is that

Intelligence gathering is the second oldest profession in the world! Modern governments are run on intelligence and information, and so this should be an area of adequate investment. Here again there are many papers already on record which can be used for a rapid response in planning and development of this sector.

Secretary of State Clinton during her recent visit to this country said publicly, and several times, that the Kerry-Lugar funds are not meant to be a dole out to the people of Pakistan but rather an American investment to enable a friendly country to become stronger in pursuit of shared ideals. It would therefore be in the fitness of things to expend as much as the treaty obligations permit, and to achieve optimum usage for improving the skewed Law- and- Order and the Security situation in Pakistan.

***Saiyed Mohib Asad***

*Former Inspector General of Police*

## Murder and Punishment in Pakistan

*David T. Johnson*

### **Abstract:**

No legal system in the world has aroused as much interest as Sharia. In 1990, Pakistan the world's second most populous Muslim-majority nation enacted an Islamic law of murder that effectively privatized punishment by giving the heirs of murder victims the right to retaliate against offenders (qisas) and by permitting killers to pay blood money (diyat) to those heirs as a means of settling their case and avoiding or reducing the criminal sanction. This article analyzes Tahir Wasti's recent monograph in order to describe how this Islamic criminal law was made and how it has been interpreted and applied, and in order to explore how and why "Sharia in practice" has delivered neither justice nor security in the Pakistan context. In the end, Pakistan's law of murder may be a case of what Murray Edelman called "words that succeed and policies that fail."

### **Keywords:**

Homicide, Criminal Sanctions, Sharia (Islamic law), Qisas (equality, retaliation, retribution), Diyat (compensation, blood-money)

Tahir Wasti's *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice* (2009), is both a carefully researched book and a convincing commentary on the sorry state of crime and punishment in Pakistan. Wasti's core conclusion is that "the attempt to apply Sharia in the law of culpable homicide and murder in Pakistan has been completely unsuccessful" (p.288). This article summarizes the book's major findings and explores some of its implications for Pakistan and for comparative criminology. Section one presents evidence which suggests that Sharia in practice may be one reason behind Pakistan's high and rising rates of lethal violence. Section two describes how Sharia became law in Pakistan in 1990. Section three discusses how Sharia has been interpreted and applied by Pakistani officials and citizens. Section four suggests some of the law's most important impacts. And section five presents three lessons that should be learned from this case study.

### **Has Sharia Encouraged Murder?**

Wasti is a former legal adviser to the Punjab provincial government, and he currently works as a Solicitor of the Supreme Court of England and Wales and a Senior Lecturer in Law at the Islamic College of Advanced Studies in London. His research shows that only 3 percent of murder cases end in criminal conviction in and around the central Pakistani city of Multan (a jurisdiction with a population of 11.5 million), while in Pakistan nationwide "an average of 83 percent of murderers escape punishment for their crimes" (Tavernise and Gillani, 2009; Wasti, 2009, p.285). In this country of 170 million, therefore, the chance of "getting away with

murder” is nearly 6 in 7 far higher than chances are in the United States (1 in 3), France (1 in 4), and Japan (1 in 25; see Johnson, 2008, p.153). In Pakistan, it seems, impunity is the usual consequence for committing murder. If the most powerful predictor of deterrence is the certainty of punishment (as many criminologists believe), then the routine impunity that accompanies killing in Pakistan is a major problem not only because it means offenders do not get their just deserts but also because it creates perverse incentives for murder and related crimes of violence (Kleiman, 2009, p.49; Kennedy, 2009).

Pakistan is hardly the only country in the world or in South Asia that has low conviction rates. Among other developing nations, India does too. In Mumbai India's most populous megalopolis the conviction rate for all criminal offenses in 2000 was only 4 percent, far below the already low conviction rates of 18 to 25 percent that the city had experienced in previous years (Mehta, 2004, p.175). And in India nationwide, “not even 45 percent of people charged with serious IPC [Indian Penal Code] offenses, including mob violence, are ultimately convicted. In other countries like the United Kingdom, France, and the United States of America and Japan, the conviction rate for similar offenses is over 90 percent” (Nariman, 2006, p.85).<sup>1</sup>

Yet two murder facts do seem to distinguish Pakistan from many other countries, including its giant sibling to the east. The first is Pakistan's *extremely high rates of murder*, the most serious criminal offense. In 2000 the endpoint of Wasti's study and one year before the events of 9/11 led to explosions of violence in Pakistan and many other places the country's murder rate of 32 per 100,000 population was about 50 times higher than Japan's murder rate of 0.6, 18 times higher than China's rate of 1.8, 9 times higher than India's rate of 3.6, 5 times higher than America's rate of 6.0, 4 times higher than Thailand's rate of 7.5, and more than double the Philippines' rate of 14.2 (Wasti, 2009, p.376; Johnson and Zimring, 2009, p.433; Johnson, 2006, p.77). At the turn of the new millennium, the only countries that had higher murder rates than Pakistan were Colombia and South Africa (Johnson, 2006, p.77).

The second Pakistan distinctive is the *significant decline in the conviction rate for murder* that has occurred since the introduction of Islamic criminal law (sharia) in 1990 effectively privatized the punishment for murder by giving heirs of murder victims the right to retaliate against offenders (qisas) and by permitting killers to pay blood money (diyat) to those heirs as a means of settling the case and avoiding a criminal sanction. The new law also allows girls to be given away as part of any

“compensation package” (Wasti, 2009, p.19). According to Wasti, “the implementation of the law of qisas and diyat changed the whole structure of criminal litigation with regard to the offense of murder, as it altered the role of the state in the prosecution of criminal cases” (Wasti, 2009, p.14). In effect, the state's interest in responding to homicide was ceded to private parties, and conviction rates fell at every level of the criminal justice system: trial courts, High Courts, and the Supreme Court (Wasti, 2009, p.280).

One of Wasti's core claims is that Pakistan's murder rate has risen largely *because* Islamic criminal law has reduced the capacity of the criminal law to deter homicide. As he sees it, “The [blood money] provision has shaken the whole criminal justice system. It has encouraged all the criminals of Pakistan. They have used this loophole to kill whoever they want” (quoted in Tavernise and Gillani, 2009). Wasti presents a wide variety of homicide evidence obtained from the Interior Ministry and collected himself to show a marked increase in homicide in the decade after passage of the 1990 law compared with the decade before it (Wasti, 2009, pp.248-276, 376-377).<sup>2</sup>

The question of how to deter violence in Pakistan is certainly a pressing issue. As one veteran observer of South Asia has noted, “violence is to the North-West Frontier what religion is to the Vatican” (Dalrymple, 1998, p.319). And the problem is broader than just one province. Indeed, with its nuclear weapons, Taliban- and al-Qaeda-infested borderlands, dysfunctional cities, terrorist attacks (including direct assaults on army and police stations), feuding ethnic groups, and high murder rates, Pakistan “may well be the world's most dangerous country” (Kagan, 2009, p.70). For this reason and because of its strategic location and significance it may also be the most important country to the future of the world (Johnson, 2009; Cohen, 2006).

Pakistan officials have long lamented the problems in their criminal justice system. In 1982, the Joint Secretary of the Law Division of Pakistan's Ministry of Law and Parliamentary Affairs identified a number of “specific areas” which demanded “immediate attention” if the goal of fair, swift, and effective administration of criminal justice was to be achieved, and he pointed to “a want of necessary education” and “the absence of honest minds on the part of those who administer the system” as “the most glaring causes” of the problems that then afflicted the system (Chaudhry, 1982, pp.215-217). Today, nearly three decades later, Pakistan's criminal justice system is even more dysfunctional, and the law of homicide can be considered Exhibit A of the system's failings.

Wasti's detailed account of the application of an Islamic criminal law of murder its legal and theoretical foundations, its conception and development, its

interpretation and application by the judiciary, and its impacts is important not only for what it says about murder and punishment in Pakistan but also for what it implies about the role of Sharia in modern Muslim societies and for what it suggests about the conditions that encourage or inhibit effective punishment policy-making in countries of all kinds.

## **Making Sharia**

Wasti explains in great detail the process that led to the birth of Islamic criminal law in Pakistan. Chapter 1 describes the sources and theories of Islamic law, reviews the relevant scholarly literatures, and explains his research methods, which included an impact study of the 1990 law, interviews with 60 legal professionals and politicians (p.399), a survey of some 700 attorneys in 10 different districts (p.279), and “wide-ranging field research in Pakistan during 2002-03” (p.52).

Chapter 2 examines the legal and theoretical foundations of the qisas and diyat law by focusing on three judgments made by the country's Sharia courts in the 1980s, all of which pointed in the same direction: that the punishments prescribed for offenses against the human body in chapter XVI of Pakistan's Penal Code were “un-Islamic” in that they did not allow for the use of qisas and diyat (p.57). Following Martin Lau (1992), Wasti argues that the Islamization of Pakistan has been primarily a judge-led process. In the end, courts “set a course for the government to embark on, laying down Islamic law on the basis of political expediency, selective material, and superficial approaches, when what was required most was deeper study, and analytical approach, organized research and contemporary thinking” (p.97).

In chapter 3, Wasti broadens focus to show that the judicial, executive, and legislative branches of government had very different views of the propriety of introducing Islamic criminal law in Pakistan (p.99). The story begins in the late 1970s with Zia-ul-Haq's “continuous process of Islamization to legitimize his long despotic rule” (p.101). In 1979, Zia promulgated a set of Islamic penal laws and established Shariat benches in the superior judiciary, but offenses affecting life and the human body were omitted from this project because he feared that qisas and diyat would allow his political rival, former Prime Minister Zulfikar Ali Bhutto, to obtain an acquittal in his murder case (p.101). Since Zia knew that qisas and diyat would create a legal obligation and public demand to try Bhutto under Islamic criminal law, he “shrewdly chose the date” of establishing “Islamic Order” in order to foreclose the possibility of his rival's survival. More bluntly, Zia wanted Bhutto dead, and since qisas and diyat could have helped save him, the dictator refused to push for those provisions (p.141). After Bhutto was hanged on April 4, 1979, it would take 11 years more for qisas and diyat to become law.



Chapter 4 reviews the legislative debates that occurred in the period between Bhutto's execution and the passage of the new law. It argues that "the Members of the Assemblies who were in favor of the introduction of qisas and diyat law were driven more by their zeal for Islam than by reason, rationality, or viability of the law" (p.144). Most strikingly, the Federal Council (Shoora) that was created in 1981 pending the restoration of democracy and its representative institutions repeatedly engaged in debates and deliberations that "were dominated by the virtues of Islam and Islamic law" (p.148), an approach to lawmaking that made "a mockery" of rational policy-making and "cheated the credulous and uneducated population" (p.145). In the end, the introduction of a qisas and diyat law in September 1990 "was a political move by President Ishaq Khan aimed at pleasing the Supreme Court of Pakistan" (p.166). Khan needed the top court's support because he had recently dismissed Prime Minister Benazir Bhutto's government and dissolved the National and Provincial Assemblies, actions which "were under scrutiny before the courts" (p.166).<sup>4</sup>

### **Interpreting and Applying Sharia**

Chapter 5 examines how Islamic criminal law has been interpreted and applied by Pakistan's judiciary. It stresses two major themes. First, different judges have issued contradictory interpretations of the Islamic law of murder. According to Wasti, the disagreements occur because "the new law is replete with all the lacunae that are bound to occur in the case of any hasty, politically-motivated and precipitate legislation" (p.235). Penal laws that should clearly define murder offenses, punishments, evidentiary requirements, and defenses available to the accused do none of these things. The predictable result is that judges fill in the legal holes with their own preferences and predilections.<sup>5</sup> According to Wasti, the legal flaws, frictions, and uncertainties of the law of qisas and diyat have resulted not only in the misuse of the law by killers who aim to escape punishment but also by judges who are little bound by its "vague concepts and loose and imprecise definitions" (p.236).

The second theme of chapter 5 is that the law of qisas and diyat has often been misappropriated by influential sectors of society who use it and their own wealth, muscle, and connections to pressure poor persons and families into making "compromises" that pardon their own murderous acts. In this way, the Islamic principle holding that the murder of an innocent person is the gravest sin of all and deserving of everlasting punishment in hell (p.88) has been systematically twisted to favor the interests of the "haves" over the "have-nots" (p.281).

Wasti does not provide many thick descriptions of murder cases to illustrate how qisas and diyat work in actual practice, but those he does summarize suggest an

extremely unseemly picture. In one case that was reported by the Pakistani press in 2002 (*Sadar Khan etc. v. The State*), four men were sentenced to death for a double murder, but they were pardoned shortly before their execution when their relatives agreed to pay the victims' family 12 million rupees (\$144,000) and 8 girls as compensation. Ultimately, after “the intervention of various influential parties and a human rights group, only two girls (aged 14 and 15) were given to the aggrieved family”; they were then wedded to men aged 55 and 77 (p.281).

Another troubling example was recently described by *The New York Times*. Malik Ishaq, one of the founders of the militant sectarian group Lashkar-e-Jhangvi, possesses a police record with a tally of at least 70 murders but he has never had a conviction stick. Ishaq has been in jail since 1997 with 44 cases against him, but convicting him has proved all but impossible because victims, their families, and judges have routinely been intimidated. Soon after Ishaq's first trial started in 1997, witnesses began to die, and the body count has continued to rise ever since. A man named Fida Hussein Ghalvi testified against Ishaq in 1997; since then, 12 members of his family have been killed, and the Ghalvis still refuse to compromise with Ishaq. “I sometimes feel like a prisoner, and the killers are at large,” Ghalvi says from his home in Multan, where all his servants have quit and an armed guard is posted at the gate. “Where is the justice?” (quoted in Tavernise and Gillani, 2009).

Other examples suggest that it is Pakistani women who “suffer most under the provisions of [Islamic criminal] law” (Wasti, 2009, p.210). The Research Wing of the Women's Division of the Secretariat of the Government of Pakistan raised several objections during the period when the new law was being drafted: that testimony should be admissible from Muslim female witnesses, not just from Muslim males; that the value of diyat for male and female victims should be the same; and that (per Article 25 of the 1973 Constitution) all citizens should be “equal before law” and “entitled to equal protection of law” (pp.126-128). But following severe criticisms from the Ministry of Religion and Minority Affairs and other conservative interests, the women's views were marginalized and ignored (p.129).

### **Sharia's Impacts: Less Punishment, More Murder?**

In an article published several years ago, a Deputy Inspector General of Police for the Mardan Region in the North-West Frontier Province of Pakistan noted that the Quran establishes a central principle of Islamic law: the “equality of men and the necessity of awarding proportionate punishment to all offenders, without distinction, unless and until the offender is pardoned by the relatives of the victim under circumstances that are expected to lead to improvement of conditions” (Khan, 2004, p.136). The same official went on to assert that the Islamic law of qisas and diyat

“provides a very effective and practical means to put a stop to murder and safeguard human life. A man who shows a callous disregard for the life of a fellow-person loses his right to live. The option to pardon allowed to the heirs of the slain person *should not be regarded as likely to encourage murder*, for such option is not synonymous with exemption from punishment as in ordinary circumstances the murderer will have to pay the blood-money. Moreover, the would-be murderer possesses no means to know that the heirs of the person whose murder he contemplated will actually be persuaded to pardon him; so the fear of capital punishment will always be there to deter him from the commission of the crime. Again, pardon or remission is permissible only where the circumstances are such that the pardon or remission is likely to improve conditions and *bring about good results for all parties concerned*” (Khan, 2004, p.136; emphases added).

The most important contribution of Wasti's book is its refusal to settle for theoretical and normative bromides of this kind and its insistence that the Islamic law of murder be studied “in action” to determine how it works in actual practice. His core conclusion is that the law has failed badly, in part because it is based on “primitive social norms” and “the tribal values of traditional society” (pp.285-286). For him, Pakistan's law of murder is not only incompatible with modern conceptions of “the criminal justice system of the state” (p.18), it also contradicts some of Islam's highest principles (p.287). According to Wasti, the only real solution is to “delegislate” the present law and “relegislate” a law of culpable homicide and murder that takes into account modern theories of crime and punishment in addition to the indigenous norms of society (p.288). At the same time, Wasti acknowledges and laments that “introducing any law in the name of Islam” makes it “exceedingly difficult” to change it (p.288).

The most profound impact of Pakistan's new law is how it has reconceived the crime of murder as an offense against the family of the deceased instead of as an offense against the legal order of the state. This approach to criminal homicide was prevalent on the Indian subcontinent under Muslim rule before and during the British occupation, and the private character of qisas and diyat was one reason the British abolished it (p.239). In its place, the British introduced a system of criminal justice based on Anglo-Saxon jurisprudence. When Pakistan grafted Islamic criminal law onto that system in 1990, it effectively privatized punishment for homicide and thereby stimulated so many problems that Wasti concludes: “The attempt to apply Sharia in the law of culpable homicide and murder in Pakistan has been completely unsuccessful” (p.288).

As described in the opening paragraphs of this article, Wasti also argues that the new law has diminished the deterrent effect of punishment for murder, and he

attributes the recent rise in Pakistan's homicide rate to the unwelcome effects of that legal change. Though he might be right, it does need to be noted that his causal story overlooks and ignores a wide array of explanatory variables that could help account for the homicide increase. The omitted variables include measures of: economic growth and inequality, illegal drug markets, ethnic conflict, family stability, the availability of guns, the efficiency of the police, media effects, and citizens' exposure to violent acts committed by the government (Beeghley, 2003). These are just some of the factors that are routinely used to explain homicide variation in other nations, and it is unfortunate that Wasti examines none of them in this book. The result is a simple thesis about cause-and-effect. Islamic criminal law led to more murder that may be part of the explanation but that seems too simplistic to be taken at face value.

Another big impact of Islamic criminal law in Pakistan is how it reflects and reinforces social and economic inequalities. As Wasti summarizes, “the law is being abused by people in positions of power and influence” (p.285). The most disconcerting aspect of this abuse is “the impact of the qisas and diyat law on murders within families, especially the honor killings of women” (p.285). More broadly, influential offenders are using diyat to get their cases compromised in the early stages of their cases without ever being convicted of murder. By contrast, if poor offenders are able to get their cases compromised at all, they typically do so in the late stages of the criminal process by “selling the last straw of their possessions and offering their females to the victims' family” (Wasti, 2009, p.287).

Sociologist Donald Black once observed that law has a “direction” in social space in that it can move from a higher rank toward a lower rank (downward) or from a lower rank to a higher one (upward). Black also noted that, all else constant, law of every kind is more likely to move downward than upward. As he famously put it: “Downward law is greater than upward law” (Black, 1976, p.21). From this Blackian perspective, the striking thing about Islamic criminal law in Pakistan is not merely the downward direction of diyat law, it is how easily, frequently, and powerfully that law can be mobilized by persons of power in a downward direction. For Wasti, the result is so much “uncalled-for leniency” that the law makes “a mockery of the Islamic concept of criminal homicide, according to which the killing of one person is equal to killing the whole race of human beings” (p.287).

Finally, the impact of blood money is also evident in capital punishment. Pakistan appears to be the only Muslim-majority nation in Asia with high rates of judicial execution, although those rates vary significantly from year to year (Johnson and Zimring, 2009, p.20). According to Amnesty International and the Human Rights Commission of Pakistan, the country carried out 18 executions in

2003, 21 in 2004, 52 in 2005, 83 in 2006, 134 in 2007, and 36 in 2008. Even in the highest execution years there is a huge disparity between the volume of executions and the size of Pakistan's death row. In 2007, for example, there were approximately 7400 prisoners on death row nearly 7000 of them in the province of Punjab. This means Pakistan had the largest death row population in the world, accounting for more than one-quarter of all the condemned inmates on the planet (FIDH and HRCP, 2007). Yet in the same year, when Pakistan executed more people than in any other year in its recent history, only 1.8 percent of its death row inmates were executed and diyat is one reason why.

In 2007, the blood money needed to avoid execution was often about US\$20,000 a sum eight times greater than the country's per capita GDP (\$2500). The class dimension of Pakistani capital punishment is most apparent when a wealthy person is indicted for killing a poor one, because "the abject conditions of the poor person's family make it all but impossible for them to refuse blood money." Once they accept it, "the crime itself is effectively eradicated" (Zakaria 2007). Conversely, few poor Pakistanis can afford to pay sufficient compensation to the families of victims with means. It is hardly surprising, therefore, that the vast majority of people on Pakistan's death row are destitute. Their only earthly salvation is the help of wealthier allies and advocates which sometimes comes from surprising quarters. Prison superintendents who oppose capital punishment have been known to spend considerable amounts of their own time and energy trying to raise diyat funds for the condemned (Johnson and Zimring, 2009, p.20).

### Three Lessons

Are there any lessons to be learned from this case study of a legal failure? There seem to be at least three: on the importance of retributive principles of punishment, the sources of bad law, and the attractions and limits of Islamic criminal law in Pakistan and other parts of the Muslim world.

For starters, some readers of Wasti's book specially those in the West may be predisposed to dismiss Sharia as antiquated, outdated, and unsuited to conditions in modern societies. If so, I hope they will take the time to consider another possibility: that the Islamic criminal law of murder recognizes the value of certain aspects of punishment that have been unduly discounted in Western criminal justice systems.

In his brilliant book *Eye for an Eye*, Professor William Ian Miller of the University of Michigan Law School reminds us of several neglected truths: that *lex talionis* the retributive principle of "an eye for an eye and a tooth for a tooth" was often taken literally in a wide range of human societies; that it still plays a powerful but submerged role in Western thinking about revenge and justice today; and that this principle was not nearly as brutal or unfair in practice as other, putatively more

civilized ways of dealing with the desire for revenge (Miller, 2006). Miller also shows how limply inadequate are “modern liberal and utilitarian understandings of justice that try so aggressively to purge this elemental instinct [of revenge] from [Western] law and laws” (Miller, 2006). In his “anti-theory of justice,” *lex talionis* facilitates rather than inhibits what are often seen as the more “civilized” processes of negotiation and compensation, because that tit-for-tat principle means the victim (not the offender or the state) decides how much the offender must pay for committing a murder or putting out an eye. Miller masterfully shows that in many retributive societies, eyes, teeth, and lives have great value. Conversely, he suggests that it may be Western cultures not the revenge cultures they look down on as barbaric that tend to view life as cheap.

If Miller is right, then maybe the core principles of Islamic criminal law *qisas* and *diyat* have something to teach non-Islamic societies and scholars about the nature of justice. Perhaps, as Miller insists, justice is largely about righting the balance, achieving reciprocity, and cultivating a willingness to bear the considerable costs of “getting even.” If it is, then despite all the problems of “Sharia in practice” that Wasti has documented in his fine book, “Sharia in law” may function as a useful mirror for many Westerners by reflecting principles of justice that have been unduly neglected in the United States and Europe and by prompting deliberation in those who take the trouble to look at an Islamic legal system that takes retribution seriously.

But at the same time, since “Sharia in practice” is indeed ineffective, it is instructive to consider the reasons for its failure. A comparative perspective may help. For the last four decades the United States the world's most punitive country in many respects has been a hothouse of harsh, inefficient, and ineffective criminal laws (Kleiman, 2009; Packer, 1968). The most notorious example may be the “Three Strikes and You're Out” law that California passed in 1994.<sup>6</sup> This law was both typical of American “get tough” legislation and unique: *typical* in that it uses mandatory prison sentences and targets repeat offenders, and *unique* in that is much broader and tougher than the Three Strikes laws that have been passed in other American jurisdictions. Among other things, the California law defines an extremely broad “strike zone,” it is used to send offenders “out” (to prison) for exceptionally long periods of time, and it targets many offenders who only have two strikes, not three. This law has been called “the largest penal experiment in American history” and it must be considered a failure. Most notably, Three Strikes in California has had little impact on crime while generating huge disparities in how similar cases are treated and helping to fill the state's prisons to overflowing through its draconian sentencing provisions (Zimring, Hawkins, and Kamin, 2001, p.17; Jaffe, 2009a, 2009b, 2009c).<sup>7</sup>

How did a democratic jurisdiction like California create a law that is every bit as bad as Pakistan's law of murder? The answer is complicated, but at its core are facts that also shed light on why the Islamic law of murder is failing in Pakistan. Most notably, legal and academic experts were almost completely sidelined during the lawmaking process in California, and citizens' deep mistrust of government provided the impetus for lawmakers to take away much of the discretion that professional judges in California used to possess over how and how severely to punish criminal offenders. In Wasti's study of Pakistan, both of these factors the absence of expertise in the lawmaking process, and the presence of government mistrust help explain the advent of an Islamic criminal law of murder whose provisions are satisfying to some on a symbolic level but whose actual operations leave a great deal to be desired. The implications for better criminal justice policy are clear: expertise must be valued, not marginalized by populist or political pressures; and legal decision-makers must be insulated against the fear and fury that so many citizens feel in societies as disparate as Pakistan and the United States.

Finally, public opinion about Islamic law is deeply conflicted, not only inside Pakistan but in the rest of the world (Ayoob, 2007). Most strikingly, the reputation of Sharia has undergone an extraordinary revival in many Muslim-majority nations in recent years, whereas to many people in the West the word 'Sharia' conjures "horrors of hands cut off, adulterers stoned, and women oppressed" (Feldman, 2008a; Feldman, 2008b; Caldwell, 2009). Outside the Muslim world it is probably true that "no legal system has ever had worse press" (Feldman, 2008).<sup>8</sup>

One major virtue of Wasti's book is that it demonstrates how an Islamic criminal law of murder can remain theoretically, theologically, and politically attractive while at the same time failing to do the basic things that criminal law is supposed to do in modern nation-states: control crime, and deliver "just deserts." Thus, Wasti's story about the application of Islamic criminal law in Pakistan may actually be one instance of the widespread phenomenon in modern law and politics that the scholar Murray Edelman called "words that succeed and policies that fail" (Edelman, 1977). The Islamic meanings and values reflected in Pakistan's new criminal law of murder are succeeding at certain religious and rhetorical levels, but the more important truth may be that the country's criminal justice policies are failing in spectacular fashion.

In order to deter murder and administer justice better than is now being done under the system of qisas and diyat, Pakistan's government probably needs to change the law (Wasti, 2009, p.288). I am no expert, but I am not sanguine about the

Prospects for positive change, in part because people do not necessarily want tangible “things” from government, they want *the feeling* that they are getting things which is quite another matter.

Many Pakistani citizens and officials apparently believe in the righteousness of Islamic criminal law, regardless of its practical effects. This is one large obstacle to reform. But an even more formidable obstacle may be the fact that the Islamic law of murder serves the interests of powerful persons who are both practiced and proficient at using criminal violence to achieve their own ends. In the absence of functional democratic institutions, it is hard to see how those interests can be overcome.

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### Endnotes:

<sup>1</sup>Criminal sanctions are also highly uncertain in parts of Latin America. According to Guillermo Zepeda, a scholar at the Center for Investigation and Development in Mexico City, "someone committing a crime in Mexico has only a two in 100 chance of getting caught and punished... The big reason is that just 12 percent of crimes are reported to the police" (Luhnow, 2009). But once a suspect is arrested in Mexico, a conviction is likely to occur (Luhnow, 2009). And in Rio de Janeiro, a Brazilian city with 14 million inhabitants, 90 percent of murders remain unsolved (Anderson, 2009, p.51).

<sup>2</sup>Unfortunately, several inconsistencies in Wasti's presentation of Pakistan murder statistics make his argument about the impacts of Islamic criminal law less persuasive than it otherwise might have been. For example, the average murder rates reported in Table G.2 on page 376 are almost double the rates reported in Table G.1 on the same page. Similarly, the homicide rates for the "sample area" of Multan in Graph 6.1 (p.259) are only about one-fourth as high as the rates reported for Pakistan in Tables G.1 and G.2 (p.376). The latter disparity may merely or mainly reflect the great socio-economic and cultural diversity that exists within Pakistan's borders (Schmidle 2009; Tavernise, 2009a). If so, it would have been instructive for Wasti to say so. But the first disparity is more difficult to understand (and Wasti did not answer my email inquiry about it). Wasti does describe some of the perils of relying on Pakistan's official crime statistics (pp.251, 261). Some of his book's statistical incongruities undoubtedly reflect the difficulty of obtaining decent crime data in this developing nation.

<sup>3</sup>Lau (2005) also argues that judges in Pakistan led the process of Islamization in an

Effort to enhance judicial independence and power and expand the scope of legally guaranteed rights.

<sup>4</sup>After 1990, the government re-issued the qisas and diyat law some 20 times before Parliament finally approved it in 1997. In Pakistan, an ordinance issued by the President lapses after four months if has not been approved by the legislative branch (Wasti, 2009, p.166).

<sup>5</sup>The judicial penchant for finding holes in statutes reminds one of the story about the man who ate a pair of shoes. When he was asked how he liked them, he said the part he liked best was the holes! See the opinion of Justice Keen in Lon Fuller's classic "The Case of the Speluncean Explorers" (*Harvard Law Review*, 1949; available at <http://www.nullapoena.de/stud/explorers.html>).

<sup>6</sup>The name of this law comes from the sport of baseball, where batters are declared "out" if they swing and miss three times.

<sup>7</sup>The sweeping nature of the California law has put thousands of nonviolent men and women in prison for 25 years to life, for crimes as minor as shoplifting \$2.69 worth of AA batteries, forging a check for \$94.94, or attempting to buy a macadamia nut disguised as a \$5 rock of cocaine. Some analysts believe that history will remember California's Three Strikes as "a discredited nightmare like McCarthyism, Japanese internment camps, and the Salem witch trials" (Domanick, 2005, quoting Robert Scheer on the back cover).

<sup>8</sup>In some respects this reputation is not deserved. See, for example, the works on torture and search and seizure by Sadiq Reza (2007 and 2009), and Noah Feldman's studies on the role of Sharia in "the fall and rise of the Islamic state" (2008a and 2008b).

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## Policing Terrorism in New York City

*Avram Bornstein*

### **Abstract:**

After the attacks on September 11, 2001, law enforcement in the United States, especially in New York City, quickly changed. These changes included: greater displays of weapons in public; increased suspicion, surveillance, registration, detention and deportation of Arab and Muslim immigrants; increased efforts to protect and reach out to those same people; training for first response to future disasters; and greater investigation co-operation between municipal and federal agencies. This article describes some of the changes at the federal and municipal levels of law enforcement and where they were contested by civil libertarians.

### **Keywords:**

Anti-Terrorist Legislation, Anti-Terrorist Policing, Community Policing, Civil Liberties, New York City.

Three weeks after the attack in New York City on 9/11/2001, NYPD officers began returning to the course I teach for them on racism and policing. They were fatigued and expressed disbelief and confusion. Many officers were experiencing what Freud called the uncanny (Gampel 2000) as they moved between the normal activities of daily life and the horror of buried bodies on the still smoldering “pile” down at “Ground Zero.” Officers discussed feelings of fear and anger, but also how they were going numb in order to get by everyday. We discussed reactive aggression and how repressed fear and anger can burst to the surface, often out of proportion to the immediate trigger. Most were hesitant to seek counseling in the Department and said returning to our class was the one time they were able to stop moving and try to talk about what they were experiencing. Officers described a strong identification with and compassion for the victims, fear for themselves and their families, and even remorse, a recurring feeling of guilt, something akin to the survivor's guilt observed by Bruno Bettelheim (1980). This remorse was sometimes expressed as a sense of responsibility. To cope with these feelings, many went to dig on the pile. Some said they felt a new urgency for increased vigilance in their policing. The attack tore apart the fabric of daily life and everyone, especially law enforcement, sought to find a way to stitch the traumatic wound.

The events of 9/11 changed the consciousness of New Yorkers and most Americans regarding the potential of terrorism. While nationalist and leftist groups like the IRA, ETA, Red Brigade, and PFLP attacked soft targets in European cities in the late 1960s and 1970s, in the US workers struggles were largely pacified by World War II, and terrorist attacks were largely restricted to white supremacist victimization

of blacks. With only a few exceptions, US law enforcement was not overly concerned with the terrorists that threatened Europe. However, in the 1980s and early 1990s, fear of political violence from right wing groups at home and Arab nationalists abroad increased. A car bombing by Islamist militants of the World Trade Center in February 1993, killed six and injured over 1000. Then a car bombing by former US soldiers of the Murrah Federal Building in Oklahoma City on April 19, 1995, killed 168 people and injured several hundred more. Then the attack against New York City and Washington, DC, on September 11, 2001, killed over 3,000. These events pushed American law enforcement into significant changes. This article outlines the changes that occurred in federal and New York municipal law enforcement's responses to threats of terrorism.

### **Federal Legislation**

In the 1980s and 1990s, there was a rising tide of anti-terrorist legislation in response to terrorist attacks outside the US that killed American citizens, like the attack on the Achille Lauro in 1985 and the Lockerbie airline bombing in 1988. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 and the Antiterrorism Act of 1992 were designed to provide American victims of international terrorism with a civil cause of action (Patton 1997: 131). The Antiterrorism Act of 1987 imposed restrictions on the Palestinian Liberation Organization (PLO); specifically, it prohibited U.S. citizens from "receiving anything of value except information material from the PLO" and made it unlawful to establish "an office...or other facilities" that furthered the interests of the PLO (Patton 1997: 131). The United States also entered into several aviation security agreements and attempted to eliminate the "political offense exception" from many of its extradition treaties (Patton 1997: 131). On February 10, 1995, two years after the first attack on the World Trade Center, the Omnibus Counterterrorism Act of 1995 was introduced to Congress (Martin 1996: 210). This Act: a) brought terrorist acts in or from the United States under Federal criminal jurisdiction, b) allowed secret evidence in deportation proceedings, c) outlawed fund-raising that supports international terrorist activities overseas, and d) implemented international agreements requiring chemical tags in plastic explosives. The Act was passed soon after the Oklahoma bombing in April 1995, and a new, more expansive Act was soon introduced.

By the anniversary of the Oklahoma bombing in 1996, the Antiterrorist and Effective Death Penalty Act (AEDPA) was approved by Congress (S. 735). This act had numerous provisions that may be divided into three categories: 1) those increasing policing powers such as the use of the army and loosening judicial oversight of police surveillance, 2) those allowing the use of secret evidence and curtailing the appeals process, and 3) those outlawing donations to organizations that are both charitable or religious, and also involved in terrorist activities

according to the US Secretary of State. This last part criminalizes humanitarian acts that have a remote connection to terrorist activity (Patton 1997: 151; see also Brooke and Sciolino 1995). The Supreme Court has repeatedly held that the First Amendment protects money contributions to political groups (Patton 1997: 151), but this right can be ignored by the designation of a group as terrorist.

In the late 1990s, civil rights attorneys and some leaders in Arab and Muslim American communities became concerned about prosecutions based on the AEDP Act. In several cases, such as Nasser Ahmed, Mazen Al Najjar and Hany Kieraldeen, men were detained for years based on secret evidence that they had an association with terrorist groups without any criminal charges being brought. The Immigration and Nationalization Service (INS) used secret evidence in at least two dozen cases, almost all of which involve Arabs and Muslims.

In the immediate wake of 9/11, the USA Patriot Act was quickly passed into law on October 26, 2001. Among the USA Patriot Act's provisions are measures that:

1. allow for indefinite detention of non-citizens who are not terrorists on minor visa violations if they cannot be deported;
2. minimize judicial supervision of federal telephone and Internet surveillance by law enforcement authorities and expand the ability of the government to conduct secret searches;
3. give the Attorney General and the Secretary of State the power to designate domestic groups as terrorist organizations and deport any non-citizen who belongs to them;
4. grant the FBI broad access to sensitive business records about individuals without having to show evidence of a crime;
5. allow law enforcement officials to cast an even broader net for student information without any particularized suspicion of wrongdoing;
6. allow for the broad sharing of sensitive information in criminal cases with intelligence agencies, including the CIA, the NSA, the INS and the Secret Service, without judicial review or any safeguards regarding the future use of such information;
7. create a new crime of "domestic terrorism" which threatens to transform protestors into terrorists if they engage in conduct that "involves acts dangerous to human life."

While the Patriot Act passed Congress with overwhelming bi-partisan support, civil libertarians feared that these new policing powers would be used against political opponents of the government such as Operation Rescue, People for the

Ethical Treatment of Animals, the Environmental Liberation Front, Greenpeace or World Trade Organization protesters. Civil rights advocates argue that the unchecked use of policing inhibits freedom of speech and freedom from arbitrary search and seizure, both of which are rights enshrined in the US Constitution in order to promote democracy against the possible tyranny of state power.

### **Federal Law Enforcement**

Federal law enforcement was not called upon to track down and prosecute the conspirators of 9/11 as they were in the 1998 bombings of US embassies in Dar es-Salam and Nairobi. The Bush administration used the US military, CIA and mercenaries to do that. Instead, Federal law enforcement was focused on prevention of further attacks. First, the federal level Transportation Security Administration took airport security away from private contractors, tightened the physical screening of passengers, and increased the number of marshals riding on planes. Then, an entire new agency, the Department of Homeland Security, took responsibility for 21 agencies in order to close the gaps in intelligence sharing that facilitated 9/11.

In the wake of 9/11, there were many reported cases of racial discrimination: at least 80 passengers were removed from airlines after boarding because of perceived ethnicity; there were over 800 reported cases of employment discrimination; and many cases of discrimination in housing and provisions of other services (Ibish 2003). Despite statements by President George Bush and both houses of Congress rejecting racial or religious profiling, the federal government detained over 1,000 men, most of them Arabs and Muslims (ACLU 2002a). According to later investigations by the Office of Inspector General of the Department of Justice, there was misconduct by federal officials including indiscriminate arrests, severe confinement at the federal detention facility in New York City, denial of access to lawyers and family, physical and verbal abuse by guards and hundreds held longer than their alleged immigration violations, many minor, warranted (see also NYCLU 2003a). In one of the most sweeping acts of profiling, in June 2002 the Department of Justice required all non-citizen men over the age of 16 from a list of 25 countries, mostly but not exclusively Muslim, deemed to be of “highest terrorism risk” to register in person at Immigration and Naturalization Service offices by certain deadlines to be fingerprinted, photographed and questioned. Hundreds of men and teenage boys who showed up to be registered were arrested and detained on immigration violation charges; around 13,000 Arab and Muslim men faced deportation (Casimir 2003a, 2003b; Hall 2003; Swarns 2003).

High profile Muslim activists have also been subject to investigation and prosecution. Sami al-Arian, a tenured 44 year-old professor of computer engineering at the University of South Florida, of Palestinian origin who has lived in



the United States since 1975, was put on administrative leave after he appeared as a spokesperson for Islam on CNN on September 26, 2001. By December, the university board of trustees voted 12-1 to approve of his firing (*On Campus* 2002). In February 2003, he was arrested by the federal government on charges of providing aid to Palestinian Islamic Jihad. After a failure to convict in 2005, he plead guilty in May 2006, rather than face a retrial, to one count of conspiring to assist Islamic welfare operations in Palestine. Shukri Abu Baker, 50, and Ghassan Elashi, 55, two founding members of the Holy Land Foundation for Relief and Development, formerly the largest US Muslim charity, were sentenced to 65 years in prison in May 2009, for sending millions of dollars to Hamas-controlled schools and programs; there were no accusations of bankrolling violence (Robbins 2009). Over 300 Muslim American groups and individuals were listed as “unindicted coconspirators” in their trial sending chills through the community (Marks 2009).

### **NYPD's Multi-Tactic Responses**

In New York City after the attacks on 9/11, thousands of police were pulled from their usual assignments and put on the streets guarding the United Nations, the Empire State Building, all the bridges and tunnels, Grand Central Station and dozens of other locations that supervisors decided were possible targets. The police went on twelve hour shifts and that often meant fourteen to sixteen hour days when commuting was included. Sleep deprivation became a frequent topic of conversation. In addition to guarding and directing traffic, they were digging in the destruction at Ground Zero, sifting through the debris and helping identify bodies.

In the months and years that followed, there were many new displays of police presence. Six helicopters began rotating to watch the city from above. Operation Hercules, a heavily armed special interdiction force, began showing up at different locations with no obvious pattern hoping to disrupt terrorist operatives (Horowitz 2003). An anti terrorist telephone hot-line campaign was publicized on busses and subways urging people to report suspicious people or objects. Random bag checks began at subway entrances. The department put portable radiation detectors on the streets and the city began installing 500 surveillance cameras on potential terrorist targets (Reagan 2006).

There were also less visible increases in police presence. The number of anti-terror detectives quickly rose from 20 to over a hundred (Gardiner and Parascandola 2002). More officers were assigned to the Joint Terrorist Task Force putting them in contact with the DHS, the FBI, and numerous other law enforcement agencies. Detectives were posted overseas (Weiss 2002). Police participated in disaster training drills (El-Ghobashy 2004). A new high-tech counter-terrorism center was built. Operation Nexus, implemented in 2002, began

gathering potential intelligence from businesses that might inadvertently train or supply terrorists (Reagan 2006). Civilian analysts were hired by the intelligence division in 2003 to help sort through the data (Worth 2005).

In January 2003, Deputy Commissioner Cohen challenged and succeeded in changing the old spying rules, called the 1985 Handschu Guidelines, that limited and monitored police investigations of constitutionally protected activity like street protests, community meetings and political essayists, where there is no indication of crime. Loosening the Handschu Guidelines, police obtained the power to infiltrate and monitor groups, keep dossiers and freely disseminate information (see Lee 2003). This surveillance has focused on mosques (O'Shaughnessy 2008), but also on groups involved in mainstream political dissent.

Just before the invasion of Iraq in March 2003, the NYPD refused march permits to a coalition of anti-war groups. Instead, a permit was given for a stationary rally near the UN, but hundreds of thousands of people were prevented from getting there by miles of police barricades, pepper spray, horses and hundreds of arrests (Dunn, et. al. 2003; Solomon 2003). Charged only with minor offenses, arrested demonstrators were interrogated about their political affiliations and prior demonstration activity on a Criminal Intelligence form entitled "Demonstration Debriefing Form" (NYCLU 2003b). After criticism of this tactic, the Department agreed to destroy the documents and discontinue the practice (Rashbaum 2003).

At the 2004 Republican National Convention protesters' petitions to assemble on the Great Lawn of Central Park were denied and over 1800 individuals were arrested. But the greater controversy emerged when it was discovered that the NYPD had gathered extensive intelligence on lawful political protesters. The Department said their intelligence gathering focused on estimating the number and motivations of people planning to attend the convention, looking for potential threats to public safety including "innovative nonviolent and violent disruption techniques that were discussed at public meetings and on the Internet by more than 18 groups and coalitions planning protests at the convention, several of which have histories of violent activity at earlier demonstrations" (Miller 2007).

Civil rights lawyers closely watched the NYPD in all areas of enforcement. Policing at these protests was closely scrutinized. The New York Civil Liberties Union sent approximately 117 teams of two to four monitors at over 40 events at the Republican National Convention (Dunn, et. al. 2005). After lawsuits brought by such organizations, the courts curbed some NYPD tactics. "In a rebuke of a surveillance practice greatly expanded by the New York Police Department after the Sept. 11 attacks, a federal judge ruled...that the police must stop the routine videotaping of people at public gatherings unless there is an indication that unlawful activity may occur" (Dwyer 2007). In December 2009, a federal judge ordered the

NYPD to release to the public the intelligence files they gathered for the Republican National Convention (NYCLU 2009).

### **Community Policing Against Terrorism**

The NYPD made significant outreach efforts in neighborhoods with recognizable Arab or Muslim populations to protect them from backlash hate crimes. The need was evident. In the first nine weeks after 9/11 there were over 700 violent incidents in the United States, including several murders, targeting Arab Americans, or those mistaken for Arabs or Muslims like Sikhs and other South Asians (Ibish 2003; see also Human Rights Watch 2002; Ruiz 2003). New York City was not an exception to this trend. Before 9/11, there were 301 hate crimes recorded for the year, an average of 33 a month; but in the month after 9/11, there were 142, with about 100 involving people of Middle Eastern descent (Hamil 2001). Common objects of such hate crimes were neighborhood mosques, deli-supermarkets owned by immigrants and taxi drivers.

The NYPD also reached out to these communities to engage them in the prevention of terrorist crimes. It is important to note that in August 1997, when the NYPD raided a Brooklyn apartment catching two bombers with bombs, they were acting on a tip from an acquaintance of the bombers, someone from the Arab community (Barry 1997: 42). Knowing the importance of cultivating relationships and not alienating the communities, the Department took several steps. Commissioner Kelly publically rejected and warned against racial profiling saying that it was immoral, a waste of resources and counter-productive (Kelly 2002). He took a public stand at the national level against the federal government's plans to engage local police in immigration enforcement. He frequently cited the importance of the cooperation and involvement of New Yorkers as eyes and ears for the police. By the summer 2003, the Department created new sensitivity components for rookies and cadets about the Arab and Muslim residents in the city. Several well-attended annual police-community events emerged especially around Ramadan. And most important, hundreds of new officers were recruited from Muslim communities who bring language and cultural competence to the Department.

On August 10, 2009, at a pre-Ramadan conference held at NYPD headquarters, over a hundred Muslim community leaders and activists had a chance to mingle and chat over coffee and pastries with numerous precinct, borough and department commanders, dozens of officers from community affairs, and well over a hundred young officers recruited from Muslim communities in New York. When Police Commissioner Kelly addressed the group he emphasized the department's commitment to a safe Ramadan for Muslim New Yorkers. He also acknowledged for applause the Muslim officers present and praised the group saying that the

department respects their traditions. The Muslim communities, like any, want protection, especially from hate crimes, and the NYPD wants full cooperation in their surveillance of these communities to investigate radicalism. The pre-Ramadan Conference and events like it are efforts to cultivate relationships of mutual reciprocity and trust between police and Muslim residents of the City.

However, even at that overwhelmingly positive conference, talk among participants and even a direct question to Commissioner Kelly, raised concerns about police operations. In particular was the fear that informants working for the police would cross the line from informing into entrapment. This was the argument of the lawyer of Shahawar Matin Siraj, a 23 year old Pakistani immigrant who was sentenced to 30 years for plotting to blow up a New York subway station in 2004. James Elshafay, his co-conspirator, a 19 year old recognized as mentally unstable, received 5 years. Siraj claimed the plot was cultivated by Osama Eldawoody, a 50 year-old paid police informer who encouraged violence and said that he had international jihadi connections and that he could provide weapons (Rashbaum 2006, 2007). Because the men never had explosives, a timetable for an attack, or a connection to a terrorist group, public critics called it a set-up. Muslim community leaders, therefore, want assurance that troubled youths who pose little danger, like Siraj's and Elshafay's families claimed them to be, will be easily entrapped by digitally recording their angry, violent and stupid words.

## Conclusions

As the opening vignette describes, the terrorist attack on 9/11 that killed over 3000 and destroyed the World Trade Center, also traumatized the individuals who survived it. This traumatic disruption to people's sense of security was a potential crisis of leadership for the state. While armies were mobilized to retaliate overseas, federal and New York City governments had to respond publically to reassert the perception of control and safety, and they had to prevent another future attack. Federal legislators responded by granting more policing powers, and federal law enforcement responded with widespread arrests of immigrants and high profile prosecutions of leading Islamic charity personalities.

The NYPD responded with a wide variety of tactics. Some seemed like displays of force to visually reassure the public, like the appearance of heavily armed Operation Hercules. Other tactics have raised vigorous objections from civil libertarians, such as the investigation and mass arrest of anti-War protesters in 2003 and Republican National Convention protesters in 2004, and a case of suspected entrapment in 2004. On the other hand, the NYPD has consistently reached out to engage Muslim American communities by consulting with community based organization leaders, recruiting young Muslim adults into the police department,

and engaging in a growing number of public rituals of solidarity. Commissioner Kelly led an organization of municipal police leaders to oppose the Bush administration's attempts to push local police to enforce immigration law. In these ways, the behavior of the NYPD stands in very favorable contrast to the broad and harsh actions of the federal government.

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## Law Enforcement and Counter Terrorism in Post-9/11 Germany

*Gad J. Bensinger*

### **Abstract:**

The low priority given to surveillance of suspected Islamic extremists in Germany before the September 11 attacks in the United States, coupled with Germany's fragmented and decentralized structure of law enforcement, contributed to the failure of the German intelligence services and the police to prevent the planning of the 9/11 attacks by what is now known as the Hamburg terrorist cell. Consequently, in the aftermath of the attacks on the World Trade Center and the Pentagon, the shocked and embarrassed German government enacted anti-terrorist legislation that provided greater freedom to law enforcement to act against suspected terrorists. In Germany, as in some other countries, the war on terrorism has aroused opposition by some who regard the new policies to be threatening civil liberties. Among other things, this article discusses the organizational structure and mission of Germany's major law enforcement agencies, as well as shifts in policy guidelines and the investigative priorities undertaken to enhance the ability of the authorities to counter terrorist threats in Germany. The article reviews some multi-lateral and unilateral actions taken against terrorism. Though no major terrorist attack has occurred in Germany, the article highlights some past potential deadly attacks such as the one by the Sauerland cell, and ongoing threats to the country's domestic security, intensified by recent threats made on the Internet and via videos.

### **Keywords:**

Germany, Terrorism, Law Enforcement, Sauerland Cell, Al Qaeda

### **Introduction**

Following the September 11 attacks on the World Trade Center and the Pentagon, Germany was shocked and embarrassed to learn that 3 of the 19 hijackers along with at least 3 other men believed to have planned and plotted the attacks on New York and Washington, belonged to an Al Qaeda terrorist cell that operated freely out of a southern suburb of Hamburg, Germany.

The fact, however, that Germany was used by Al Qaeda as a base of operations to launch terrorist attacks should not have come as a great surprise. As pointed out by Rohan Gunaratna (2002) in his book, *Inside Al Qaeda: Global Network of Terror*, Germany had been a center for “terrorist propaganda, recruitment, fund raising, investment, procurement and shipping” (p.129) for a long time. Germany's intelligence agencies had warned that radical Islamic organizations were taking advantage of their presence in the country to support terrorism, yet no German intelligence agents were planted within Germany's Moslem community before September 11 (Baer, 2002).

Because of its Nazi past, after World War II, Germany decentralized its police and created a constitutional and democratic political system that emphasizes the right to privacy and other constitutional protections analogous to the one enjoyed in the United States. Consequently, new directives giving more power to law enforcement agencies are viewed by most Germans with suspicion. It is now evident that the low priority given to surveillance of Islamic extremist before September 11, coupled with Germany's fragmented and decentralized structure of law enforcement, contributed to the failure of the intelligence services and the police to prevent what the German magazine *Der Spiegel*, in a lead article, referred to as Pearl Harburg (Brinkbaumer et al, 2001).

This article sheds some light on Germany's post-9/11 policies and efforts to counter the threat of international terrorism within its borders without damaging its democratic principles.

### **The Structure of Law Enforcement**

Because of its Nazi past, law enforcement powers in Germany, before and after unification, were intentionally fragmented and decentralized to prevent the reemergence of a centralized secret police such as the Gestapo. Consequently, under Germany's federal system, each of its 16 states (*Länder*) controls its own police force. Each state has its own State Office of Criminal Investigations, responsible for investigating criminal offenses and collecting data. In each state, the police are further decentralized into municipal police forces called *Schutzpolizei* (uniformed police responsible for patrol, preliminary investigations, etc.) and *Kriminalpolizei* (detectives). The *Kriminalpolizei* is subordinated in each state to that State's Office of Criminal Investigations.

On the federal level, Germany's Constitution (Basic Law) provides for federal law enforcement responsibilities that are vested in the Federal Ministry of the Interior (*Bundesministerium des Innern*), headed by the minister of the interior. In the aftermath of 9/11, one of the major tasks, if not the major task, of the minister of the interior is to formulate and articulate the country's antiterrorism policies. Assisting the ministry in carrying out this task are the following federal law enforcement agencies:

### **The Federal Criminal Police Office (*Bundeskriminalamt*), known as the BKA.**

This is Germany's central agency for domestic investigations. The BKA by law carries out its law enforcement responsibilities in "partnership" with the state police forces. But it may investigate cases only when requested to do so by a state

police agency or in cases involving two or more states. Also, in special cases, at the direction of the federal prosecutor, the BKA may be ordered to investigate cases of federal interest. As such, the BKA investigates criminal activities related to terrorism, extremism (including neo-Nazis), espionage, and financial crimes. New post-9/11 counterterrorism measures are enhancing the BKA's power. For example, according to the federal minister of the interior, draft legislation approved by the German government on June 4, 2008, "adds to the Act of the Federal Criminal Police Office all the tools the BKA needs for its new task of preventing threats arising from international terrorism" (*Welt Online*, June 4, 2008).

### **The Federal Police (*Bundespolizei*), known as BPOL**

Reconstituted as the Federal Police in 2005, and recently reorganized, this force is responsible for border protection, railway policing and aviation security. Among other things, it may assist state police forces, when so requested. The Federal Police now also houses Germany's famous counter-terrorism elite unit known as the GSG-9. Created in 1973, as a result of the 1972 Munich Olympics fiasco in which 11 Israeli athletes were murdered by Palestinian terrorists, this unit has been deployed in several rescue operations and missions still shrouded in secrecy.

### **The Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*), known as BFV**

Domestic intelligence gathering is vested in the BFV, whereas traditional police responsibilities, as already discussed, are carried out by the states and the BKA.

### **Directorate-General P within the Federal Ministry of the Interior: Police Affairs, Counterterrorism.**

Directorate-General P consists of the Directorate of Police Affairs and the Directorate for Counterterrorism. Among other things, the Directorate-General P oversees the BKA and, in matters related to extremism and terrorism by foreigners, also the BFV. The agency also houses the Office of the Standing Conference of State Interior Ministers, which coordinates federal and state domestic policy.

### **The Federal Intelligence Service (*Bundesnachrichtendienst*), known as BND**

Akin to the CIA, the BND is responsible for foreign intelligence gathering. A specialized division within the BND was created in 2001 to fight terrorism and organized crime. Created in 1956, the agency reports directly to the Federal Chancellery in Berlin. At the present time, the BND is being reorganized and new headquarters are being constructed in Berlin.

## Guiding Principles for Germany's War on Terrorism

Based on German government officials' pronouncements and Germany's military commitments in foreign lands, it is clear that the overarching principle guiding counterterrorism policy is based on soft rather than hard power. The government is, of course, obligated to protect its citizens, yet it tries to do so rationally without alienating Germany's Muslim population and playing into the terrorists' hands.

### Guidelines for Domestic Security:

The following is a brief summary of official views and principles regarding the danger of terrorism, gleaned from recent statements issued by the Federal Ministry of the Interior:

- The German people have the right to live “a free and secure life” (BMI, May 15, 2008). It is the duty of the state and its representative agencies to secure this fundamental right and, when called for, to employ means to counter the danger of extremism. Islamic terrorism constitutes the gravest threat facing the nation. Germany has become more than just a staging point for terrorists, “it is now open to operations by Islamic terrorists” (BMI, May 15, 2008).
- The threat of terrorism is real for the number of active Islamic organizations in Germany has grown to 30 in 2007. They include such organizations as The Egyptian Muslim Brotherhood (1,300 members), Palestinian Hamas (300 members), Lebanese Hezbollah (900 members), the Turkish Milli Gorus (28,000) and others (*Welt Online*, December 26, 2007).
- Domestic security is based on federalism and is mainly the responsibility of the states and the state police agencies. The states know best their respective specific needs and the most effective means for solving problems (BMI, June 30, 2008).
- International terrorism has ushered in a new reality. Unlike any other phenomenon, terrorism blurs the distinction between internal and foreign security. Consequently, there exists a need to understand the asymmetrical means employed by terrorists and fight it domestically, and in foreign countries such as Afghanistan. This requires a multilateral rather than a unilateral approach (BMI June 30, 2008).
- Military means are insufficient to fight terrorism. Other means must include improved law enforcement (especially intelligence), as well as political, economic, judicial and legislative approaches (BMI, June 30, 2008).
- The key to fighting terrorism is prevention, and effective prevention depends on gathering information and sharing of intelligence. Still, it is necessary not to

confuse uncontrolled collection of data with the needs of security. In a democratic society, a balance must be found to strengthen the means leading to greater security and the right to privacy. However, in some unique situations, some “red lines” must be crossed. To be realistic, when terrorists use the internet and modern technology to advance their cause, the security apparatus must also be given new instruments such as the capability to conduct online searches (BMI, May 19, 2008).

- Radicals in Germany must be isolated. Thus, society must act against the social circumstances that give rise to recruitment of potential terrorists and alleviate the sense of grievance and alienation that often feeds the radicals. Consequently, efforts must be made to better integrate the immigrant population and counter youth violence (crimes committed by 14-18 year-olds rose from 0.7 percent in 2006 to 4.9 percent in 2007) by opening up communications between the police, schools and youth organizations (BMI, May 19, 2008). Moreover, means must be found to better communicate with the country's Muslim population. (Regarding the latter, the first German Conference on Islam, “Muslims in Germany-German Muslims,” intended to improve the religious and social integration of the approximately 3 million Muslims in Germany, opened in Berlin in summer 2008.)

## **Multilateral and Unilateral German Initiatives in the War on Terrorism**

### **Multilateral Action:**

#### *Military Cooperation*

Immediately after the September 11 attacks, Germany declared its solidarity with the United States and began supporting America's war on terrorism by taking several concrete military steps. In response to an American request for assistance in the global war on terrorism, Germany joined the United States effort by taking part in “Operation Enduring Freedom,” initially dispatching more than 1000 German troops to Afghanistan to fight the Taliban and help rebuild that country's police forces. Despite strong opposition to the war in Iraq, the German Parliament in 2004 reauthorized the deployment, but set a limit of 3,500 soldiers. More recently, under pressure from its NATO allies, the German government agreed to seek parliamentary approval to add another 1,000 troops to the earlier deployment. In this connection, however, it must be noted that Germany's aversion to fight wars has resulted in a policy that shelters the German troops in Afghanistan by keeping them in the Regional Command North, where they are engaged mainly in training the Afghan police and Army. Nevertheless, at least 25 German soldiers have died in Afghanistan (compared to more than 450 American soldiers). The German Navy, too, has been

partaking in “Operation Enduring Freedom” by patrolling the waters off the Horn of Africa and the Mediterranean Sea. A number of German warships and support vessels have been involved for several years in preventing Al Qaeda from using the sea lanes for smuggling weapons and moving terrorists from country to country. Also, along the East African coast, the German Navy has been conducting surveillance flights to track suspicious vessels.

### ***Financial Consideration and Cooperation***

Another important area in which Germany has been cooperating with the United States and other countries is the effort to combat money laundering by international terrorist organizations. Thus, for example, taking advantage of a law passed after the 9/11 attacks (see below), Germany has shut down some Islamic charity organizations linked to such terrorist organizations as Hamas and Hizb ut-tahrir. German law was also brought into line with the international requirements of the Financial Action Task Force on Money Laundering, making it possible for the BKA's Financial Intelligence Unit (FIU) to cooperate more closely with its counterparts in other countries (BMI, August 12, 2004).

Germany has also played an important role in getting the European Union (EU) to adopt measures against money laundering and coordinate antiterrorist policies among EU members. Thus, for instance, the EU has begun to monitor cash transactions across national boundaries and has created the position of an Anti-Terror Coordinator linked to a unit of the EU that meets in secret to assess potential terrorist activities in Europe. Related to Europe's greater awareness of the danger posed by terrorism, the EU and the United States have begun to overcome a long-simmering conflict that developed after the 9/11 attacks over the sharing of personal data, especially information related to people flying from Europe to the United States. As reported by *The New York Times*, in a statement issued on June 10, 2008, the United States and the EU declared that “the fight against international crime and terrorism requires the ability to share personal data for law enforcement” (Savage, 2008).

## **Unilateral Initiatives**

### ***Legislative and Judicial Action***

Following the 9/11 attacks, and the growing realization of its own vulnerability to international Islamic terrorism, the German government pushed through Parliament two important antiterrorism legislative packets, called “Security Packet” I and II. The newly enacted legislation made it possible for the German authorities to take concrete actions against religious organizations

used as fronts by extremist elements in Germany. Thus, a revised section (129B) of the German Penal Code eased restrictions on the police to act inside Germany against members of foreign terrorist organizations (such as Hamas) if they incite violence or pose a threat to the country's national security. The antiterrorist legislation also made it easier for law enforcement agencies to obtain electronic information and communications records from telecommunications companies and Internet providers. This legislation, of course, has raised deep concerns among German civil rights advocates who are ever so cautious over privacy issues. There is an ongoing debate in Germany between advocates of more stringent measures to protect national security and those who fear that such measures only weaken the German democratic system. Most recently it surfaced once again in reference to the government's quest to monitor the computers of suspected terrorists and their sympathizers. The specific surveillance technique at issue involved the sending of e-mails with so-called Trojan horses to a suspect's computer to make it possible for the nation's intelligence services to spy on that computer's activities. That particular surveillance technique was challenged before Germany's highest court, the Constitutional Court, which consequently ruled that the law enforcement authorities could indeed monitor the computers of suspected terrorists, but only if there is sufficient evidence of pending danger (BMI, February 27, 2008). On the other hand, shortly after, the same court limited the above mentioned law that allowed the government to collect data from telecommunications companies and Internet providers (BMI, March 19, 2008). Still, the German Parliament (*Bundestag*) on November 12, 2008 enacted an amendment to the BKA ACT (the so-called *BKA Gesetz*), which would authorize the BKA to tap telephone calls, conduct telecommunications interceptions at the source through remote searches of computer hard drives, as well as bug private homes to prevent an imminent threat. The latter power even goes so far as allowing bugging of a home of a third party (not a suspect) as long as there is reason to assume that the suspect himself is located on the premise (BMI, November 12, 2008). Since this new legislation would provide the BKA some concurrent constitutional powers already vested in the states, as of this writing, the new amendment still awaits approval by the upper chamber of the Parliament (*Bundesrat*). The controversy over the granting of additional police powers to the BKA continues to reflect the country's dilemma in finding a proper balance between national security needs and the cherished civil liberties enshrined in the German conscience after World War II. This issue is also overshadowed by internal politics as the Ministry of the Interior is controlled by the conservative Christian Democrats, and the Justice Ministry is under the control of the liberal partners of the so-called grand coalition, the Social Democrats.

## The Terrorism Information and Analysis Center

As already mentioned, German counter-terrorism policies are guided by the belief that the key to preventing terrorist attacks depends primarily on improved intelligence and greater coordination and cooperation among law enforcement agencies. To that end, the German government in December 2003 created the Terrorism Information and Analysis Center, which brings together 11 government departments and agencies for the purpose of exchanging information in real time, analyzing threats, and organizing timely response. At the time of the center's inauguration, the then minister of the interior declared, "With the intensified and expanding cooperation we are achieving a qualitative jump in the war on international terrorism (BMI, December 14, 2003).

## Terrorism-Linked Police Raids

### *The Sauerland Arrests*

Throughout Germany there have been numerous police raids mounted in recent years in an effort to preempt any terrorist attacks. One of the most successful raids, and the one most talked about by German officials and politicians, occurred in September 2007. Known as the Sauerland (so named after the geographic location) arrests, this particular operation, in which some 600 officers raided 41 houses and apartments in several German states, foiled planned car bomb attacks that could have been the largest and most deadly terror attacks in Germany. These large-scale attacks were aimed at several sites, mostly frequented by Americans, including military bases such as the Ramstein Air Base and the Frankfurt International Airport. Seized by the police were 12 containers of hydrogen peroxide, which when mixed with other chemicals, could produce a huge bomb or bombs more powerful than those used by terrorists in Madrid and London. Arrested were three men, two German citizens who had converted to Islam and a Turkish national. Another German of Turkish origin was later arrested in Turkey. Allegedly, those arrested had been trained in Pakistan by an Al Qaeda-linked group of terrorists. Reflecting relief among German officials, the German federal prosecutor, Monika Harms, at a specially called news conference, declared, "This is a good day for German security" (*Welt Online*, September 5, 2007). The most important raid of the entire operation, which yielded the explosives and the arrests, was mounted by the BKA and the GSG-9 in a remote village in western Germany. The Saureland arrests did not come as a complete surprise to the German authorities. Indeed, German officials had issued several warnings of a pending terrorist attack for some time. These officials, of course, knew that an elaborate investigation had been undertaken and that suspects were under



surveillance. The investigation included monitoring phone calls, observation of suspects, and even entry of the storage place of the containers of hydrogen peroxide and the successful replacement of some of these containers with less lethal material. The fact that the leader of the terrorist cell, Fritz Gelowicz, was a German convert to Islam and the others of Turkish origin has focused public debate and commentaries by politicians on the need for more stringent security (for instance, making training at a terrorist camp a criminal offense and giving the BKA enhanced powers to conduct surveillance) as well as improving the relationship with Germany's Muslim community, especially its large Turkish minority. Not surprisingly, shortly after the Sauerland arrests, it was revealed that the BKA has created a list of "890 names of German residents of Islamic background, who potentially constitute a threat" (*Welt Online*, September 5, 2007). Moreover, overall German anxiety was raised after the authorities released a new study about "Muslims in Germany," which indicated that the number of "Islamists" (followers of political Islam) in Germany needed to be revised from 32,000 (based on a 2006 BFV report) to 390,000 "Islamists who exhibit anti-democratic and anti-Western attitudes, and who wish to see the institution in Germany of *Sharia* law" (*Welt Online*, December 26, 2007). As of this writing, the Sauerland arrests continue to make news. Almost one year to the date after the original raid, German prosecutors formally charged the arrested men "with membership in foreign and domestic terrorist organizations and with plotting bombing attacks..." (Mekhennet, 2008), and the trial itself opened in Düsseldorf in late May 2009. Regarded as the biggest terrorism trial in more than 30 years, it is expected to last some two years (*Welt Online*, March 16, 2009). Furthermore, this past August the BKA arrested yet another individual suspected of having rendered material assistance to the Sauerland cell (*Welt Online*, August 18, 2009).

### ***Neu-Ulm and other Arrests***

In another major antiterrorist operation, the police raided more than a dozen suspected terrorist sites throughout Germany. The police arrested and charged nine Germans with radicalizing German converts to Islam and promoting Jihad. Those arrested are said to have been connected to the Multicultural House in Neu-Ulm, the same center frequented by Fritz Gelowicz, previously mentioned as the leader of the Sauerland cell (see above). In fact, fear of possible terrorist attacks prompt the German police and intelligence services to be extra vigilant and execute arrests. Thus, for instance, after the release of recent videos threatening retribution against Germany, the police took into custody, as a preventive measure, two suspected Al Qaeda supporters, obtaining a judicial order to hold them in detention until after the celebration of "Oktoberfest" (*Welt Online*, September 28, 2009).

## The Fear of Homegrown Terrorism

Daily life in Germany is affected by the fear that Germans (rather than Middle-Eastern looking persons) are being trained by Al Qaeda for possible suicide operations inside Germany. In September 2008, for example, the German authorities arrested a Turkish national suspected of having tried to recruit Germans to join the Al Qaeda terrorist organization for training during 2005-2007 (*Welt Online*, September 13, 2008). That fear has been reinforced by the disclosure that the CIA had informed the German authorities that two suspected terrorists (the German-born Eric Breininger and his Lebanese-born friend Hussein al-Malla) have crossed the so-called Green Line into Germany. Not surprisingly, a manhunt for the two was launched throughout the land (looking for the brown-haired and blue-eyed Breininger), with "Wanted" posters displayed in subways and other public places (*Welt Online*, September 27, 2008). Consequently, the head of the BND issued another warning that the threat of terrorism in Germany has taken on a "new dimension," namely, the threat of "homegrown terrorism" (*Welt Online*, October 24, 2008). More recently, as if to prove the point, a propaganda video was released in Germany showing a number of young German radicals in training, calling on German Muslims to join the Jihad (*Welt Online*, October 3, 2009). This latest video was preceded by several other videos and Internet messages threatening Germany with terror attacks. The first of these was a 30-minute Al Qaeda video message posted on the Internet on January 12, 2009, threatening Germany with terror attacks in Berlin and other cities.

A man issuing the threat who identified himself as "Abu Talha the German" was heard speaking in German, accompanied in the background by loud explosions and salvos of rapid gunfire. German intelligence experts were taking the threat very seriously, especially since the message was explicit and uttered in fluent German. According to the BKA, the video proved that Germany was becoming a target for Al Qaeda (*Welt Online*, January 24, 2009).

## Conclusion

In Germany, as in the United States and other democracies, the events of 9/11 have exposed domestic security-related weaknesses that, to some extent, have since been remedied by strengthening the ability of law enforcement agencies to monitor, through a variety of means, the activities of suspected individuals, and thus hinder or prevent looming terrorist activities. Like fighting crime, the challenge of terrorism in a free society strains the delicate balance between security and individual civil liberties. Though not comprehensive, this paper has highlighted the danger of terrorism in Germany and that nation's attempts to counter that threat by employing means that include both hard power (military and law enforcement) as well as soft power (cultural understanding and better integration).

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## **Police Reform in Pakistan A Victim of Foreign Security Aid?**

*Paul Petzschmann*

### **Abstract:**

My very brief note will provide a survey of recent police reform efforts in Pakistan. Since the beginning of police reform efforts under the Musharraf government, Pakistan has been confronted by a rapidly deteriorating security situation. There are a number of competing explanations for this, not all of which have received the scrutiny they deserve. While 'talibanization' has been the main focus of attention, there are also suggestions that the militarization of policing and the police reforms themselves are partly responsible for a break-down of law and order. These hypotheses deserve further scrutiny.

### **Keywords:**

Pakistan, Police Reform, Security

### **The Institutional Context**

According to the Constitution of Pakistan, Authority over the Police is exercised concurrently by the central government and the four provinces. Yet these constitutional provisions do not fully correspond to reality on the ground. Policing in large swaths of Pakistan, in the Federally Administered Tribal Areas (FATA) and the Northern Areas, for example, is directed centrally through political agents and other executive figures. In addition, a plethora of military intelligence and para-military policing agencies constitute a parallel structure to the civilian security forces. Overall, these paramilitary forces, such as the Pakistan Rangers and the Frontier Corps are almost equal in number to regular police forces and are frequently deployed on internal security duty, most prominently during the Red Mosque Operation in Islamabad in July 2007 and in the city of Karachi but also in policing parts of Balochistan. These forces have been accused of drawing funding away from the provincial police.

Civilian security forces Pakistan number only about 350.000 for a population estimated at 172 million. This amounts to one police officer per 477 citizens. The strength of 16 million city of Karachi, the commercial hub and notoriously crime-ridden city is only 29.000 police. Lahore, with its 10 million inhabitants only has 25.000 police. Mandated strength is rarely reached, especially in rural areas where much of the crime occurs. Police are frequently used for guard and VIP duty, further diminishing the effectiveness of an already overstretched force. Similarly, the human resource challenges to Pakistan's police force are well-known. Being a

police-officer is a profession with a low status compared to the army or the elite civil services corps, the District Management Group (DMG). Earning only around 8000 Rs a month (100 \$), low-ranking police officers are recruited from the poor and often illiterate sections of society. There is no standardised system of training, hiring, promotion and transfer.

This under-resourcing of the police as an institution and of police officers individually has obvious implications both for the policing as a public service. Firstly, due to shortage of funds it is common practice for the police to charge for their expenses. Allocations for investigations, for example, fall substantially short of actual costs. It is therefore not uncommon for the police to ask plaintiffs to make up the shortfall by, for example, providing money to pay for transportation of officers to and from a crime scene. Needless to say, this severely limits access to police services for the poor. Similarly obvious is the incentive for officers to engage in corruption. Several Transparency International Reports have characterised the police as 'the most corrupt institution in Pakistan.' A recent survey revealed that 59% people had paid bribes to the police.

### **Attempts at Reform**

Since 1947 successive governments have attempted to reform the Police. Under the Musharraf Government a new Police Order replaced colonial legislation and introduced a number of changes to the service. On paper at least, Pakistan has thus become the country with the most progressive police legislation in South Asia. The Police Order 2002 provided for increased parliamentary and judicial accountability, separation of management, human resource and investigative functions as well as civilian oversight of police operations. It provided for the establishment of oversight bodies at the national, provincial and district levels. Public safety commissions and Citizen-Police Liaison Committees (CPLC) were to ensure accountability to and liaison with the general public. Specialist branches were to fulfil the various investigative and operational functions, including research and development, education and training, auditing and accountability. A separate and independent prosecution service was to be created to provide additional checks on the police

Eight years on most of these reform initiatives are regarded as having failed, not least by members of the police services themselves. Several factors are cited as reasons for failure:

Frequent amendments by the Musharraf government in response to political pressures from the provinces saw planned accountability measures watered down. The compositions of the Public Safety Commissions were changed to reflect preferences of government while the plan for independent complaints authorities was dropped entirely.

Lack of political will and of resources meant that seven years after its promulgation most of the new institutions have not been created. Most rural areas have not constituted either public safety commission or CPLCs.

The simultaneous decentralization reforms, introducing elected officials at the local level have multiplied hierarchies and left local police officers more amenable to political interference by politicians.

Politically motivated transfers have removed reform-minded senior officers from their positions. As a result reform efforts have not been institutionalized.

The functional separation of the police service has largely failed due to lack of resources and resistance from inside the police who fear the loss of a 'unity of command' in police stations.

### **The Role of Security Aid**

The organizational disarray resulting from this ambitious attempt at reform could not have come at a worse time. Pakistan was and continues to be a primary focus of the US-led 'war on terror' and an important staging area for the ongoing conflict in Afghanistan. The police is not only confronting challenges presented by the lack of funds, equipment, training and organization but also growing extremism, social unrest and crime. Security has deteriorated throughout Pakistan with a spate of bombings, shootings, kidnappings and riots in the major cities. Parallel militias and courts have sprung up in Swat and parts of NWFP. Yet international efforts in the 'war against terror' have tended to regard the fight against extremism in Pakistan in military terms alone. Since 2002 the US has given 10 billion \$ in aid to Pakistan, almost none of which has been devoted to policing. A properly resourced police force with its own mechanisms for gathering and processing intelligence could provide not only a more effective but also a civilian answer to the challenge of extremism in Pakistan. Yet the militarization of security questions in Pakistan have arguably had a deleterious effect on efforts directed at the civilian security forces. Worryingly, there are signs of a donor withdrawal from police reform in Pakistan.

Despite of its intention to promote a withdrawal of the military from politics the economic aid envisaged by the United States as part of the 'Enhanced Partnership with Pakistan Act', does not signal any fundamental change in towards the role of the police. The Asian Development Bank (ADB), hitherto the largest donor in the area of criminal justice and police reform in Pakistan has refused to further engage in projects targeting the police service. In the future ADB will limit itself to the provision of equipment and infrastructure alone, although human resources management has been recognised as an important bottleneck for transforming the police into a more effective institution. The United Kingdom's Department for International Development (DFID) recently increased 718 million \$ aid allocation

for Pakistan does not so far include any substantial commitments to policing and police reform. A review of British involvement in Pakistan's police reforms, ongoing since 2006, has, to the author's knowledge, not been concluded.

## Outlook

These developments are worrying at the beginning of what many commentators have characterized as a crucial year for Pakistan's future. The onset of civilian rule in 2008 could have presented an opportunity for freeing the police services from the grip of the military. Yet Police reform has been held hostage by the indecision of the new government, the political deadlock between parties and power-struggles between the centre and the provinces. The Punjab and NWFP are bent on abandoning police reform altogether and re-introducing the colonial-style magistracy system. The reasons cited for this were often concerns about a break-down of law and order as a result of what was regarded the organizational turmoil of recent reforms. Even though many officers agree that reform is needed and that some of the objectives of the reforms remained valid, they resent the opportunities for interference that police reforms, combined with some of the decentralization measures, have afforded to local politicians. The police have become once again pawns in the power struggle between political parties at national, provincial and district levels. In addition, centre-province relationships are set to remain tense and could become the nail in the coffin for the Musharraf-era police reforms and indeed hamper any potential successor reforms.

What remains especially puzzling in light of the great international attention the security situation in Pakistan has received is that the reasons for the failure of reform and the situation of the police services on the whole have received little attention. For obvious reasons, no institution in Pakistan has received as much scholarly focus as the army. Recent years have seen yet more publications on an institution that continues to set the parameters for Pakistan's politics, even in times of civilian rule.<sup>1</sup> While the development of civil-military relations is of great significance, the specific role of the police in this equation has been largely neglected. There is little research on its historical development as an institution and its actual operation. The accusation that attempted police reforms and the further 'militarization' of security questions are themselves responsible for a break-down in law and order should give pause for thought. They should stimulate further questions about the relative merits of and trade-offs between military and civilian security sector reform as well as inquiries into the rationale for donor interventions

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<sup>1</sup>Shuja Nawaz, *Crossed Swords. Pakistan, Its Army, and the Wars Within*. Karachi: Oxford University Press, 2008. Mazhar Aziz, *Military Control in Pakistan. The Parallel State*. London: Routledge, 2008.



in this area. It is hoped that current and future contributors to the *Pakistan Journal of Criminology* will continue to address some of them and in this way stimulate a public debate about what 'security' means in the present context and what role the police can and should play in providing it.

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## The Idea of Terrorism in China

*Kam C. Wong*

### **Abstract:**

This research investigated an old political problem in a new cultural context: what is the idea of terrorism in China? Specifically, this research posed two inter-related research questions in search of an understanding of terrorism on Chinese soil: how did China conceive of terrorism in the imperial past? What is China's conception of terrorism in the communist present? A review of literature informs that there is very little research into and discussion of the historical roots or indigenous conceptualization of terrorism in China. This research is a first and tentative step to fill the literature gap. The research found that while the idea of "terrorism" (as understood in western terms) has no counterpart in China's past, China has treated "terrorist" activities as political violence, i.e. challenged to the ruler's mandate from heaven and disruption of cosmic order. It also finds that the contemporary PRC understanding of and attitude toward terrorism exhibited a remarkable continuity with the past, i.e. until very recently there was no terrorism law but counter-revolutionary crimes. Thus observed China, old and new, preferred to think about terrorism in more generic terms of political criminality, i.e. violent posing challenges to prevailing authority or dominant ideology; disrupting "mandate from heaven" of old and undermining "Marxism – Leninism – Maoism – Dengism" of new.

### **Keywords:**

Terrorism, Idea of Terrorism, Chinese Terrorism, Political Violence, Luan in China, Counter-Terrorism

"There has never been any consensus definition of terrorism."

Richard Betts

Director, Institute of War and Peace Studies

Columbia University (2001)

"That is to say when we look at terrorism as a problem we should be looking at it historically, dialectically and not be satisfied with "general concept" ("fanhau gainian") based on formal logic ("xingshi luoji").

Rong Hanxsong (翁寒松) (2004)

"China scholars should have their own definition for terrorism"

Wang (王逸舟 2002/01/23)

## Introduction

Terrorism is an aged old social problem and perennial political phenomenon. Some observed that the practice of terror is as old as civilization itself.<sup>4</sup> In the west, Greek historian Xenophon (cir. 431 – 350 BC) espoused the use of psychological warfare and employment of terror to intimidate the enemy populations and Roman emperors, such as Tiberius and Caligula, have used terror measures, such as banishment and execution, to discourage opposition to their rule.<sup>5</sup> In the east, Chin Shih Huang (259 - 210 B C.), first Emperor of China, has used draconian measures and collective punishment to instill discipline and secure his rule.<sup>6</sup> Michael Foucault lends his insight in explaining the effectiveness of specter of torture in inducing fear to discipline the body and control the mind:

On 2 March 1757 Damiens the regicide condemned 'to make the amende honorable before the main door of the Church of Paris', where he was to be 'taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds'; then, 'in the said cart, to the place de Greve, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds' (Pieces originales . . . , 372-4).<sup>7</sup>

Terrorism becomes a global phenomenon, international problem and public concerns only in the twentieth century, around 1960 with the rise of the IRA and PLA. The 9/11 terrorist attacked on United States was successful in making terrorism a global problem and public menace to be eradicated at all cause.<sup>8</sup> As declared by President Bush, a global war on terror has began:

"The attack took place on American soil, but it was an attack on the heart and soul of the civilized world. And the world has come together to fight a new and different war, the first, and we hope the only one, of the 21st century. A war against all those who seek to export terror, and a war against those governments that support or shelter them."<sup>9</sup>

Thus far the effort to rein in terrorism has suffered from a lack of common understanding of its nature and characteristics, causes and remedies.<sup>10</sup> International community lacks consensus as to what constituted terrorism, thus inhibiting sustain and effective international cooperation. The following dialogue by various U.N. representatives on international nuclear terrorism cooperation clearly and fully demonstrated the nature of the problem:<sup>11</sup>

ARIM MEDREK (Morocco): “In an attempt to complete the international legal framework against terrorism, the General Assembly had adopted resolution 59/46 aimed at pursuing negotiations on a draft comprehensive convention on international terrorism and on the suppression of nuclear terrorism. Regrettably, a lack of “authentic political resolve” had prevented the attainment of the necessary compromise on the two instruments....A main problem had been the issue of the definition of terrorism.”

ARÍA ÁNGELA HOLGUÍN (Colombia): “To achieve agreement on a universal concept of terrorism, it was necessary to focus on the purpose of the act and not to concentrate on the definition or description of its authors, who must be subject to punishment by law.”

EMINE GÖKÇEN TUĞRAL (Turkey): “speaking on behalf of the Organization of the Islamic Conference (OIC)...While terrorism could not be tolerated under any pretext, it was important not to lose sight of the moral duty to address the legitimate grievances caused by despair, resentment, ignorance and poverty...”

AILA TAJ EL DINE (Venezuela): “Three fundamental elements were necessary for completing work on a text, including a definition of State terrorism ...State terrorism undermined tolerance between peoples and nations and impeded the peaceful conflict resolution. It was necessary to distinguish between the legitimate struggle against foreign occupation and the right of people to self determination.”

MOHAMMED HAJ IBRAHIM (Syria): “The draft comprehensive treaty should fill the gaps left by previous treaties and should specify a clear definition of terrorism which distinguished terrorism from the legitimate struggle of peoples. No exceptions must be taken for military troops in the treaty, unless such actions were legitimate in accordance with the Charter and international law.”

CARL PEERSMAN (Netherlands): “on behalf of the European Union...It was high time to set aside debates on so-called State terrorism...The Union also agreed with the Secretary-General that the use of force by States was already thoroughly regulated under international law. In addition, the true meaning of the right to resist occupation must be understood; that could not include the right to spread terror in a population by deliberately killing or maiming them. The Union endorsed the Secretary-General's call for a definition of terrorism.”

A GOPINATHAN (India): “There could not be any justification for any act of terrorism. Despite the various measures, it had not been possible to stop the spread of terrorist networks around the world. ..The perceived differences and difficulties in arriving at a consensus definition should not be used as an excuse to delay or postpone a decision on the comprehensive anti-terrorism convention.”

From the above U.N. discussion, it is obvious that there is no universal definition of terrorism,<sup>12</sup> and the prospect of arriving at a consensus is slim. It vindicated the oft cited comment that “One man's terrorist is another man's freedom fighter.” Such a critique is best summed up by Noam Chomsky:

“It is important to bear in mind that the term “terrorism” is commonly used as a term of abuse, not accurate description. It is close to a historical universal that our terrorism against them is right and just (whoever we happen to be), while their terrorism against us is an outrage. As long as that practice is adopted, discussion of terrorism is not serious. It is no more than a form of propaganda and apologetics.”<sup>13</sup>

This saying while often denied as a cliché<sup>14</sup> and rejected as being too post-modernist;<sup>15</sup> is nevertheless well supported by history.<sup>16</sup> For example:

During the civil war, John Brown<sup>17</sup> murdered unarmed men in Kansas to avenge the killing of Northerners and killed innocent civilians at Harper's Ferry to arm the slaves.<sup>18</sup> He has this to say about fighting and dying for a cause:

“I believe to have interfered as I have done . . . in behalf of His despised poor, was not wrong, but right. Now, if it be deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children, and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I submit: so let it be done.”<sup>19</sup>

Brown was convicted of treason and hanged by the state of Virginia, but was later memorialized and immortalized by a grateful nation in an epic poem on the

Civil War by Stephen Vincent Benet: "John Brown's Body." The Union army soldiers of yesteryears and local boy scouts of today joined in chorus by campfires everywhere, centuries apart, and singing to the top of the lung and from the bottom of the heart: "John Brown's body lies a-mouldering in the grave, but his soul goes marching on. Glory, glory hallelujah."

Yasser Arafat,<sup>20</sup> the putative father of PLO, a terrorist organization, was charged with the cold-blooded assassination of U.S. Ambassador Cleo Noel. Salah Khalef (Abu Iyad), Yasser Arafat's deputy, responsible for the 1972 Munich Olympics rationalized such violent actions and terrorist tactics thusly:

"By nature, and even on ideological grounds, I am firmly opposed to political murder and, more generally, to terrorism. Nevertheless, unlike many others, I do not confuse revolutionary violence with terrorism, or operations that constitute political acts with others that do not."<sup>21</sup>

Arafat won a Nobel Prize award for peace in 1995.

Nelson Mandela<sup>22</sup> promoted the use of force to overthrow the apartheid South African government and was convicted of treason to be imprisoned for life on June 12, 1964. However, in 1993, Mandela was awarded the Nobel Peace Prize for, according to Mandela:

"We stand here today as nothing more than a representative of the millions of our people who dared to rise up against a social system whose very essence is war, violence, racism, oppression, repression and the impoverishment of an entire people."<sup>23</sup>

More recently, "The Taliban and Osama bin Laden were once called freedom fighters (mujahideen) and backed by the CIA when they were resisting the Soviet occupation of Afghanistan. Now they are on top of the international terrorist lists."<sup>24</sup>

Lastly, in the context of China, Mao Zedong used "guerrilla warfare" to topple the Nationalist (KMT) government<sup>25</sup> and established the People's Republic of China.<sup>26</sup> Mao legitimized the use of force and violence to achieve political – ideological end.<sup>27</sup> It was Mao who said: "The revolution is not a tea party."<sup>28</sup> In saying so, he made clear that the only determinant of political legitimacy is one of ultimate success or "survival of the fittest."<sup>29</sup> This is evident by the fact that U.N. reluctantly and belatedly came to accept China as the proper political sovereign of China, a full U.N. member, notwithstanding her blatant violation of U.N. charter.<sup>30</sup>

If we were to consult terrorism literature, we will find many definitions of terrorism.<sup>31</sup> There are as many terrorists groups<sup>32</sup> as there are explanations for their causes and justifications for their action in achieving statehood.<sup>33</sup>

For example, Schmidt and Youngman once cited 109 different academic definitions<sup>34</sup> of terrorism in their book *Political Terrorism*:<sup>35</sup> Brian Jenkins: "Terrorism is the use or threatened use of force designed to bring about political change."<sup>36</sup> Walter Laqueur: "Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted."<sup>37</sup> James M. Poland: "Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical."<sup>38</sup>

If the scholars, academicians and experts could not come up with a universally agreed and mutually accepted definition of terrorism<sup>39</sup> the policy, legislative, and administrative fellows could do no better, and certainly as confusing.<sup>40</sup>

Thus, the 1937 League of Nations Convention defined terrorism this way: "All 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."<sup>41</sup> The U.S. Code of Federal Regulations defined terrorism as "...the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives"<sup>42</sup> The United States Department of Defense defined terrorism as the "calculated use of unlawful violence to inculcate fear; intended to coerce or intimidate governments or societies in pursuit of goals that are generally political, religious, or ideological." The F.B.I. defined terrorism as: "Terrorism is the 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." The British Terrorism Act 2000, defined terrorism so as to include not only attacks on military personnel, but also acts not usually considered violent, such as shutting down a website whose views one dislikes. The 1984 U.S. Army training manual defined terrorism as: "Terrorism is the calculated use of violence, or the threat of violence, to produce goals that are political or ideological in nature."<sup>44</sup>

It appears that thus far, all we can agree on is that the definition of terrorism shared some common features. According to Schmidt and Youngman, they found

that the list of 109 definitions contained many recurring elements and repeated key words/phrases: Violence, force (in 83.5% of the definitions); political (65%); fear, terror (51%); threats (47%); psychological effects, anticipated reactions (41.5%); victims not target of violence (37.5%); intentional, planned, systematic, organized (32%); methods, strategy, tactics (30.5%).<sup>45</sup>

As observed, arriving at a shared understanding of terrorism is an impossible task.<sup>46</sup> As Walter Laqueur observes, “Even if there were an objective, value-free definition of terrorism, covering all its important aspects and features, it would still be rejected by some for ideological reasons.” It is difficult to define terrorism for a number of reasons: First, there are many parties who have a vested interest to either condemn or embrace the use of political violence to their advantage. There are weak states who are interested in suppressing political violence. There are strong states who wanted to purge political oppositions. There are emerging insurgency groups who promoted their brand of political ideology. There are established radical organizations that fought for universal human rights. Second, there are many different ideological schools and philosophical traditions, and still more competing political thoughts and moral perspectives which argued for the legitimacy and propriety of the use of violence to maintain order or promote justice.<sup>47</sup> All claimed “might makes right” or “end justifies mean”.

In the end, people who have come to embrace terrorism with certitude or fight it with conviction have to accept the fact that their views are never going to command respect by each other, as with the case of Palestine and Israel.<sup>48</sup> In this regard, they are very much like the blind people in John Godfrey Saxe (1816-1887)'s “The Blind Men and the Elephant”:<sup>49</sup>

It was six men of Indostan  
To learning much inclined,  
Who went to see the Elephant  
(Though all of them were blind),  
That each by observation  
Might satisfy his mind

...

And so these men of Indostan  
Disputed loud and long,  
Each in his own opinion



Exceeding stiff and strong,  
Though each was partly in the right,  
And all were in the wrong!  
(Emphasis provided)

John Godfrey Saxe insightful observation and perceptive comments at the end of the poem - “each was partly in the right, And all were in the wrong!” – cautioned against premature closure of the mind and blind rush to judgment. Instead it suggests the need for double up effort to investigate into different conceptions of and experiences with terrorism; preferably in different time, at different place and with different people.<sup>50</sup> The more elephant parts we touch and feel, the closer we are to “sensing” the truth.

This article took up John Godfrey Saxe's challenge in investigating into the idea of terrorism in China, past and present.

One clarification before we start. “Sensing” is used here out of respect to the origin text of John Godfrey Saxe. “Sensing” is also used because “terrorism” – as in killing of innocent people and striking up of fear – touched all of us as humans, whichever side of the debate we are on. Witness the noble cause state terrorism that was to be Hiroshima and Nagasaki.<sup>51</sup> Most, if not all of us, have “feelings” about terrorism before we start “thinking” about it. If asked, most people will reluctantly attest if not readily admit that their understanding of terrorism is underscored more by strong “feeling” than sharp “cognition” or cold “logic”. Thus, the saying: “I cannot tell you what terrorism is, but I know one when I see one.” It is important to recognize that as intellectuals or academics we are hardly beyond interests and certainly not without prejudice, still less emotion and feelings of one form or another. Here I do not mean that intellectuals are necessarily disposed to material interests (reflection requires stability and security), but they are certainly moved by more basic constitutional and visceral forces, e.g. truth, justice and betterment of human kind. Human beings are made up of hearts (feelings - sensation) and mind (logic - reason). Intellectuals are blessed with logical ability and trained in cognitive skills. They are less sure footed when coming to feeling or emotions, the “fussy” stuff. In the ultimately analysis, intellectuals “thinks”<sup>52</sup> not “feel” their way out of problems. The common people are different, they feel, not think into an issue. I thus use “feeling” to remind my “thinking” colleagues and “feeling” readers that there is a need to freely mix feelings with reasons in giving meaning to “terrorism”, or at

the very least take “feelings” into account when attempting a definition.<sup>53</sup> This approach to social inquiry vindicates claims of “insider” research (e.g. Convict Criminologists)<sup>54</sup> and “identity” scholarship (e.g. feminism) that research (findings) has more to do with the heart (feeling - values) than the mind (rationality - logic) and play into the welcoming arms of the post modernists, who championed individual and personal narratives in truth seeking than collective and objective understanding of the world we live. Simply put, true understanding of human affairs requires identification, motivation and interpretation, not logic alone.<sup>55</sup>

This article is divided into the following sections. After this brief “Introduction”, section II “Research Focus” states the questions posed by this research. Section III provides a comprehensive review of literature on terrorism in China. The review informs that while China of late and especially after 9/11 is very much interested in terrorism study, the corpus of research findings have focused mostly on how to deal with (international) terrorism, esp. separatist movement in Xinjiang. There is very little research into the conceptual roots and intellectual history of terrorism in China. This unexpected finding provides justification for this research. Section IV explains and expounds upon the “Research Approach” taken. It argues for the need to study terrorism in China from a local perspective and with indigenous conception. This approach necessitates the investigation into the origin, history and development of idea of terrorism in China; an approach adopted by this study. Section V: “Terrorism in Imperial China” offers a first of a kind historical look at how terrorism was conceived and received in China. It observes that while the idea “terrorism” (as understood in the west today) has no counterpart in China's past, China has treated “terrorist” (like) activities and criminality (with political overtone) most severely, as challenging to “heavenly mandate” (“tianming”) and disruption of “cosmic order” (“dao”). Section VI: “Terrorism in Communist China” explores PRC's thinking about terrorism since 1949. It found that PRC understanding has exhibited a remarkable continuity with the past, i.e. until very recently there was no terrorism law but counter-revolutionary crimes, suggesting China, old and new, preferred to think about terrorism in more generic terms of political criminality, i.e. violent challenges to dominant ideology, i.e. “mandate from heaven” of old and “Marxism – Leninism - Maoism – Dengism” of new.<sup>56</sup> The last section, Section VII: “Conclusion” offers a reflection on what have been learned and achieved with this investigation into China's conception, perception and reception with “terrorism”. It affirms the fact that a people's reception of and reaction to crime is very much determined by past history and influence by

current ideology. Terrorism as an anti-state political offence has long existed in China. Only that they were looked upon and dealt with differently.

### **Research Focus**

This research takes up the Saxe's challenge to investigate into China's conception of and experience with terrorism. It also addresses U.N. General Assembly Resolution 42/159 of December 7, 1987 standing concern: "the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism."

This research poses two inter-related research questions in searching for idea terrorism on Chinese soil: how does China conceive of terrorism in the past? What has China's idea with terrorism in the present? More simply, is it possible to develop an indigenous notion of terrorism in China,<sup>57</sup> or terrorism with Chinese characteristics.

### **Literature Review**

There is very little published research – in criminal justice, Asian studies, political science and law - over the subject matter of terrorism in China, and virtually none on conceptual definition and historical development.

A key word search (China, terrorism) of criminal justice electronic search engines<sup>58</sup> turned up three relevant items.<sup>59</sup>

In 2002, an anonymous author wrote about the up surge of terrorism and related arrests in Xinjiang China after 9/11: "Chinese police in the capital of the far western region of Xinjiang arrested 166 violent terrorists and other criminals in a crackdown on crime. The arrests were made between Sep 20 and Nov 30 in a three-month push to crack cases in the predominantly Muslim region."<sup>60</sup>

The next year, John Z. Wang published an article describing terrorism in Xinjiang China in more details:

"The Eastern Turkistan Islamic Movement (ETIM) was designated a terrorist organization by Afghanistan, Kyrgyzstan, China, the United States, and the United Nations in 2002. However, no systematic studies have been published on the new terrorist organization in Xinjiang, China. Using a case-study approach and interviews, this article attempts to provide information in terms of its historical evolution, related religious and ethnic issues, organizational agenda, activities, and role in the current international terrorist network. This article argues that better international cooperation

and the improvement of social and religious policies will help curtail activities of the ETIM.”<sup>61</sup>

Finally, in 2005, Mabrey confirmed the obvious – China was no longer insulated from terrorism, especially from separatists' attacks at high profile international events:

“The People's Republic of China has been well-insulated from the threat of terrorism, with less than 300 official terrorism-related casualties recorded in the last 10 years. However, the rise of religious separatist extremism in western China and China's role as host of the 2008 Summer Olympics in Beijing are making counter-terrorism a new priority for the Chinese security forces.”<sup>62</sup>

A key word electronic search (China, terrorism) of political science – Asian studies journals<sup>63</sup> turned up 566 articles. Very few of them are directly related to terrorism in China. A detail examination of these literature shows that the term “terrorism” started to appear with some frequency at the end of 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century, a time of great social turmoil<sup>64</sup> and political upheaval for China.<sup>65</sup> The subject matter of terrorism was brought up in relationship with dynastic rebellion, e.g. 1911 revolution,<sup>66</sup> domestic strives, e.g. banditry<sup>67</sup> and warlords,<sup>68</sup> civil wars, e.g. KMT vs. CCP,<sup>69</sup> anti-foreignism, struggles, e.g. Boxer rebellion,<sup>70</sup> and external wars, e.g. war of resistant against Japan.<sup>71</sup>

More recently, research in terrorism has shifted to exploring internal unrest, e.g. Xinjiang separatist movement,<sup>72</sup> international terrorism, i.e. multilateral approach (including China) in fight terrorism,<sup>73</sup> and global human rights issues, i.e. how terrorism fight raised human rights concerns.<sup>74</sup>

Finally, a key word (China, terrorism) search<sup>75</sup> of legal journals search turned up 256 articles of interest.<sup>76</sup> A careful examination of this corpus of legal writings turned up two articles that discussed in some length recent development of terrorism in China. Both articles were written by Matthew D. Moneyhon, a law student then (2002 - 2003). Both of them were devoted to the reporting of political development in Xinjiang, and with it the necessity to touch upon separatists' terrorist activities.

With “RECENT DEVELOPMENT: Controlling Xinjiang: Autonomy on China's "NEW Frontier," Moneyhon discussed terrorism in the context of independence and succession movement in Xinjiang. He observed that

notwithstanding violence acts and terrorism activities by Xinjiang separatists - terrorists, the only political settlement that was acceptable to China would be Constitutional "autonomy", not separate statehood, for the Uighurs which will eventually mean "modernization, sinification, and ultimately, integration into the greater Han framework."<sup>77</sup>

In "CHINA'S GREAT WESTERN DEVELOPMENT PROJECT IN XINJIANG: ECONOMIC PALLIATIVE, OR POLITICAL TROJAN HORSE?"(2003) Moneyhon set out to show that the PRC has been using economic development as a means to incorporate Xinjiang within its political fold:

"Viewed within the context of China's evolving minority policy, Go West looks more like the latest incarnation of Beijing's strategy to integrate and assimilate ethnic minorities into the fabric of greater China, than it does a serious economic development and poverty alleviation plan."<sup>78</sup>

All the above studies adopted a conventional (western) definition of terrorism in investigating terrorism in China. If we were to take up the added challenge of investigating China terrorism indigenously, i.e. infusing terrorism idea with local content and engaging in terrorism discourse within local context, we need to broaden the scope and deepen the reach of the literature search. Instead of basing the search for "terrorism" predominantly on pre-conceived conceptual categories and commonly accepted experiential labels, we need to branch out and dig deeper to look at "terrorism" from a Chinese indigenous perspective and as revealed by local grounded empirical data.<sup>79</sup> For example, how did the state, government, officials and public reacted to armed group challenges (bandits) and secretly organized criminality (secret societies) in imperial China.<sup>80</sup> This search strategy turned out to be much more fruitful and far more interesting.

Banditry was a serious social qua political problem in China.<sup>81</sup> Banditry took on political character when they directly challenged state authority in seeking political concession or indirectly questioned government legitimacy in seeking to restore cosmic order.<sup>82</sup> For example, in a May 1468 edict, the emperor wrote indignantly about the open challenge to his rule:

"Recently banditry in and around the capital has become rampant. Openly riding their horses in gangs of several dozen, at night they set fires, brandish their weapons, and plunder residents' goods. During the day, [they] intercept

the carts of those people who pass by, seizing their donkeys and mules. They even go so far as to take people's lives. Even though there are intendants charged with apprehending bandits, imperial soldiers from the warden's offices of the five wards, and patrolmen, they do not really try to capture the bandits; so that now they are totally unrestrained by fear and act outrageously.”<sup>83</sup>

Bandits (of all ages) in China were akin – in purpose, constitution, organization, methods - to modern day terrorism: they were oppressed by the government; they were anti-establishment (e.g. local gentry) and against government (e.g. local magistrate or emperor); they sought political change by violent means, e.g. redistribute wealth or return to Confucius state; they used terror tactics to induce fear, e.g. making traveling unsafe;<sup>84</sup> they were well organized, e.g. charismatic leadership with loyal followings.

In imperial China, secret societies were conspiring and organized groups that openly contested political legitimacy and secretly undermined government authority, with the use of violence and terror at the turn of the 20<sup>th</sup> century.<sup>85</sup> The most famous one was the Triad Society (or “Triads”) which was formed to “resist Qing, and return to Ming” (“fan Qing, fu Ming”). By conventional standard, secret societies were consummate terrorist groups. Indeed, they were enlisted by both Sun to sabotage the Qing dynasty and used by Chairman Mao to subvert the Nationalist government.<sup>86</sup>

What have we learned from this literature search about for conception of terrorism in China?

There was very little serious research into terrorism in China as a domestic problem and domesticated concept.<sup>87</sup>

To look at terrorism as a domestic problem is to recognize that terrorism, as an existential<sup>88</sup> phenomenon<sup>89</sup> and socially constructed<sup>90</sup> experience, is to observe that terrorism is experienced subjectively and conceived collectively. It cautions against taking for granted how (Chinese) people think, feel, believe and act towards terrorism, still less its history, culture and conditions.

To investigate terrorism as a domesticated issue is to research into how terrorism, as an imported idea, is given meaning anew in China. China “terrorism” research to date has not seen fit to question the appropriateness and utility of applying conventional (western) idea of terrorism to understand associative terrorism experience in China.

## Research Approach

Comparative legal scholars and cultural anthropologists have long observed and frequently suggested that in comparing phenomenon across culture there is a need to be sensitive to temporal-cultural-contextual differences between conceptual categories for comparative purposes.<sup>91</sup> Contemporary (western) concepts<sup>92</sup> have very little utility in describing and understanding traditional (non-westernized) society.<sup>93</sup> As one African legal scholar observe:

To the extent that legal positivism claims to be a universally valid and applicable theory, no doubt, its credibility would be substantially diminished, if it can be shown to be either incapable of providing an adequate description of, or of responding adequately to, the peculiar jurisprudential experiences and needs of certain cultures, or, to be peculiarly susceptible to morally undesirable consequences, when put into practice in certain cultural milieu.<sup>94</sup>

The first challenge in any comparative study is to answer the most basic and first order question; i.e. what to compare or finding a comparable “unit of analysis”. This entails the breaking down of conceptual boundary of subject matter to be compared, here deconstructing idea of terrorism into its constitutive parts in order to understand its reach and scope as a logical construct and denotation and connotation as an experiential label.<sup>95</sup> Take the idea of comparative law as an example. The modern idea of law – positive, written, formal, coercive, political - has no counter-part in primitive society.<sup>96</sup> For example, Austinian concept of law found different expression in historical Indian<sup>97</sup> and practice of law manifested differently in traditional Chinese culture.<sup>98</sup>

Terrorism as a manifestation of political violence in different time and place adopts different names, takes on various shapes, evokes distinctive sentiments, attracts disparate reactions, elicits divergent responses, and results in differentiated assessment in different culture and times. As comparative scholars we are interested in finding functional equivalences<sup>99</sup> of the western concept of terrorism in China context. Professor Igor Stramignoni observed thusly:

The basic methodological principle of all comparative law is that of functionality. .. the legal system of every society faces essentially the same problems, and solves these problems by quite different means though very often with similar results. The question to which any comparative study is

devoted must be posed in purely functional terms; the problem must be stated without any reference to the concepts of one's own legal system.”<sup>100</sup>

While all agreed that the term “terrorism” is new to China and imported from abroad, there is a great debate on whether there were “terrorism” (or terrorism like) activities in China, as we come to know the idea in the west and in the 20<sup>th</sup> century. This line of research requires us to deconstruct the concept of “terrorism” as a social construct and experiential label into its essential elements. What makes for “terrorism” and why is it important? If one were to pursue this line of inquiry, one invariably come to the inevitable conclusion that terrorism is objectionable because it is challenging to a political order, with terrorists demanding to speak to the political authority as equal sovereign, not subjugated citizens; with the use of force but not by appealing to (“authoritative”) reason. Indeed more often than not meaningful dialogue is not possible due to differences in values and divergent of interests, as reflecting completing paradigm and conflicting of ideology. Violence and terror was used as an instrumentality to resolve such irreconcilable conflicts in values and interests.<sup>101</sup>

### **Terrorism in Imperial China**

Until very recently, the term terrorism did not exist in China. Currently, the investigation, analysis, discussion and debate over terrorism has been pre-occupied with a contemporary and international terms of reference.<sup>102</sup>

This is not the case in historical China:

“Historical terrorist activities are not strictly speaking terrorism, and more appropriately not fitting with modern definition of terrorism. That is because at that time modern nation states has yet to appear. Thus it was impossible to concretely differentiate between organized “state” violence vs. terrorism. “The assassination of Qin emperor by Jing Ke”<sup>103</sup> is a good example. This kind of terrorist activities has clear political objective. But whether it was a government conduct or a “martyr”<sup>104</sup> kind of conspiracy, is very hard to decide. Due to the fact that at that time the people's object of loyalty could easily be changed, there was not strong and focused idea of nationalism. Nationalism was rarely the roots of terrorism. Except of religious violent activities, there was very few ideological<sup>105</sup> driven terrorism. The most common form (of terrorism) was for the princes and dukes<sup>106</sup> and ministers<sup>107</sup> to cultivate assassins to achieve the purpose of power struggle in attacking the opponents. There was a heavy dosage of



personal vendetta and very little political purpose. Also at that time the communication technology was very primitive and the status of the public was very low, except in cases of mass “clan” confrontation, there were very few terrorist activities directed at the common people. This is because it was much easier to cultivate terrorist atmosphere by assassinating the official and dignitaries.<sup>108</sup>

In order to understanding terrorism in China, we must first understand China's view on (gratuitous) violence and (cosmic) order in the way of things “dao”. In imperial China, all forms of gratuitous violence were frowned upon as immoral and destructive, i.e. unnatural and dysfunctional.<sup>109</sup> Violence was considered as contrary to human nature<sup>110</sup> and disruptive of the cosmic order.<sup>111</sup> Furthermore, the use of violence to challenge the Emperor regime, destabilize the state, harm the citizens, and disrupt social order was punished in the most serious manner. The emperor has an affirmative duty to restore the cosmic order (“tianming”) and in accordance with rule of nature (“dao”).<sup>112</sup> Conducts seeking to undermine the legitimacy or authority of the emperor, e.g. individual assassination, or disrupt the stability of the state, e.g. collective violence, were strictly prohibited, resolutely deterred, and severely punished.<sup>113</sup> This is particularly the case with alien governance and under barbarian rulers, e.g. Northern Wei, Northern Zhou, Liao, Jurchen Chin (1115 – 1231),<sup>114</sup> Yuan and Qing dynasty.

As crime against the state, terrorism as political violence took on radically different meaning in imperial China. In imperial China, political criminality (*zhengzhi fenzui*) was violence directed against the emperor, inducing fear and causing “chaos” (*luan*). Such kinds of violence were much feared by the emperors as being secretive and unpredictable. Emperor of Sung, Taizhong was reported to have said:

“ If there is no external threat (*waiyou*), the state must have internal trouble (*neihuan*). External threats are only at the border and can be protected against. However those who are treacherous (*jianxie*) have no form, as internal threats, they are much to be feared! The emperor should always pay attention and be aware of this possibility.”<sup>115</sup>

State historian, Au Yangxiu, who has written the an authoritative historical account of China – *Shiji* - after traveling cross the country twice has equated external threat by barbarians as those afflicting the skins and internal attacks by the hoodlums and traitors (terrorists) as those corrupting the internal organs (*fuxin zhi huan*)<sup>116</sup>.<sup>117</sup>

Throughout the centuries, Chinese emperors have spared no effort to prevent such fear:

“During the *Qin* dynasty, those who committed political crimes (*zhengzi fanzui*) against the emperor was punished at the minimum with death, most of them were punished with purging the clan. According to historical account, those who engaged in “*wei luan*”<sup>118</sup> (creating disorder) and “*wei ni*” (creating dissent)<sup>119</sup> are often torn apart by vehicles, before death they are subjected to “five punishment”<sup>120</sup>, then “*yi san zu*” (termination of three clan),<sup>121</sup> “*mei qizong*” (extermination of the ancestor), this often implicates thousands of households and tens of thousands of people. People who engaged in crimes of slandering (*feibang*) and heresy (*yaoyan*) against the emperor, must be punished with the most heavy penalty. Even those who disclosed the where about of the emperor must be severely punished with death.”<sup>122</sup>

Through the centuries and dynasties, political violence against the emperor took many forms, e.g. from regal assassination to civil uprising to destruction of royal temples, and comes from still many quarters, e.g. from deprived citizens to disaffected public to disillusioned intellectuals.<sup>123</sup>

However, the use of political violence against the emperor and officials while considered illegal and generated apprehension in the ruled, might be undertaken for justifiable reason and under the most exceptional circumstances, e.g. “*guan bi min fan*” (people rebel as a result of oppressive officials).<sup>124</sup> Thus, while official history might condemn individual assassins and collective violence, contemporary unofficial history and later historical records often lauded such acts as heroic and necessary, in disposing a tyrant, in venting anger of the people, in doing heaven's justice.<sup>125</sup> The issue of benevolence vs. malevolence of “terror” was ever present but rarely discussed in official history of the time.<sup>126</sup>

As to response to political violence, as early as the Spring and Autumn (*Chunqiu* 770-475 BC) and Warring States (*Zhan guo* 475-221 BC) periods, historical records described early form of specialized violence suppression officials called “*jin bu shi*” (violence suppression officials) whose functions are much like our anti-terrorists units today, i.e. control of violence, broadly defined.<sup>127</sup> Emperors took extensive precautions against assassinations and adopt draconian measures against collective violence, of one form or another. The imperial security system at the capital, much like that of the secret service today, made sure the emperor was well protected.<sup>128</sup> The comprehensive *baojia* system of the *Qin* dynasty and

the elaborate spy system during the Sung era made sure that the emperor was well informed of every plot against him.<sup>129</sup> Spy system in Nationalist government and National security office in ORC helped to keep the nation harmless by perpetrating their own brand of state terrorism.<sup>130</sup>

After this brief discussion of terrorism like political violent in imperial China, three challenging intellectual issues present themselves.

First, can “terrorism” as we come to know it be perpetrated by the state<sup>131</sup> in China?<sup>132</sup>

In China, “punishment” and “terror” was extended beyond the individual body to the corporate body, the blood family. This state sponsored terror was openly conducted and explicitly endorsed, and are most rational in design and functional in operations. The emperor wanted to punish and terrorize the family because: First, geographically (isolated villages separated by great distance), organizationally (agriculture society), socially (insularity of self-sufficiency) and morally (Confucianism), China practiced collective responsibility, with family, clan, community and nation as respective unit of accountability. Second, functionally, the family has been made the site of *de jure* and *de facto* site of education, supervision and control. Third, both moral and practical reason suggested that clan and family “deserve” to be punished for collective guilt; treacherous acts seldom went unnoticed and without support from intimate others living in close quarters with social and moral obligations to support each other. Fourth, revenge was expected and demanded of family members whose family members were aggrieved. Total annihilation of the blood family was considered prudent and necessary to lay to rest future threats to the emperor.

Second, can terrorism be perpetrated by “pure”<sup>133</sup> speech alone?<sup>134</sup> This line of inquiry suggested itself when we consider that in a learned society that was imperial China, the power of the pen and impact of the words on the people was enormous. Speech was strictly controlled and words were meticulously vetted. *Qin* burned all the books, while *Qing* prosecuted people for speech crime. Intellectuals were viewed with much suspicion. To the emperors dissenting intellectuals with a pen were as dangerous as a terrorists with a gun, and treated no less resolutely and severely, as annals of history clearly documented and research of today amply suggested.<sup>135</sup>

“The court, ever so sensitive to slights and expression of hostility to Manchu rule, decided to deal harshly with offenders. The purported author, Chuang

T'ing-lung, was dead, and so his father was arrested and thrown into a Peking jail, where he later died. When the case was closed in 1663, the father's and son's body was disinterred and mutilated, their families were bound over to Manchus as slaves, and their possessions were confiscated. A similar fate lay in store for all the scholars involved in preparing the history, the printer, and even some of the purchasers. Altogether seventy men were executed.”<sup>136</sup>

Third, the remaining theoretical – conceptual issue to discuss is whether all forms of violent challenge to state authority, directly or by proxy, were deemed to be “terrorist” in nature? In as much as the China emperor ruled his empire and govern his citizens by proxy and through the family, the family head assumes the honorific role and real functions of state, any challenge to the family head is a challenge to the emperor, symbolically and indirectly. Philip Kuhn has called this as “third realm”.<sup>137</sup> Another scholar has described it as “more or less government.”<sup>138</sup> They amounted to the same thing: government has cooped local community to rule themselves. Assault on or threat to the family power structure is treated every bit as serious as challenging the authority of the state, i.e. consider the ten most serious crimes.<sup>139</sup> By this logic, terrorist acts are not only those that threatened the state – emperor but also those who intimidated the clan - family - heads. Any disobedience to parents were severely dealt with by state law, family rules and social norms, and made an absolute offense.

### **Terrorism in Communist China**

As observed, the concept of “terrorism” is new to China, but the experience with “terror” is not. “Terrorism” as we come to know it in the West, as a discrete intellectual idea, scholarly concept, legal classification, cultural label or conventional referent, was alien to China. However, the use of “terror” as a political instrumentality was never questioned by the Party and the experience with “terror” is never too far from China consciousness as a nation and personal experience as collectives. Ever since the formation of the Communist Party in 1920s, CCP members were perpetrators and recipients of political terrors. KMT used terror tactics to purge the ranks of CCP. CCP resorted to terrorism – assassination and bombing – to intimidate KMT officials and destabilize the KMT government. More recently, the cultural revolution recalled French terror and “strike-hard” campaign qualified as state sponsored terrorism, in theory and practice.

According to the official and authoritative PRC “police encyclopedia”, the *Gongan baike quanshu*,<sup>140</sup> counter-revolutionary crime (*fan geming zui*)<sup>141</sup> is defined as: “Conduct which harmed the People's Republic of China with the purpose of over-throwing people's proletarian dictatorship and socialist system.”<sup>142</sup>

The PRC Criminal Law (1979) provides in Article 90 that “Conduct which is harmful to the People's Republic of China and done with the purpose of over-throwing the proletarian dictatorship and socialist system are all counter-revolutionary crimes.” Counter-revolutionary crimes include crime involving: (1) inciting people to resist and harm the implementation of state law and order and (2) use counter-revolutionary slogans, pamphlets and other means to incite others to over-throw the proletarian dictatorship and socialist system. (The PRC Criminal Law (1979) Article 102.)<sup>143</sup>

A exhaustive review of prior and existing counter-revolutionary laws, regulations, and directives is not informative on what constitute counter-revolutionary conduct beyond the fact it refers to speech or conduct which is intended to or in effect was harmful to the state's political order or challenge the established government, what terrorism is all about

As the police definition intimates, legal literature confirms and case studies<sup>144</sup> borne out, counter-revolutionary crimes are “intent” (in China “purpose”)<sup>145</sup> more so than a “conduct”<sup>146</sup> and “result” crime.<sup>147</sup> Thus, for the same harmful conduct, e.g. personal or property damage, the existence of counter-revolutionary purpose (*mudi*)<sup>148</sup> separates the crime vs. non-crime (*zui yu fei zui*<sup>149</sup>).<sup>150</sup> Collaterally, harmful conduct is used to demonstrate and prove the existence of counter-revolutionary motive (*dongji*) and purpose (*mudi*).<sup>151</sup>

For purposes of terrorism crime vs. non-crime analysis, counter-revolutionary crime covers more than conventional terrorist conducts when ALL criminal activities, not only violent ones, in pursue of counter-revolutionary purpose, e.g. distribution of anti-revolutionary propaganda materials, are covered. This literal and analytical “over-coverage” should not detain us for long. It is likely that as applied, most if not all counter-revolutionary crimes in China are covered as terrorist conduct. First, by law in order for a prosecution under counter-revolutionary law to be successful it must be proven that the impact of such conduct on the social (e.g. socialist economy) and political order (e.g. proletarian dictatorship) is other than *de minis*, i.e. there must be substantial harm. In such cases, the conduct being prosecuted is more likely to be disruptive and threatening. If not

if not even violent or damaging.<sup>152</sup> Second, proving a counter-revolutionary crime requires the demonstration of “harmful” purpose and intent. In most cases only violent conduct is likely to be prosecuted and convicted.<sup>153</sup> In fact, a comprehensive review of pertinent PRC Criminal Law provisions covering counter-revolutionary crimes show that most of them required the use of force to bring about damage to property, disruption to services, and harm to people.

Counter-revolutionary crime is covering less than conventional terrorist conduct since ONLY conduct with counter-revolutionary purpose, not all political crimes are covered. Take the case of holding a hostage to make a demand on the PRC government to purge corruption falls squarely within the ambit of contemporary definition of terrorist acts, i.e. using violence to change government policy and not topple the government. Thus, only SOME but not violent acts are deemed to be carried out against the state.<sup>154</sup>

Doctrinally, the most authoritative statement of the nature and treatment of political violence – from revolution to terrorism – can be found in an essay written by Mao:<sup>155</sup> ON THE CORRECT HANDLING OF CONTRADICTIONS AMONG THE PEOPLE.<sup>156</sup> The intellectual foundation of the “on contradiction” doctrine was that of Hegel's dialectics.<sup>157</sup> The doctrine has been applied to justified government draconian anti-crime measures at the expense of human rights concerns.<sup>158</sup> In “On Contradiction” Mao taught that are two kinds of contradictions (conflicts), one within the ranks of the people and the other between the people and the class enemy. The former can be resolved peacefully, i.e. education and punishment, the later cannot be resolved amicably without resort to force, i.e. war. Terrorism belongs to the second type of contradiction.

## **Conclusion**

This research began with an observation that the effort to treat terrorism as a uniform set of human experiences and a universal conceptual category ill serves the purpose of academic research in understanding terrorism – origin and development, causation and remedy, impact and implications - on foreign soil, here China.<sup>159</sup> In order to understand terrorism in China on its own terms, there is a need to investigate “terrorism” (like activities) in local (historical) context and with an indigenous cultural perspective. In practical terms, how “terrorism” originated indigenously and developed historically in imperial China. This entails the study of history, culture and above all else philosophy and in the case of

China, Confucius ideas and ideal; specifically, how China viewed order, violence and control? This has been the research focus and investigation approach of this first of a kind study.

This investigation shows that the concept of terrorism, as conventionally understood in the west, did not exist in imperial China. Western concept of terrorism was not able to adequately capture the essence and characteristics, fully account for the experience and discourse, and accurately communicate the specificity and nuance of “terrorism” like “political violence” in historical China. The idea of “terrorism” included more, e.g. state terrorism, and less, e.g. clan violence, it accentuate some aspects, e.g. terror on innocence, at the expense of others, e.g. terror on parents, and finally it is understood analytically and logically, i.e. the constitution of the violent act, more so than being appreciated intuitively and emotively, i.e. the total effect of the phenomenon on people, society, cosmos.<sup>160</sup>

Some of the inadequacies of conventional terrorism label in capturing China experience are summarized below:

First, as an agriculture society China sough order, stability and continuity, and above all else harmony.<sup>161</sup> Thus, Confucius ethics taught that conflicts are to be avoided and violence, condemned.<sup>162</sup> The former is a precursor of the second. The second is a consequence, re-enforcer and regenerator of the first. Both have a tendency of disturbing established social relationships (“wunlun”)<sup>163</sup> and if left unchecked rupture (“luan”) pre-ordained cosmic order (“dao”), which take years to established and still more time to rehabilitate. Thousand years of Confucius education was successful in fostering a culture, creating a custom and developing a personality that equate conflicts as “bad” and violence are “evil”, at a cognitive and emotive level. Thus, people were taught to avoid conflicts at all cost, even if they were in the right. Violence was found to be objectionable, however it was prosecuted (violence vs. threat vs. terror), whoever it was directed again (emperor, officials, parents, peers); whatever the impact (physical injury vs. psychological harm). There were few attempts to discriminate one type of conflict and violence from another. There was very effort to avoid conflict and suppress violence, individually, collectively and nationally. The focus is on maintain peace and order, not discriminating causes, e.g. for judging the state of “cosmic order”<sup>164</sup> and entitlement to “mandate of heaven”. Thus, emperor and officials were equally to be blamed for natural disasters as with human upheaval.

Second, like all other countries, old and new, east and west, political violence, of which “terrorism” is a species, did exist in China and in abundance,<sup>165</sup> i.e. assassination, banditry,<sup>166</sup> secret society activities<sup>167</sup> and peasant rebellion.<sup>168</sup> These

violent acts were found to be particularly odious because they were secretly organized and openly challenged the emperor's authority and legitimacy. To a Confucius scholar and by extension the sage ruler, they were acts of disloyalty and signs of chaos ("luan"); both affronts to the emperor's mandate to rule. Here again, it matters not how political violence was perpetrated, e.g. slandering vs. assassinating vs. rebellion. What matters was that the emperor's authority must be re-established, "luan" quelled and mandate from heaven restored.

Third, terrorism is the instrumental use and strategic employment of threat, violence or terror to achieve political – regime change or policy reform – objectives. Terrorism, as instrumental use of violence, has no place in Chinese ethical and jurisprudential thought. (1) The instrumental use of violence is frowned upon, thus treated as barbaric and animalistic, i.e. Chinese ethics has no principles of end justifying means.<sup>169</sup> The use of violence means to achieve political ends, make the perpetrator as morally apprehensible as the oppressive government, one attempts to remove. (2) The strategy use of violence will likely fail, in principle, if not in practice. The way to reform government and change policy is through adherence to Confucius ethic and with the use of moral reasoning, starting with appealing to higher moral principles and setting a good personal example. Fighting violence with violence is not recommended,<sup>170</sup> and not likely to succeed or prevail. People were taught not to bend to raw power but succumbed to sound reasons.

Fourth, one of the characteristics of terrorism is the indiscriminate killing of innocent people to promote fear and terror. This would not happen in imperial China for two reasons, one philosophical, the other practical. (1) Philosophically, killing indiscriminately or terrorizing innocent people was *ipso facto* not reasonable, however noble the cause, i.e. against "qing" and "li" in China.<sup>171</sup> (2) Practically, China was a non-democratic (autocratic) country,<sup>172</sup> there was no point in attacking civilians, since they have no say over the conduct of the emperor. Nor would the emperor yield in the face of slaughtering or terrorizing of his civilians for three reasons. It is morally wrong to negotiate on matters of governance principle. It is also morally wrong for the learned and educated ("zhunzi") to defer to and make concession with the not cultivated and uneducated ("xiaoren").<sup>173</sup> It is also unimaginable for the emperor – parent to negotiate with citizens – subordinate.



Fifth, there was no state terrorism in paternalistic China.<sup>174</sup> In accordance with Confucius teachings the state is build upon a family model.<sup>175</sup> The relationship between emperor/office and citizens/charges was, and still is, that existed between father and sons. Sons have to show respect and demonstrate loyalty to familial authority figures, from parents to officials to emperor. The family authority figures have a moral duty to take care of the best interest of the children, e.g. food, shelter and education. Thus when citizens challenge the state – from dissenting to resisting to rebelling – the state has the authority and duty to react in a most violent manner. This is not considered as state terrorism. This is viewed as state performing its moral duty. If the citizens misbehaved they can hardly blame the state for acting “violently” against their misconduct, seeking a return to the right path or “dao”.

Sixth, the concept of terrorism was also not able to make allowance for good “political violence”.<sup>176</sup> The only proper course of act and effective measure by the oppressed people against the abusive state (or none benevolence (buren) emperor) was to engage in righteous political resistance, from assassination to rebellion, in a last ditch effort to return to the country to the prescribed and preordained heavenly way. The aim was never to overthrow the emperor but to return the throne to proper “heavenly” authority. View in this light, there is righteous, if done right, acts of violence to correct violation of heavenly mandate and no illegal, still less immoral, terrorism act to disturb the cosmic order.<sup>177</sup> The “terrorist” act that challenges the emperor resulting in cosmic disorder is brought on by the emperor, manifesting heavenly displeasure and a sure sign the emperor having lost his mandate from heaven, in modern term denial of political legitimacy. In order for such resistance be recognized as legitimate, the resisters must be righteous in its cause and proper with means. Conversely, violence used to press the rulers to conform to the cosmic order and return to heavenly (benevolent) rule is deemed as understandable, if not indeed justifiable<sup>178</sup> and necessary.<sup>179</sup> Years later, Mao has justified such grassroots - peasant rebellions as examples of class wars; present day freedom fighters not terrorists. In the ultimate analysis, the use of violence for or against the emperor in China must be evaluated against a fix moral universe and universal ethical percepts, espoused by Confucian and enshrined within Confucian teachings.



interests and advance world peace.) Available at “Introduction to international politics” – Reading materials (《Guoji zhengzhi gailun》 Yuedu cailiao- 《国际政治概论》 阅读材料 <http://www.sis.pku.edu.cn/wanglian/reading/reading.htm>

<sup>4</sup> “HISTORY OF TERRORISM,” *terrorism files* [http://www.terrorismfiles.org/encyclopaedia/history\\_of\\_terrorism.html](http://www.terrorismfiles.org/encyclopaedia/history_of_terrorism.html)

<sup>5</sup>*Id.*

<sup>6</sup>**Zhu Shaohou, *Zhongguo gudai zhian zhidu shi*** (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.93.

<sup>7</sup>*Id.* p. 3.

<sup>8</sup>“The Global War on Terrorism: The First 100 Days” White House. <http://www.whitehouse.gov/news/releases/2001/12/100dayreport.html>

<sup>9</sup>*President George W. Bush, 10/11/01. Id.*

<sup>10</sup>David Trimble – Nobel Lecture, Oslo, December 10, 1998 (Human conflicts in general and terrorism in particular cannot be dealt with effectively until and unless people start to look at them realistically, not with an eye towards Platonic perfectibility and in pursuit of abstract values. Burke observed: "Circumstances give in reality to every political principle, its distinguishing colour, and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind.")

<sup>11</sup>See Action Needed on Two Draft Conventions this Year, Ad Hoc Committee on Terrorism Told, as It Begins Current Session, L/3081, 29 March 2005. United Nations, the Ad Hoc Committee on International Convention for the Suppression of Terrorist Bombings, adopted by the Assembly in 1997; and the International Convention for the Suppression of the Financing of Terrorism, adopted in 1999. <http://www.unis.unvienna.org/unis/pressrels/2005/l3081.html>.

<sup>12</sup>Kevin J. Greene, Terrorism as Impermissible Political Violence: An International Law Framework, 16 *Vt. L. Rev.* 461 (1992) ("Terrorism has 'no precise or widely accepted definition.'")

<sup>13</sup>Noam Chomsky was interviewed by Sabahattin Atas. Znet (October 1, 2003)

<sup>14</sup>TOM SCHNEIDE, “Is One Man's Terrorist Really Just Another Man's Freedom Fighter? *RightTurn* February 15, 2002 (“Or is it just simply another leftist assumption taken for granted in academia and the media that puts us on the slippery slope to anti-Americanism?”); Patrick J. Buchanan, “One man's terrorist is another

man's freedom fighter," *Information Clearing House* March 16, 2004 ("One man's terrorist is another man's freedom fighter. Or so it would seem.") George Cantor, "When is one man's terrorist another's freedom fighter?" *The Detroit News* February 16, 2002 ("So there are cases in which one man's terrorist may be another man's freedom fighter. But only when the freedom is real and not just a rhetorical lie.")

<sup>15</sup>Jonah Goldberg "A welcome blow for ineffective intellectuals," *Jewish World Review* April 25, 2003 ("One man's terrorist is another man's freedom fighter"; "it depends on the meaning of 'is'" ... These are the barnacles that build up on a society which takes postmodern thought seriously."). Stanley Fish, "Don't Blame Relativism CAN POSTMODERNISTS CONDEMN TERRORISM?" *The Communitarian Network* Volume 12, Issue 3, Summer 2002 (Postmodernists cannot explained the reality of 9/11 – senseless death and destruction – away, on account of different perception or relative value.) <http://www.gwu.edu/~ccps/rcq/Fish.pdf>

<sup>16</sup>See Peter Weiss "Terrorism, Counterterrorism and International Law," *Arab Studies Quarterly* 29 March 2002 ("What do Nelson Mandela, Menachem Begin, Gerry Adams and Yasir Arafat have in common? They all made the transition from being regarded as terrorists to being recognized as statesmen and peacemakers.")

<sup>17</sup>John Brown was an anti-slave activist who resorted to violence and perpetrated murders to achieve his goals. He participated in the Underground Railroad and established the League of Gileadites in 1851. The league protected escaped slaves from slave catchers.

<sup>18</sup>On October 16, 1859, John Brown raided the federal arsenal at Harpers Ferry, Virginia to arm the slaves.

<sup>19</sup>"John Brown" PBS

<http://www.pbs.org/wgbh/amex/brown/peopleevents/pande01.html> (Visited September 1, 2005)

<sup>20</sup>Arafat (Mohammed Abdel-Raouf Arafat As Qudwa al-Hussaeini) was born on August 24, 1929 to Palestinian parents. His mother died when he was five. He lived with his maternal uncle in Jerusalem, the capital of Palestine, then under British rule. While there he experienced first hand the oppressiveness and abusiveness of British rule. At seventeen Arafat started to smuggle arms to repel the British. At nineteen, he quitted the University of Faud I to fight the Jews. In 1964 Arafat became a full-

time revolutionary. The same year Palestine Liberation Organisation (PLO) was established. It was sponsored by the Arab States to free Palestine for the Palestinians. In 1969 Arafat took over the PLO and turned it into a radical and militarized organization. In 1988, at a special United Nations session held in Geneva, Switzerland, Arafat declared to the world that the PLO denounced violence, renounced terrorism and supported "the right of all parties concerned in the Middle East conflict to live in peace and security, including the state of Palestine, Israel and other neighbours. See "Yasser Arafat – Biography," <http://nobelprize.org/peace/laureates/1994/arafat-bio.html> (Visited September 1, 2005).

<sup>21</sup> Abu Iyad, *Without a Homeland* (Tel-Aviv: Mifras, 1983)

<sup>22</sup> Mandela (Nelson Rolihlahla Mandela) was on July 18, 1918 to Henry Mandela, Chief of the Tembu Tribe. Mandela qualified in law in 1942 and joined the African National Congress (ANC) in 1944. He has been fighting the ruling National Party's apartheid policies since then. The ANC was banned in 1960. In 1961, Nelson Mandela established Umkhonto we Sizwe, an armed wing of ANC to struggle against the government. On June 12, 1964, Madela and eight others were convicted attempting to overthrow the government and was sentenced to life imprisonment. "Nelson Mandela – Biography," <http://nobelprize.org/peace/laureates/1993/mandela-bio.html> (Visited September 1 2005)

<sup>23</sup> More recently and closer to home, President Bush embraced the Northern Afghanistan alliance as "our friends" in November of 2001 when only a decade ago (1992), they were killing thousands of civilians; raping and torturing still more. See "Bush's Definition of Terrorism Fits Northern Alliance Like a Glove; TV Interviewers Don't Notice," <http://www.commondreams.org/views01/1123-05.htm> (Visited September 1 2005).

<sup>24</sup> Sami Zeidan, "Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism," 36 *Cornell Int'l L.J.* 491, 492 (2004)

<sup>25</sup> Howard L. Boorman; Scott A. Boorman, "Chinese Communist Insurgent Warfare, 1935-49," *Political Science Quarterly*, Vol. 81 (2): 171-195 (1966).

<sup>26</sup> Allen Finn, "Distinguishing terrorism from guerrilla warfare," Queen's University – The Journal FRIDAY, NOVEMBER 21, 2003 - ISSUE 22, VOLUME 131. <http://www.queensjournal.ca/article.php?point=vol131/issue22/features/lead3>

<sup>27</sup>H. Edward Price Jr., "The Strategy and Tactics of Revolutionary Terrorism," *Comparative Studies in Society and History* Vol. 19 (1): 52-66 (1977); Andrew C. Janos, "Unconventional Warfare: Framework and Analysis," *World Politics*. Vol. 15 (4): 636-646 (1963). (China was accused of shooting here way to the U.N.)

<sup>28</sup>He also said: "Politics is war without bloodshed while war is politics with bloodshed."

<sup>29</sup>HARUN YAHYA, "The Real Ideological Root of Terrorism - DARWINISM AND MATERIALISM," ('Chinese socialism is founded upon Darwin and the theory of evolution.')

[http://www.islamdenounceterrorism.com/darwinism\\_materialism.html](http://www.islamdenounceterrorism.com/darwinism_materialism.html)

<sup>30</sup>C. G. Fenwick, "The Recognition of the Communist Government of China," *The American Journal of International Law* Vol. 47, No. 4 (Oct., 1953), pp. 658-661

<sup>31</sup>For an excellent discussion of the difficulties and issues with defining terrorism from a western perspective, see Steve Best and Anthony J. Nocella II, "Defining Terrorism." *Animal Liberation Philosophy and Policy Journal*, Volume 2 (1) (2004). For a discussion of definitional issues from an Islamic perspective, see *Ayatullah Shaykh Muhammad 'Ali Taskhiri* "Towards a Definition of Terrorism," *Al-Tawhid (A Quarterly Journal of Islamic Thought & Culture)*, Vol. V, No. 1 (Muharram 1408 AH/1987 CE). For a U.N. approach, see "Definitions of Terrorism," United Nations Office for Drug Control and Crime Prevention. For a discussion of the problems and impact of defining terrorism in the international arena, see Peter Weise, "Terrorism, counterterrorism and international law," *Arab Studies Quarterly (ASQ)* (Spring-Summer, 2002).

<sup>32</sup>The American Ku Klux Klan (founded in 1865), the Irish Republican Army (founded 1919), the Pakistani Lashkar-e-Toiba and Jaish-e-Mohammad, two pre-state Zionist groups: Irgun (founded 1931) and Lehi (founded 1940), the Basque ETA located in Spain and France (founded 1959), the Canadian Front de Libération du Québec (founded 1963), the Palestine Liberation Organization (founded 1964), the German Red Army Faction (also known as the Baader-Meinhof Gang, founded 1967), the Italian Red Brigade (founded 1969), the American Weathermen (founded in 1969), the Peruvian Shining Path (active since the late 1960s), the Palestinian Black September (founded 1970), the Ulster Defence Association (founded 1971), the Puerto Rico's Los Macheteros (founded 1976), Hezbollah (founded 1982), the Islamic Jihad (active in Egypt and Palestine since the late 1970s), the Hamas (founded 1987), Al-Qaeda (founded in 1988) and the Kosovo Liberation Army - (KLA). See *FBI Terrorism Report* (1993 – 1998), (1996), (1997), (1998).

<sup>33</sup>MATTHEW J. MORGAN, "The Origins of the New Terrorism," *Parameters*, Spring 2004, pp. 29-43. (The manifestation of terrorism and its conduct might be attributable to cultural, political and technological factors.)

<sup>34</sup>A 1988 Army report came up with 100 definitions for terrorism.

<sup>35</sup>Alex P. Schmidt and Albert I. Jongman et al., *Political Terrorism* (SWIDOC, Amsterdam and Transaction Books, 1988). "Encyclopedia: Definition of terrorism," <http://www.nationmaster.com/>

<sup>36</sup>Encyclopedia/Definition-of-terrorism (Visited September 1, 2005).

<sup>37</sup>*Id.*

<sup>38</sup>*Id.* See also Steve Best and Anthony J. Nocella II, "Defining Terrorism." *Animal Liberation Philosophy and Policy Journal*, Volume 2, No. 1, 2004.

<sup>39</sup>At least one scholar thought that not all is well when we relegate our moral responsibility and withhold our judgment in confronting terrorism. Ruth W. Grant, "Moral Judgment in Crisis, "Forum: Faculty Viewpoint." Duke University <http://www.duke.edu/web/forums/grant.html> (Visited September 1, 2005).

<sup>40</sup>For a partial list of U.S. government definitions, see "Terrorism" Definitions, Center for Arms Control and Non-Proliferation. <http://www.armscontrolcenter.org/terrorism/101/definitions.html> (Visited September 1, 2005).

<sup>41</sup>"Definitions of Terrorism" United Nation: Office on Drugs and Control. [http://www.unodc.org/unodc/terrorism\\_definitions.html](http://www.unodc.org/unodc/terrorism_definitions.html)

<sup>42</sup>28 C.F.R. Section 0.85

<sup>43</sup>"Definition of terrorism" <http://www.answers.com/topic/definition-of-terrorism>

<sup>44</sup>Boaz Ganor, "Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?" <http://www.ict.org.il/articles/define.htm>

<sup>45</sup>John Dugard, "International Terrorism: Problems of Definition," *International Affairs (Royal Institute of International Affairs 1944-)* Vol. 50 (1): 67-81 (1974).

<sup>46</sup>Terrorism Research Center (Visited March 10, 2002). <http://www.terrorism.com/terrorism/def.shtml>

<sup>47</sup>Bilal al-Hasan, "Who has the Right to Condemn Terrorism?" *Journal of Palestine Studies*, Vol. 15 (3): 150-151 (1986)

<sup>48</sup>John Godfrey Saxe (1816-1887), "The Blind Men and the Elephant"

<sup>49</sup>Defining Terrorism & its Root Causes: references to the definition of terrorism and the root causes as discussed in the UNGA debate "Measures to eliminate international terrorism", October 1-5, 2001, United Nations, New York *available at* <http://www.reachingcriticalwill.org/political/1com/terror.html> (last visited March 8, 2005)

<sup>50</sup>Patrick Buchanan, "Hiroshima, Nagasaki & Christian morality," *World Net daily* August 10, 2005.

[http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=45692](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=45692); Anthony Gregory, "Targeting Civilians at Hiroshima and Nagasaki," " August 6, 2004, *The Future of Freedom Foundation* <http://www.fff.org/comment/com0408b.asp>

<sup>51</sup>This I true at least in the West and certainly in post industrial age, with the verdict on post-modern era hanging in the balance but leaning distinctively to a "back to the future" kind of romanticism.

<sup>52</sup>This is to suggest that more primitive and non- western people, e.g. Chinese, "think" differently. "Comparative Philosophy: Chinese and Western," Stanford Encyclopedia of Philosophy <http://plato.stanford.edu/entries/comparphil-chiwes/> ("Chinese philosophy is "wisdom" literature, composed primarily of stories and sayings designed to move the audience to adopt a way of life or to confirm its adoption of that way of life. Western philosophy is systematic argumentation and theory." In order to move people to do the right thing, Confucius moral principles are rarely analytical and argumentative, still less stand alone ethical rules, detached from the real life and embraced as absolute propositions. Instead, moral principles and reasoning is applied in context to solve concrete life problems in the form of stories, making it realistic and pragmatic, the two characteristics of Confucius teachings. Confucius teachings were espoused to address real life human situations, e.g. should son avenge the father's death at the hand of the corrupt officials. In so doing, they have to come to terms with multitudinous considerations and myriad of concerns, in an interactive, dialectic and dynamic process, which inform all life – situational decision making, to come up with a best fit solution. No one principle dominates and controls, all considerations plays a part, if only considered and



rejected. Consideration of “feelings” and “emotions” are part and partial of the process, and never rejected outright as irrelevant. This makes Confucius principles take on a contingent quality and relative gloss. But as instructed by Wittgenstein language game [Ludwig Wittgenstein, *Philosophical Investigations*, tr. by G. E. M. Anscombe (Prentice Hall, 1999)], the contingency and relativity of Chinese “ethical rule games” are never too contingent or relative after all. At the end of the day and given sufficient practice, Chinese people know right from wrong and in turn what to do in like circumstances and similar situation.)

<sup>53</sup>In another context (debating right to die), the author concluded an essay with this observation: “When I look back, I still feel ambivalence; sometimes guilt. My human emotions drive me one way and my rationality takes me to another. Schooling has given me an analytical mind and critical spirit, but has taken away my innocence and makes me uncomfortable of emotions...Still in all, during these tormenting moments, I am glad to be able to find some genuine, if fleeing, solace. I am able to feel the pain of my mother and suffering endured by my fellow human beings. I am glad that I am a human being; living the vagaries of my feelings!!” “A Matter of Life and Death: A Very Personal Discourse,” *Georgetown Journal of Law and Public Policy* Vol. 1 (2): 339–361, 361 (2003).

<sup>54</sup>Jeffrey Ian Ross and Stephen C. Richards (Ed.). *Convict Criminology*. (Belmont, CA, Wadsworth, 2003. (Convict criminology assessment prison conditions and evince reform policy from an experiential point of view and with “feelings” and “emotion” to match.) “Reality” is never objective, still less without personal attachment - feelings. Stephen Richards, “Convict Criminology,” Faculty Lunch Seminar, December 7, 2005. College of Letters and Science, University of Wisconsin (Oshkosh).

<sup>55</sup>See author: “Peer Review of Academic Journals Revisited” (August 2005) (under review and on file.)

<sup>56</sup>Michael Lindsay, “Contradictions in a Totalitarian Society,” *The China Quarterly* No. 39 (Jul., 1969), pp. 30-40

<sup>57</sup>陶世龙, (需要认清具有中国特色的恐怖主义) <http://www3.nbnet.nb.ca/stao/sles143.htm>; 警惕中国特色的恐怖主义现代化) <http://www3.nbnet.nb.ca/stao/sles143.htm>

<sup>58</sup>ProQuest (August 25, 2005) - Criminal Justice data set. A confirmation with A web search of Wilson Web with keywords: China, terrorism yield 130 items, only 1 is a peer reviewed article related to China terrorism, i.e. John Z Wang, "Eastern Turkistan Islamic Movement: A case study of a new terrorist organization in China" (see above).

<sup>59</sup>Daniel Mabrey "Counterterrorism efforts in China," *Crime & Justice International* Vol. 20 (84): 29 (2005); John Z Wang, "Eastern Turkistan Islamic Movement: A case study of a new terrorist organization in China," *International Journal of Offender Therapy and Comparative Criminology*. Vol. 47 (5): 568 (2003); Anonymous, "166 terrorists nabbed," *Crime & Justice International*. Vol. 18 (59): 16 (2002).

<sup>60</sup>"166 terrorists nabbed," *Crime & Justice International*. Vol. 18 (59):16 (2002).

<sup>61</sup>"Eastern Turkistan Islamic Movement: A case study of a new terrorist organization in China," *International Journal of Offender Therapy and Comparative Criminology*. Vol. 47 (5): 568 (2003).

<sup>62</sup>*Id.* Abstract.

<sup>63</sup>Project Muse Political Science Journals (October 5, 2005).

<sup>64</sup>Elizabeth J. Perry, "Collective Violence in China, 1880-1980," *Theory and Society* Vol. 13 (3): 427-454 (1984).

<sup>65</sup>Ward Perkins, "The Failure of Civil Control in Occupied China," *Pacific Affairs* Vol. 12 (2): 149-156 (1939)

<sup>66</sup>Young-Tsu Wong, "Popular Unrest and the 1911 Revolution in Jiangsu," *Modern China* Vol. 3 (3): 321-344 (1977).

<sup>67</sup>R. G. Tiedemann, "The Persistence of Banditry: North China Plain," *Modern China* Vol. 8(4): 395-433 (1982)

<sup>68</sup>Diana Lary, "Warlord Studies," *Modern China* Vol. 6 (4): 439-470 (1980).

<sup>69</sup>Howard L. Boorman; Scott A. Boorman, "Chinese Communist Insurgent Warfare, 1935-49," *Political Science Quarterly* Vol. 81 (2): 171-195 (1966).

<sup>70</sup>Elizabeth J. Perry, "Collective Violence in China, 1880-1980," *Theory and Society* Vol. 13 (3): 427-454 (1984).

<sup>71</sup>Ralph Thaxton, "On Peasant Revolution and National Resistance: Toward a Theory of Peasant Mobilization and Revolutionary War with Special Reference to Modern China," *World Politics* Vol. 30 (1):24-57, 55 (1977).

<sup>72</sup>Tanner, Murray Scot, "China Rethinks Unrest," *The Washington Quarterly* - Volume 27, Number 3, Summer 2004, pp. 137-156

<sup>73</sup>David M. Lampton and Richard Daniel Ewing, *The U.S.-China Relationship Facing International Security Crises: Three Case Studies in Post-9/11 Bilateral Relations* (Washington, D.C.: Nixon Center, 2003), p. v, <http://www.nixoncenter.org/publications/monographs/US-ChinaRelations2003Intro.pdf> (accessed July 12, 2004). Cited at note 6, Wu, Xinbo "The Promise and Limitations of a Sino-U.S. Partnership," *The Washington Quarterly* - Volume 27, Number 4, Autumn 2004, pp. 115-126.

<sup>74</sup>Hoffman, Paul, "Human Rights and Terrorism," *Human Rights Quarterly* - Volume 26 (4): 932-955 (2004). (9/11 allowed PRC to suppress Xinjiang separatist aspirations of the Xinjiang-Uighur Autonomous Region (XUAR) and independence claims of ethnic Uighur community in the name fighting terrorism.)

<sup>75</sup>Lexis Nexis Academic Universe (October 7, 2005).

<sup>76</sup>Search function adjusted to China and terrorism appearing within same paragraph.

<sup>77</sup>Matthew Moneyhon, "RECENT DEVELOPMENT: Controlling Xinjiang: Autonomy on China'S "NEW Frontier," 3 *Asian-Pacific L. & Pol'y J.* 4 (2002)

<sup>78</sup>"Conclusion." In Matthew D. Moneyhon, "CHINA'S GREAT WESTERN DEVELOPMENT PROJECT IN XINJIANG: ECONOMIC PALLIATIVE, OR POLITICAL TROJAN HORSE?" 31 *Denv. J. Int'l L. & Pol'y* 491 (2003).

<sup>79</sup>H. Edward Price Jr., "The Strategy and Tactics of Revolutionary Terrorism," *Comparative Studies in Society and History* Vol. 19 (1): 52–66 (1977).

<sup>80</sup>Bandits were variously called *dao* and *zei*, see *Hanyu dacidian*, Vol. 7, pp. 1431-32 and vol. 10, p. 183 respectively.

<sup>81</sup>James W. Tong. *Disorder Under Heaven: Collective Violence in the Ming Dynasty* (CA, Stanford: Stanford University Press, 1991) and Elizabeth Perry, *Rebellion and Revolution in North China, 1845-1945* (CA, Stanford: Stanford University Press, 1980) and Esherick, *The Origins of the Boxer Uprising* (Berkeley, 1987), chapter 2.

<sup>82</sup>Martha Crenshaw, "The Causes of Terrorism," *Comparative Politics* Vol. 13 (4): 379 - 399 (1981) (Terrorism is the pre-meditated use pr threat of symbolic and low

level violence by conspiratorial group for political purpose against the state (p. 379))

<sup>83</sup>David M. Robinson, "Banditry and the Subversion of State Authority in China: The Capital Region During the Middle Ming Period (1450-1525)," *Journal of Social History* - Volume 33(3): 527-563, 529 (2000).

<sup>84</sup>The pirates in the 17<sup>th</sup> century use flags to announce their presence and induce fear in their victim, so that they can achieve their piracy without a fight (<http://www.kipar.org/piratical-resources/pirate-flags.html>). 1400s the bandits in China build up a reputation of ruthlessness to effectual their exploits. For example, the "whistling arrow bandits" (*xiangmazi*, commonly abbreviated to *xiangma*) attached bells to their mounts or using whistling arrows when they raided. Id. 529.

<sup>85</sup>Owby, David, "Recent Chinese Scholarship on the History of Chinese Secret Societies," *Late Imperial China* - Volume 22, Number 1, June 2001, pp. 139-158. David Owby, *Brotherhoods and Secret Societies in Early Qing China: The Formation of a Tradition*. (Stanford: Stanford University Press, 1996). Jean Chesneaux. *Secret Societies in China in the Nineteenth and Twentieth Centuries*, tr. Gillian Nettle. (Ann Arbor: University of Michigan Press, 1971); and Jean Chesneaux, ed., *Popular Movements and Secret Societies in China, 1840-1950*. (Stanford: Stanford University Press, 1972.)

<sup>86</sup>John C. DeKorne, "Sun Yat-Sen and the Secret Societies," *Pacific Affairs* Vol. 7 (4): 425-433 (1934); Stuart R. Schram, "Mao Tse-tung and Secret Societies," *The China Quarterly* No. 27: 1-13 (1966).

<sup>87</sup>Ever since the door of imperial China was plied open by foreign powers in the late 19<sup>th</sup> and early 20<sup>th</sup> century, Chinese people – from emperor to intellectuals to the public has find ways to come to terms with western technology, ideas and culture. Most of the efforts have been devoted to selective borrowing of useful foreign technology, without also wholesale importation of corrupting barbarian culture. Thus the idea that "foreign" ideas and "foreign" culture, which are not as advanced as the Chinese, must be domesticated and make to fit for Chinese use.

<sup>88</sup>A philosophy that emphasizes the uniqueness and isolation of the individual experience in a hostile or indifferent universe, regards human existence as unexplainable, and stresses freedom of choice and responsibility for the consequences of one's acts. *American Heritage Dictionary of the English Language, Third Edition* © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation.

<sup>89</sup>“Phenomenology: modern school of philosophy founded by Edmund Husserl. Its influence extended throughout Europe and was particularly important to the early development of existentialism. Husserl attempted to develop a universal philosophic method, devoid of presuppositions, by focusing purely on phenomena and describing them; anything that could not be seen, and thus was not immediately given to the consciousness, was excluded. The concern was with what is known, not how it is known. The phenomenological method is thus neither the deductive method of logic nor the empirical method of the natural sciences; instead it consists in realizing the presence of an object and elucidating its meaning through intuition.” *The Columbia Encyclopedia, Sixth Edition*. © 2002 by Columbia University Press

<sup>90</sup>Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. (Garden City, New York: Anchor Books, 1996) pp. 51-55, 59-61.

<sup>91</sup>See “3. How (and What) to Compare?” In MATHIAS REIMANN, “The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century,” 50 *Am. J. Comp. L.* 671, 689 - 690 (2002). See also RAN HIRSCHL, “The Question of Case Selection in Comparative Constitutional Law,” 53 *Am. J. Comp. L.* 125 (2005)

<sup>92</sup>The term “western” is not a scientific concept, capable of particular referent, without anchor, perspective, background and context. This does not deny the fact that “western” has received meaning, such as “occidental” or those of European abstraction and origin, i.e. Greek. The term “western” is not a geographic concept as much as it is a cultural, e.g. Greek civilization vs. barbarian culture, and economic, one, e.g. industrial national vs. developed countries. See “Western world” in *Wikipedia Encyclopedia* [http://en.wikipedia.org/wiki/Western\\_world](http://en.wikipedia.org/wiki/Western_world) The western influence on the world is un-mistakenly Greek, from philosophy of government (Plato, Aristotle), to science, e.g. mathematics, architecture (physics and geometry), astronomy and theoretical science.

<sup>93</sup>Friedrich Carl Von Savigny, *The Vocation of Our Time for Legislation and Jurisprudence* (tr. 1831). (He observed that legal institutions like art or music are an indigenous expression of a people's culture, and cannot be externally imposed or selectively transplanted.). P.C. Huang, "Theory and the Study of Modern Chinese History: Four Traps and a Question," *Modern China* Vol. 24 (2): 183-208 (1988).

<sup>94</sup>Jare Oladosu, "CHOOSING A LEGAL THEORY ON CULTURAL GROUNDS: AN AFRICAN CASE FOR LEGAL POSITIVISM," *West Africa Review* (2001) <http://www.westafricareview.com/vol2.2/oladosu.html>

<sup>95</sup>Susan Tiefenbrun, "Legal Semiotics," 5 (1) *Cardozo Arts & Ent. L. J.* 89-156 (1986) (discussing the application of semiotics to the law and the meaning of "deconstruction").

<sup>96</sup>Karl N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict in Case Law in Primitive Jurisprudence* (Norman, OK: University of Oklahoma Press, 1941).

<sup>97</sup>Oriental jurisprudence is build upon natural law foundation and thus cannot be compared with positivistic legal system. CATHERINE VALCKE, "Comparative Law as Comparative Jurisprudence - The Comparability of Legal Systems," *52 Am. J. Comp. L.* 713 (2004).

<sup>98</sup>William P. Alford, "Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law," *Modern China* Vol. 23 (4): 398-419 (1997).

<sup>99</sup>Ralf Michaels, "The Functional Method of Comparative Law," *Duke Law School Legal Studies Paper No. 87.* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=839826](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=839826)

<sup>100</sup>Igor Stramignoni, "The King's One Too Many Eyes: Language, Thought, and Comparative Law," 2 *Utah L. Rev.* 739, 750 (2002)

<sup>101</sup>Gary Gilley, "Postmodernism - Part 3," *Think on These Things* December 2002 - Volume 8, Issue 9 [http://www.svchapel.org/Resources/Articles/read\\_articles.asp?id=44](http://www.svchapel.org/Resources/Articles/read_articles.asp?id=44)

<sup>102</sup>"Literature review" Hu Lianhe (ed.), *Contemporary terrorism and response* (Dangdai shijia kongbu zhuyi yu duice) (Beijing: Dongfang Chubanshe, 2001), pp. 2 – 11.

<sup>103</sup>"Jing ke ci Qin Huang""荆轲刺秦王" Chinese folklore stories (Zhongguo mingjian gushi - 中国民间故事) <http://www.6mj.com/2004-1/2004115171547.htm>

<sup>104</sup>“sishi” “死士”

<sup>105</sup>“Yishi xingtai” 意识形态 PYCED 824R.

<sup>106</sup>“wanggong” 王公 PYCED 711R.

<sup>107</sup>“Dachen” 大臣 PYCED 124R.

<sup>108</sup>“古代恐怖活动不是严格意义上的恐怖主义，或者说不一定符合现代人对恐怖主义的定义，因为那时现代意义上的国家还没有出现，现代社会行之有效的一些国际准则更没有诞生，所以我们无法具体地将“国家”有组织的暴力与恐怖活动区分开。“荆轲刺秦王”就是一个明显的例子，这一恐怖活动具有明显的政治目的，但是它属于政府行为还是一种“死士”的阴谋，却难下结论。由于当时民众的忠诚目标较易变化，没有形成一个巩固而有凝聚力的民族概念，民族因素很少是恐怖主义的根源。除了一些宗教原因的暴力活动外，很少因为意识形态发生恐怖活动。通常的形式是一些王公大臣培植杀手以达到争夺权力、打击对手的目的，带有浓厚的个人色彩，一般政治目的渺小。另外，由于当时传播技术极端落后，且民众地位十分低下，除了大规模的“民族”间冲突外，一般不从事直接针对平民的恐怖活动，因为这样不如杀害达官显贵更能渲染恐怖气氛” See Zhang Jia Dong (张家栋), “Analysis of terrorism concept” (“Kongbu zhuyi fenshi” - 恐怖主义的概念分析) *International politics and international relations* (“Guoji zhengzhi yu guoji guanxi - 国际政治与国际关系) Vol. 3 (2003), Section 1: “Terrorism was born to practice during the development process of human political society” (“Kongbu zhuyi shengyu renleizhengzhi shehui shenghuo de sjjian - 恐怖产生于人类政治社会生活的实践过程)

[http://www.iwep.org.cn/html/kongbuzhuyidgnfx\\_chenjiadong.htm](http://www.iwep.org.cn/html/kongbuzhuyidgnfx_chenjiadong.htm)

<sup>109</sup>Michael Puett, “Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State,” *Harvard Journal of Asiatic Studies* Vol. 58 (2):425-479, 448 (1998).

<sup>110</sup>This is contra distinctive from Hobbes who assumed that the nature of man is self-interested and barbaric and the nature is chaotic and disorderly, where man eats man. Hobbes, *Leviathan* (1660), esp. Chapters XIII to XXIV. <http://www.orst.edu/instruct/phl302/texts/hobbes/leviathan-contents.html> In “Luxing”, it was said that people are born to peace only to have disorder imposed on them by evil doers. As a result the five punishments were established. *Book of History* (“Shangshu” (Henan Chubanshe, 1996), pp. 264 – 280 (“Minister Lu on Punishment”) See also Michael Puett, “Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State,” *Harvard Journal of Asiatic Studies* Vol. 58 (2):425-479, 448 (1998).

<sup>111</sup>Karen Turner, "War, Punishment, and The Law of Nature in Early Chinese Concepts of The State," *Harvard Journal of Asiatic Studies* Vol. 53 (2): 285-324 (1993).

<sup>112</sup>M. H. van der Valk, "The Revolution in Chinese Legal Thought," *Pacific Affairs* Vol. 11 (1): 66-80 (1938).

<sup>113</sup>Michael Puett, "Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State," *Harvard Journal of Asiatic Studies* Vol. 58 (2):425-479, 438–440. (1998).

<sup>114</sup>Jing-shen Tao, "The Influence of Jurchen Rule on Chinese Political Institutions," *The Journal of Asian Studies* Vol. 30 (1): 121-130.(1970) (As alien rulers from a lesser (barbaric) culture, the Chin emperor has to walk on thin ice to come to terms with China's high culture and Confucius official doms. The Juren emperors have resorted to violence and terror to bring Chinese (Han) officials to their knee, e.g. in one case eight officials were executed and 34 were banished for engaging in factional activities.)

<sup>115</sup>Zhu Shaohou, *Zhongguo gudai zhian zhidu shi* (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.446.

<sup>116</sup>Literally, "disease in one's vital organ, i.e. serious hidden trouble. *The Pinyin Chinese-English Dictionary* (Hong Kong: Commercial Press, 1979) 766L.

<sup>117</sup>Zhu Shaohou, *Zhongguo gudai zhian zhidu shi* (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.447.

<sup>118</sup>“Luan” literally means public disorder or loss of control as a state of affair, both of which implicates the emperor's capacity and legitimacy to rule. *Hangyu Dacidian* (Shanghai: Hangyu Dacidian, 1994), Vol. 1:797R.

<sup>119</sup>“Ni” liberally means contrary, here being contrary to order and regulation. *Hangyu Dacidian* (Shanghai: Hangyu Dacidian, 1994), Vol. 10:823R.

<sup>120</sup>“Wun xing” are the five chief form of punishment, torture really, in ancient China, being tattooing of the face, cutting off the nose, cutting off the feet, castration, and decapitation. *The Pinyin Chinese-English Dictionary* (Hong Kong: Commercial Press, 1979) 731R. “Wuxing” is a serious punishment than not only because it is painful but also because it is humiliating to the person and loss of face to the family. In the text of <<Xiaojing. Kaizhong Mingyi” (Filial piety. Making clear the principle in the beginning”) it is said: “Shenti fafu, shou zhi fulwu, bugan huishang, yao zhi shi ya” (The body and its associates parts (hair and skin), is given by the parents, dare not harm, this is the beginning of filial piety.” In essence the body is a family trust. This conception of “body politics” is to have grave implications on Chinese social control strategy and policy.



<sup>121</sup>The three clans being the offender's family, his mother and wife.

<sup>122</sup>Zhu Shaohou, *Zhongguo gudai zhian zhidu shi* (A history of ancient China public security system) (Henan: Henan daxue chubanshe, 1994), p.93.

<sup>123</sup>Joseph W Esherick, "Symposium on Peasant Rebellions: Some Introductory Comments," *Modern China* Vol. 9 (3):275-284 (1983). (Throughout history, e.g. six dynasty, oppressed peasants, social bandits and powerful warlords, with legitimate grievances, challenged the central authority with all means at their disposal.)

<sup>124</sup>Frederick Wakeman, Jr., "Rebellion and Revolution: The Study of Popular Movements in Chinese History," *The Journal of Asian Studies* Vol. 36 (2): 201-237 (1977).

<sup>125</sup>Ching-Yueh Yen, "Crime in Relation to Social Change in China," *The American Journal of Sociology* Vol. 40 (3): 298-308 (1934) (Bandits organized themselves to "execute the will of God by killing the wicked rich and saving the honest poor." They were fighting the soldiers as "official "bandits".)

<sup>126</sup>R. G. Tiedemann, "," *Modern China* Vol. 8 (4): 395-433 (1982) (Banditry lived in the fringe of Chinese rural society and "exist at the fringe of history. (p 395) Local officials had little incentive to report such incidences which reflected poorly on their administration (p. 396)

<sup>127</sup>*Zhongguo Jinchazhidu Jianlun* (Beijing: Qunzhong chubanshe, 1985)

<sup>128</sup>Alison Dray-Novey, "Spatial Order and Police in Imperial Beijing," *The Journal of Asian Studies* Vol. 52(4):885-922 (1993).

<sup>129</sup>*Baojia* system was used by Japanese during its colonization of Japan to spy on residents. Ching-Chih Chen, "The Japanese Adaptation of the Pao-Chia System in Taiwan, 1895-1945," *The Journal of Asian Studies* Vol. 34 (2): 391-416 (1975)

<sup>130</sup>Frederic Wakeman, Jr., "American Police Advisers and the Nationalist Chinese Secret Service, 1930-1937," *Modern China* Vol. 18 (2): 107-137 (1992).

<sup>131</sup>Conventional wisdom had it that state is as capable of instilling fear on unsuspecting civilians for political objectives as individuals. The term terrorism was traceable to French revolution when it was used to purge the counter-revolutionaries, and has been used since then by every government to intimate its political nemeses, with varying degree of success and complete sense of entitlement. To those who dared to oppose government, 'terror' is indiscriminate and real. Thus

its cope, degree and kind. First, whether it is discriminate in application, i.e. whether it reached beyond the targeted groups, such as terrorists who were Muslims to Muslims who might be terrorists. Second, whether it is total in operations, such as comprehensive and routine interference with privacy as with Total Awareness Program. Third, whether it is physical or psychological. Seldom discussed is the idea of how criminal punishment is designed and applied with “terror” in mind. Analytically, “deterrence”, a justification of punishment on utilitarian grounds, is a “terror” system. Literally and symbolically punishment strikes fear into the hearts of the criminal, e.g. scarlet letter effect, would be criminal, e.g. profiling, and general public, e.g. selective enforcement. Reformed criminals were scared straight and straight citizens were made out to be criminals, e.g. false negatives in profiling.

<sup>132</sup>From antiquity, the utility and legitimacy of the state to use violence to suppress violence – from punishment to warfare - has never been questioned, and in fact considered a duty of a sage emperor. The issue was on its proper – purpose and degree – use. Michael Puett, “Sages, Ministers, and Rebels: Narratives from Early China Concerning the Initial Creation of the State,” *Harvard Journal of Asiatic Studies* Vol. 58 (2): 425-479, 443 – 444. (1998) (“What is the purpose of making armor, shields, and the five weapons? It is done in order to restrain robbers, disorderly elements, bandits, and thieves.” Citing Maozi.) It is important to note that Chinese considered state sponsored violence (or organized violence) as a continuum to be deployed as appropriate in response to challenges to authority or disruption of order. Emperor and officials were cautioned against arbitrary, gratuitous, and excessive use of violence, but never object to certain kind or degree as “cruel and unusual”. The idea of proportionality – an eye for an eye - was also missing. For example, Shangyang, putative father of legalist school, has proposed the use of heavy punishment for minor offense in order to hold off bigger harm to come. Cheng Liangshu, *Shangyang and his school of thought* (Shangyang ji qi Xuepei) (Taiwan, Taiwan Xuesheng shuju, 1988), p. 284. “Moreover, if you use war to get rid of war, even war is acceptable; if you use killing to get rid of war, even killing is acceptable; if you use punishment to get rid of (the need for) punishment, even punishing is acceptable.” (Shangjunshu, Huace)

<sup>133</sup>By “pure” I mean speech that does not advocate violence action, but suggestive of the legitimacy or desirability of violence as a cause of action. Lest western scholars and international activities should object to the treatment of “pure” speech as

terrorism and intellectual as terrorists in imperial China, they should be reminded that no one has a right to “yell fire in a crowded theatre” and “say that he has a handgun at an airport”. This suggested that whether speech is pure depends on context of time, place and manner of speech. If that should be true, “purity” of any speech must be assessed in regard to its potentiality – proximity and degree - of harm. In imperial China, Confucianism has a dominant and dominating influence on the public. The intellectuals have an exalted and influential status with the people. Lastly and perhaps most significantly, there is a belief in heavenly order as made clear by the sage- intellectuals. The common people were not able to and not in the position to take issue with the intellectuals. Taken together, intellectuals have powers to define issues and move people, much like the media today.

<sup>134</sup> It should be clear by now that all terrorism acts involve “speech” (making demand on TV) and “acts” (placing the bomb). In most instances, “speech” alone is enough to generate the desirable effect, i.e. terror, in achieving one’s objective, i.e. political demand. The question then is not whether “speech” can be a terrorism act when violent acts are threatened, i.e. speech as integral part of a terrorist act. The question is whether “pure” speech can be construed as a terrorists act when considered to be challenging the emperor’s mandate to rule, or more simply critical of the emperor’s person or deed.

<sup>135</sup> Lawrence D. Kessler, “Chinese Scholars and The Early Manchu State,” *Harvard Journal of Asiatic Studies* Vol. 31: 179-200 (1971) (IN the Shun-chih period, the northern Chinese degree and office holder cooperated with the Qing emperor in purging the ranks of the southern intellectuals and scholars. For example, in 1661, Chuang T’ing-lung suffered the most egregious literary inquisition for having adding to existing Mind history.)

<sup>136</sup> *Id.*

<sup>137</sup> Huang, Philip. “Public Sphere/Civil Society in China?: The Third Realm between State and Society,” *Modern China*, Vol. 19 (2): 216 – 240 (1993).

<sup>138</sup> Author, “Black’s Theory on the Behavior of Law Revisited II: A Restatement of Black’s Concept of Law,” *International Journal of the Sociology of Law* Vol. 26(1) (1998).

<sup>139</sup> Geoffrey MacCormack, “On the Pre-Tang Development of the Law of 'Treason': moufan, dani and pan,” (The three most heinous crimes, called abominable, in the Han Code were plotting rebellion (moufan), sedition (dani) and rebellion (pan). *Buxiao* (不孝 'lack of filial piety') made the list of ten most abominable crime, at least.) <http://jalh.ku.edu/article/maccormack2005.pdf>

<sup>140</sup>The newest edition is: Editorial committee, *Zhongguo gongan da baike quanshu* (China police large encyclopedia) (Two volumes) (Jinlin: Jilin Chubanshe, 2000).

<sup>141</sup>The idea of counter-revolutionary crime originated in Russia in 1911.

<sup>142</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 350R.

<sup>143</sup>See for example “Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Ganlin (The Chinese People's Political Consultative Conference Common Program) (promulgated on September 29, 1949) Article 7; PRC Constitution (promulgated on September 20, 1954) Article 19; Zhengwuyuan, Zuigao Renmin Fayuan, “Guanyu Zhenya Fangeming Huodong de Zhishi” (Government Administrative Council and Supreme People's Court “Directive on the Suppression of Counter-revolutionaries”) (promulgated on July 23, 1950); Zhonghua Renmin Gongheguo Zhenzhi Fangemin Tiao Li (PRC Punishment of Counter-revolutionary Regulations) (promulgated on Feb. 20, 1951), Article 2.; Zhongyang Sifabu “Guanyu Eba, Guanfei, Bufa Dizhu Ruhe Shiyong Zhenzhi Fangemin Tiaoli Pifu” (Party Central Judicial Department “Reply Regarding How to Apply Punishment of Counter-revolutionary Regulations to Local Tyrant, Habitual Criminals, and Illegal Landlord”) (promulgated in 1951); Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” (Party Central Party of Ten Committee Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements (promulgated March 3, 1956); Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” (Party Central Party of Ten Committee “Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated March 3, 1956); Zhonggong Zhongyang Xiren Xiaozu Dui “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” de Buchong (Communist Party Central Party of Ten Committee “Supplement to Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements (promulgated June 24, 1957) (Counter-revolutionary damages mean causing damage with counter-revolutionary intent and purpose); Renmin Gongan Pianweihui Guanyu Zhongyang Xiren Xiaozu “Guanyu Fangeming-fenzi he Qita Huaifenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding” de Buchong Jieshi Zhong Yixie Wenti de Jieda (PRC

Organizing Committee “Answers to Certain Questions on Supplementary Explanation Regarding Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements”) (promulgated 1957) (Contemporary counter-revolutionary elements means people who spread reactionary pamphlets with counter-revolutionary intent); Zhongyang Xiren Xiaozu “Guanyu Putong Fangemin Fenzi ji Qita Fandong Fenzi de Jieshi” (Committee of Ten from Party Central “Explanation Regarding Common Counter-revolutionary Elements and Other Reactionary Elements”) (November 1957) (Counter-revolutionary elements are people who insist upon their reactionary class viewpoint); Zhongyang Zhengfa Xiaozu “Guanyu Xinde Fangeming Fanzui Xingwei de Jiexian” (Party Central Political-legal Committee “Regarding the classification of Counter-revolutionary Elements”) (1962). (People who are merely critical of the party or government policy or implementation are not counter-revolutionary.) Zuigao Renmin Jianchayuan, *Xingshifanzui Anli Congshu (Fanfeminzui)* (Book on Criminal Cases) (Counter-revolutionary Crimes) (Beijing: Zhongguo Jiancha Chubanshe, 1990), pp.269-311.

<sup>144</sup>Zui gao renmin jiancha yuan <<xingshifanzui anli congshu>> bianwei hui (Supreme People’s Procuracy “Crime cases series” editorial committee, *Xingshifanzui anli congshu* (Crime cases series) (Beijing: Zhongguo jiancha chubanshe, 1990).

<sup>145</sup>A “purpose” (*mudi*) crime is one which punishes people for motive and purpose. It is similar to common law basic intent vs. ulterior intent distinction, e.g. burglary – breaking and entering of other’s premises at night with the intent committing a felony therein.

<sup>146</sup>A “conduct” (*xingwei*) crime is one which punishes certain conduct, irrespective of result intended, e.g. perjury.

<sup>147</sup>A “result” (*youguo*) crime is one which punished result, e.g. murder. However, the war separating “intent” and “result” crime is not as firm and insular as it might first appear. This is so far two reasons. First, since intention cannot be judged by once action, and action is most evident with its impact and consequences. The “result” of the action speaks to the intent of the actor, both as direct as well as circumstantial evidence. Direct because one is charge with the natural consequence of ones act. Word is not more than action. Circumstantial, because how might ones intent be explained given certain action. Words speak louder than words. Second, even if one does not intent ones action, the result of the act is all the same. People are responsible of serious harm to society, a reckless type of attribution of responsibility.

<sup>148</sup>The PRC criminal law jurisprudence does not draw a clear distinction between intent (*yitu* or *zuiyi*), purpose (*mudi*) and motive (*dongji*) in the finding of guilt and imposing of punishment. It is embraced by the term “*fanzui zhuguan*” (subjective mental condition (*xinli zhuangkuang*)). Editorial Committee, *Faguan shouce* (Judges handbook) (Shangxi: Shangxi renmin chubanshe, 1995), p. 51. PRC legal scholars do draw an analytical distinction between “*fanzui mudi*” (criminal purpose) and “*fanzui dongji*” in that “*dongji*” is *mudi* precipitated by *dongji*. Ibid. p. 55. In common law jurisdiction, only intent is the mental state (*mens rea*) that needs to be proven. Intent is usually defined as “knowingly” and “purposely.” Motive is considered as irrelevant as a legal principle or immaterial as evidentiary proof. However, increasingly and by statute, motive is being considered as important in the Anglo-American jurisprudence, e.g. hate crime with racial animus.

<sup>149</sup>The “*zui yu fei zui*” is an analytical, rhetorical and instructional device to highlight the main differences between one crime vs. another, especially as interpreted and applied. This is usually done by comparing two similar cases along critical dimensions, in counter-revolutionary crimes the issue of intent.

<sup>150</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 351L. “*Fen ge ming mudi*” (counter-revolutionary purpose or intent) is defined as: “With the purpose of overthrowing people's proletarian dictatorship and socialist system, is an important element constituting counter-revolutionary crime, is a distinction between counter-revolutionary crime, counter-revolutionary and other crime.”

<sup>151</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 351L. “*Fen ge ming mudi*” (counter-revolutionary purpose or intent) is defined as: “We can ascertain the purpose of perpetrator can by looking at the counter-revolutionary conduct and effect in practice.”

<sup>152</sup>Editorial Committee, *Gaguan shouce* (Judges handbook) (Shangxi: Shangxi renmin chubanshe, 1995), p. 75.

<sup>153</sup>Editorial committee, *Zhongguo gongan baike quanshu* (China police encyclopedia) (Jinlin: Jilin Chubanshe, 1989), p. 351L. “*Fen ge ming mudi*” (counter-revolutionary purpose or intent) is defined as: “We can ascertain the purpose of perpetrator can by looking at the counter-revolutionary conduct and effect in practice.”

<sup>154</sup>In order for one to survive this argument, one can adopt a broader and more inclusive definition of counter-revolutionary crime in arguing that anytime violence is used contrary law in order to change state policy and practices, even if legitimate and ill advised, it is deemed to be ipso facto counter-revolution in effect. This argument stretches counter-revolutionary acts to include violent conduct seeking to change policy and practices that are themselves illegal, improper and otherwise disapproved by the PRC.

<sup>155</sup>Chalmers Johnson, "The Third Generation of Guerrilla Warfare," *Asian Survey* Vol. 8 (6): 435-447, esp. 435 – 440 (1968). (As a consummate military strategist in guerrilla warfare, Mao was the a quintessential terrorists par excellence; one who look upon violence as means not ends in service of larger cause.)

<sup>156</sup>From the *Selected Works of Mao Tse-tung*, (Peking: Foreign Languages Press, 1977). Vol. V, pp. 384-421

<sup>157</sup>"ON CONTRADICTION" (August 1937)

[http://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1\\_17.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1_17.htm)

<sup>158</sup>Donald C. Clarke and James V. Feinerman, "Antagonistic Contradictions: Criminal Law and Human Rights in China," *The China Quarterly* No. 141: 135-154 (1995)

<sup>159</sup>See "3. How (and What) to Compare?" In MATHIAS REIMANN, "The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century," 50 *Am. J. Comp. L.* 671, 689 - 690 (2002). See also RAN HIRSCHL, "The Question of Case Selection in Comparative Constitutional Law," 53 *Am. J. Comp. L.* 125 (2005)

<sup>160</sup>The investigation of idea of terrorism in China provided a rare opportunity to look into comparability of philosophy and allow us to look at how the two people think and act in processing information and articulating ideas. "Comparative Philosophy: Chinese and Western," *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/comparphil-chiwe/>; "Philosophy of Language in Classical China," Hong Kong University (Chinese language is a pictorial, prescriptive and action oriented language. English language is a symbolic, instrumental and analytical language. These linguistic properties separate, reflect and reinforce how the two people think.) <http://www.hku.hk/philodep/ch/lang.htm>

Alfred H. Bloom, "The Impact of Chinese Linguistic Structure on Cognitive Style," *Current Anthropology* Vol. 20(3):, 585-586 (1979) (Because of the structure of Chinese language, it moves away from speculative theory construction to actuate description of reality.)

<sup>161</sup>Arthur F. Wright, "Struggle vs. Harmony: Symbols of Competing Values in Modern China," *World Politics*, Vol. 6 (1): 31 – 44, 31 – 34 (1953).

<sup>162</sup>James Wall mad Michael Blum, "Community mediation in China," *The Journal of Conflict Resolution* Vol. 35(1): 3 – 20 (1999). (Confucius teachings and field research indicated it was better to endure suffering than to cause disputes and destroy relationship with others.) For a rejoinder, see Neil J. Diamant, "Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches," *The Journal of Conflict Resolution* Vol. 44 (4): 523-546(2000).

<sup>163</sup>The five relationships ("wulun") are ruler-subject, father-son, husband-wife, elder brother-younger brother, and friend-friend.

<sup>164</sup>Hsu Dau-lin, "Crime and Cosmic Order," *Harvard Journal of Asiatic Studies*, Vol. 30 : 111 – 125 (1970).

<sup>165</sup>Elizabeth J. Perry, "Collective Violence in China, 1880-1980," *Theory and Society*, Vol. 13 (3): 427-454 (1984).

<sup>166</sup>R. G. Tiedemann, "The Persistence of Banditry: North China Plain," *Modern China* Vol. 8(4): 395-433 (1982); Phil Billingsley, "Bandits, Bosses, and Bare Sticks: Beneath the Surface of Local Control in Early Republican China," *Modern China* Vol. 7 (3), No. 3:235-288 (1981).

<sup>167</sup>James Polachek, "Review: Secret Societies in China and the Republican Revolution:

Reviewed Work(s): Secret Societies in China. In the Nineteenth and Twentieth Centuries. by Jean Chesneaux; Gillian Nettle and Popular Movements and Secret Societies in China, 1840-1950. by Jean Chesneaux) *The Journal of Asian Studies* Vol. 32(3): 483 – 487).

<sup>168</sup>James P. Harrison, "Communist Interpretations of the Chinese Peasant Wars," *The China Quarterly* No. 24 : 92-118 (1965)



<sup>169</sup>One possibility is to argue that Confucianism is not a set of ethic principles as much as it is a set of rules for practical reason to deal with life contingencies. *Zhang Rulun*,” Chapter VIII. Is an Ethics of Economic Activity Possible?” In Yu Xuanmeng, Lu Xiaohe, Liu Fangtong, Zhang Rulun & Georges Enderle (Eds.) *ECONOMIC ETHICS and CHINESE CULTURE - Chinese Philosophical Studies*, XIV (“For Confucius, *jen* is an all-encompassing ethical ideal... It is an existential goal which one must attempt to achieve for oneself through one's own self-cultivation. All the "worldly goods" are totally subordinate to the higher goal of *jen*. But this does not mean that people can do anything to achieve this goal.”) <http://www.crvp.org/book/Series03/III-14/contents.htm>

<sup>170</sup>This is not to deny to equally strong instinct and custom to seek revenge for ones family.

<sup>171</sup>The propriety of actions, including the use of violence, must be judged three independent but supplementary ideas and ideal, i.e. Qing” “Li” “Fa” (<<情理法>>) (“QLF”) or “compassion”, “reason”, “law”. Thus one must not only act legally, but also morally and reasonable within given context and in light of evolving circumstances. Fan Zhong Xin (范忠信), *Qing Li Fa Yu Zhong Guo Ren* (*Compassion, reason, law and the Chinese people*) 《情理法與中國人》 (Beijing: Zhongguo renmin daixue chubanshe, 1992).

<sup>172</sup>Karl Wittfogel, *Oriental Despotism* (1957).

<sup>173</sup>The gentleman and based people lived in two distinctive world, separated by a great divide. The gentleman is regulated by principles of “li” and “ren”. The based people are moved by consideration of “li” (utility) and compelled by punishment (“xing”).

<sup>174</sup>L. H. M. Ling, "Rationalizations for State Violence in Chinese Politics: The Hegemony of Parental Governance," *Journal of Peace Research* Vol. 31, No. 4 (Nov., 1994), pp. 393-405

<sup>175</sup>Ch'u Tung-tsu, *Law and Society in Traditional China* (Mouton, Paris and The Hague, 1961)

<sup>176</sup>Gilbert Reid, "Revolution as Taught by Confucianism," *International Journal of Ethics* Vol. 33(2): 188–201 (1923). (As an establishment scholar, Confucius never always called for showing respect and loyalty to the ruled. But in describing roles and responsibilities of ruler vs. ruled, he made clear that bad rulers will naturally and inevitably be dethroned and replaced, intimating grassroots rebellions from below. For example: “The ruler is like a cup, and the people like water.” P. 193)

The cosmic order having been broken by the emperor, the citizens have a right to rebel. Just as the learned intellectuals have a duty to advise and correct the emperor when he ill spoke or misbehaved, as measured against the nature's "dao" as expressed in the Confucius classics. *Id.* p. 196.

William G. Crowell, "Social Unrest and Rebellion in Jiangnan during the Six Dynasties," *Modern China* Vol. 9 (3): 319-354, (1983). (During the Six dynasty, popular resistant to government oppression – excessive taxation, conscription and corruption – resulted in people escaping into the mountain to become bandits, pp. 323 – 325.) Since then, banditry has earned a good reputation as representing social conscience of the people and romanticized as heroes. Elizabeth J Perry, *Challenging the Mandate of Heaven: Social Protest and State Power in China* (Armonk: ME Sharpe, 2001)

Ralph Thaxton, "The World Turned Downside up: Three Orders of Meaning in the Peasants' Traditional Political World," *Modern China* Vol. 3 (2): 185-228 (1977) (Peasants rebelled not because they want to but because they have to. Peasants rebelled as a last resort traditional patron – client paternalistic – protective relationship, not to overthrow the government or disrupt the heavenly rule.)

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## Extremism in Pakhtun Society

*Ihsan Ghani*

### **Abstract:**

The deteriorating law and order situation in the NWFP and FATA has some intrinsic causative agents and many more contributing factors. A number of research articles have been published on the issue, but rarely the problem of extremism has been studied and analysed in its socio-economic and historical perspective. This paper critically examines the various extremist trends and policies in the last thirty-five years, with their implications for law-enforcement and administration in the conflict-ridden areas of the NWFP and FATA. A critical evaluation of the past and present counter-terrorism approaches is also presented.

### **Keywords:**

Extremism, FATA, NWFP, PATA, Pukhtun/Pashtun/Pathan, Levies, Khasadar, Frontier Corps, Frontier Constabulary, Police, Pukhtunwali

Since the security situation in Pakistan in general and in the NWFP in particular has deteriorated, there have been a number of analytical studies on why we have reached a stage where people are losing faith in the state and are queuing to leave the country for safer destinations. Due to the waning state writ and absence of state machinery, the state is gradually becoming irrelevant to its citizens.

First, we have to see whether the current situation is a law and order issue or an insurgency. Law and order is generally not a protracted activity and is mainly related to anti social elements. It is at times also a way to express demand for resolution of problems faced by a faction of the society. There is no intent to create alternate governing authority or control of certain territory. Insurgency, on the other hand is a contest by an organized group with the government for support of people and control over resources and territory. It is a protracted political-military activity by organized groups with a view to subvert and displace a government. It seeks control of resources and population by weakening of government power. The methods employed are guerrilla tactics, use of terror and propaganda, recruitment and training, overt and covert party organizations with international linkages.

The current situation prevailing in parts of NWFP and FATA is clearly thus an insurgency and needs a well thought out counter strategy. No counter terrorism strategy can succeed without the active and popular participation and support of the people. This has been clearly manifested by the current gains made by the LEAs in Swat and elsewhere. We have to change the public perception through clear cut policy. Steps taken by the present regime are in a right direction and the public now feels that the state is actually taking on the militants in earnest.



**District map of Pakistan's NWFP & FATA**

- Provincially Administered Tribal Areas
- Federally Administered Tribal Areas

Population NWFP	17.5 Million	Area 74521 Sq KM
Population FATA	3.10 Million	Area FATA: 27220 Sq KM
Afghan Refugees	0.80 Million	

I look at our predicament from a different angle. The Frontier Province, since ages has been ruled on adhoc basis. The province is administratively ruled in the following five different styles:

- i. **The settled Areas** are those where the normal rules of governance, applicable in the rest of the country, are relevant.
- ii. The region that lies on the border between Afghanistan and Pakistan is called as the **Federally Administered Tribal Areas (FATA)**. Except Orakzai Agency, all the Agencies share border with Afghanistan. Since the British days, FATA has been acting as a buffer between the two countries and has been under the federal rule. The Governor as the agent of the President exercises administrative control over the seven Agencies through Political Agents. The British had framed a different set of rules for the area, called as the Frontier Crimes Regulations (FCR), giving wide ranging powers to the Political Agent. The tribes are punished for a crime committed by a member of the tribe under the “collective responsibility” clause. These punishments could be in the form of forfeiture of facilities, razing of houses or huge fines imposed on the whole tribe. The Political Agent is the executive and judiciary both at the same time. Development schemes are used to garner support through discretion of the Political Agent.
- iii. **Frontier Regions** are those areas which lie between the settled areas and the FATA. These are contiguous to the Agency and are populated by the same tribe. A grade 17 officer, appointed by the provincial Govt is responsible for running administration of the region. The distinction between the FR and the FATA is completely superfluous as the same laws apply in both the areas.
- iv. **Provincially Administered Tribal Areas (PATA)** are the areas which are considered backwards are thus ruled directly by the Provincial Govt.
- v. **De Facto Tribal Areas** present the best of the above unique governance system. These are the settled areas where the people have declared themselves as tribal areas and do not subject themselves to the normal rules and governance.

Repeated attempts made in the past to amalgamate the diverse setups into a singular system have failed as most of the actors involved like to maintain the status quo for their own interest.

A similar number of diverse forces are employed to maintain law and order in these areas:

- i. **Police** is deployed in the settled areas and in some of the PATA areas.
- ii. In some PATA areas like Malakand Agency, local **Levies** are deployed.

- iii. In the FATA and the FRs, a ***Khasadar*** force is deployed. These are men drawn from the different tribes of the areas. If a crime takes place in an area, the *Khasadar*, whose tribe populates that area is penalised. The force is under the operational and administrative control of the Political Agent. The *Khasadars* are neither well trained nor equipped to fight the current brands of militants and foreign fighters.
- iv. **Frontier Corps** is a paramilitary force and is deployed on the boundary between Pakistan and Afghanistan. The force is drawn from amongst the different tribes where the officers are deployed from the Pakistan Army. Frontier Corps has presence in all the Agencies and is at the beck and call of the Political Agent.
- v. **Frontier Constabulary** is another paramilitary force and is deployed to act as a buffer between the FATA and the settled areas. It is also used to reinforce police to establish writ of the state in troubled areas. Here too, the constabulary is drawn from the tribes and police officers manage the force. Both the Frontier Corps and Frontier Constabulary are under the Ministry of Interior, though the General Headquarters exercise effective control over the Frontier Corps.

With so many complications how would one expect stability in the area? In my opinion, the last 5 years of the 70s have had a profound effect of this region. Some very significant internal and external events took place in a very short span of time. In the following sections, I would divulge upon some of these happenings. However, before I venture into the analysis of the late 70s, I would like to write about the Pashtun society so that those readers, who are not well conversant with the Pashtun code of life, get an overview of the same.

Pashtun society has evolved over centuries. From the numerous different civilisations that have passed over their lands, the Pashtuns have adopted certain mannerisms. These could be very positive like *mailmasty* (playing host) or extremely negative like the practice of *swara* (handing over of a child in marriage to the opponents to settle feuds). Pashtuns in general have more conviction in collective wisdom than individual brilliances. Their society is thus based on communal system. The Pashtun social order can broadly be divided into three factions. It revolves around the *Khan*, who is the most dominant of them all. He is the landholder and the decision maker. He is the leader of the tribe or the clan. *Tenants* manage the lands and are also the major contributor of the *lashkars* in case of armed conflict with other tribes or villages. *Qasabgars* consist of skilled people of the village or tribe. They include the carpenters, blacksmiths, masons, cobblers and the village Maulvi. The tasks of these *qasabgars* are clearly defined. The village Maulvi's assignment was to lead the prayers, conduct birth & death rites, perform his role in the Jirga and teach the Holy Quran to the village children. In short, he had an important role but not a dominating role and had no influence over the society in

general. Keeping this role in mind, it may appear strange that most of the resistance movements in this part of the region were led by religious zealots. The explanation for it is that the Khans could never agree on a single person's leadership. Also, in case of a success of the movement under a single Khan, all the others would have to follow his directions and accept his leadership. They knew that in case of a Maulvi, they could easily wrest the power back from him.

Some of the basic ingredients of the Pashtun society are enumerated below:

*Hujra* constitutes the basic ingredient of the Pashtun life. A hujra is generally owned by the community and not individuals though there may be some hujras that are owned by a single person. A room or two, with a veranda and a courtyard at the centre of the village constitutes a hujra. A larger village will have more such establishments, each owned by different *khels* or families. A hujra will have a few utensils like water pots, some cots, an old design of the modern *sheesha* and a few musical instruments. The whole family or khel are hosts to whoever may be the guest; weddings are community affairs where everyone contributes with pieces of furniture, crockery and cutlery etc. and all the youngsters are engaged in serving the guests. This is the true display of another code of *pukhtuwali* called as the *mailmastya* where guests are treated with utmost respect and reverence. The same spirit is displayed during all the functions including funerals. *Jirga*, (congregations held to decide all matters) are also held in the hujra. Male members, after coming out of their homes gather in the *hujras* to sit around, discuss issues, decide matters or even to do nothing. It is inhibited during the day by the elders and by youngsters at night. While the youngsters avoid entering it during daytime except to serve the guests etc, the elders stay clear of it at night to let the boys enjoy themselves with singing and narrating folk stories. It serves as the nerve in the village or community. In some areas, the hujra also serves as sleeping quarters for the male members.

Village disputes, both civil and criminal are settled through the council of elders, called the *Jirga*. Minor cases are decided within the village whereas major cases after resolution are reported to the local administration for verification and promulgation. The *Jirga* can even award the punishment of *swara* where to settle blood feuds women are given to the rivals. These include girl children as well. This is one of those customs which are extremely negative.

Following are some other features of *pukhtunwali*:

*Nanawatee*, where the guilty party goes to the aggrieved party to seek forgiveness and the opponents are almost bound to grant the same.

Pakhtun society gives utmost respect to their and their enemy's women. *Da khazoo dranaway* means respect for female. Even during blood feuds women are not harmed.

*Jaba* means to promise something in words which are more binding and sacred than a written statement.

*Panah* is to give shelter to someone. Even when the shelter is given to an enemy, he becomes sacred. It is under this code that the Pakhtun in the tribal areas are reluctant to get rid of the foreign fighters who have been given shelter in their areas.

*Nang* is the honour of the pathans, which is considered more sacred than his life.

*Badal* is revenge and the proverb that “revenge is a dish best served cold” is absolutely true in the case of Pakhtuns.

As mentioned earlier, the last five years of the 1970s are of significant importance. Some of the events are as under:

- i. In 1977, General Zia overthrew the elected government of Zulfikar Ali Bhutto in a bloodless coup. The military dictator, in search of a constituency, owned the religious elements who were opposed to the more liberal and secular Pakistan Peoples Party. The religious parties were inducted into the government, given funds and estates to build mosques and seminaries.
- ii. During the petroleum prices boom as the Middle East underwent an economic explosion and huge construction activity, Pakistan provided cheap labour. Poor segments of the society, specially from the Frontier reaped the rich harvest and changed their lives forever. They not only purchased lands from the landlords but also raised the living standards of their areas. As they had no significant role in the hujra, they built small living rooms or *bhetaks* in their new houses. The hujra thus saw a decline in its pivotal role in the society. To keep up with their lifestyles, the Khans had to sell their lands or took up services in the cities. The hold and power of the Khan started waning and the centre of power started shifting from the hujra to the mosque.
- iii. The Iranian revolution brought the Shia Sunni conflict in the open and a proxy war was started in Pakistan. The Sunni states of Saudi Arabia, Libya, Iraq and the Gulf states were supporting the Sunni militants of Pakistan and Iran was helping the Shia militants. As this war was being fought through the religious elements on both sides, they gained further strength.
- iv. The Soviet invasion of Afghanistan brought the international powers into the region. Instead of taking up the conflict as a war of independence, it was fought as Jihad and the Islamic forces were deployed to battle the Soviet forces. Huge amounts of money and sophisticated weapons were supplied to the religious elements, giving them further strength and significance. The large influx of



Afghan Refugees into the country, specially in the Frontier not only became a strain on the already overstretched resources but also led to a sharp rise in violent crime. With the Afghan Refugees came fighters from the Muslim world mostly from the Arab world. Sophisticated weapons and narcotics was another element that was added to the Pakistani society.

These were some of the significant and visible events taking place in a short span of time. At the same time an invisible revolution in the Pashtun society was taking place. As earlier mentioned, a major shift of power had taken place. Decisions were now taken in the mosques and people were queuing to enter the mosques instead of the hujra. This power shift became more prominent with the Taliban establishing the first sovereign state headed by a Mullah. Afghanistan under the new regime saw stability and peace after years of war. The state thus became a beacon all over the Islamic world in general and to the misguided population of the Frontier and the FATA despite the atrocities and excesses committed by the Taliban.

All these resulted in a paradigm shift in the hitherto moderate and peaceful Pashtun society, adding an element of religious extremism and intolerance. After the US invasion of Afghanistan, the Pakistani fighters started returning back to the country. These men had left their country in their late teens or early 20s to fight the Soviet forces and were now over 40 years of age. They had become outcasts in their own neighbourhood, with resources of sustenance. The only means through which they could support themselves was their weapons or battle training. For a while they stayed engaged in the occupied Jammu and Kashmir but had to return back after mounting international pressure.

These men ultimately spread all over the province and FATA and soon became disillusioned with the society. They had left a backward and a conservative social order which had undergone a very significant change. No longer were people living in mud houses, most had television sets, satellite dish receivers, telephones, computers and even internet. It was difficult for them to stomach such affluence in which they had no role to play. Most of them became reactionaries and revolted against this new culture. In league with other such elements, they formed vigilante groups to fight vulgarity, drugs, gambling dens and other such social evils. In the absence of the state and sick of the growing influence of criminals, their crusade was whole heartedly welcomed by the public. After establishing their credentials through this social reform agenda, they reverted back to violence to implement their own peculiar brand of beliefs. The state looked the other way at the rise and rise of this religious intolerance and militancy, initially in the FATA and then throughout the whole province.

The writ of the state was waning continuously. As the militants gained strength, they embarked on an anti state agenda. Perilous state of Muslims all over the world

added to a wave of sympathy among the general population for these non state actors. Beginning with areas with minimal government control, they paralyzed the govt. machinery by cutting the main routes, by destroying state symbol like schools, Police Stations, communications etc. They established parallel govt. by adjudicating local disputes, collection of taxes etc. They ran a very effective propaganda through violence and visible and quick justice. They terrorized the local population through unheard off means including suicide bombings, attacking *jirgas*, killing women, public beheadings of criminals and other people, attacking mosques, funeral prayers, mutilating dead bodies and target killing of rallying points/ icons. In a short time, they killed over 600 tribal elders in the FATA.

Pukhtuns were at that point entangled by their own code. They could not throw away the foreign fighters from their lands due to the *mailmastya*. The society was already weaponized beyond point of no return. Due to the absence of either the state or other rallying points, the Pakhtuns soon surrendered to the criminals, who gathering strength by the day. Soon they started playing god. The delayed and indiscriminate action by the state led to alienation of the population. Action at Damadola (Bajaur), where over 80 innocent students were killed and Lal Masjid added fuel to the already blazing fire. Added to this were the poor living conditions prevailing in the FATA.

The table below is an ample example of the same:

Item	Pakistan	NWFP	FATA
Pop. Density (Per Sq: Kms)	166.00	238.00	117.00
Irrigated Area as % of Cultivated	82.00	52.00	40.00
Pop. Per Irrigated Hectare (#)	09.00	23.00	44.00
Cultivated Area as % of reported area	37.21	30.09	07.35
Literacy Rate (%) (1998)	45.00	37.30	17.42
Male	56.50	52.80	29.50
Female	32.60	21.10	03.00
Primary Enrolment Rate (%)	86.00	81.00	38.00
Population Per Doctor (#)	1404.00	5054.00	7670.00
Pop. Per Hospital Bed (#)	1737.00	1594.00	2290.00
Roads per Sq. KM of area (Km)	00.32	00.15	00.17

All these factors had devastating and long lasting effects on the Pakhtun life style. Some of these are enumerated below:

- **Social**

The social impact of militancy on life in the province was that the population had to change their life style. They could not hold observance of their rituals like weddings, funerals and other ceremonies in their traditional manner.

Population in the NWFP and FATA started drifting away from the state of Pakistan as they felt that the state had abandoned them and that their plight was of no consequence to the rest of the country.

*Pukhtunwali* was shattered to pieces as the main players were marginalized and new actors had taken their place.

The happy go lucky Pakhtun was replaced by a nervous and frustrated person, who now carried the image of a horrible *Fassadi*. He was hunted both by the security agencies and by the militants. He could not go about selling his dry fruits in the small villages of Punjab or the deserts of Baluchistan.

Faith in religion dwindles when in the name of Islam un-Islamic acts were being perpetrated by the so called religious extremists.

- **Economic**

The situation had ravaged the already fragile economy of the NWFP and FATA. Economic activity came to a standstill due to a number of factors. Owing to the security situation there was no outside investment. People started shifting to the Punjab and to other overseas safe havens, leaving the province to the extremists. Brain Drain to other parts of the country and outside also saw a sharp increase.

Infrastructure of the area was destroyed as Govt buildings, bridges were blown away.

Development funds were diverted to strengthen law enforcing establishments.

Educational system in tatters as hundreds of schools were destroyed- in Swat alone over 300 schools have been destroyed and female education was banned altogether.

In my opinion there are too many players playing the same game. It is like a squash court; where instead of the normal two players over a dozen players are playing at the same time with each either trying to undo efforts of the other or playing against each other. We need to leave only two opponents in the field and withdraw the others.

There is a reverse flow of direction and the policy guidelines are mostly coming from the implementers i.e the military or the Intelligence Agencies with politicians mostly becoming irrelevant. There is no clear cut course of action. As police is busy battling the militants, normal crime has spiraled. There has been an mass desertion of LEAs personnel.

How can we get out of this situation? We will have to identify for the problem before finding a solution. Is the problem a military one or political or a combination of both? The issue problem was initially a political one and ultimately turned into a military one. Both the solutions were unduly delayed. Dialogue with the trouble makers was started late and was half hearted. Similarly, the military action remained half baked for most of the time. Only recently the military action was started sincerely and bore immediate fruits when calm returned to Swat and other parts.

Can we re-establish the *Pukhtunwali* code and bring back the Hujra culture to reverse the power centre? We also have to make the politicians relevant and responsible and should be given due role. Similarly, the ulema have to challenge militants on Islamic issues. It is a fact that the militants are ignorant of the true Islam and Islamic teachings. There is now a serious effort to strengthen the LEAs and build their capacity.

The government's recent attempts to recognise the needs of the Frontier province and FATA are another step in the right direction. Massive development works are required to deny fresh recruitments to militants. A Parliamentary Group (Irrespective of Party affiliations) needs to be setup to give policy guidelines. The policy guidelines and its implementation may be monitored through a group of people which may include retired bureaucrats, former members of judiciary and eminent journalists.

There is light at the end of the tunnel. Pakistan has some very positive scores on its side. It has a very large population and land mass. Its people are hardworking and very knowledgeable. There is still faith in the state of Pakistan. The current conflict is neither sectarian (Shia Sunni), nor ethnic (Punjabi, Pashtun, Sindhi, Baluchi or Muhajir) or provincial. It is a battle between good and evil, where the evil are in a minute minority. The vast majority of Pakistanis and international community are on the side of the good and the good will ultimately prevail, *Insha Allah*.

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## **Policing The Northwest Frontier Province of Pakistan: Practical Remarks From A South African Perspective**

*Prof. Dr. J. M. (Johan) Ras*

### **Abstract:**

The Northwest Frontier Province of Pakistan needs a special form of policing model by the Frontier Police. This model must focus on the needs of the people and must incorporate the insights of the community, intelligence-led and indigenous policing models. Terrorism is an intelligence war and the police constantly needs to enhance and expand their intelligence abilities to prevent any form of terrorist activities. While a strong-man's approach is recommended in terms of policing it is important that the police must win the hearts and minds of the people in order to win the fight against crime and to be successful in the war on terror.

### **keywords:**

Policing, Community Policing, Intelligence Led Policing, Indigenous Policing Models, Terrorism, Extreme Beliefs, Counter terrorism

### **Introduction**

There is no doubt that growth and economic development cannot take place if there is no peace and social order in any society (Nadeem 2004). This is true, not only of Pakistan, but also of any other country. It is the task of the police to see that proactive and reactive policing measures are in place to ensure that criminal incidents are reduced and that citizens can feel safe and secure. This is of special importance when it comes to terrorism and any form of serious crime (Ras 2009b; 2009c). Although Pakistan was faced with major challenges during the period of 1969 to 1996, and was seen as one of the most disturbed periods in this country's history (Nadeem 2004:2; Ras 2007b:492-493), it seems that this state of affairs did not really have altered (Gillani, Rehman & Gill 2009:79-98). The War on Terror that is ongoing in *inter alia* the Northwest Frontier Province and the seven tribal agencies is a reflection of this (Fasihuddin 2008).

### **The North West Frontier Province**

The North West Frontier Province (NWFP) comprises 74 521 square kilometers and has a population of over 22 million people comprising mostly from the Pathan tribes (<http://nwfp.gov.pk/nwfpgov/aboutus/index.php>) who live according to the unwritten ethical Pushtunwali code ("the way of the Pushtun" <http://www.joshuaproject.net/peopctry.php?rop3=107909&rog3=AE>). It is home to diverse ethnic groups and languages such as Pathan, Khowar, Hindko, Kohistani, Shina, Torwali, Kashmiri, Kalasha and Kaghani. The presence of Afghan refugees

also has brought Ghilzai and Durrani tribes and hundreds and thousands of Farsi speaking Tajiks and Hazaras who have settled there.

According to the government of the NWFP nearly all the inhabitants of this province are Sunni Muslims with a minority of Shias', Ismailis', Animists and Shamanists (<http://www.nwfp.gov.pk/nwfpgov/aboutus/index.php>). This conglomerate of ethnic and language diversity necessitates in my opinion a special form of policing model by the Frontier Police under Inspector-General Malik Naveed Khan that can truly address safety and security needs and issues that can ensure lasting peace and stability (Ras 2009a; [http://en.wikipedia.org/wiki/Frontier\\_Police](http://en.wikipedia.org/wiki/Frontier_Police)). This is in particular an imperative when it comes to the prevention of terrorism and the combating of extremism (Martin 2010:4).

### **Geographical Divisions and Policing**

According to the government's Directorate of Information Technology in the NWFP, the province comprises of three major administrative parts. One part, that is regarded as settled areas, consists of districts like Abbottabad, Bannu, Battagram, Charsadda, Dera Ismail Khan, Hangu, Haripur, Kohistan, Kohat, Karak, Lakki Marwat, Mansehra, Mardan, Nowshera, Swabi, Peshawar and Tank. Another part is known as the Provincially Administered Tribal Areas (PATA) and consists of the Malakaland Agency, and the districts of Upper Dir, Lower Dir, Chitral, Swat, Buner, Shangla, Kala Dhaka ("Black Mountains"), Kohistan and the State of Amb (submerged in the Tarbela Dam Reservoir). The last and third part is well-known as the Federally Administered Tribal Areas (FATA) and comprises of seven Tribal Agencies (Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan, South Waziristan) and six Frontier Regions (Frontier Region Bannu, Central Kurram, Frontier Region Dera Ismail Khan, Frontier Region Kohat, Frontier Region Lakki, Frontier Region Peshawar and Frontier Region Tank). These three mentioned main geographical areas are directly controlled by the Governor of the NWFP (<http://www.nwfp.gov.pk/nwfpgov/aboutus/index.php>).

This geographical-administrative division, characterized by people whose tribal relationships have been formed through centuries of matrimonial alliances and socio-economic covenant-treaties and business relationships (Fasihuddin 2008), underlines for me something that I have learned in South Africa, and that is, normal westernized policing models and measures cannot truly address the ethnic and religio-cultural underlying currents in the NWFP to ensure lasting peace. The only sustainable policing model that will work in this legendary and vigorous religious-cultural *ummah* must come from within. In other words, police experts in conjunction with and in collaboration with indigenous groups within the NWFP must come up with a *sui generis* policing model that will work. (Ras 2009a).

## The Establishment of A North West Frontier Province Policing Model

Worldwide, police scholars, experts and practitioners know that no policing model will really work without the constant input and cooperation from local communities (Albrecht 2008:26-47; Bezuidenhout 2008:48-67). This reality is felt much more intense when one is confronted with very serious crimes in especially rural and remote communities that are very often characterized by more homogenous social networks and cognitive thought-patterns that are soaked in religio-cultural language, traditions and customs (Ras 2009a). Crimes are committed by people and it is only people who can share intelligence, whether it is crime intelligence or intelligence related to national or international matters like terrorism (DCAF Intelligence Working Group 2003:3).

In South Africa, especially in rural settings like northern Zululand, people very often survive by relying on themselves and the support and goodwill of their neighbors when there are real dangers, instead of waiting for the police who are very often too far away to respond immediately (Ras 2007a:93-110). In line with contemporary worldwide developments, I am of the opinion that the situation in Pakistan's North West Frontier Province necessitates that an integrated policing model must be developed by Pakistan's policing experts that will incorporate the community policing model, the intelligence-led policing model, and the indigenous policing models of the Frontier tribes (Ras 2009a).

A critical assessment of the existing state of affairs in the NWFP, especially focusing on the needs of the people and the challenges to address it, must form the basis of this proposed policing model. This developed model must be filtered through a critical-assessment of all the *pros'* and *cons'* of each model (community, intelligence-led, indigenous). It is of great importance to especially focus on the indigenous models that are most of the time based on Pushtunwali codes like *badal* (the right of blood feuds or revenge) and *ghayrat* (defense of property and honor) (<http://www.joshuaproject.net/peopctry.php?rop3=107909&rog3=AE>).

Insights and lessons learned through the many decades of war and conflict that have formed and shaped the existing state of affairs in this important province seriously need to be considered. The presence of the military and militia, the past examples of collaboration between different role-players in law enforcement that have brought successes, peace and stability to this part of the world are all critical ingredients that need to be identified in order to come up with an unique policing model that will bear fruit in future (Ras 2009a).

The fact that the Afghan, the Pukhtun and the Pathan are three names of the same people despite shifting political boundaries (<http://www.nwfp.gov.pk/nwfpgov/aboutus/index.php>), indicates that this

province is truly a mixture of many civilizations. The incorporation of local indigenous knowledge (cf. Ajibade 2003:99) related to policing and security issues within a policing model for the NWFP will ensure that local tribal leaders will not feel marginalized and may assist in creating the necessary confidence that is seriously needed to ensure the success of any attempt to ensure social order and harmony (Nadeem 2004:221-232, 271-274).

### **Community and Intelligence -Led-Policing Within The NWFP- Policing Model**

Community-driven policing models, whether they are coined as problem-oriented, problem-solving models or sector policing, or whatever name or acronym may suit the user, they all have in common the central idea that people are involved with one another and that the police and community members are in an active partnership (Ras 2009; Van Heerden 1995). It is not really important if the police are making use of paramilitary methods in achieving their goals or not. What is more important is that their relationship with local community members must be so cemented in trust that there is mutual respect, a definite share of information, and a willingness and boldness, not only to tackle the real issues, but to cooperatively alter the existing state of affairs to the good of both parties. In short, the reduction of crime and the fear of crime must be ultimate goals (Ras 2009a).

Community-driven models have worked in the Gujranwala Division (Nadeem 2004:264) and can be rolled out to the NWFP but only, and only, if a thorough analysis has been made to assess the strengths and weaknesses of the Gujranwala model before it is applied. The revival of the *panchayat*-system (community meetings where everyone is present and their problems sorted out), the implementation of *numberdars* (persons who act as a link between the local union council and the police), *chowkidars* (persons in charge of villages that must coordinate all their village activities with that of the police), and neighborhood watch programmes, for example, must form an integral part of police-community relations (Nadeem 2004:221-232,271-274; Ras 2007:492-493).

The implementation of the Intelligence-Led. Policing (ILP) model is for me part and parcel of any form of community policing because it basically has to do with the gathering of intelligence (crime and criminal-specific information), the implementation of clandestine methods and operations, and the sharing of information between all role-players that can assist in the reduction of crime (Kalidheen 2008). However, it is central that the NWFP-policing model must be driven by a focus on local needs. If the needs and expectations of the local inhabitants are not met then their frustrations and angers will find expression in conflict and attacks aimed at the police and the military. The involvement of the



police in addressing village councils (cf. Fasihuddin / Whisenhunt 2008:21) where relationships can be established, nurtured and developed are of critical importance to ensure police successes (Ras 2009a).

### **Indigenous Policing Models Within The NWFP - Policing Model**

The tapping into the indigenous knowledge-systems of the Pashtun and other tribes, who through the centuries had to sort out their own differences and problems can, in conjunction with police facilitation and in line with Pakistan's criminal justice system, be incorporated into the newly proposed NWFP - policing model. Wide consultation, the sharing of ideas and recommendations by different tribal, cultural leaders and religious, are all examples of what need to be done in order to develop a practical but workable policing model for the Frontier Police (Ras 2009a).

If one thinks that the Frontier Police owes its origin to the Indian Rebellion of 1857 and that the force was created in 1861 ([http://en.wikipedia.org/wiki/Frontier\\_Police](http://en.wikipedia.org/wiki/Frontier_Police)), then there is no doubt in my mind that the NWFP - police force owns a *thesaurus* of policing knowledge and experiences that is available to assist and to guide them in developing their own unique policing model. Past policing encounters with locals, interactions, tropes / stories, previous problems and the implementation of possible solutions, lessons of the past, publications, and whatever information that may shed light and add value to the establishment of an own policing model for the NWFP, are without doubt available to the leaders of the Frontier Police to come up with their own policing model.

### **Policing Extreme Beliefs**

Worldwide community-policing models are all implemented in line with democratic policing principles, and that is, human rights issues determine the behaviour of police officials. The embracement of democracy necessarily leads to an embracement and implementation of human rights and the establishing of a culture of human rights (Nel & Bezuidenhout 1997). Any extremists like terrorists and suicide-bombers, whether they are members of Al-Qaeda (Ras 2009a; 2009b; 2009c), Lashkar i Jhangvi (Army of Jhang) or part of the Lashkar-e-Tayyiba (Army of the Righteous) (Ronczkowski 2007:285-287), pose a very serious threat and challenge to any police and military official.

From a military perspective, the identification, neutralization and elimination of extremists after 9/11 are practical realities in the ongoing War against Terror. If people do not change their radical beliefs or plan to destroy innocent lives and symbolic targets in order to achieve their own political aims, then terror deeds and counter-terrorist measures without doubt will lead to bombs, bloodshed and tears.

The police cannot escape this reality but is regrettably drawn into this internal religio-political unfortunate power-struggles. They cannot escape these attacks - they can only minimize it (Ras 2009a, 2009c).

To prevent terror attacks, they have to gather intelligence, infiltrate extremist groups and proactively prohibit them from executing what they plan to do. Through clandestine methods and techniques (human and electronic intelligence) they have to identify, arrest and prosecute those who want to establish a new socio-political order or dispensation (Ras 2009). The presence of the Pakistani military in the FATA and NWFP and the assistance of the United States of America in the ongoing War on Terror, whether in Afghanistan or within the Pakistani regions, are already winning formulas.

The Central Intelligence Agency's (CIA) secret war through the use of drones (the Predator and the Reaper) in the tribal belts of Waziristan, in which high-tech video-surveillance with the ability to use deadly fire, is used in order to target Al-Qaeda operatives and Taliban fighters like Abu Omar, are examples of this (<http://img.timeinc.net/time/daily/2009/0905/wdrones...>). However, the marginalisation of police personnel in the city areas must never happen because it is the police who are always the first responders and who form the first line of defense between the people and criminals/enemies on the ground.

The existence of radical terror groups that seemingly move freely at night over the Pakistani and the Afghan border or FATA and settled districts boundaries remains a policing and military challenge. This how-ever, must not discourage the Frontier Police. Terrorism is an intelligence war (Wilson 2006) and the police need to enhance effective communication technologies through partnerships with those that want and can assist (e.g. the USA). The constant gathering of human intelligence through infiltration and clandestine operations must never stop (Ras 2009a).

### **Best Practices in Counter Terrorism**

Terrorism is a special crime that requires special laws. This reality necessitates that Pakistani's police leaders need to look at laws in this regard that can greatly assist them in ensuring that they have the necessary legal backing to do their job without fear and hesitation. Not only must relevant legislation be put in place to prevent and combat terrorism, but diplomatic relationships with other countries must also be established and maintained in order to fight terrorists. One also needs strategies to win the hearts and minds of passive sympathizers of terrorism something the police can do through their community engagement and involvement with members of the public (Wilson 2006; Ras 2009a).

The criminalization of financial support to terrorist groups need to be tackled more seriously and the freezing of assets to supporters need to be continued.

Intelligence needs to be shared and covert actions need to be coordinated through the enhancement of regional cooperation. The existing military operations against the Taliban who supports Osama Bin Laden's Al-Qaeda need to be supported. From a preventative policing point of view Frontier Police members always need to be proactive and must know exactly who their enemies are. Specific assertiveness training must be given to them in this regard (Fasihuddin 2008:21-22).

Knowledge-sharing about the enemies of the police, their tactics and modus operandi, their organizational structures, their hiding-places, and especially their criminal intent and terror deeds need to be clearly stated so that the police in the NWFP knows exactly who is friend and who is foe. To know your enemy is one of the most accepted maxims in warfare (Wilson 2006). The Frontier Police must also implement aggressive efforts to identify terrorists and their organizations, map out their command and control and support infrastructures, and implement counter-terrorism measures to prevent their attacks. Disruption of all their planned activities must be at the order of the day (Ras 2009a).

### **Religious Leaders and Terrorism**

There is no doubt in my mind that the reasons why many Al-Qaeda members are willing to carry suicide belts and to blow themselves up are simply because of the religious indoctrination and erroneous belief, and fundamentalistic interpretation of the Holy Qur'an (Ali 1946) that they will please Allah if they do so (Ras 2009c). These so-called martyrs (*shaheeds*) are willing to die because they are told by religious extremists or fanatics that they will inherit heaven and reap rewards if they do *jihad*. Police needs to identify the religious leaders, for example, at the *masjid*, and members of the *ummah* who teach this, and simply neutralise them. It is only through infiltration and counter-terrorism techniques and methods that attacks, sabotage, the *al kannas* (sniper) and the suicide bombings will be stopped (Ras 2009a).

I believe that if the majority of peace-loving Muslims, who are in favor of law and order, will stand up and reject all these senseless killings by radical extremists in the name of Allah, then alone, peace will return to Pakistan. It is the task of the Pakistani police, especially those working in crime intelligence, who must infiltrate radical groups and organizations and start to identify members and neutralize their planned actions through arrests and prosecution. Globally-speaking, outsiders are expecting that military and national intelligence operators must disrupt the planned activities of extremists, even if it means that they have to penetrate much deeper into the enemy lines to neutralize and eliminate those who want to kill innocent people through terror campaigns (Ras 2009b; 2009c; 2009d).

From a policing point of view, an integrated approach is recommended where there is greater communication between the police, intelligence, the military and the

government (Kalidheen 2008:136). In South Africa, for example, the Department of Home Affairs is responsible for the issuing of identity and travel documents. A close collaboration between these important role-players will ensure that terrorists cannot move freely and that information is shared so that no-one works in isolation (Ras 2009a).

Partnerships between the police and private security companies are another important example that take place in South Africa in order to win the fight against crime (Potgieter, Ras & Naser 2008:33-43). Despite all the criticism that they receive because of poor service delivery, there are four times more private security officers in South Africa than police officers on the ground. This means there are more visible private security (police) officials on the ground that can assist the police in their search for suspects and criminals. The visibility of private security officials makes a difference and do act as a crime deterrent, and it is recommended that Pakistan also look more in depth at this matter (Ras 2009a).

### **The Pakistan Society of Criminology**

The NWFP is privileged to have the President of the Pakistan Society of Criminology in their midst. This Society is very important, just like the positions of each member of the steering committee because the aims of this Society are basically the dissemination of scholarly knowledge, the giving of advice, and to look at sound criminological and policing practices and experiences of different role-players from around the world, to see how the interests of Pakistan can be served. Knowledge-dissemination is one of many critical elements that can be used to win the war against criminal elements, especially against extremists or terrorists who are radical and violent in order to achieve their idiosyncratic religio-political aims.

Information gathering from different scholars, criminologists, police organizations and practitioners can be fruitfully used by this Society to come up and to develop an unique and indigenous policing model that may bring more peace and stability, not only to the NWFP, but also to the rest of Pakistan. Knowledge is power, and it was the wise Solomon who once said that “Being wise is better than being strong; yes, knowledge is more important than strength. After all, you must make careful plans before you fight a battle, and the more good advice you get, the more likely you are to win” (Good News Bible: Proverbs 24:5-6)

### **Police and Control The Borders**

Most of the Federally Administered Tribal Areas (FATA) and the Northwest Frontier Province of Pakistan are adjacent or near to the Afghanistan border. The people who live on both sides of the border speak the same language and are mostly of the same ethnic group and as a result of this there is a strong social bond that exists

between them for hundreds of years (Fasihuddin 2008). This means in practice that whatever happens in Afghanistan is felt in Pakistan and *vice versa*. This impacts upon policing. Although all criminal activities pose problems and challenges to law enforcement officials in Pakistan, it is especially the War on Terror, after 9/11, which led to the presence of foreign troops (e.g. United States of America) and drone attacks in areas like Waziristan that impact upon this Province.

If the Frontier Police effectively can control their borders with the tribal territories and in conjunction with the military and assistance of the United States of America ensure that radical elements, drug smugglers, human traffickers and weapon smugglers, for example, are restricted in terms of their movements and activities, then a lot of crime and social disruptions will be reduced. Effective border control means there are less criminal and enemy movements and activities that can contribute to disorder and lawlessness in Pakistan. Strategic planning and international assistance and cooperation can ensure that the Frontier Police will be in control (Ras 2009a).

### **Policing Challenges**

Fasihuddin (2008) recently has pointed out that the police in the NWFP were never trained for the War on Terror and do not know how to respond in a warlike situation. They are not only under equipped, understaffed and poorly paid, but there are also careless attitudes of high-ranking police officers who did not take the war in Afghanistan seriously enough and as a result did not prepare Pakistan for the consequent spill-overs. The NWFP is now experiencing terrorist attacks in greater numbers than the FATA with 28 suicide bombings that were recorded during 2007 (Fasihuddin 2008).

### **Fasihuddin's Recommendations**

When interviewed by John Whisenhunt, the editor of *IO Sphere*, Fasihuddin, the Director of Research and Development in Pakistan's NWFP and President of the Pakistan Society of Criminology, has pointed out that he believes that the whole police model need to be revamped because of the fact that terrorists are using the most modern equipment and communications gear. He uses the acronym TASK to emphasize that training (T), Attitude (A), Skills (S) and Knowledge (K) are the key ingredients that need to be implemented in order to ensure that effective policing, including counter-terrorism strategies, can take place. There is no doubt that his first-hand knowledge and experiences in the NWFP are of great importance in order to make progress in the War on Terror. To support his remarks I would like to conclude with a few brief remarks about police developments in South Africa that may help the Frontier Police to develop their own policing model that will work in their own situation as pointed out earlier.

## Police Developments in South Africa

Dutch traders under Jan van Riebeeck have established a stopover on the spice route between Holland (the Netherlands) and the East (India) on 6 April 1652 that led later to the founding of the City of Cape Town. Policing duties were performed by soldiers and felons from Batavia and as time goes on by ordinary “vrije burghers” (free citizens) who have assisted with law and order duties through the formation of commandos (Van Heerden 1995). In essence, commandos were local people who have fought their enemies with rifles and horses, using indigenous skills and experiences in order to survive (Ras 2009).

After the British have seized the Cape of Good Hope area in 1806 many of the Dutch settlers (the Boers) trekked north to found their own republics. This has led to the expansion of the commando-system. The discovery of diamonds (1867) and gold (1886) spurred wealth and immigration and intensified the subjugation of native inhabitants. The Boers resisted British encroachments but were defeated in the Second Boer War (1899 to 1902). The British and the Boers (who later became known as Afrikaners) ruled together under the Union of South Africa. In 1948 the National Party came into power and instituted the policy of apartheid where a white minority racial group erroneously have dominated all other races, especially the black majority ([http://www.theodora.com/wfbcurent/south\\_africa/south\\_africa\\_introduction.html](http://www.theodora.com/wfbcurent/south_africa/south_africa_introduction.html); Van der Watt 1976:1-3; Giliomee & Mbenga 2007).

The first official police force was established in 1912 after the four provinces in South Africa have become part of the Union of South Africa. The police force was centralized and the force was standardized in terms of uniforms, weaponry, tactics, duties, and law enforcement duties. It was a police force and not a paramilitary or military force. The understanding of people was that the police represent the public and are doing duties on the public's behalf. Where and when necessary, the police also have taken over the functions of the traffic police and they also got involved in military duties when and where necessary, but only in assisting the military, not to take over their role functions (Ras 2009; Van Heerden 1995).

South Africa became an apartheid state from 1948 where the white minority has implemented a policy of separate development based on racial and ethnic lines. The state has used the police and military to enforce their laws, including racial-discriminatory laws. As a result of this non-Whites have rejected the authority of the police and later start to reject their authority. This has led to bloody clashes with the police.

During the apartheid-period South Africa was also involved in protecting the border of South West Africa (now Namibia) with military and police personnel. Although South Africa's Koevoet police and the South African National Defense Force (SAND / military) have won their battles during the Bush Wars (Afrikaans:

“Bos Oorloë”) from 1965 to 1990 on this border between Namibia and Angola (Geldenhuys 2009; Nortje 2003; Stiff 2004; Williams 2008), they have lost the war because they did not win the support of the local people / communities (Ras 2009a).

The apartheid government has also lost their political power when unconventional guerilla tactics and warfare were introduced by underground community members like the ANC's (African National Congress) military wing, Umkhonto weSize (“The Spear of the nation”) who fought against the apartheid system (Ras 2009a). Pakistan must not make the same mistake. It is the task of the Frontier Police to win the hearts and minds of the people. If the people reject them, then the War on Terror will be lost.

In 1994 the apartheid state was replaced by a democratic-elected black majority rule under President Nelson Mandela of the existing ruling party, the African National Congress (ANC). Community policing was introduced and it was succeeded by sector policing and problem-oriented policing. However, crime did not really go down but has escalated. Mandela was succeeded by Thabo Mbeki who could not manage the high levels of crime. In fact, crime was not regarded as a very high priority, rather the provision of water, electricity, houses and the providing of jobs. One of the main reasons for the high crime rate in South Africa is the economic inequalities that still exists.

After the ANC's Polokwane Conference in December 2007, Mbeki was forced during May 2008 to resign because of pressure by radical elements within the ANC Youth League and members of the South African Communist Party and intelligence operators who have worked in a planned and very long manner to ensure that Jacob Zuma, that was ousted earlier by President Mbeki as Deputy President on so-called corruption charges related to an arms deal worth billions of rands, became the people's president.

When Zuma took office during 2009 he has appointed new police and intelligence leaders and moved away from the concept of a police “service” to a police “force.” In short, there is a war going on a war against criminal elements. The police service was seen as a too “soft approach.” What people want is action and absence of crime in their areas and a visible manifestation of police personnel who can reduce crime. Zuma and his cabinet have committed themselves to do just that. They even have started to use the military where necessary in order to portray a strong man's image and to assist with road blocks and searches (Ras 2009a). The present situation in Pakistan necessitates that the police and military have to work very closely together at this stage.

According to 2007-figures the South African population stands at 47 850 700 and comprises of 79,7% Blacks, 9,1% Whites, 8,8% Coloureds and 2,4% Indian / Asians ([http://en.wikipedia.org/wiki/Demographics\\_of\\_South\\_Africa](http://en.wikipedia.org/wiki/Demographics_of_South_Africa)). For many

years the police force comprises of about 150 000 members and it has been announced recently that this figure is going to be expanded to 180 000 members and promises were made that this number will escalate to about 210 000 within the next few years. There is also a strong indication that the intelligence capabilities of the state is built out and that the privacy of individual members of the state are now replaced by national demands that carry more weight.

There is a definite trend that after 9/11 that the community policing model in the United States of America and the United Kingdom is now expanded, even replaced, through the incorporation, assimilation and absorption of the intelligence-led policing model. The same can be said of South Africa although at a lesser scale because of the government's official point of view that community policing is and must be the policing model that must be used in order to reduce crime (Ras 2009a). Pakistan can consider these options and then, as pointed out earlier, come up with their own policing model.

According to the intelligence-led policing model, the gathering of specific intelligence, the doing of clandestine operations, the integration of all law enforcement personnel through the sharing of information, and the implementation of more integrated law enforcement approaches are typical features of this approach (Kalidheen 2008; Ras 2009a). Although Brown (2007:239-251) is correct in pointing out that community-oriented counter-terrorism measures *in praxis* have led to highly aggressive tactics, there is no doubt in my mind that community-oriented counter-terrorism measures definitely includes the intelligence-led policing model (Ras 2009a). The intelligence-led policing model cannot be separated from community-oriented approaches because it is people within communities who are providing the necessary human intelligence that is needed to ensure the safety and security of human lives and their property (Ras 2009a).

At present South Africa's top policing leadership are characterized through verbal war rhetoric like "We will fight criminals! Shoot to kill! Zero tolerance! We will fight them with everything that we have!" and so forth. The author was part of a four-person panel discussion on 29 October 2009 where the Minister of Police, Nathi Mthethwa, explicitly mentioned that the police are going to expand their crime intelligence capabilities. He also mentioned it directly and very boldly that the police is now officially no longer a police service but a police *force*.

This underlines the present reality that South Africa, after President Zuma came into power in 2009, deliberately is moving towards a more hard-line approach or a strong man's approach to policing. Police members are instructed to shoot to kill when confronted by serious criminals and they are busy to change section 49 of the Criminal Procedural Act, Act 51 of 1977, to make it more clear to the police when to shoot so that they do not hesitate to do so when they have to make that split-second decision (Mtheth-wa 2009; Ras 2009).



Because South Africa and Pakistan have a lot in common in terms of their past and present histories (e.g. diverse culture and language groups, both were former British colonies, both have a high crime rate, etc.), and in the light of our own challenges here on the southern tip of Africa, *in conclusion*, I recommend the following for the police in the NWFP to be successful:

### **To Be Successful in Policing The NWFP**

Have a political will. There must be an absolute determination to positively change the crime situation around. Although the enemy is sometimes within, there must be a strong will and determination to make an about-turn. A strong-man's approach is necessary at this stage and the implementation of the police as a force and not as a service may sound too militaristic, but it will have the desired effect. Develop your own policing model that does not replace the community service model, but strengthen it via intelligence-led and indigenous policing models and a no-nonsense (zero crime tolerance) approach. In short, create your own policing model that will work.

Motivate existing police members and underline the important role that they place despite all their challenges. Stay focused and stick to the set-goals without giving up or to slow down until reaching the objectives. Very important is discipline. It is crucial if one wants to succeed. One cannot have combat discipline if there is no personal discipline. Be knowledgeable and know who are you fighting (Ras 2007:93-110; 2009a).

In terms of terrorism, local and international terrorists are normally well organized and engage in thorough preparations that normally take long. Terrorists preparations normally go through ten main phases that are indicative of their activities and modus operandi. These relevant issues are: recruitment, training, selection of action / targets, planning, finances, logistics, transportation, security (their own protective measures), execution (the actual attacks) and propaganda (Wilson, 2006). Because terrorists need time to prepare themselves in order to strike, police must utilize this time-factor to infiltrate and disrupt their activities before they can strike. Expand your intelligence capabilities and infiltrate and disrupt the enemy from within. Definite collaboration with the military and intelligence agencies is critical in order to ensure success (Ras 2009a).

The specific identification of leaders, whether political or religious, who advocated hatred and who oppose any form of peaceful means that will ensure social harmony in the NWFP, needs to get special attention. Win the hearts and minds of the people through community engagement, addressing their social needs, and through positive communication operations. Keep on expanding your general

knowledge-base in terms of criminology and policing matters via the Pakistan Society of Criminology and build out your existing friend-networks to ensure help, advice, assistance and support at all levels when needed. The collaboration with the United States of America and their allies are encouraged because they stand and fight for sound democratic principles and human rights despite all the criticism.

The Frontier Police has many challenges but I believe they are in the best position to know how to police their own people. Be brave and continue to fill the gaps and track down criminals and those who want to destroy the good work that been done in the past. I conclude with a sailor's image: Sometimes you have to sail against the wind, at times with the wind, other times with no wind; no matter what the circumstances, keep on sailing, reach your destination, ensure the safety and security of all inhabitants of the NWFP.

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## **Problems of Data Collection and Constraints in Investigation Management of Cases of Terrorism in Pakistan**

*Fasihuddin*

### **Abstract:**

In the absence of properly maintained and verifiable data on terrorist activities a research leading to policy options for countering terrorism remains a mere desire. The absence of uniform statistics or faulty data hampers the job and assessment of the investigation management of terrorist incidents. Likewise, the poor quality investigation management will not create proper information indicators for data collection systems. This paper briefly examines this issue in the context of terrorist activities in Pakistan.

### **Keywords:**

Data, Crime Statistics, Investigation Management, National Police Bureau, National Crisis Management Cell, Joint Interrogation Team, National Counter Terrorism Authority, Police.

### **A. Introduction:**

Much depends on the successful investigation of any criminal offence recorded with a law-enforcement agency anywhere in the world. Investigation generally starts from arrival at the scene of crime, collection of evidence, compilation of recovered and recorded material, examining the witnesses and making of a case file for prosecution and trial by the competent court. In the usual police work in Pakistan, the preventive intelligence or prior information sharing or analyses are beyond the scope, competence and authority of the police force as far as the serious organized crimes like terrorism or human trafficking are concerned. The modern investigation tools like geographic profiling, deductive profiling, voice analysis, technological interceptions, etc are neither tried by the Pakistani police nor do they have resources for modernizing and equipping the investigation wing and the Forensic Sciences Laboratory (FSL). Poor investigations result in low conviction with acquittals or untraced cases, which are not taken as good indicators for police performance and efficiency. Investigation staff often complain of the non-professional or non-cooperative attitude of the prosecution (separated from the police in 2005), but there exists no such mechanism to critically evaluate the outcome of an investigation and trial of case. The usual practice of writing Police Brief, Chalan (Final Report) Memo at the conclusion of an investigation and a report on the Conviction Slip receipt are now no more in vogue or very poorly done due to lack of effective

monitoring and supervision of investigation management. Another big issue is the lack of properly collected and documented data on terrorist activities. In the absence of verifiable and authentic data, even the uniformed police statistics, create serious implications for law-enforcement, criminal justice and crime prevention policies. In this paper, both these issues are briefly discussed. Let us take the second issue first:

### **Methodology:**

This paper is written on the basis of information generated and recorded by various provincial and federal departments and authorities. Efforts were made to collect, analyze and organize the available data. Extensive interviews were held with those police officers who are responsible for conducting police investigation in troubled areas.

### **B. Terrorist Activities & Problems of Data Collection:**

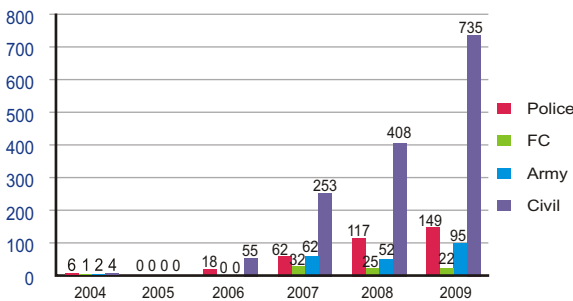
The first and foremost indication of the severity and magnitude of a crime is evident from the authentic and verifiable or official statistics. Though the official figures may be challenged by impartial observers or opponents, yet they are endorsed, recorded, kept for longer period and at times published and disseminated. In Pakistan, there is no single department to collect data from local police offices, intelligence and law-enforcement agencies on a single standardized format. No effort is being made to gather the maximum of information indicators on terrorist activities. All what available are the routine police statistics, generated at a police station and sent through higher offices to the provincial and federal governments. Mistakes are generally expected during the upward flow of information. Information on standardized formats or information which are computer-friendly and accessible are generally not seen in this process. The round-figure statistics with no calculation of crime rate, arrest or clearance rate, incarceration rate, conviction rate or percent increase or decrease, are the only available crime figures we have in Pakistan. Even this kind of available crime figures suffer from difficulties of uniformity, consistency and availability. These are not easily available to the general public. At times, the print and electronic media calculate and compile their own statistics on the basis of media-reported incidents or NGOs-generated data or quoting some anonymous source in the government or on the authority of a think-tank report, mostly foreign. Most often the police at district and provincial level classify the kind of crime into so many sub-categories without any legal justification like robbery at banks, on highways, at petrol pumps, etc. This is not done for any research purpose, but to mitigate the overall round-figure effect. This 'specification' is generally known as the 'purification of

statistics' in China. However, it gives rise to contradiction and creates difficulties for the officers and researchers who want to study the exact nature of any single crime and the outcome of the investigation processes. Let us examine the various kinds of data produced by the different government departments:

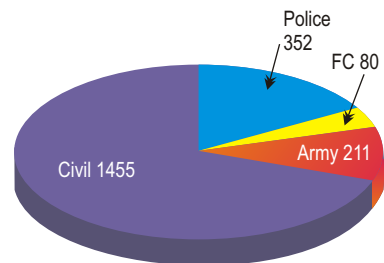
1. The National Crisis Management Cell (NCMC), the Ministry of Interior, Government of Pakistan, collects the statistics related to terrorist activities in the country. They usually do tabulation of these figures according to year and provinces. They are provided data by the intelligence agencies, special branch and the respective provincial governments. There is a two way flow of information between NCMC and the primary and secondary sources. **Annexure-A** (Table-I) describes the details of the terrorist incidents as tabulated by NCMC. This is kind of aggregated data. Without these wholesome figures no further description or classification can be found with the NCMC. This tabulation is for the settled districts as well as the Federally Administered Tribal Areas (FATA).
2. The National Police Bureau (NPB), the Ministry of Interior, Government of Pakistan, receives the police crime statistics for the settled districts of Pakistan. All the provinces and the Islamabad Capital Territory Police regularly provide the crime statistics to the NPB on monthly basis. Earlier to the war on terror, such statistics on terrorist activities were rarely provided. Even the NPB didn't design any detailed information sheet with maximum of indicators for terrorist incidents which could be easily used and analysed for research purpose and policy options. **Annexure B** (Table-II) shows the available data with the NPB which too are in wholesome figures. In the NPB, no separate or specialized unit is established for this purpose to collect, analyse and disseminate data on terrorist incidents, terrorist profiling or the outcome of the investigation of such incidents. The NPB Research Office has no staff or resources for this job.
3. The National Counter Terrorism Authority (NACTA), which was established in 2009, eight years after Pakistan joined the global war on terror, has started working on some indigenous research and collecting the available data on terrorist acts in the country. In an effort the NACTA has acquired the number of religious militants in the prisons of all the provinces. NACTA found that there are 12 religious militants in the prisons of Baluchistan, 80 in Sindh, 220 in the Northwest Frontier Province (NWFP) and 173 in the Punjab. We have tabulated the NACTA provided figures in **Annexure C** (Table-III) with percentage. These figures also don't show the exact nature of the offence, the relevant section of law, the individual characteristics of the offender and the under trial or convicted status of the inmates, etc.

4. In addition to these three available data systems at the federal level, the provincial governments generate and present their separate crime statistics which, at times, are slightly different from the statistics already provided to the various setup at the federal level. It may be due to the additional information or cancellation of cases in the due course of time, but failing updating at the higher level. For example, the NWFP Police Department provides the following data which we have shown in the two graphs (I-II) pertaining to terrorist activities, one for the overall incidences and the other for the suicide attacks. The Research Section of the NWFP Police has further done some classification of the various kinds of terrorist activities alongside the geographical distribution of such incidents. Though a little detailed, it also suffers from the usual difficulties of data collection as seen in the case of NACTA, NPB and NCMC. Moreover, the statistics from the Operation or Research sections, occasionally, are somewhat different from the statistics compiled by the Special Branch of the concerned police departments. One of the reasons for this obvious discrepancy is that the Special Branch usually records all the registered/reported and un-registered/non-reported cases. In a way, the record of Special Branch is like a picture of victimization. In addition, the police have generally the total number of arrested, killed or injured terrorists whereas the Special Branch also maintains a record of the arrested and interrogated terrorists or suspects brought to the Joint Interrogation Team (JIT) exercises. The JIT is composed of almost all law-enforcement agencies. According to the NWFP Police headquarters a total of 1764 terrorists were arrested and 150 killed in 2008 and 904 arrested and 138 killed in 2009. However, the complete details of the arrested and interrogated terrorists by the JIT referred to the NWFP Special Branch are given in Annexure D (Table-IV). In Table-V, we have calculated the percentage of the outcome of the interrogation which will be discussed shortly.

**Graph 1**



**Persons Killed**



**Total Persons Killed: 1906**

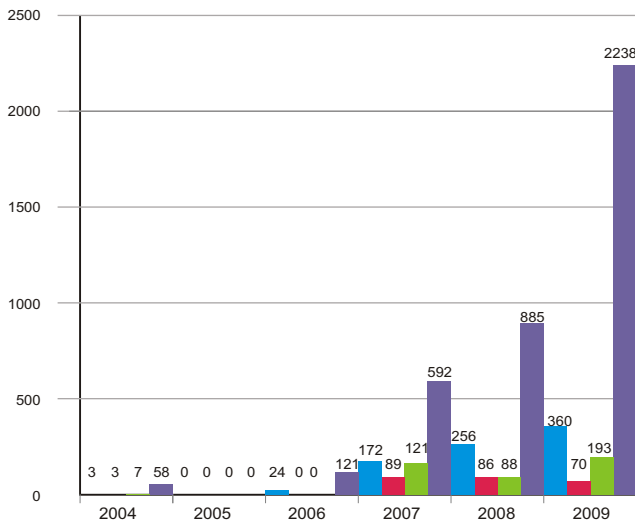
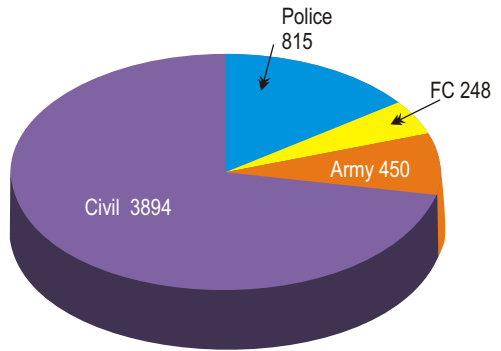
Source:

Office of the Additional Inspector General of Police (Investigation), NWFP Police Department, Peshawar.



**Graph 2**

**Persons Injured**



**Total Persons Killed: 4758**

Source:

Office of the Additional Inspector General of Police (Investigation), NWFP Police Department, Peshawar.

**C. Discussion:**

The different data collection systems as mentioned above have serious implications for situation analysis, research, policy-options and decision-making. It also indicates the in-coordination amongst the various agencies at federal and provincial level. We have no reasons to disbelieve the NWFP Police crime statistics for the arrested terrorists but the available figures for the religious militants in the prisons of the NWFP are comparatively too low as

provided by the NACTA. The available data doesn't classify and indicate the exact details of the more than two thousand arrested terrorists. If it includes the arrested terrorists currently undergoing the JIT after the military operations in Swat, even then the number of the religious militants (if it is not a separate category of the arrested terrorists) is far below than the police record. The most important implication of this record is for the investigation management. We simply can't determine how many arrested terrorists are under police detention and for how many maximum days, and whether the Final Report (Chalan) of investigation is submitted in a complete or in-complete form, to the competent court; and how many are awarded punishment, and again what type of punishment. In the absence of such basic data the researchers are unable to comment upon the performance of the investigation management for those terrorist activities which have happened in the settled districts and are under the police jurisdiction. The total number of the arrested terrorists undergoing the JIT as compiled by the Special Branch is different from the total number of the arrested terrorists as given by the Police headquarters. Again, it is not clear whether JIT examination is being held for all the arrested terrorists or not. If this is not a mandatory stage in the process, then it has serious effects on the findings of an individual police investigation officer (IO), who in such cases needs greater support and detective insight from his colleagues in the JIT, representing their individual intelligence agencies. To my mind, the data collection at the federal level is very hopeless in the eyes of unbiased researcher. The absence of any consolidated data at the national level often creates problem for the government and policy-makers. It also provides an opportunity for critics and opponents. The discrepancy in the data of NPB and NCMC for the same year and province (except FATA as NPB doesn't record anything related to FATA) is not an encouraging sign for a respectable research-oriented institution of a national character in a country. The situation needs immediate attention from the higher decision-makers and a proper research is to be conducted into the causes and effects of these discrepancies and steps taken for removal and correction of these anomalies.

#### **D. Constraints in Investigation Management of Cases of Terrorism:**

Academic literature offers surprisingly little commentary on or analysis of the management of criminal investigations (Neyroud and Disley, 2007). This remark holds good for most of the cases, but perfectly applies to the investigation of terrorist activities. The inherent complexity of investigation practices like complicated and overlapping targets, requirements and auditable standards with which the investigation managers must comply and the different targets and requirements imposed by federal and provincial

governments, is further augmented due to lack of approved priorities, resources constraints, absence of independent and public scrutiny and cross-agency oversight, to name a few. The terrorist incidents are generally dealt as issues of national security and at times the local police are not entrusted with the legal responsibilities they ought to perform in case a terrorist act is committed in the area jurisdiction of a police station. Though police are the first to arrive at the scene of occurrence and are supposed to preserve the scene of crime as their prime duty in all such events, but in this case they may not be able to do the same due to a number of reasons, especially when the target or victim belongs to some other law-enforcement agency or a sensitive installation is attacked. Police in such cases may not even be allowed to enter and collect evidence. This may be the case in many countries that terrorist incidents are considered as high profile cases of national security concerns, so the local police may not be considered as competent or resourceful enough to deal with such cases. It may be due to security and intelligence considerations also. As a matter of fact, in case of this shift of responsibilities, there must be another legally authorized or specialized department to carry out the requisite responsibility of an efficient investigation management, which unfortunately is not the case in Pakistan. However, the police normally register the criminal cases of terrorism and thus are bound to conduct investigation, whether the offence is committed or attempted.

As noticed earlier, there is no uniform data available on the outcome of the total registered cases of terrorism. We definitely don't know the exact results of the registered cases so far. To measure the effectiveness of the investigation management, we must know how many cases are successfully worked out; how many nominated or suspected terrorists are arrested; how many are charged with undeniable evidence, and resultantly, how many are properly prosecuted and convicted. If we look at **Annexure E** (Table-V), we find that during a period of thirty years (1981- 2009), a total of 3569 suspected and arrested terrorists were sent for JIT to the Special Branch of the NWFP to determine the status of their involvement in a terrorist activity. It was found that only 16.11% were declared as black, whereas 25.20% were declared as white and another 52.03 % were declared as white and the fate of another 2.38% was left as undecided. This huge number of grey suspects leads to 'investigation coma or suspended animation' which can't be cogently explained as far as the collective performance of the members of the JIT is concerned. Police Officers and others generally avoid responsibility in such cases, ultimately resulting in faulty investigation. This is an area which is normally inaccessible for an outside researcher and the official record is not easily available to the general public.

Though this black, white, grey debate is not a legal debate yet the outcome of the interrogation is a good guideline for an investigation officer or manager. Different interrogation teams use different profiling systems; however, the NWFP Police (Investigation) has developed recently a comprehensive profiling for the detainees in Swat. This is a good initiative on part of the local police. However, critics may challenge the legality of this initiative as the JIT is put before any formal arrest or referral by any agency under proper legal documents.

The police generally apply the routine investigation techniques even for the deadliest terrorist or suicide attacks, where in the absence of CCTV or eye-witnesses, or huge destruction, the evidence is badly destroyed and lost. The lack of properly trained, equipped and responsive disaster or crisis management departments further overburdens the first respondent team of the police with emergency and rescue activities at the scene of a terrorist attack. The police thus start the investigation after the registration of the case in a police station. Following are the much debated constraints faced by the police detectives in investigation management of terrorist incidents:

1. Police are often confronted with public anger, non-cooperation, disorderliness, commotions, media race for early coverage and too many cameras at the scene of crime, which hamper their job of quick preservation of the scene of crime and providing social and emergency services.
2. There is no separate directorate or wing of the police investigation in any province to deal with serious organized crime investigations. In Pakistani police culture, the emphasis on prevention strategies like more patrolling, more check posts, more barricades, etc is always greater than the scientific investigation, criminal profiling, community involvement or creation of an indigenous form of intelligence-led policing.
3. No efforts were made to implement the Police Order 2002 in letter and spirit. The police reforms brought the worst days for the investigation and after separation of the two wings of prevention and investigation, the police officials prefer to rush to the lucrative postings and jobs in the prevention than to stay in the more scientific and professional job of conducting investigation. It seems time-consuming, responsibility-binding and a disinterested activity to most of the police officials due to priority problems at the level of top police leadership. Investigation didn't get its due place and respect after the new police law in 2002. The basic police training, the in-service police training courses and the Forensic Sciences Laboratories were not reformed and modernized in the wake of creating specialized units in the police under the new Police Order 2002. Vision, leadership and professionalism will work hard for a change in the

overall policing styles, overhauling of police training systems and allocation of ample resources for detective instruments and up gradation and modernization of Forensic Sciences Laboratories in the country.

4. During interviews with the senior police officers I found that the subordinate staff often avoid to conduct investigation of terrorism cases. The major reason for shirking responsibility in this respect is not the availability of resources or competence, but a fear of tracing the investigation pathway back to the terrorist groups and militant gangs in some unidentifiable place in a remote tribal area, which obviously is beyond the jurisdiction and competence of the local police. Moreover, the police subordinate officials fear repercussions of dealing with such cases. The stories of targeting the police officials are not few in number. Police need more authority, more incentives, and definitely stress management programmes to overcome this problem.
5. Police have no system of local intelligence or a say in the information-sharing processes amongst the national intelligence agencies, therefore, they fail to devise and design a rational profiling of the potential terrorists or groups-at-risk in a locality. It needs an academic and intellectual input from senior intelligence analysts and an immediate revitalization of the Central Intelligence Agency (CIA) at the district level and the Criminal Intelligence Department (CID) under the Investigation wing with the same role as given in the Police Rules, 1934. New amendments can be made to it in accordance with the circumstances and requirements. This will undoubtedly overcome the intelligence gap of the investigation management of the terrorist incidents.
6. Police in such cases may not be the first and prime agency of arrest, so the ocular or circumstantial evidence may not be verified by the lower police officials during the investigation process. It needs a fresh legal insight on the subject.

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Table III: Details of Religious Militants in Pakistani Prisons (As in March 2009)

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6. Office Record of the Additional Inspector General of Police (Special Branch), NWFP Police Department, Peshawar.
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9. Interview with Superintendent of Police (Investigation), District Tank, NWFP.

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Fasihuddin (Police Service of Pakistan) is currently working as Director General, Human Rights, Conflict-Resolution & Peace-Making, NWFP Police Department. His other publications on this subject include:

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In addition, he has made a dozen of presentations on this issue at various international conferences.

Annexure: A

Table 1: Details of Human Losses in Terrorist Activities ( For the Period 2006 to 2008)

Province	2006						2007						2008						2009					
	No of Incidents	Killed		Injured		No of Incidents	Killed		Injured		No of Incidents	Killed		Injured		No of Incidents	Killed		Injured					
		LEAs *	Others	LEAs	Others		LEAs	Others	LEAs	Others		LEAs	Others	LEAs	Others		LEAs	Others						
Punjab	41	5	12	17	49	44	32	38	58	126	47	42	131	96	271	54	80	236	115	814				
Sindh	29	20	10	2	157	28	8	12	48	478	19	10	16	17	95	48	15	66	39	228				
NWFP	55	24	66	52	85	216	160	412	293	729	244	187	389	464	834	584	284	810	719	2714				
Balochistan	139	23	35	42	91	129	24	72	74	244	211	40	103	151	307	566	62	112	256	744				
FATA *	256	61	244	162	162	228	238	513	614	431	199	96	1602	238	2065	671	251	406	676	957				
ICT ❖	0	0	0	0	0	2	7	20	23	97	5	17	68	34	325	11	14	12	21	43				
AJK ⚡	3	3	1	1	0	2	0	0	0	7	2	0	0	0	18	5	2	15	6	31				
Gilgit Baltistan	1	0	1	0	0	2	0	0	0	2	0	0	0	0	0	8	0	17	0	14				
Total:-	524	136	369	276	544	651	469	1067	1110	2114	727	392	2309	1000	3915	1947	708	1674	1832	5545				

\* Law Enforcement Agencies

★ Federal Administered Tribal Area

❖ Islamabad Capital Territory

⚡ Azad Jammu Kashmir

Source: National Crises Management Cell (NCMC), Ministry of Interior, Government of Pakistan, Islamabad

## Annexure: B

Table II: Details of Human Losses in Terrorist Activities ( For the Period 2001 to 2008)

Year	Punjab			Sindh			NWFP			Balochistan			Islamabad			Railways			Northern Areas			AJK*			Total		
	Cases	Person		Cases	Person		Cases	Person		Cases	Person		Cases	Person		Cases	Person		Cases	Person		Cases	Person		Cases	Person	
		K*	I*		K	I		K	I		K	I		K	I		K	I		K	I		K	I		K	I
2001	24	29	122	27	10	77	1	0	0	16	9	21	2	1	31	3	1	18	1	0	0	5	22	79	55	291	
2002	18	30	135	19	38	133	2	0	9	7	0	3	1	5	35	0	0	0	2	0	1	4	1	4	53	74	320
2003	10	52	176	31	1	54	0	0	0	18	42	52	0	0	0	1	0	0	1	0	0	5	7	66	102	299	
2004	8	134	238	25	75	267	22	10	57	70	85	54	0	0	0	6	0	0	2	0	0	2	0	3	135	304	619
2005	21	9	38	28	4	23	10	5	10	109	43	65	1	19	100	6	2	15	15	0	3	1	0	191	83	254	
2006	20	9	65	13	62	194	36	53	104	237	52	298	0	0	0	8	0	0	2	0	0	0	0	316	176	661	
2007	21	101	311	0	0	0	281	388	819	268	83	229	3	30	123	0	0	0	1	0	1	0	0	574	602	1483	
2008	15	186	592	7	0	36	450	527	1246	332	100	389	6	83	367	0	0	0	0	0	0	0	0	810	896	2630	
Total	137	550	1677	150	190	784	802	983	2245	1057	414	1111	13	138	656	24	3	33	24	0	5	17	14	46	2224	2292	6557

\* Political Agent # Assistant Political Agent

\$ Frontier Region \* Superintendent of Police © Dera Ismail Khan

Source: National Police Bureau (NPB), Ministry of Interior, Government of Pakistan, Islamabad



## Annexure: C

Table III: Details of Religious Militants in Pakistani Prisons (As in March 2009)

Baluchistan		Sindh	
Prison	No. (Religious Militants)	Prison	No. (Religious Militants)
District. Jail, Quetta	8	Central Prison, Karachi	71
Central Prison, Mach	3	Central Prison, Hyderabad	7
Central Prison, Gaddani	1	Central Prison, Sukkur	2
<b>Sub Total</b>	<b>12 (2.47%)</b>	<b>Sub Total</b>	<b>80 (16.49%)</b>
NWFP		Punjab	
Central Prison, Peshawar	83	Central Prison, Lahore	36
Central Prison, Haripur	43	District. Jail, Lahore	3
Central Prison, Bannu	20	Central Prison, Gujranwala	2
Central Prison, D.I. Khan	41	District Jail, Sialkot	6
District. Jail, Mardan	2	Central Prison, Faisalabad	13
District. Jail, Kohat	4	District. Jail, Jhang	4
District. Jail, Daggarr	27	District. Jail, Sargodha	7
<b>Sub Total</b>	<b>220 (45.36%)</b>	District. Jail, Mianwali	6
		Central Prison, Multan	37
		Central Prison, Sahiwal	6
		Central Prison, Rawalpindi	36
		Central Prison, Bahawalpur	17
		<b>Sub Total</b>	<b>173 (35.67%)</b>
<b>Grand Total</b>		<b>485 (100%)</b>	

Source: National Counter Terrorism Authority (NACTA), Ministry of Interior, Government of Pakistan, Islamabad.

Table IV: Details Suspect/Accused Terrorist Referred For Joint Interrogation Team / Special Branch NWFP, Peshawar (For the Period 09 - 04 - 1981 to 31 - 12 - 2009

Year	Pa <sup>+</sup> Khyber	Mohmand	Bajaur	Kurran	Miranshah	Peshawar	Comm: AR**	FR <sup>+</sup> Lakki	SP <sup>+</sup> Mardan	PA Tank	SP Chitral	SP Karak	SP Swat	Islamabad	SP Kohat	SP Hangu	SP Bannu	SP Lakki	SP Dir	Mansehra	SP Swabi	SPP Abbottabad	SP Kohistan	SP Noshetra	SP Charsada	APA FR D.L. Khan <sup>®</sup>	APA <sup>+</sup> FR Bannu	FR Kohat	Total
1981	5	2	9	2	-	8	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	27	
1982	58	-	1	2	128	-	-	-	-	-	4	-	-	-	2	0	-	-	1	-	-	-	-	-	-	-	-	197	
1983	12	1	-	4	-	38	21	-	-	-	3	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	80	
1984	32	7	6	2	16	36	90	-	-	-	-	-	-	-	2	-	2	-	1	-	-	1	-	-	-	-	-	193	
1985	41	5	1	2	26	41	46	-	-	3	1	1	-	-	1	-	-	-	-	-	-	2	-	-	-	-	-	170	
1986	57	11	7	1	18	46	6	-	1	14	2	-	1	-	3	-	-	-	-	-	-	-	-	-	-	-	-	167	
1987	67	2	4	65	14	17	9	19	5	-	10	1	2	-	5	-	2	-	16	1	-	1	-	-	-	-	-	240	
1988	252	-	5	20	3	18	4	2	-	3	-	3	-	11	3	-	1	-	-	-	-	-	-	-	-	-	-	325	
1989	27	-	3	6	1	11	2	-	-	4	2	5	2	1	-	-	-	-	-	-	-	-	-	-	-	-	-	64	
1990	10	-	1	9	-	28	-	-	-	-	4	2	5	2	1	-	-	-	-	-	-	-	-	-	-	-	-	52	
1991	18	1	2	13	9	23	1	-	2	-	-	-	-	-	1	-	2	-	-	-	-	1	-	3	3	-	-	78	
1992	6	2	4	4	36	8	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	61	
1993	19	-	-	5	10	-	-	-	1	-	-	-	-	-	2	-	2	-	-	-	-	-	-	-	-	-	-	39	
1997	54	-	5	-	10	23	-	-	-	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	96	
1998	181	6	7	3	44	17	-	-	-	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	259	
1999	130	79	26	26	8	9	-	-	-	-	-	-	2	-	-	-	-	1	-	-	-	-	-	-	-	-	-	298	
2000	158	1	-	-	4	11	-	-	-	-	-	-	-	-	1	-	-	1	-	-	-	-	5	-	-	-	-	181	
2001	97	19	38	22	14	5	-	-	-	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	-	197	
2002	57	38	4	1	19	18	-	-	-	15	-	1	-	1	-	-	-	-	15	-	-	-	-	-	-	-	-	171	
2003	84	2	6	4	11	-	-	-	-	6	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	115	
2004	41	5	3	1	14	1	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	68	
2005	48	3	13	6	13	-	-	2	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	96	
2006	41	1	6	1	-	3hd	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	56	
2007	96	2	2	13	-	1	-	-	1	-	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	117	
2008	101	-	-	-	3	7	-	-	-	-	-	-	-	-	3	15	-	-	-	-	-	-	-	2	-	-	-	132	
2009	30	-	-	-	-	8	-	-	12	-	-	1	-	-	-	-	-	6	-	-	14	-	11	8	-	-	-	90	
Grand Total	1722	187	152	206	270	512	179	23	22	44	24	9	10	14	25	15	18	10	21	16	15	5	1	19	14	1	2	3569	

Source: Additional Inspector General of Police, Special Branch, NWFP Police Department.

Table V: Result of JIT/SB for Referred Suspected & Accused of Terrorism

Year	Black	%age	Gray	%age	White	%age	Return	%age	Pending	%age	With out Gradation	%age	Other	%age	Total	%age
1981	10	37.04%	17	62.96%	-	-	-	-	-	-	-	-	-	-	27	100%
1982	60	30.15%	36	18.09%	103	51.76%	-	-	-	-	-	-	-	-	199	100%
1983	19	23.75%	20	25.00%	41	51.25%	-	-	-	-	-	-	-	-	80	100%
1984	39	20.21%	44	22.80%	110	56.99%	-	-	-	-	-	-	-	-	193	100%
1985	25	14.71%	22	12.94%	123	72.35%	-	-	-	-	-	-	-	-	170	100%
1986	42	25.15%	52	31.14%	72	43.11%	1	0.60%	-	-	-	-	-	-	167	100%
1987	92	38.33%	79	32.92%	69	28.75%	-	-	-	-	-	-	-	-	240	100%
1988	48	14.77%	252	77.54%	17	5.23%	8	2.46%	-	-	-	-	-	-	325	100%
1989	15	23.44%	39	60.94%	-	-	10	15.63%	-	-	-	-	-	-	64	100%
1990	13	25.00%	14	26.92%	-	-	25	48.08%	-	-	-	-	-	-	52	100%
1991	36	46.15%	24	30.77%	3	3.85%	15	19.23%	-	-	-	-	-	-	78	100%
1992	14	22.95%	38	62.30%	2	3.28%	7	11.48%	-	-	-	-	-	-	61	100%
1993	4	10.26%	16	41.03%	8	20.51%	11	28.21%	-	-	-	-	-	-	39	100%
1997	26	27.08%	64	66.67%	6	6.25%	-	-	-	-	-	-	-	-	96	100%
1998	8	3.09%	242	93.44%	6	2.32%	3	1.16%	-	-	-	-	-	-	259	100%
1999	17	5.70%	278	93.29%	2	0.67%	1	0.34%	-	-	-	-	-	-	298	100%
2000	12	6.63%	148	81.77%	14	7.73%	7	3.87%	-	-	-	-	-	-	181	100%
2001	6	3.05%	100	50.76%	84	42.64%	7	3.55%	-	-	-	-	-	-	197	100%
2002	12	7.02%	34	19.88%	116	67.84%	9	5.26%	-	-	-	-	-	-	171	100%
2003	4	3.48%	44	38.26%	54	46.96%	13	11.30%	-	-	-	-	-	-	115	100%
2004	5	7.35%	28	41.18%	29	42.65%	6	8.82%	-	-	-	-	-	-	68	100%
2005	22	22.92%	62	64.58%	8	8.33%	4	4.17%	-	-	-	-	-	-	96	100%
2006	7	11.67%	41	68.33%	3	5.00%	7	11.67%	-	-	-	-	2	3.33%	60	100%
2007	22	18.80%	56	47.86%	29	24.79%	8	6.84%	-	-	2	1.71%	-	-	117	100%
2008	11	8.33%	86	65.15%	2	1.52%	3	2.27%	-	-	30	22.73%	-	-	132	100%
2009	7	7.78%	24	26.67%	-	-	6	6.67%	-	-	53	58.89%	-	-	90	100%
Grand Total	576	16.11%	1,860	52.03%	901	25.20%	151	4.22%	-	0.00%	85	2.38%	2	0.06%	3,575	100%

Source: Additional Inspector General of Police, Special Branch, NWFP Police Department.

## The Possibility of Foreign Powers Training Intelligence Agencies of Pakistan

*Raja Saadat*

### **Abstract:**

An attempt is made in this paper to emphasize the need for training of Pakistani intelligence agencies by Western countries and identify the areas which hinder a meaningful interaction. To do this it is necessary to understand the constraining factors of both sides. Pakistan's security compulsions which lay down the guidelines for the use of its intelligence apparatus, past experiences, present degree of cooperation with other countries will be discussed for better understanding of the subject. To explore the possibility of Pakistan's intelligence agencies being trained by foreign powers.

### **Keywords:**

Terrorism, Intelligence, Training, Foreign Powers, Security

### **General**

1. The success of terrorists in 9/11, 7/7 and Madrid bombings has revealed new trends in terrorism. Terrorists now function internationally through various regional groups having common ideology and strategy. These groups support each other across countries and regions and have adopted a new form of warfare<sup>1</sup> commonly known as 'unrestricted warfare'. Presumably this kind of warfare enables them to take their fight to homeland of the enemy and strike at his soft underbelly. Such a strike is highly preferred due to the ability to target the enemy's sensitivities, wide media coverage, and avoidance of direct engagement with regular military forces. The menace of international terrorism knows no physical, religious or cultural boundaries and targets Muslims and non Muslims alike.
2. In the wake of recent events of international terrorism across the globe, there has been a growing realization amongst many countries to enhance their intelligence relationships with nations, with proximity to Afghanistan, especially Pakistan. The affected countries which are being used as terrorists' bases, safe havens or staging areas, also realize the importance of such cooperation. However, it is being experienced that despite genuine desire on both sides, an intelligence cooperation which is sincere in nature and meaningful in results is difficult to attain due to mutual suspicion on both sides. Resultantly, despite sincere desire of all willing parties, optimum results cannot be achieved and the terrorists continue to succeed in striking their targets across the globe at will. Pakistan afflicted by terrorists and certain extremist

tendencies in its society though willing to curb these is constrained by certain internal and external dynamics. Terrorist networks present a challenge for the Pakistani intelligence which has limited capabilities and can benefit greatly from modern training imparted on scientific lines by foreign powers in general and Great Britain and USA in particular.

### 3. Regional Security Environment

Before an attempt is made to comprehend the organizational structure and working methodology of Pakistan's intelligence agencies, it will be pertinent to first fully understand the factors which act as a driving force. Regional environment coupled with internal dynamics to include domestic political, economic and security situation shapes Pakistan's threat perception. This threat perception helps in formulation of national policy which then dictates the type of state resources and the manner in which these are to be employed.

### 4. Conclusions From Environment

Some conclusions from the security environment which are responsible for Pakistan's threat perception and also necessitate the requirement of cooperation in intelligence field are:-

#### a. Regional Environment

Regional security landscape is festering with numerous flash points (Kashmir, Chechnya, Palestine, Aceh) and, is therefore, likely to take much longer time to stabilize than anticipated. These flash points provide the terrorists with ideal grounds for recruiting dissidents, radicals and rogue elements for furthering their cause. Pakistan would continue to be affected by regional events in general and all significant events in Afghanistan, Iran and India in particular. As such its internal/domestic administration would be greatly influenced by its threat perception.

#### 1. India

- a. Pakistan's geopolitical environment remains a threat to its external and internal security. Relations with India are a case in point. India and Pakistan may have come a long way from their posture of confrontation, but peace between them is still far off.<sup>2</sup>
- b. As long as India is pursuing her objective of acquiring the status of permanent member of UN Security Council, she would not like any distractions and hence would engage Pakistan through a strategy of long drawn peace process without yielding on any issue. It would continue endeavors to improve relations with China while portraying itself to the US as a readily available regional power for containment of the former.

- c. Despite the ongoing peace process, Pakistan's relations with India are not likely to experience any drastic change unless progress is made on the core issue of Kashmir. Her external threat perception, is therefore, not likely to register any major change in the foreseeable future.
2. Afghanistan
    - a. An unsettled Afghanistan, especially where the Taliban rump which has affinities with and support from Pakistan's tribal areas still remains a source of potential instability on the Pakistan-Afghan border and an irritant in the relations between the two countries.<sup>3</sup>
    - b. Its geographic location provides natural connectivity between Pakistan, Iran and Central Asian Republics for the transportation of energy resources and trade; therefore, its stability will play a major role in shaping future of the region.
    - c. The region in general and Afghanistan in particular could be subjected to narco-politics that may be exploited by the terrorists.
3. Iran
    - a. On the Western front, Iran, with its regional ambitions, emerging nuclear capability, strategic rivalry with Pakistan, and suspicions of a U.S.-Pakistan axis, has the motive and capability, if not the intention, to leverage Pakistan's policies.<sup>4</sup>
    - b. Iran is also a rival influence in Afghanistan and an economic competitor for access to Central Asia, which itself remains unstable.<sup>5</sup> It continues to assert itself in the region through ideological values and revolutionary agenda. It would like to continue to exploit like minded societies and groups in the region to pursue its economic objectives. It is likely to continue a strategy of conflict with its neighbors on account of ideological divide and economic competitiveness.
4. Central Asia
    - a. Central Asian Republics are currently in the process of asserting themselves and discovering their sovereign status. This process would continue to create a state of chaos and flux in the region.

b. Internal Security Environment

Pakistan's internal security is closely linked with politico-economic stability and law and order situation. As long as progress is being made in these fields, the internal situation would remain normal and radical/extremists elements are not likely to gain any support of the masses.

5. Pakistan's Intelligence Community

Pakistan has three main intelligence services; Intelligence Bureau (IB), Military Intelligence (MI) and Inter-Services Intelligence (ISI). The common goal of these agencies is to look after national interests and preserve security of Pakistan on both external and internal fronts.

6. Intelligence Bureau

IB is the oldest dating from Pakistan's creation in 1947. It was formed by the division of the pre-partition IB of British India. Its primary job is to monitor politicians, political activists, suspected terrorists, and suspected foreign intelligence agents. The IB keeps tabs on political operatives from countries it considers hostile to Pakistan's interests. IB is headed by a director general and is part of the Interior Ministry of Pakistan.<sup>6</sup> DG IB reports directly to the Prime Minister's office. Unsatisfactory performance of IB in the first Indo-Pak war of 1947-48 led to the decision in 1948 to create the ISI, manned by officers from the three Services.

7. Military Intelligence

MI is tasked with counterinsurgency operations, identifying and eliminating sleeper cells, foreign agents and other anti Pakistani elements within Pakistan. Additional functions involve monitoring high level military and political leaders and safe guarding critical facilities such as military and non-military installations. MI also has limited external role as well.<sup>7</sup>

8. Inter-Services Intelligence

ISI is one of the best and most well organized intelligence agency. It was founded in 1948 by a British army officer, Maj Gen R Cawthome, then Deputy Chief of Staff in the Pakistan Army.<sup>8</sup> ISI is tasked with collection of foreign and domestic intelligence; co-ordination of intelligence functions of the three military services; surveillance over its cadre, foreigners, the media, politically active segments of Pakistani society, diplomats of other countries in Pakistan and Pakistani diplomats serving outside the country; interception and monitoring of communications; and the conduct of covert operations.<sup>9</sup>

9. ISI works under a Director General, a serving Lieutenant General of the Pakistan Army. There are three Deputy Director Generals-designated as DDG (Political), DDG (External) and DDG (General).<sup>10</sup> There are over 25,000 active men on the staff of ISI who are drawn mainly from the army, para-military forces and the police. ISI is organized into following divisions:-
- a. Joint Intelligence X  
JIX serves as the secretariat which co-ordinates and provides administrative support to the other ISI wings and field organizations. It also prepares intelligence estimates and threat assessments.<sup>11</sup>
  - b. Joint Intelligence Bureau  
JIB, responsible for political intelligence, was the most powerful component of the organization during the late 1980s. The JIB consists of three subsections, with one subsection devoted to operations involving India, other operations involve, anti-terrorism and VIP security.<sup>12</sup>
  - c. Joint Counter Intelligence Bureau  
JCIB is responsible for field surveillance of Pakistani diplomats stationed abroad, if need be monitoring foreign diplomats, as well as for conducting intelligence operations in the Middle East, South Asia, China, Afghanistan and the Muslim republics of the former Soviet Union.<sup>13</sup>
  - d. Joint Intelligence / North  
JIN is responsible for Jammu and Kashmir operations, including monitoring Indian forces deployed within disputed Kashmir.<sup>14</sup>
  - e. Joint Intelligence Miscellaneous  
JIM is responsible for offensive intelligence operations and war time espionage.<sup>15</sup>
  - f. Joint Signal Intelligence Bureau  
JSIB, which includes Deputy Directors for Wireless, Monitoring and Photos, operates a chain of signals intelligence collection stations, and provide communication support to its operatives.<sup>16</sup>
  - g. Joint Intelligence Technical  
JIT, not much is know about this section however it is believed that JIT includes a separate explosives section and a chemical warfare section.<sup>17</sup>
10. Intelligence Cooperation Between Pakistan and Western Countries
- During the Cold War Pakistan was deeply conscious of the power disparity in the Subcontinent and was actively looking for ways to redress it. The heightened security concerns and need for economic development compelled



Pakistan to reach out to the United States, which was then trying to promote a strategic alliance of Asian states to check the expanding lines of Soviet influence. The United States strengthened Pakistan's defense capabilities and potential for economic development.<sup>18</sup> Pakistan also leased bases to the United States for intelligence-gathering and communications facilities.<sup>19</sup>

11. The Soviet invasion of Afghanistan from 1979 to 1989 made Pakistan a country of paramount geo-strategic importance. In a matter of days, the United States declared Pakistan a "front line state" against Soviet aggression and offered to reopen aid and military assistance deliveries.<sup>20</sup> Cooperation between Pakistan's ISI and America's CIA was exceptional. Initially Pakistani intelligence was trained along British lines, but subsequently CIA, trained 200 ISI officers in improved intelligence methods. Using Pakistan as a conduit, US funded large numbers of jihadists through Pakistan's the ISI.<sup>21</sup> ISI monitored the activities of and provided advice and support to the mujahidin, and commandos from the Army's Special Services Group helped guide the operations inside Afghanistan. The ISI trained about 83,000 Afghan Mujahideen between 1983 to 1997 and dispatched them to Afghanistan.<sup>22</sup> Throughout the years of Soviet occupation of Afghanistan, relations between the United States and Pakistan were best characterized by close cooperation. But Pakistan paid a price for its activities. Afghan and Soviet forces conducted raids against mujahidin bases inside Pakistan, and a campaign of terror bombings and sabotage in Pakistan's cities, guided by Afghan intelligence agents, caused hundreds of casualties. In 1987, some 90 percent of the 777 terrorist incidents recorded worldwide took place in Pakistan.<sup>23</sup>

### **Current Cooperation in the War on Terror**

#### **12. USA**

The current U.S.-Pakistan cooperation in the war on terrorism is focused on building the military-intelligence partnership between the two countries. Pakistan has cooperated with the United States by granting logistics facilities, sharing intelligence, and capturing and handing over al-Qaida terrorists. The intelligence provided by Pakistan has led to successes against terrorism around the world.<sup>24</sup> USA has helped Pakistan with some specialist training and even some high-tech surveillance equipment, such as ground sensors that can monitor vehicle movements.<sup>25</sup> Pakistan has arrested more than seven hundred terror suspects. It is currently creating a national criminal database and is the first country to successfully install PISCES, a terrorist-interdiction program set up at seven Pakistani airports and at border crossings with India.<sup>26</sup>

### 13. UK.

Historically Pakistan has always had closer ties with Great Britain. Although relations between both the countries have remained friendly, however, during the Cold War, USA gradually moved in to replace Great Britain. Since 9/11 and 7/7 there have moves from both the sides to revive their traditional relationship. Pakistan and United Kingdom started cooperating in the international efforts against terrorism immediately after the 9/11 incidents.<sup>27</sup> Pakistan has an intelligence sharing mechanism with more than 48 countries including the UK.<sup>28</sup> Recently Pakistan and United Kingdom signed a memorandum of understanding for enhancing military and intelligence cooperation. So far United States is the major source of weapons systems supplied to Pakistan for use in anti-terrorism efforts. However, it appears the United Kingdom will also provide latest equipment to Pakistan for bolstering the capability of its security forces in the war against terrorism.<sup>29</sup>

### **Impediments to Intelligence Cooperation**

14. Terrorist networks present a peculiar challenge for those countries which have limited capabilities in areas such as law enforcement, intelligence and border control. There is the risk that terrorists may see some countries, or regions, as attractive places to plan and operate with low risk of detection or disruption. While there is a realization on part of both the western nations and Pakistan that a lot can be achieved through close cooperation in intelligence field, national interests and perspective as well as mutual suspicion prohibits any meaningful agreement. Pakistan is cognizant of the limitations of its intelligence agencies and would welcome assistance from western states in the shape of training and equipment but on its own terms and conditions. It is aware that there are always some strings attached to the package being offered by the west. Some of the problems which prohibit a close cooperation are discussed in the succeeding paragraphs.

### 15. Approach to Cooperation

Intelligence relationship between international allies especially a third world country and a developed country has typical problems. While a third world country normally responds to regional impulses, the major partner tends to consider global dynamics in its relationships.<sup>30</sup> A case in point United States which failed to see Pakistan's perspective on the nuclear issue and left it heavily sanctioned. Resultantly Pakistan's relationship with the west has always lacked continuity and a common vision. It is for this reason that as soon as the western powers achieved their objectives vis-à-vis Pakistan in past engagements, they abandoned it either consigned to benign neglect or hit with a succession of punitive sanctions that left in their trail resentment and a sense of betrayal.<sup>31</sup>

## 16. East West Divide

Islamic countries which remained colonies or experienced Western domination are faced with the dilemma of searching for their true identities. Pakistani society has been torn apart by the stark choices of deciding between Muslim identity, following the western ways left behind by the colonial power or adopting a new compromise identity which is a merger of both the Islamic and the Western ways. Irrespective of the official decision, the society always remains deeply divided. The war on terrorism has sharpened the tensions within the Pakistani society and between Islam and the West. The United States seems to be fighting terrorism with traditional instruments of power, whose bluntness obscures the subtlety and complexity of the issues involved, and with a crusading zeal that speaks of an ideological struggle and clash of civilizations.<sup>32</sup> All conservative Muslims as well as their religion is being labeled as extremist. Both sides are judging each other with their own ideals.

## 17. Provision of Technology

While the Western countries which have latest technology available to them are willing to train Pakistan's intelligence agencies and in return demand full cooperation, they fail to provide any state of the art technology to Pakistan. In the end Pakistan has to rely on the use of human intelligence resources which though available in abundance are no match to the latest technology. Moreover, Pakistan considers that its intelligence agencies are vastly experienced and need no outside training in handling their indigenous resources. What it needs is latest intelligence collection equipment and requisite training in its handling. However, while the Western countries are labeling Pakistan as the front line state in the war on terror and an invaluable ally they are reluctant to provide any modern technological assistance to Pakistan. The information provided to Pakistan is also on selective basis.

## 18. Mutual Suspicion

- a. The West in general and USA and Great Britain in particular have the tendency of viewing Pakistan with suspicion. USA was responsible for the civil war in Afghanistan as immediately after the soviet withdrawal, it abandoned the Afghan Society which suffered a decade long civil war. This civil war resulted in anarchy and the Mujahideen collected from all over the world were left to take advantage of the situation by pursuing their own agenda. Pakistan which was left stranded by the Western powers had to deal with the situation at its own. It tried to bring some stability in the region and end the chaotic state in its neighborhood. Ultimately it was blamed for all the crises in Afghanistan after 9/11. Similarly in the

wake of 7/7 bombing in Britain, there is frustration and helplessness over the suspicion that a former colony could be serving as a school for would-be terrorists. In Pakistan, meanwhile, there is indignation and resentment at being blamed for acts committed by Britons in Britain.<sup>33</sup> In response Ex-President Musharraf was careful to emphasize that fighting terror was not a job for Pakistan alone. In an address to the nation, he said that while Pakistan had a problem, "England has a problem also. "There is a lot to be done by Pakistan internally. And may I suggest there is a lot to be done in England also."<sup>34</sup>

- b. Historic facts prove that the West is eventually responsible for the prevalent problems. Following examples point in this direction:-
  1. During the Soviet occupation of Afghanistan in the 1980s, the US funded large numbers of jihadists through Pakistan's secret intelligence service, the ISI. Later the US wanted to raise another jihadi corps, again using proxies, to help Bosnian Muslims fight to weaken the Serb government's hold on Yugoslavia. Those they turned to included Pakistanis in Britain.<sup>35</sup>
  2. For nearly a decade the US helped Islamist insurgents linked to Chechnya, Iran and Saudi Arabia destabilize the former Yugoslavia. The insurgents were also allowed to move further east to Kosovo. By the end of the fighting in Bosnia there were tens of thousands of Islamist insurgents in Bosnia, Croatia and Kosovo; many then moved west to Austria, Germany and Switzerland.<sup>36</sup>
  3. Less well known is evidence of the British government's relationship with a wider Islamist terrorist network. During an interview on Fox TV, former US federal prosecutor John Loftus reported that British intelligence had used the al-Muhajiroun group in London to recruit Islamist militants with British passports for the war against the Serbs in Kosovo. Since July Scotland Yard has been interested in an alleged member of al-Muhajiroun, Haroon Rashid Aswat, who some sources have suggested could have been behind the London bombings. Loftus claimed that Aswat is a British-backed double agent, pursued by the police but protected by Mi6.<sup>37</sup>

### **Possibility of Cooperation and Training in Intelligence Field**

19. Trust and Confidence. The war on terrorism has sharpened the tensions between Islam and the West. The United States seems to be fighting terrorism with traditional instruments of power, and with a crusading zeal that speaks of

an ideological struggle and clash of civilizations. Elements on both sides see their basic value system as under siege and have exaggerated their mutual fears and are busy defaming and demonizing each other. Moral issues have been confused, or sacrificed to self-righteousness. Each side is judging the other with its own ideals, ideals from which it has fallen short itself. There is a dire need to stop all such practices immediately as the terrorists are taking full advantage of such a divide. Instead all relationships and dealings should be carried out under an atmosphere of trust and confidence. Partners have to stop blaming others for their own failings and should have the courage to come forward and accept own mistakes. Instead of blaming each other a helping attitude towards the others would be more beneficial.

20. Technological Assistance.

USA operates the most technologically sophisticated international surveillance network in the world. In co-operation with other western nations, it runs an international eavesdropping system known as "Echelon". A system of newly installed internet taps code-named Carnivore also gives US law enforcers the power to trawl email messages.<sup>38</sup> For surveillance in Afghanistan, USA is relying on the use of unmanned drones and sophisticated aircraft such as the Rivet Joint - which can monitor communications and other electronic activity and the Joint Stars, which uses radar to monitor ground movements.<sup>39</sup> Provision of this kind of equipment along with training to the Pakistani personnel to operate and maintain the equipment will certainly be welcomed by Pakistan and also boost the surveillance capability.

21. Tracking Terrorist Finances. An important aspect of fighting terrorism is to track and disrupt terrorist financing. USA is already imparting training to willing partners in this field. US State Department, has obligated over \$11.5 million to provide technical assistance and training to develop and reinforce counter-terrorist financing/anti-money laundering regimes of front line states.<sup>40</sup> These comprehensive training and technical assistance programs include legislative drafting, financial regulatory training, financial intelligence unit development, law enforcement training, and prosecutorial/judicial development. Such training can also be imparted to Pakistani personnel.

23. Weapons in Counter Terrorism Operations. Owing to the availability of latest weapons to the terrorists and the ever improving insurgent tactics, there is a greater requirement of weapons technologies and weapon systems that cater for surveillance, early warning, detection, night fighting aids and digital communications. For high-tech weapons technologies Pakistan would continue to be dependent on imports from foreign countries. Provision of these

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## Narcotics The Hidden Terrorism

*Majid Karimi*

### **Abstract:**

This article begins with definition of term Terrorism Later on relation between narcotics trade and terrorism is highlighted production and trade of narcotics as guaranteeing financial source for terrorism is examined and the reasons of the international community's failure against these two phenomena are mentioned In the end it is concluded that despite of relation between terrorism and financial resources collected through narcotics "curse of narcotics itself is a type of terrorism which can be pronounced as the "Hidden Terrorism". Where as considering close relationship among these both we can say Narcotics is in the service of terrorism and terrorism is in the service of narcotics

### **Keywords:**

Terrorism Narcotics Trade International Community Terrorist Groups Securing Financial Sources

### **Introduction**

Surely several times you had heard this phrase from anti narcotics authorities and experts that – Terrorism and narcotics are two sides of a coin

One of the goals of this research is to review the reasons for which such idea are schemed Lets start here whenever cultivation and production of narcotics and its causes i.e political economic social etc are discussed a curious mind is perplexed with this question that for what reason human being had not come to a solution for this obstacle which was created by his own hands?

Perhaps we would say the solution to this problem is very simple? If we go through ideas of anti narcotics experts from the international community we can conclude a practical solution after gaining global consensus It may be enough to hold a UN session attended by experts from all over the world and through exchange of ideas they could sum up a feasible solution and send it for execution

Reviewing previous history of cultivating and producing narcotics it comes to our knowledge that from beginning imperial states inflicted this curse on others to gain economic and political benefits and used it as a strategy to reach their goals Historically speaking British East India Company was most active in promoting cultivation production and transfer of narcotics in sub continent as compared to other countries

In Iran during the Safawi era traces of Britain's influence in promoting and publicizing narcotics is evident. The cultivation and production of narcotics in Iran continued till end of Pahlavi era in 1978. After the success of great Islamic Revolution in Iran in 1979, annihilation of opium forms and complete halt to opium cultivation was a big step taken towards countering narcotics.

In this context Imam Khomeini (R.A.) the great leader of Islamic Revolution in Iran had said: "Entry and distribution of narcotics is a plot of global imperialists." Perhaps most of people at that time did not take it seriously nor had delved its depth; they just merely took it as a slogan. Whereas in last decade most of the incidents specially relating to some government and political persons who call themselves "Mafia" came to our knowledge. We accept them as a reality when ever we talk about Mafia the first thing which come to our mind is a rude terrorist group which can commit any sinister act to get their benefits and goals. Today it have become clear for everybody that these mafia and terrorist groups are nurtured by opportunist countries and with their aid, support and guidance they were formed and are spreading their activities.

Al Qaeda is one of such terrorist organization. My opinion will specially focus on the financial sources of such terrorist groups and how some of the countries get benefits from them. In last decade we observed that the terrorist activities and narcotics trade has flourished astonishingly. No doubt close relation exists between them. Antonio Maria Costa, Executive Director of United Nations Office on Drugs and Crime (UNODC) had many times highlighted this issue that there are proofs that money generated through narcotics is used to finance organized crimes i.e. it is used for terrorism. He is of the view that war against drug smuggling is equivalent to war against terrorism.

Relation between terrorism and narcotics perhaps is not a new issue. Whereas after knowing the definition of the terrorism we must analyze different aspects and angles of its relation with narcotics.

### **Literal Root of Word Terrorism**

Literal root of word "terrorism" is from Greek and Latin languages. The word "terror" means fear and tremor and in English it means to cause fear and fright. In Oxford's Advanced Dictionary terrorism is defined as a behavior which is meant to achieve political goals through extremism or threat.

### **Meaning of Terrorism**

Terrorism is any kind of organized crime committed by force or threat against people and their property in order to threaten or to induce citizens or governments

to achieve certain socio political goals Whereas we can say that till now no consensus over definition of terrorism have been achieved world wide The proposed definitions are based upon some certain conditions and methods It is possible that a person be taken as a terrorist by some and the same may be a freedom fighter in view of other because of this till now defining terrorism is an unresolved issue

Noam Chomski while defining terrorism writes Terrorism is an impulsive tool to attack civilians in order to gain political religious or similar goals Some of experts in internal rights define terrorism as Criminal acts against a country to create chaos among its people classes and certain groups or all inhabitants of a country

According to others Terrorism can be defined as an act of genocide threat and frightening people to reach political goals to overthrow the governments to take control of official matters or to submit them to some one else

### **Types of Terrorism**

As time passes types of terrorism are diversifying and many of its types have been formulated which contains examples in different spaces Types of terrorism known to us are psychological terrorism revolutionary terrorism nationalist terrorism suicidal terrorism religious terrorism state terrorism international terrorism cyber terrorism global terrorism and criminal terrorism Hereby looking at criminal terrorism as a categorical research topic we precisely define Criminal terrorism as is evident from its name a type of terrorism in which groups of robbers armed bandits and arm traders etc function to gain worldly and personnel benefits Every type of criminal means like extortion kidnapping organized murder attempts killing and murder are customary in this type of terrorism

### **Narco Terrorism**

(Narco terrorism) Narcotics terrorism is type of terrorism in which people directly or indirectly are involved in cultivation production transfer or distribution of drugs

According to this definition narco terrorist groups conduct and guarantee their terrorist activities through narcotics trade On the basis of given definition for the term terror as manifest of fear and threat this type of terrorism consists of crimes which are conducted by narcotics smugglers and can be considered as terrorist activities i.e murdering innocent people kidnapping capturing and killing government officials etc

### **Terrorism and Narcotics**

Today at national and international level every one has formulated plans to counter terrorism We can say that in last decade and after September

terrorist act, and presence of Western troops in Afghanistan to fight terrorism, has made terrorism the most important issue of world at all the levels of the present society.

Today many countries have given priority to the war against terrorism in their policies and willingly or unwillingly are showing negligence over narcotics propagation.

Till now after eight years, Western troops had scored limited success in establishing long lasting peace in Afghanistan, against armed and terrorist groups. This defeat tells failure story of coalition forces in extending and executing common and coordinated plan in Afghanistan to control unrest and terrorism and moreover to establish peace and to start rehabilitation and reconstruction activities in this country.

According to statistics of UNODC in year 2008, the number of addicts has reached a total of 200 million and statistics of AIDS and hepatitis patients, rapidly increases using common syringes. Is it not the proper time that international community may see into this matter technically and to take practical steps in this regard.

During the peak of cold war, narcotic drugs were used as a political tool and source of revenue. Afghanistan was turned into epicenter of narcotics cultivation. Undoubtedly appearance of Taliban was accompanied by political and imperialist mafia and narcotics terrorism. During Taliban era in Afghanistan, cultivation and production of opium were openly allowed and Taliban was share holder in the opium trade and to generate more money they imposed more taxes on opium cultivators and smugglers. In fact Taliban era in Afghanistan can be termed as era of blooming of opium cultivation. Before year 1992, opium production in Afghanistan was less than 2000 tons per year. Whereas in first year of Taliban rule it reached 3400 tons per year and in year 1999 it increased up to 4600 tons.

Flourishing cultivation and production of opium in Afghanistan have close relation with strengthening and spreading of terrorism in this country. Taliban by encouraging farmers to cultivate poppy and by issuing permits to transport narcotics products in Afghanistan and out of country and by taking taxes for these activities collected enormous benefits, through which they kept their military machines running smoothly.

The few examples quoted here about Taliban's control over drugs cultivation and productions are closer to reality. But the Taliban's leader later by issuing prohibition order (ban) to cultivate poppy, comparatively reduced poppy cultivation in Afghanistan.

Official statistics of UN also support these reports and elaborate that at the end of Taliban rule in Afghanistan opium production reached 185 tons. Whereas eye witnesses present in Afghanistan claimed more than the declared production of UN (185 ton).

In fact reduction in cultivation and production was endorsed by them. Here a question arises that if we believe that narcotics are the real channel for the financial means of the terrorist groups including Taliban, then why they reduced the production of opium up to 185 tons?

### **International Will to Fight Drugs and Terrorism**

September 11, 2001 incident in US became a turning point which gave international community the direction to take comprehensive steps to counter the phenomenon of terrorism. Immediately after these incidents foreign troops, under US banner, entered Afghanistan to encounter terrorism and to establish consistency and order in the country.

Before this incident, anti terrorism conventions were not welcomed by the governments and the UN's efforts in this context were not effective as needed.

Seventeen days after September 11, 2001 incident the Security Council passed two important resolutions.

In the resolution No. 1368, which was passed on September 12, 2001, Security Council while extending its sympathies to the families of those killed in terrorist attacks to the US government, condemned terrorism as a threat to global peace and security and emphasized on inherited right of individual and collective defense on part of victimized government and demonstrated its commitment to fight terrorism in all its forms.

Later on in the resolution No. 1373, which was passed after 17 days of this incident, detailed measures consisting of more legal issues, were chalked out for the governments of world to fight against terrorism.

Security Council in this resolution collected all the agreements in this context till the date, in a new form as a resolution. This global liability resulted from the resolutions of UN conventions to fight against terrorism. They converted these liabilities into organizational duties which were to be obeyed by all the governments without any objection.

From year 1909 till now many international and regional documents have been written and approved regarding war against narcotics, which still lack international community's commitment for its enforcement.

## War Against Financial Resources of Terrorist Groups

Financial resources of terrorist groups consist of presentation and collection of money, in any way, direct or indirect, illegally with intention or specifically to utilize in terrorist activities. War against financial resources of terrorist groups demand greater commitment and desire from the governments. It is necessary for governments to approve laws and suitable regulations, and to keep eye on implementation of these laws to pave way for this task. More international coordination among countries is required, so that effective tools can be used to prevent provision of financial resources of terrorism and through pursuance and applying penalties to their assets, their activities could be eliminated.

Anti money laundering law is one of these laws. In absence of proper law structure, preventing the financial resources to reach terrorist groups becomes very difficult. Whereas in absence of a transparent and single strategy, the international community falls in this category. According to UNODC's report, in 2009 opium was cultivated in the five provinces of Southern Afghanistan, and these provinces are under Taliban's influence. Antonio Maria Costa Executive Director of UNODC says: "Especially in these provinces poppy cultivation must be curbed. This action is necessary to fight against Taliban. This group earns 10% of its revenue from taxes imposed on poppy grower, Taliban strengthens poppy growers and smugglers and in return they strengthen Taliban. Taliban collects millions of dollars revenue from cultivation of narcotics and this revenue is spent to buy weapons and conduct terrorist activities."

## Conclusion

While discussing types of terrorism, we discussed criminal terrorism, according to its definition it was said that the terrorist groups which commit any criminal act i.e. murder, killings and, kidnapping to gain material and personal benefits fall under this classification of terrorism.

Likewise the word (Narco-Terrorism) Narcotics Terrorism stands for the terrorist activities regarding direct or indirect cultivation, production, transfer or distribution of drugs. According to this definition the narco- terrorist groups ensure their terrorist activities through trade of drugs.

Despite of the financial relation between terrorism and drugs, it is necessary to clear this hypothesis that narcotics itself is a type of terrorism and we must name it as "Hidden terrorism".

The players of this game behind the screen in politics and economy have literally caused death to millions of innocent people.

In this game the poor Afghan farmer, for livelihood and maintaining his family, is forced to grow and has become the target.

So with presence of Western coalition forces in Afghanistan, we all were expecting that solid steps be taken in order to eliminate the cultivation of poppy and smuggling of narcotics. But till now, No significant success have been achieved against drugs and terrorism.

By examining meanings and definitions of terrorism in detail we can claim that those human beings who have lost their lives in drugs including those who sacrificed to fight against narcotics, and those who were killed during smuggling and by using drugs are all the victims of the "Hidden Terrorism."

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## **Narco-Terrorism in Pakistan: An Organized Crime-Linkage and Counter-Strategies**

*Nabi Bakhsh Narejo*

### **Abstract:**

The paper outlines and introduces the conceptual framework of narcotics and their linkage to terrorism in Pakistan. The factors producing narcotics originating in Afghanistan are discussed as linkages causing terrorism. The secondary analysis focuses on the data discussing various factors causing terrorism in Pakistan. Although there is not significant evidence in empirical terms about the linkages, one can assume from available data that narcotics and terrorism are mutually determining taking example of the case of Afghanistan. The incidents of terrorism occurring articulate that there is involvement of organized criminality in causing and strengthening terrorism, specifically in case of Pakistan.

### **Keywords:**

Pakistan, Afghanistan, Narco-terrorism, Organized Crime, Linkages, Opium Cultivation, Counter-narcotics

### **Introduction**

The phenomenon of terrorism shrouds ambiguity and automatically triggers multiplicity of outlooks, variegated perceptions and dynamic perspectives. Narco-terrorism poses great threat to Pakistan and other Regional countries with and without touching the boundaries and borders. The type of terrorism is financed, fueled or geared through the narcotic cartels having organized criminal nature and profiling.

Globalization has dramatically changed the face of both legitimate and illegitimate enterprise. Criminals by exploiting advances in technology, finance, communications, and transportation in pursuit of their illegal endeavors, have become criminal entrepreneurs. Perhaps the most alarming aspect of this "entrepreneurial" style of crime is the intricate manner in which drugs and terrorism may be intermingled (Casteel, 2003). The global enemy is organized and supported by organized criminal gangs and narcotic cartels. It eludes clear thinking and swindles professionals touching the areas/aspects where crime, violence and terrorism are intermingled and intersected. Terrorism as systematic use or threat of violence continues to hit nerve centers of global community. The phenomenon is highly intricate in its nature acquiring delicate understanding, professionally-focused inputs and persistence in strategically defeating the alluding enemy.

Terrorists are motivated and strengthened through finances. Jihadi organizations are one of the greatest sources of finances to terrorists. They continue



to change their strategies in view of law enforcement reactions (Costigan & Gold, 2007, p 15)

The organized crime may affect society in many ways and manifestations. Drug trafficking is linked to terrorists causing great harm and destruction in society like Pakistan. This article focuses on the link between organized crime (narcotics) and terrorism in Pakistan. The causative factors have been discussed to formulate their linkage to the issue of terrorism in Pakistan. The research involves secondary analysis through description and presentation through graphs and tables.

The law- makers, statesmen, legal professionals, law enforcement agencies and Criminologists are keenly worried and professionally involved in range of efforts aiming at understanding and countering the menace of terrorism. Media responses to terrorism are initially being shaped on paths of professional ethics, neutrality, human rights and care for the victims. There is a continuous drive, drift and shift towards crafting and executing better strategies against terrorism.

### **Conceptual Framework**

Crime has recently been witnessed the greatest of all threats to human society and peace of citizenry on the face of the globe. Organized criminality has emerged as highly complex phenomenon that now attracts all professionals and general public. The phenomena have now been spreading towards the less developed and more centralized societies world around. The networking of criminality is entangled and has become customary in open markets. The patterns of organized crime gangs are now varied in nature, having trans-continental and diverse manifestations. These are the basic characteristics of organized crime. There are vanishing boundaries and definitions making such illegal business look like legitimate enterprise. Besides, there are patterns like money-laundering, illegal weapon sale and trade, and illegal drug-sale are also key inseparable elements to the issue of organized crime. Sophisticated technology has supported this phenomenon, increased opportunities involving illegal profits through human trafficking and arms trafficking. (Padhy, 2006, p 2-4).

The organized crime and terrorism are linked together for achieving multiple inter-connected goals and benefits through organized activities. They include generating finances for organizing their networks and include other tactics like bribing the local officials specially to run their operations smoothly. These groups are wiser enough to access and utilize the advanced technologies in promoting violence, terror and destruction (Padhy, 2006, p 164). Livingston summarizes that 'organized crime involves large, long-standing organizations with diversified roles for its members: a criminal organization derives much of its income from crime; and it relies on violence, real or potential, to accomplish its goals' (Livingston: 1996, p 253).

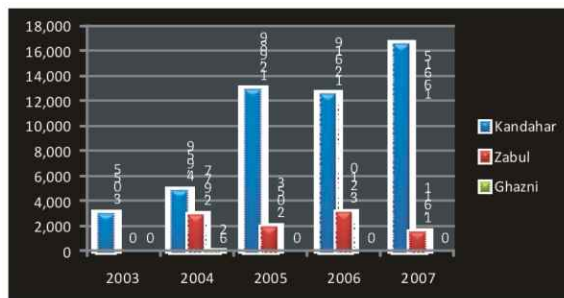
Drug dealing is not just a crime, but a form of business as well. Cocaine, methamphetamines, heroin, marijuana and some other drugs are sold in a network that has close similarity with business organizations. The structure of such organizations looks identical to those of legitimate ones. The organizational structure of a typical drug cartel-organized crime- has three major levels. These levels include the street dealer, the distributors and the cartels (the drug lords). Drug trafficking is controlled by the organized criminal groups who develop alliances for purposes of greater effectiveness and producing enormous benefits. Drug trafficking has become both a transnational and international phenomena. Drug trafficking is the primary means of acquiring large sums of money and power, and is a major cause of both human and financial suffering world wide. The global phenomenon of trafficking has been a problematic area of concern for world community. There is an increasing priority shift of world community towards understanding and addressing seriousness of this issue. (Wright and Miller, 2005:442-3)

### Afghanistan Link

Afghanistan has history of turmoil, war, narcotic trade and free weapons which play critical role in destabilizing this land and its near-border countries. The open cultivation impacts locals and border countries. The roots coming from Afghanistan are impacting near regions and international communities. The open cultivation is very profitable, illegal business used by terrorist organizations for furthering their operations in desired countries.

### Indicators of Opium Cultivation

Statistics show a rapid increase in poppy cultivation in Kandahar province and terrorists incidents as well. The following chart shows the amount of poppy cultivation and the change in cultivation scale in different years:



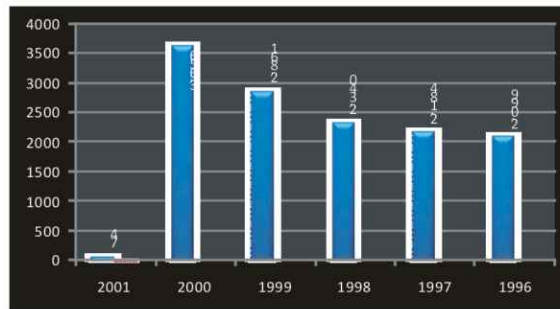
**Opium Cultivation in Afghanistan from 2003 to 2007**

Source: 2007 Annual Opium Poppy Survey, Executive Summary, UNODC

According to the Annual Opium Survey of UNODC (2007), which studied cultivation of poppy in Afghanistan during the period 2003–2007, the largest crop was grown in 2007 (16615 ha) in Kandahar Province, which was also the major cultivation area during this period. The second major province for poppy cultivation was Zabul in which the biggest crop was ploughed in the year 2006 (3210 ha). Whereas Ghazni has only grown small amount of opium in 2004 (62 ha).

### Impact of Narcotics on Pakistan

Pakistan employs a global approach to attacking drug organizations that fuel the terror network. In 2000, Afghanistan produced 70 percent of the world's opium supply and 80 percent of the opiate products destined for Europe. Unlike their counterparts in Colombia, the terrorists in Afghanistan enjoy the benefits of a trafficker-driven economy that lacks even a recognized national government.



#### Afghanistan Opium Production 2001 - 1996

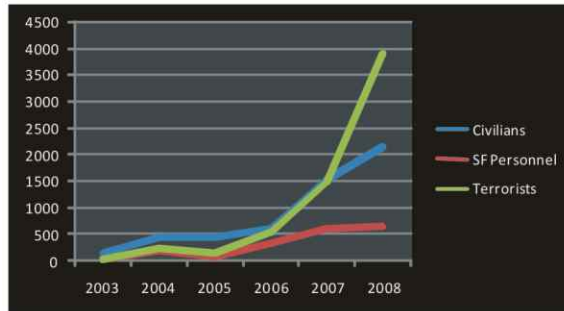
The above graph shows that the opium production in Afghanistan gradually increased starting from 1996 to the maximum in year 2000. Whereas in 2001, opium cultivation almost came to the halt.

According to the United Nations, up to 60% of Afghanistan's opium crop is stored for future sales. Accordingly, the degree to which profits from the drug trade are directed to finance terrorist activities, as well as the extent to which both types of organizations rely upon the same money laundering and smuggling facilitators or systems, is of paramount concern to Pakistan.

### Impact of Terrorism on Pakistan

Terrorism as global menace has its impact over Pakistan. However, it is not clear whether or not narcotics are involved in all incidents of terrorism. But it can be

assumed that the terrorists are being financed by the narcotics gangs. In recent years due to war against terrorism, casualties among terrorists have been dramatically increased.



Annual Fatalities in Terrorist Violence in Pakistan, 2003- 2008

*Source: Institute for Conflict Management(SATP)*

The above graph depicts how casualties from terrorist activities increase from the years 2003 to 2008. Important is the point here that there has been a major increase in casualties of terrorists in the year 2008 and onwards.

#### Counter-Narcotics & Terrorism

### Recommendations

1. Narcotics and terrorism are mutually linked and reinforced. They are dual enemies of countries like Afghanistan and Pakistan. There is need of priority based focus towards understanding about these issues. They require strict enforcement and counter strategies.
2. Narcotics as trade must be stopped through disruption mechanism and other strategies formulated through research by related professionals and officials.
3. The legitimate alternatives of narcotic cultivation and production are needed to be enforced and ensured so that people sustain on alternative sources of livelihood discouraging narcotic production and trade.
4. The Taliban link to cultivation, production and trade needs to be broken or disrupted to end narcotic trade and its boost up to terrorist activities.
5. The demand reduction mechanism needs to be re-evaluated and enforced.
6. The law enforcement must be incapacitated through professional inputs by criminologists.

7. Terrorism resulting from drug trade support requires multiple approaches and inputs from all stake holders in society.
8. The linkage of Afghanistan narcotics, border infiltration of extremists and trade of arms must also be tackled to prevent and counter terrorists in the region.
9. The terrorism in Pakistan is a result of several other factors like poverty, extremism, religious violence and inequity among provinces.
10. The terrorism is a dynamic challenge that requires dynamic approach including professional attitude of all the concerned citizens and officials.

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## The Life of Children After the War on Terror

*Jawad Ullah*

### **Abstract:**

This paper provides reflection of the negative impacts of the so called war against terrorism on the daily lives of children in Pakistan. It is an attempt to depict the general vulnerabilities of children as a result of armed conflict or displacement alongwith the biggest ever challenge faced by humanitarian community to respond. Radicalized or indoctrinated children, especially the suicide bombers or child soldiers are the biggest problem at the moment. No proper research is found on this subject. There is zero capacity to deprogramme such children in Pakistan.

### **Keywords:**

Terrorism, Vulnerability, Internally Displaced Person, Psychosocial, Separated and Unaccompanied Children, Suicide Bombers, Referral Mechanism, UNCRRC, Miscreants.

### **Introduction:**

In recent decades the globe has witnessed a significant increase in armed conflicts, whether they are internal in a country or between two or more countries. This has also led to a significant long term unstable post conflict situation. Post conflict situation often results in more killings of the innocent civilians, total or partial destruction of social institutes, psychological terror, forced migration, starvation and destruction of schools .The third world countries are amongst the most affected communities by these warefares. Amongst these children and adolescents are the most affected. According to UN estimates, some 20 million people have been killed in over 150 conflicts till 2002 (Jo Boyden, et.al, 2002). More of half of the since displaced people are children or under 18. There are direct and indirect impact of conflicts on children of these displacements. Some are very easy to be observed and measured such as injuries, dislocations, separation from family, deaths etc, but there are many which are not that easy to be measured or observed such as economic impoverishment, hazardous labour, participation in war directly as soldiers etc, early marriage, increased drop out from schools, no opportunity to health facility and malnutrition, to name a few. Armed conflict puts challenges to the rights of children which are laid in Convention on the Rights of the Child (CRC), thus putting greater responsibility on international community to ensure less or no violation of these rights of children. Millions of children are caught in conflicts in which they are targeted directly or indirectly. The indirect victims still suffer from effects of sexual violence or other multiple deprivations.

It has been found from various reports and events that emergencies whether man made or natural, potentially risk the lives of millions of people around the world, pushing them from normal routine lives to that of the life of an Internally Displaced Person (IDP). It is estimated that out of the approximate 24.5 million conflict-related internally displaced people (IDPs) in the world, about 50% are children. Moreover it is estimated that between 250,000 and 300,000 children are associated with government armed forces or armed opposition groups in at least 13 countries of the world (Save the Children, 2007). Whether internally displaced or a refugee; whether a victim of war, civil unrest or natural disaster; be in an urban, rural or semi-rural setting, a child's vulnerability to abuse during a crisis is very high. Families suffer multiple and severe disruptions: losing their homes and livelihoods, and often losing their autonomy and dignity when trying to obtain humanitarian relief and protection. With an uncertain future, repeated emotional stress and only minimal access to education, children are at risk of sexual abuse and exploitation, physical harm, separation from their families, psychosocial distress, gender-based violence, economic exploitation, recruitment into armed groups, and other forms of harm.

### **Statement of the Problem**

The events of 9/11 have greatly affected the mode of the world politics. Consequently, the focus of attention is diverted to Afghanistan and to the tribal belt of Pakistan. After the US attacks on Afghanistan, thousands of Afghan refugees migrated to Pakistan and get settled in the nearest tribal belt. The US forces along with NATO first attacked Afghanistan, and later on the focus shifted to the tribal areas of Pakistan. It was claimed that a number of Taliban and their supporters have got shelter in this region. To combat with this situation an operation was launched in South Waziristan which gradually spread to Bajawar and Mohmand agencies as well as to Malakand Agency. Due to these operations, millions of people migrated from their ancestral villages to Peshawar and other cities of the Frontier Province and it was the largest ever internal displacement of people in the history.

This entire situation led to some serious problems. People who migrated to the cities are living in the shabby makeshift tents with poor facilities. Their lives are exposed to both physical and psychological problems. They find it difficult to make both ends meet. Women and elderly people are suffering from all sorts of diseases, while children are exposed to an undesirable situation and criminal activities. This has aggravated the already worst law and order situation and has further endangered the peace of the cities. These hungry and angry young people are adding to the tension and are the potential threats to the security. They also run a great risk of moral deterioration. Knowing the facts that young minds can be easily shaped and molded, these vulnerable youth have started becoming the part of the armed

conflicts. There are reports of some young people being missing. It has also been reported that various armed groups have influenced and taken them into their folds.

The aftermath of 9/11 has made the peace of the world more fragile, and more and more people, mostly children, are becoming vulnerable as a result of the war against terror. Pakistan being one of the leading front States in the war against terror is facing the same problem and the insurgents have started a full fledged armed fight in the tribal areas which has resulted in the displacement of more than three million (3,000,000) individuals, mostly women and children who have left their areas of origin and are either living in IDP camps or staying with host families.

### **Impacts of Armed Conflict on Children in Pakistan:**

#### **1. Psychological Impact on Children:**

The threatening statements of Taliban, roaring of gunships helicopters and mortar guns, public slaughtering and hanging of persons were witnessed by children which created a lot of psychological problem for children of the calm valley of Swat and Federally Administered Tribal Areas (FATA). The situation got multiple effects when the residents of the areas were forced to flee as the military action was declared against the miscreant. The hardships being faced during the displacements, totally changed the environment of living i.e; from house to communal living in tents, school buildings or with host families, lack of facilities, long queues to get register and receive relief goods, no access to education, harsh weather conditions, which coupled with non availability of electricity, led to severe traumatic symptoms amongst the majority of children. The children suffered from stress display a wide range of symptoms including increased separation, anxiety and developmental delays, sleep disturbances and nightmares, lack of appetite, withdrawn behaviour, lack of interest in play, and, in younger children, learning difficulties. In older children and adolescents, responses to stress can include anxious or aggressive behaviour and depression. Relatively little is known about the psychosocial long-term effects of recent lengthy civil wars. The loss of parents and other close family members leaves a life-long impression and can dramatically alter life pathways. These findings are summarized from the little local research studies and are based on my field observations while I worked as the incharge of rehabilitation and as cluster coordinator for emergency of Save the Children Alliance in the post-operation situation in 2009.

#### **2. Separated/Unaccompanied and Missing Children:**

Unaccompanied children are those who are separated from both parents and are not in the care of another adult who, by law or custom, has taken



responsibility to do so. Children are often separated from parents in the chaos of conflict, escape and displacement. Parents or other primary caregivers are the major source of a child's emotional and physical security. For this reason family separation can have a devastating social and psychological impact. Unaccompanied children are especially vulnerable and at risk of neglect, violence, military recruitment, sexual assault and other abuses. An essential goal of relief programme is to provide assistance to the families to prevent separations. The first priority of humanitarian organizations working in emergencies should be the identification of these children, providing them shelter and protection and referring to other social services available and then to reunite them with their families.

In the recent IDP crisis, the social set up i.e. joint family and community feeling of the IDPs was a blessing because children were separated by their parents, but none were reported as unaccompanied. However, it was a dilemma that majority of the UN and INGOs were responding at the camps level, whereas 80 percent of the IDPs and children were living with host families, thus the actual magnitude of missing children, separated or unaccompanied children was not clear. Admittedly, the Government, UN agencies and INGOs failed to establish an institutionalized referral mechanism for identification, registration, monitoring and re-unification of the above mentioned category.

### **3. *Health and Nutrition:***

Thousands of children are killed every year as a direct result of fighting, from knife wounds, bullets, bombs and landmines, but many more die from malnutrition and diseases brought or aggravated by armed conflicts. The interruption of food supplies, the destruction of food crops and agricultural infrastructures, the disintegration of families and communities, the displacement of populations, the destruction of health services and programmes and of water and sanitation systems all take a heavy toll on children. Many die as a direct result of diminished food intake that causes acute and severe malnutrition, while others, compromised by malnutrition, become unable to resist common childhood diseases and infection. Communicable diseases are another major threat to children when they are living in camps, such as diarrhea, skin infections, HVC. The IDPs of the recent crisis suffered most of these health problems and the relief providers noticed many of these illnesses.

### **4. *Early Marriages:***

Due to so many social and psychological pressures on the lives of the conflict ridden people/internally displaced persons, parents are compelled to make their children marry, especially girls, at an early age which is a clear violation of

the rights of children as envisaged in United Nations Convention on the Rights of the Child (UNCRC) and the Early Marriages Restraint Act 1929. The major hurdle in monitoring such violations is that majority of these cases go unregistered, and there is a potential risk that such young girls are used for prostitution or being married for having bride price. Whereas the Humanitarian community finds it difficult to address these issues as this is taken very personal and a culturally approved practice. Therefore, any action against such violations is considered an interference in their traditions. Here is an example from my personal experience:

*“While heading the Child Protection Sub-Cluster back in November 2008, it was brought to the discussion that a girl aging 16 years was going to be married to a 60 years old person from Afghanistan in Sheikh Yasin Camp of Mardan. Every effort was made to restrain the marriage but due to the above mentioned factors and self interview of the girl, that she is marrying at her own will, no convention could restrain her from doing so.”*

#### **5. Education:**

Schools were targeted during the war against terrorism. Taliban were more against girl's education so their mere targets were girl schools, destroying them permanently or at least partially. Approximately 264 schools were destroyed. In rural areas, the school buildings were the only substantial permanent structure, making it highly susceptible to shelling and hideouts for army and armed opposition. Local teachers were also the prime targets of Taliban. The destruction of educational infrastructures is one of the greatest developmental setbacks for countries affected by conflict and same is with Pakistan, where literacy rate is already very low and even lower for female. Years of lost schooling and vocational skills will take equivalent years to replace. Even where services are maintained, education will remain of lower quality. Funds will be short and the supply of materials will be slow or erratic. In addition, fear and disruption make it difficult to create an atmosphere conducive to learning and the morale of both the teachers and pupils is likely to be low.

This is an alarming situation leading to two other potential forms of child protection issues i.e. economic exploitation of children and increased trend of enrolment in madrassas, which are alleged to be nurseries for child soldiers and suicide bombers in the name of Islam.

#### **6. Child Soldiers/Suicide bombers:**

As a result of armed conflict, the greatest challenge is seen as the association of children with warring factions. These children are normally known as child

Soldiers, not necessarily active combatants but could be found in different roles such as cooks, helpers, spies, runners etc. Children are preferred to be used or recruited as child soldiers because of a number of reasons, including obedience, unaware of the purpose for which they have been brainwashed, etc.

In 2001 the International Labour Organization and Quaker United Nations Office Geneva started a global research on child soldiers and it was found that the children of the adjacent tribal areas bordering Afghanistan were once mobilized to fight against the Northern Alliance. However, exactly within a short span of only one decade, the miscreants mobilized the community of Swat and FATA, to associate their children in their fight against the State, which, in their opinion, is supporting western particularly the US interests.

The state of child soldiers became the worst ever global problem, whereby children were trained and used as suicide bombers. These children/ suicide bombers are recruited in many different ways. Some are conscripted, others are press-ganged or kidnapped and still others are forced to join armed groups to defend their families. The situation is more alarming as there are proper institutes or nurseries where these suicide bombers are trained and produced. Pakistan's top Taliban leader is buying children as young as 7 to serve as suicide bombers, in the growing spate of attacks against Pakistani, Afghan and U.S. targets.

Different sources quote that the going price for child bombers was \$7,000 to \$14,000 - huge sums in Pakistan, where per-capita income is about \$2,600 a year (Carter, 2009). Suicide bombings have become frequent in Pakistan in the past year, including high-profile attacks on hotels frequented by Westerners, as well as on Pakistani police and military installations. The indicators described by Naushad (2009) in his article on suicide bombers are clearly indicative of the situation that these child soldiers are mostly drop outs, unemployed and religiously radicalized (See *Pakistan Journal of Criminology*, Vol.1 Number 1, April, 2009).

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## Kidnapping in The North West Frontier Province (NWFP)

*Naushad Ali Khan & Imran Ahmad Sajid*

### **Abstract:**

Kidnapping is a very serious, organised, non-compoundable and nonbailable crime. Kidnapping causes serious threat to the safety and dignity of a person and to the overall security environment in a society. In the year 2008 and 2009 kidnapping in the NWFP has escalated to an alarming extent. Kidnapping not only affects the local people, but also diplomats and foreigners are kidnapped/abducted. This article thoroughly studies the prevalence and trend of kidnapping in the NWFP. It also highlights the causes of kidnapping and abduction in the NWFP with support from statistical data.

### **Keywords:**

Kidnapping, Abduction, Human Trafficking, Organised Crime, Police, Law Enforcement Agencies, Recovery, Investigation, Convicted, Terrorists, Militants, Taliban, Ransom, Motives.

### **Introduction**

Kidnapping is not only an organised crime in our society but also an associated crime with other heinous crimes like terrorism, human trafficking and money laundering. The relation can not be fully explained with empirical studies as there is no authentic and exclusive research on the subject. However, an attempt is made in this essay to show the trends, magnitude and severity of kidnapping in the North-West Frontier Province (hereinafter NWFP). This paper also helps to identify that how the Police deal with this crime. Earlier than any further details it is pertinent to mention that there is no special force or unit to tackle this issue anywhere in the country. There is no special and separate data available in Police departments to provide us enough information about the actual problem. The data obtained from the Office of the Additional Inspector General Police, NWFP and provided by the National Police Bureau is being presented in this article.

Basically kidnapping seems to be a way of generating income for the kidnapers and gangs but it has now become a way of fulfilling the political goals and other vested interests. Our argument is justified in that on the one hand the kidnapers after making a successful attempt demands high amount of ransom and on the other hand they demand for the fulfilling of some other interests in exchange (Daily Mashriq: Sunday Magazine, 9 January, 2010) e.g; the demand for release of a particular criminal/militant such as in case of the kidnapping of the two Chinese engineers from district Dir. At times, the amount received by such means is further used to fuel the terrorist/criminal activities. This crime is thus perpetrated by the militants as a tool for increasing their bargaining power with the authorities.

## Situation Analysis

The NWFP, the smallest in size of all the four provinces of Pakistan, is land of the Pukhtoon. It is bordered with Federally Administered Tribal Area (hereinafter FATA) which is a buffer zone between Afghanistan and Pakistan. The NWFP is a poor province with a population of 23.313 million and a literacy rate of 53% (Government of NWFP, 2008). Some reports show that per capita income in Pakistan is about 1000 US \$ while the government official figures show per capita income in the NWFP lesser than 30% from the rest of the country (World Bank, 2007). Assuming this per capita income as correct for the country, per capita income in the NWFP comes to be around 700 US\$ which means per day income is less than 2 US\$. Inflation is the worst in the frontier province and food items particularly wheat is sold for 100% higher price as compared to the province of Punjab (Sajid, 2008).

Further the province is war affected, although not officially declared. Frontier was also host to the millions of the Afghan refugees and now to the millions of the Internally Displaced Persons (IDPs) of the FATA and Swat. Bomb blasts, firings, and suicide attacks have become a routine event for the people here in the NWFP. Only in 2009, the registered cases of suicide terrorism were 45 (Government of NWFP, 2009). The present police strength in the NWFP is 53087 which makes a Police/Population ratio as 1:439 (Government of NWFP, 2009).

Kidnapping is on the increase in the NWFP. The media reports state that due to kidnapping in the NWFP, particularly Peshawar, 90% business activities have been affected. There has been 70% increase in kidnapping for ransom in the year 2009. This trend has greatly affected the business community (Daily Aaj, January 1<sup>st</sup>, 2010).

## Significance of The Problem

The security situation in the post 9/11 scenario in the NWFP remains highly volatile, un-predictable and ultra sensitive (UNICEF, 2009). Kidnappers have become confident to the extent that they do not hesitate to kidnap even the diplomats, foreigners and other international figures. Terrorism in the area is one of the major factors which is fueling other serious and organised crimes also, like kidnapping and abduction in the NWFP. Kidnapping as a criminal act encourages the terrorist and militants to act with more pride and confidence. This situation causes people of the NWFP to live under the shadow of more terror, fear, and in a vicious circle of kidnapping, abduction and death as well.

The Law Enforcement Agencies (LEAs) are relatively unprepared, unequipped, and untrained to deal with the serious organized crime problem. Rahimullah Yousufzai pointed out that *the Pakistanis, both resourceful and*

*un-resourceful (rich and poor) are being kidnapped in ever greater numbers for ransom and the government is helpless in preventing kidnappings or recovering the victims* (Yousufzai, 2008). If this problem of kidnapping and abduction is not tackled immediately on emergency basis, it will spiral out of the control, and disrupt the entire social structure of the society. The disruption in the social structure of any society brings social change in the society i.e. the change in norms, values, attitudes and the entire culture. “*Social Change is the transformation of culture and social institutions* (Maciounis, 2008).” Although social change is an inevitable phenomenon but its direction can be diverted positively or negatively. The change through kidnapping will result in negative trends.

### **Kidnapping And Abduction: Definition And Difference**

Under the Pakistani law kidnapping is of the following two kinds:

#### **1. Kidnapping from Pakistan**

Whoever conveys any person beyond the limits of Pakistan without the consent of that person, or of some person legally authorized to consent on behalf of that person is said to kidnap that person from Pakistan (Section 360 of Pakistan Penal Code (hereinafter PPC), 1860).

#### **2. Kidnapping from Lawful Guardianship**

Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without consent of such guardian, said to kidnap such minor or person from lawful guardianship (Section 362 of PPC, 1860).

Lawful guardian here includes any person lawfully entrusted with the care or custody of such minor or other person.

**Abduction** on the other hand is defined in the following words:

“whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person (Section 362 of PPC, 1860).” In kidnapping the minor is just taken away. Force need not be used. However, in case of abduction force, compulsion or deceitful means are used. Secondly, kidnapping is committed only in respect of a male under fourteen or female minor under sixteen years of age, whereas, as far as abduction is concerned, any person of any age can be abducted. But in general both the terms are used interchangeably. When used in this way kidnapping or abduction means “an offence involving taking and conveying away a person against his or her will, either by force, fraud, or intimidation (Kidnapping, 2009).”

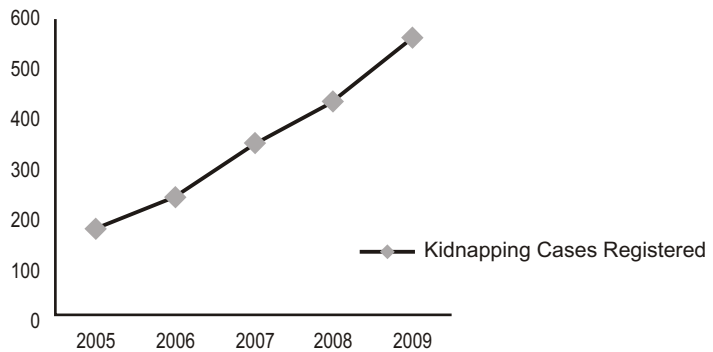
The punishment for kidnapping or abduction in the law is imprisonment for a term of seven years, ten years, life time or sentence to death, subject to the conditions of kidnapping (Sections 363,364,365-A of PPC, 1860).



## Methodology of the Study

The kidnapping statistics in the NWFP are not properly recorded and maintained. Being the Superintendent of Police (SP), one of the authors, Naushad Ali Khan, designed a format for recording of such crimes, and sent it to all the 23 police districts of the province. The format included the registered cases, persons charged and arrested, kidnapped and recovered, and the conviction if any. The data obtained through these measures has been presented and analysed in this article.

Figure-I: Trend in Kidnapping in the NWFP



Source: Office of the Additional Inspector General Police (Investigation), NWFP, Peshawar.

## Data Analysis

Kidnapping in the NWFP is increasing since the last few years. It is clear from Table-I that the kidnapping has escalated during the period 2008-2009. In the year 2005 the number of cases registered were 173 while in 2009 the registered cases rose to 561. Figure-I, based on Table-I also shows this increasing trend in kidnapping cases in the NWFP. As stated above, the Daily Aaj reported on the 1<sup>st</sup> January, 2010 that there have been 70% increase in kidnapping cases in 2009.

In the context of the NWFP pin-pointing a one definite reason for kidnapping is next to impossible. There are numerous theses regarding the contemporary escalation of the kidnapping in the NWFP. A few of them are presented as follows:

1. The first thesis is that the Taliban/militants/terrorists were created and supported for some vested political interests. With the decline of state-sponsored terrorism, the militant elements were left unpatronised. To meet their financial requirements these militant or terrorist elements have started kidnapping the people-which by and large include financially strong and influential people. This is one thesis presented for the contemporary rise in the kidnapping cases in the NWFP.

Table 1: Details of Registered Kidnapping Cases in the NWFP for the Period 2005 - 2009

	Year	Kidnapping for Other Motives	%age	Kidnapping for Other Motives	%age	Total	%age
<b>Cases registered</b>	2005	141	81.50%	37	21.39%	178	100%
	2006	182	76.79%	61	25.74%	243	100%
	2007	257	74.28%	90	26.01%	347	100%
	2008	277	64.27%	154	35.73%	431	100%
	2009	401	71.48%	172	30.66%	573	100%
	<b>Total</b>	<b>1258</b>	<b>70.99%</b>	<b>514</b>	<b>29.01%</b>	<b>1772</b>	<b>100%</b>
<b>Adult</b>	2005	121	79.61%	31	20.39%	152	100%
	2006	152	74.51%	52	25.49%	204	100%
	2007	231	76.24%	72	23.76%	303	100%
	2008	240	63.83%	136	36.17%	376	100%
	2009	381	71.62%	151	28.38%	532	100%
	<b>Total</b>	<b>1258</b>	<b>70.99%</b>	<b>514</b>	<b>29.01%</b>	<b>1772</b>	<b>100%</b>
<b>Children</b>	2005	20	76.92%	6	23.08%	26	100%
	2006	30	76.92%	9	23.08%	39	100%
	2007	26	59.09%	18	40.91%	44	100%
	2008	37	67.27%	18	32.73%	55	100%
	2009	20	48.78%	21	51.22%	41	100%
	<b>Total</b>	<b>1258</b>	<b>70.99%</b>	<b>514</b>	<b>29.01%</b>	<b>1772</b>	<b>100%</b>

Source: Office of the Additional Inspector General Police (Investigation), NWFP, Peshawar.

This argument can not be rejected at all but the data given in Table-I does not support this stated point of view i.e. meeting the financial requirements. The share of registered kidnapping cases for ransom is only 28% during the period 2005-09 i.e. lower than the kidnapping for other motives, 71.8% (See Table. 1), provided the other motives are fully believed and verified.

The share of the other motives in kidnapping is more than two times than kidnapping for ransom. The other motives can be political and religious. Here our data is weak in the sense that it does not depict the holistic picture. It lacks to identify the other motives-such as murder, marriage, sexual abuse or exploitation, rape, personal enmity, religious enmity, financial settlement, property settlement, etc.

- The performance and duty schedules of the police and other Law Enforcement Agencies (hereinafter LEAs) have been greatly affected by the war on terror (WOT). Our LEAs have been over-busy in the war on terror and consequently the routine policing has become the secondary job. This argument is supported by Table-II which shows that the arrest rate is only 33.3% of the total persons charged with kidnapping.

Table II: Details of Persons Charged / Arrested for Kidnapping / Abduction in the NWFP for the Period 2008 - 2009

Charged /Arrested	Years	For Other Motive	For Ransom	Total
Persons Charged	2008	750	646	1396
	2009	971	737	1708
Sub Total		<b>1721</b>	<b>1383</b>	<b>3104</b> (66.9%)
Persons Arrested	2008	430	336	766
	2009	416	349	765
Sub Total		846	685	<b>1531</b> (33.3%)
<b>Grand Total</b>		<b>2567</b>	<b>2068</b>	<b>4635</b> (100%)

Source: Office of the Additional Inspector General Police (Investigation), NWFP, Peshawar

Another question which needs to be taken into consideration here is that despite the 100% increase in security check posts in the NWFP the kidnapping is escalating. Why is this case? This can be explained due to the factors like lack of equipments, lack of logistics, lack of intelligence and information, and lack of capacity of the personnel dealing with this organised crime. One has to agree that the security check posts are essential in prevention of crimes but the check posts without proper infrastructure is of lesser use. Our police are only sacrificing their Jawans (cops) on the check points with lesser concrete outcome.

3. The third thesis is that the war on terror itself has boosted the rate of abduction/kidnapping in the NWFP. The bearers of this view quote the examples of the kidnapping cases of Afghan/Iranian diplomats, Chinese engineers, and other foreigners. This is the most considerable view in the authors' opinion as 71% of the kidnapping cases registered show kidnapping for other motives (See Table-I). The *other motive* is a wide-range word with no definite limits, so it is difficult to determine the exact nature of the other motives. This includes the bargaining power of the militants and financing of terrorism.

Of particular concern are the recent kidnapping of the Iranian and Afghan diplomats and Chinese engineers. While the government and its scores of intelligence agencies and LEAs were still struggling to locate Afghanistan's ambassador-designate Abdul Khaliq Farahi, who was kidnapped from Hayatabad area in Peshawar, another kidnapping took place, and this time it was an Iranian diplomat. Heshmatollah Attarzadeh, commercial attaché at Iran's consulate in Peshawar was kidnapped from Hayatabad. His guards and drivers were shot dead by the kidnapers. Two other important Afghans were also kidnapped.

4. Yet another view is that the administrative machinery in FATA has almost vanished. Prior to the war on terror the Frontier Constabulary (hereinafter FC) was functional at the borders of the settled districts and FATA to fight against crimes. But for the last few years the role of FC in guarding the unfrequented routes at the administrative borders has become very weak, thus the criminal activities gone unabated. This observable fact has contributed to the escalation of kidnapping from the settled districts to the tribal areas.
5. The fifth thesis on the reasons for the increase in kidnapping deals with the conviction of the offenders. The process of justice is very slow in kidnapping cases. Table-III gives a picture of a slow court process. It is clear from the Table-III that the conviction rate is very low i.e only 3 persons were convicted in 2008 and non in 2009 and 405 cases are still under process (See Table-III., & Daily Aaj, 1<sup>st</sup> January, 2010). This low rate of conviction is a persuading factor for the kidnappers and abductors.

There can be various reasons for this low rate of conviction. First, the cases may not be properly investigated which offer a favour to the offender. Secondly, the courts are over burdened with the cases, as pointed out in the National Judicial Policy 2009.

Table III: Details of Cases Investigated & Convicted for Kidnapping / Abduction in the NWFP for the Period 2008 - 2009

	Year	For Other Motive	For Ransom	Total
Cases Registered	2008	277	154	431
	2009	401	172	573
Cases Investigated	2008	173	103	276
	2009	151	89	240
Challaned to Court	2008	213	120	333
	2009	159	92	251
Filed as Untraced	2008	36	21	57
	2009	59	14	73
Convicted	2008	1	2	3
	2009	0	0	0
Acquitted	2008	17	8	25
	2009	2	4	6
Subjudice	2008	149	77	226
	2009	1163	63	179

Source: Office of the Additional Inspector General Police (Investigation), NWFP, Peshawar

National Judicial Policy (NJP) 2009 states that “*the courts have continuously suffered on account of shortage of funds. The budgetary allocation to judiciary is negligible. Not even 1% of Federal/Provincial budget is allocated for the third pillar of the State. No wonder then, the judges are over-burdened.*” Along-with this an anti-kidnapping cell in the NWFP police is also non-operational at the present. Whatever the reason for this low conviction rate is, however, the fact remains that this is an encouraging phenomenon for the kidnapers as well for other criminals.

### Why LEAs Failed to Prevent/Control Kidnapping?

There are 24 districts in the NWFP (all police district with the exception of one) and most of the districts are bordering with the tribal territories, both FATA and Frontier Regions. Normally, the fugitives are taking shelter in the tribal areas where they form gangs and commit kidnapping for ransom and other motives. The kidnappees are kept in the tribal areas. The police cannot take action in the tribal areas like making the arrest of the accused and recovery of the kidnappees. Table-IV and Table-V are of special interest for us. Table-IV shows that 1416 persons were kidnapped during 2008 and 2009 while the Table-V shows that 1100 of the kidnappees were recovered i.e. to say that the recovery rate is almost 78%-a positive sign. In spite of the high rate of recovery the LAEs has failed to prevent kidnappings/abduction from occurring and increasing. It is worth mentioning here that some critics don't take this recovery as a result of the police action due to the low rate of arrest as discussed earlier. They observe that the kidnappees are recovered through mediation, negotiation and payment through third parties, which is a common practice in the Pukhtoon society.

Table IV: Details of Persons Kidnapped / Abducted in the NWFP for the Period 2008 - 2009

Persons Kidnapped	Year	Other Motive	For Ransom	Total
Adult	2008	435	190	625
	2009	524	162	686
Children	2008	38	19	57
	2009	21	27	48
<b>Total</b>		<b>1018</b>	<b>398</b>	<b>1416</b>

Source: Office of the Additional Inspector General Police (Investigation, NWFP, Peshawar

Table V: Details of Persons Recovered from Kidnapping/Abduction in the NWFP for the Period 2008-b2009

Persons Recovered From Kidnapped	Year	For Other Motives	For Ransom	Total
Adult	2008	343	175	518
	2009	351	131	482
Children	2008	38	21	59
	2009	21	20	41
<b>Total</b>		<b>753</b>	<b>347</b>	<b>1100</b>

Source: Office of the Additional Inspector General Police (Investigation, NWFP, Peshawar)

The question of failed control, however, can more appropriately be answered by the LEAs themselves. For that reason authors conducted interviews with LEAs officials and investigation officers. Their responses to this question are summarized in the following categories.

1. Lack of Intelligence & Information Sharing: There is no proper data bank of kidnapping at the provincial level as well as at central level. Proper system of collection of intelligence also does not exist. There is also a lack of sharing of intelligence amongst the various LEAs.

We have to agree with this point. Intelligence plays a vital role in controlling kidnapping and in the arrest of the kidnappers. Although separate anti-kidnapping cell was created in the NWFP police but that is a defunct entity at the moment.

2. Kidnappers are Patronised by the Influentials of the Area: This is a very serious and common cause that the crime perpetrators are helped and backed up by the most renowned personalities of that area-often a local political figure. This notion is supported by comments of the Ex-Chief Capital Police Officer (CCPO) Peshawar Habib-Ur-Rehman who replied to the authors' question in the following words, "*the kidnappers are mixed up and patronised by the influential figures which is an encouraging factor for the criminals*" (Habib-ur-Rehman, personal communication, January 22, 2010).
3. Non- Identification of Gangs: Because there is no special police force to tackle this problem, that's why the gangs involved in committing this crime can not be identified or traced clearly. Even the Central Intelligence Agency (CIA) of a district police is currently non-operational which could be of help to the LEAs in this respect.

However, some may not agree to this point of view as some have already responded that kidnappers are patronised by influentials of the area i.e. the gangs are identified but the police or other law enforcement agencies are unable to arrest them. Mere identification is of no help unless proper care is initiated, investigation and evidence produced before a competent court of law.

4. Low Rate of Conviction: This is another major reason as identified in the above lines (See Table-III). This reflects the poor quality of investigation and prosecution coupled with other problems discussed above.

## **Discussion**

We have presented five different points of analysis on the present increase in kidnapping cases. Neither of them alone can be taken as responsible for this escalation in 2008 and 2009. It can be inferred that the problem is a compound of all the above stated reasons. The tribal area is said to be the sanctuary for criminal elements. The militant and other such elements also reside there. The lack of surveillance equipments and effective policy for kidnapping control by the police and the low rate of conviction, all these factors together can be stated as contributing to this increase in kidnapping.

## **Issues Identified**

This paper identified the following issues related to kidnapping:

1. Capacity of the police and other LEAs to tackle with the problem of kidnapping;
2. Crime-Terror Continuum, War on Terror and its implications for law-enforcement;
3. Non-functional anti-kidnapping cell;
4. Slow justice process and low rate of conviction; and
5. Lack of Proper record management including management of separate gender based record.

These are some of the issues which are either basic or contributing factors for the lack of control in prevention and investigation management of kidnapping cases.

## **Recommendations**

On the basis of our findings in this paper we present the following recommendations.

First and foremost research is the key for the development of any policy or department. The research on kidnapping as an organised crime, its causes, implications and analysis is essentially needed not only in the NWFP but also the entire country.

Secondly, kidnapping/abduction and human trafficking are two distinct phenomena. Human trafficking in the Pakistani law is the kidnapping of any person from Pakistan or as per Human Trafficking Ordinance, 2002 "*Human Trafficking*" means obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes (Section 2-h of The Prevention and Control of Human Trafficking Ordinance, 2002). Although kidnapping and abduction is dealt by the police under the PPC, 1860 but human trafficking is separately dealt by the Federal Investigation Agency (FIA). There is no link between kidnapping and human trafficking. Kidnapping leading to human trafficking is not clear. In the un-recovered or untraced cases of kidnapping, no one knows how many might be trafficked out of the country. The only competent authority to deal with human trafficking in the country is the Federal Investigation Agency (FIA). It is recommended that the Prevention and Control of Human Trafficking Ordinance should be extended to the police.

Throughout the country police deal with kidnapping for ransom and kidnapping for other motives. These other motives are not clear, unexplained, and un-interpreted. It is also not clear how police calculate other reasons. It needs to be explained clearly. In the authors' observation, the kidnapping for the settlement of financial disputes is very common but the police have no specific head in its record to clearly identify such cases. In this regard, the separate record of such cases should be maintained.

Kidnapping is a very serious organised crime but there is no separate police for dealing with organised crimes, especially kidnapping and drugs. There are special police units in the police departments of most of the developed and under developed countries. In the NWFP and other provinces, anti-car lifting cell, anti-kidnapping cell, and anti-drugs cells were created time and again but those were abortive, without resources, with no legal authority, and without institutionalization. Structural and functional changes are needed in the police department alongwith support from international institutions for the capacity building, provision of equipments, communication facilities, vehicles and surveillance. For this purpose a separate police unit, specialized and trained for dealing with organised crimes, should be established with tactical and strategic wings and with full legal support and coverage.

The police are facing difficulties in investigation of kidnapping cases. As the Frontier Province is surrounded by the tribal areas where police can not



conduct any operation. In most cases, the ultimate destination of the kidnappers is the tribal territory where police are helpless. In FATA only the federal agencies can take actions so there should be proper and legally binding coordination between the provincial police department and the federal agencies for the investigation of organised crimes and arrest of such groups.

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## **Electronic Crimes Ordinance: An Overview of Its Preamble and Extent<sup>1</sup>**

*Muhammad Amir Munir*

The opening para of the Prevention of Electronic Crimes Ordinance reads as under:

**WHEREAS** it is expedient to prevent any action directed against the confidentiality, integrity and availability of electronic system, networks and data as well as the misuse of such system, networks and data by providing for the punishment of such actions and to provide mechanism for investigation, prosecution and trial of offences and for matters connected therewith or ancillary thereto

**AND** whereas the National Assembly stands dissolved and the President is satisfied that the circumstances exist which render it necessary to take immediate action:

Now, therefore, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan and in exercise of all powers enabling in that behalf, the President is pleased to make and promulgate the following Ordinance:-

### **Commentary**

Almost 30 years ago, on August 1, 1978, the Florida Computer Crimes Act (Chapter 815, Florida Statute) came into force. Its *preamble* described the importance of the issue of computer crimes in the words:<sup>2</sup>

#### **“Fla. Stat. 815.02 Legislative Intent**

The Legislature finds and declares that:

- i. Computer-related crime is a growing problem in government as well as in the private sector.
- ii. Computer-related crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime.
- iii. The opportunities for computer-related crimes in financial institutions, government programs, government records, and other business enterprises through the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets, are great.

- iv. While various forms of computer crime might possibly be the subject of criminal charges based on other provisions of law, it is appropriate and desirable that a supplemental and additional statute be provided which proscribes various forms of computer abuse.”

Likewise, the United Kingdom passed the Computer Misuse Act in 1990 when many problems relating to computer crimes came on record but courts found it difficult to convict accused of new generation of crimes. For example, prior to this law, cases were decided under the Theft Act of 1968 and 1978, the Criminal Law Act, 1977, the Criminal Attempts Act, 1981, the Forgery and Counterfeiting Act, 1981, the Data Protection Act, 1984, the Criminal Damage Act, 1971, the Trade Description Act, 1968, the Interception of Communications Act, 1985.<sup>3</sup>

The difficulty for courts and prosecution for curtailing the computer related crimes is seen in a number of cases that were decided prior to the enactment of the 1990 Act. In *DPP v. Ray*, [1974] AC 370, a case of deception under the Theft Act, 1968, it was held by the House of Lords that “for a deception to take place there must be some person or persons who will have been deceived.” In *R v. Gold*, [1988] 2 WLR 984, the conviction by the Crown Court under the Forgery and Counterfeiting Act, 1981 for hacking the computer password was reversed by the Court of Appeal and House of Lords. In *Oxford v. Moss*, (1978) 68 Cr App R 183, it was held that confidential information does not come within the definition of property for the purpose of theft.

On the other hand, it was held in *Cox v. Riley*, (1986) 83 Cr App R 54, that the accused has damaged the printed circuit card although the accused argued that he has not damaged any tangible property within the meaning of the Criminal Damage Act, 1971. Further, in *R v. Whiteley*, (1991) 93 Cr App R 381, the accused who gained unauthorized access to a system where he added and deleted files, changed passwords and deleted audit files recording his activities, was convicted for the charge of damaging computer disks. His argument that no tangible damage has been caused was rejected by the Court of Appeal holding that the 1971 Act require damage to tangible property and not that the damage itself should be tangible.

Considering all these problems and prospects of an overcrowding generation of computer related crimes, the Computer Misuse Act, 1990 was enacted with the following Preamble:<sup>4</sup>

“An Act to make provision for securing computer material against unauthorised access or modification; and for connected purposes.”

Malaysia also took lead by enacting the Computer Misuse Act, 1997 (Act 563).<sup>5</sup> The Preamble to this law reads:

“An Act to provide for offences relating to the misuse of computers.”

This is a small legislation that defines five distinct offences (ss. 3 to 7) relating to computer misuse.

India also enacted the relevant legislation in the year 2000 when it passed the Information Technology Act, 2000. *Preamble* to this Act reads:

“ An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

whereas the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law;

and whereas the said resolution recommends inter alia that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information;

and whereas it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records.”

It seems that Indian legislature was more concerned with the electronic commerce and its recognition as compared to electronic crimes because the emphasis of the *Preamble* is on electronic commerce and communication. Nowhere we found the reference to electronic or cyber crimes in this Preamble. However, this legislation is comprehensive and covers substantially the issues of digital signatures and electronic or cyber crimes. For example, Chapters IX and XI deal with issues of computer crimes.

The scenario in Pakistan is little different. Pakistan adopted an un-planned step by step approach starting through an amendment in copyright law in 1992 and leading towards the present specific legislation on the issue of electronic crimes enacted on the last day of the year 2007. It was in the year 1992 when the first computer related amendment in the law was made in the Copyright Ordinance, 1962 when the term “literary work” was expanded to also include 'computer programs' as one of the kinds of “literary work”.<sup>6</sup> Thus any infringement of copyright law relating to computer programs was made adjudicable both at civil and criminal sides.<sup>7</sup>

The Copyright Ordinance, 1962 provides both civil and criminal remedies for any alleged infringement of copyrights. Thus anyone who unauthorizedly copies a computer program or software may be held liable for civil and criminal liabilities.<sup>8</sup> However, it is to be seen if any computer program infringement matter has been decided by the superior courts and reported accordingly in various law reports.

At criminal side, there was no legislation that specifically encircled the electronic data theft problems. Section 22 of the Pakistan Penal Code, 1860 defines the term 'movable property' as under:

## **22. “Movable Property”**

The words “Movable Property” are intended to include *corporeal*<sup>9</sup> property of every description, except land and thing attached to the earth or permanently fastened to anything which is attached to the earth”.

Here the word “corporeal” is of much significance as the electronic data or electronic document does not fall under the meanings of this word. Further, the dictionary meaning of the term 'property' also suggest that it is something tangible and can be possessed. At the same time, the word “document” defined in section 29 of the 1860 penal code was also exclusive of electronic documents and data. It reads as under:

## **“29. “Document”**

The word “document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

### **Explanation 1**

It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of justice, or not.

### **Explanation 2**

Whether it is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.”

In this definition, word 'substance' is relevant for our discussion. This word is not defined in the penal code and hence we have to look into the dictionary meaning. According to the *Merriam-Websters'*, 11<sup>th</sup> edition, substance means a physical material from which something is made. Hence, these two important definitions in the penal code were not comprehensive in their original form to include electronic

documents or electronic data or property that is available only in electronic format like a document prepared and saved in hard disk of a computer but never printed. In today's understanding, it (e-data or e-document) *is* a property against which a particular act or omission may be an offence. So these laws were required accordingly to be modified. Otherwise, before the enactment of present law, if a person steals a computer, he may be charged with the offence of theft but if he only steals the whole data saved in its hard disk by means of copying while leaving the original data unchanged, perhaps he could not be charged of any offence.<sup>10</sup>

The advent of internet and world wide web also added more complexities in this regard. A person cannot even be held liable for cheating if he deceives a computer or a system (machine) as the cheating is to be done by a person against another person. Further, physical presence has also become irrelevant at the scene of crime as a computer expert sitting in one part of the world can deceive another computer system in some other part of the world by sending an executable program to that system. Pakistan has faced many such problems but as there was no clear law or policy in this regard and as there was less awareness about the computer crimes, most of the issues remained unnoticed or unreported to the police in the past.

At the same time, another area that experienced notable growth was electronic commerce.<sup>11</sup> As it is becoming the norm to use electronic means for business transactions, therefore, a heavy mass of big transactions of business got attention of all stakeholders in Pakistan and hence efforts were made to regulate the electronic commerce. In the year 2002, the Electronic Transaction Ordinance, 2002 (*hereinafter* ETO, 2002) was promulgated. The operative part of its *Preamble* reads as under:<sup>12</sup>

“to recognize and facilitate documents, records, information, communications and transactions in electronic form, and to provide for the accreditation of certification service providers.

WHEREAS it is expedient to provide for the recognition and facilitation of documents, records, information, communications and transactions in electronic form, accreditation of certification service providers, and for matters connected therewith and ancillary thereto;”

Resultantly, a number of changes were made in other laws dealing with 'documents' and full recognition was given to e-documents.<sup>13</sup> The Qanun-i-Shahadat Order, 1984 was also amended by this Ordinance and hence the evidentiary value was given to the electronically generated documents equal to the conventional documents.<sup>14</sup> The words “electronic”, “electronic document” and “electronic signature” were defined and brought on statute book of Pakistan.<sup>15</sup> Section 30

ETO, 2002 comprehensively gives cover to most of the documents that can be generated through electronic means.

Cyber crimes' were also recognized in the ETO, 2002 wherein unauthorised access and damage to any information system were made offences punishable with imprisonment and heavy fine.<sup>17</sup> These were the only enabling provisions of law since the year 2002 uptil now under which the computer offences were made cognizable. Section 58 of the Payment Systems and Electronic Fund Transfers Act, 2007 (IV of 2007) defines the offence of Cheating by Use of Electronic Device. Earlier on, section 31 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (XVII of 1996) defined a number of offences that generally fall under the definition of cyber or electronic crimes.

After promulgation of the Prevention of Electronic Crimes Ordinance, 2007 (*hereinafter* PECO, 2007), the offences defined in the Ordinance are to be tried by a special Tribunal that will be constituted by the government. The offences defined in laws mentioned in Schedule to this Ordinance shall also be tried by the Tribunal. Further, this law has over-riding effect and hence any provisions in existing laws contrary to this Ordinance shall have no effect. The Tribunal under this Ordinance has yet to be notified by the government and hence till establishment of the Tribunal, the transitory provisions of this Ordinance provide that the law will be administered by the competent forums under existing laws.

Even at this moment, no Rules have been prescribed by the government as required under this Ordinance.

## **The Extent of Law and its Application**

### **1. Short Title, Extent Application and Commencement.-**

- i. This Ordinance may be called the Prevention of Electronic Crimes Ordinance, 2007.<sup>18</sup>
- ii. It extends to the whole of Pakistan,
- iii. It shall apply to every person who commits an offence under this Ordinance irrespective of his nationality or citizenship whatsoever or in any place outside or inside Pakistan, having detrimental effect on the security of Pakistan or its nationals or national harmony or any property or any electronic system or data located in Pakistan or any electronic system or data capable of being connected, sent to, used by or with any electronic system in Pakistan.
- iv. It shall come into force at once,



## Commentary

As the Pakistan Penal Code, 1860 (hereinafter PPC) is 'general'<sup>18</sup> penal law, therefore, for any special kind of offences or crimes a special law can be enacted by the legislature.<sup>19</sup> Considering the importance and uniqueness of the cyber or 'electronic crimes, the present law was enacted through an Ordinance. Under this law, 'jurisdiction' is one of the most important questions to be determined by the courts. Being a new legislation under the cyber regime, where physical state boundaries have no meaning as far the netizens<sup>20</sup> are concerned, much law will develop on the issue of jurisdiction because it is now norm, and not the exception, that people who are non-citizens and who are sitting in another country are causing cyber crimes in different jurisdictions. The matters relating to jurisdiction, evidence and extradition are part of major discussions regarding international treatise on the subject of cyber crimes. For example, the Budapest Convention<sup>21</sup> of 2001 on Cyber Crimes, have special provisions relating to jurisdictional matters and international cooperation in this regard.

Jurisprudentially, it will not be out of question to remind the readers that the PPC's approach already caters generally for the issue of commission of offences (defined under Pakistani laws) by non-citizens in jurisdictions beyond Pakistan. Sections 3 and 4 of PPC are most relevant in this regard. For ready reference, they are reproduced here, *mutatis mutandis*, as under:

### **"3. Punishment of offences committed beyond, but which by law may be tried within Pakistan.**

Any person liable, by any Pakistan Law, to be tried for an offence committed beyond Pakistan shall be dealt with according to the provisions of this Code for any act committed beyond Pakistan in the same manner as if such act had been committed within Pakistan.

### **"4. Extension of Code of extra-territorial offences.**

The provisions of this Code apply also to any offence committed by:--

- i. any citizen of Pakistan or person in the service of Pakistan in any place without and beyond Pakistan
- ii. Omitted
- iii. Omitted.
- iv. any person on any ship or aircraft registered in Pakistan wherever it may be.

### **Explanation**

In this section the word "offence" includes every act committed outside Pakistan which, if committed in Pakistan, would be punishable under this Code."

Explanation to section 4 of PPC is most relevant in this respect read with illustration at letter (d) in this section. This illustration is quoted here *verbatim*:

“(d) *D*, a British subject living in Junagadh, instigates *E*, to commit a murder in Lahore. *D* is guilty of abetting murder.”

Here, the subject is a foreigner (British subject), living in another country (India) and committing an offence that is to be done in Pakistan by a third person. Still, he or she can be charged with the offence of abetting murder.

The restricted provision of PPC is section 2. It reads as under:

**"2. Punishment of offences committed within Pakistan, etc.**

Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within Pakistan.”

In an old case, it has been held by the Lahore High Court that s. 2 must be read subject to s. 5 which clearly makes a reservation with regard to offences specified therein.<sup>22</sup> Therefore, only those offences which are mentioned in general penal code (PPC) or any local or special laws are punishable.<sup>23</sup> An early case in this regard decided by the Indian Supreme Court provides that where a foreigner by false representations made by post from a foreign country to a Pakistani living in Pakistan, defrauds him of his property, he can be held guilty under the Penal Code notwithstanding the fact that he was a foreign national at the time when he made those representations and committed the offence.<sup>24</sup> The intra-territorial application defined by s.2 PPC will be no bar on extra-territorial application of PECO, 2007 because of the fact that special penal laws can be enacted in accordance with s.5 of PPC.<sup>25</sup> These interpretations of general penal law provide a strong backbone for enforcement of special law like the PECO, 2007.

However, to implement these provisions or provisions of this Ordinance regarding extended jurisdiction to local courts will remain a big jurisprudential debate in the courts. We have to wait for development of the law in this regard to be propounded by the superior courts while interpreting the newly enacted legislation to explain it further. Of course, the answer in this regard will be to study none else than international cooperation in this regard. The Budapest Convention, as also the present law, contains special provisions of international cooperation in combating cyber crimes and related issues. States are required to remain in close contact and cooperation in such type of matters where extradition involves. Some countries may not allow their citizens to be extradited only for the reason that said person or persons have committed a cyber offence and caused serious damage to the systems in requesting country. Further, definition of an offence and its gravity may be different from jurisdiction to jurisdiction. May be an act is an offence in one country

and not in another! Still, the country of offender may not follow a particular definition of another country of an act or omission classified as an offence. These are complex legal issues that will require all the legal actors (judges, magistrates, attorneys, law teachers, law officers, public prosecutors, defence lawyers, investigators, police etc.) to move ahead with more knowledge and understanding of the issues through use of relevant literature available in print and cyber media. Likewise, universities and law schools need to evolve a strategy to provide academic backbone on the issue by conducting relevant research and writing and publishing of indigenous materials.

Another relevant question may arise about the application of principle of *Ignorantia Legis Neminem Excusat* (ignorance of law excuses nobody)<sup>26</sup> to the netizens. Section 79 of PPC reads as under:

**"79. Act done by a person justified, or by mistake of fact believing himself justified, by law.**

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."

How the courts will presume that the offender was, in fact, in knowledge of any particular law defining an act or omission as an offence in a particular jurisdiction where he/she had never physically gone or about which he/she had no information; but in physical territory of said jurisdiction he/she had done an act which constitutes an offence there? A difficult and complex question may arise when the offender takes the plea or defence of innocence regarding a factual mistake about law.<sup>27</sup> In India, Supreme Court has held that for an Indian law to operate and be effective in the territory where it operates namely, the territory of India, it is not necessary that it should either be published, or be made known outside the country.<sup>28</sup> Further, the Gazette published by the government is not yet issued electronically in all jurisdictions. The consequence of such type of ignorance may result in mitigating the sentence and not the benefit of the maxim of ignorance of law as an absolute defence.<sup>29</sup> An old English case is referred in this regard universally. It is *R. v. Bailey* (1800), *Russ & Ry.* 1, 168 E.R. 651. In a Canadian case cited *R. v. Campbell and Mlynarchuk*, (1973), 10 C.C.C. (2d) 26, District Judge Kerans elaborates *Bailey* in the following words:<sup>30</sup>

"Well, I have already indicated, in a quotation from Kenny, that, in this awkward situation, the matter does not afford a defence, but should certainly be considered in mitigation of sentence. Indeed, there are several cases, not as awkward as this, in the law reports, involving a person who had an honest and reasonable mistake in belief as to the law, and for whom the Courts expressed sympathy, and, in respect of whom, sentence was mitigated.

It is at this stage where the scales of justice are balanced. Clothed with very recent power to refuse to enter a conviction, I can now balance the scales of justice even more delicately. I have read a note in vol. 14 of the English and Empire Digest, at p. 51 of an old case, *R. v. Bailey* (1800), Russ & Ry. 1, 168 E.R. 651. It goes back to 1800. In that case, the Government of England had passed a statute, making something a crime which was not previously a crime. Subsequently, the accused did the forbidden act. The Courts found that, in fact, in the district in which this crime was committed, no news had yet reached anyone of the passage of this *Act*. Nor could any news have reached this district of the passage of this *Act*. And that the accused, therefore, had to be convicted of an offence which he did not and could not have known was an offence. And they said there that the proper way of dealing with the matter was to give a pardon, which I understand to be a conviction followed immediately by the wiping out of a conviction.

I have no power to give a pardon, but I do have power to give an absolute discharge. In my view, this is the proper case.”

This being the position, it is important to revisit the principles laid down in *Bailey* so that prospective criminals may not get an unnecessary advantage of mitigating circumstances for a lesser sentences in this era of information technology.

At the moment, not much law is developed under section 79 of PPC though with few reported cases, it is settled that the Courts in Pakistan do not accept the plea of mistake of law as an absolute defence.<sup>31</sup> However, with the promulgation of the present Ordinance, if foreigners as accused are brought to the courts of Pakistan, there are chances of excessive defence plea under this provision and may be courts are required to adopt a moderate version of *Bailey*!

Another area of reasonable consideration is the fact that juveniles are most vulnerable to cyber / electronic crimes because of computer learning starting from early years of their education. Now a day, access to internet has become the easiest. There are many possibilities that a young computer programmer (under 18 years or even under 15 years)<sup>32</sup> sitting in another country enters into the critical systems of Pakistan and commits an act which is an offence<sup>33</sup> under the present Ordinance. The delicacy and issues of juvenility and proof of criminal intent are going to be the complex legal issues for the judges of cyber crimes courts. In this respect, the PECO, 2007 is required to be read with the Juvenile Justice System Ordinance, 2000 and sections 82 & 83 of the PPC. A good example of warning students of a university<sup>34</sup> to avoid any misuse of cyberspace becomes relevant for educating our youth about prospective misuse or abuse of cyberspace or computer technology so that they can avoid any criminal proceedings. But what is for juveniles who are citizens of another country sitting in that country?

Juveniles may also become victims of cyber / electronic crimes. The present law defines crimes and punishments, and hence, this area is out of our discussion.

## End Notes

<sup>1</sup>This study is made prior to the issuance of latest edition of the PECO 2009. However, it is considered that the provisions of the latest version are replica of earlier editions of this law. The reason of issuance of number of editions of this law is that the law was originally issued as a Presidential Ordinance which cannot last more than four months unless ratified by the Parliament. The Parliament is yet to enforce it as an Act of the Parliament.

<sup>2</sup>[http://www.clas.ufl.edu/docs/flcrimes/subsubsection2\\_1\\_1\\_2\\_2.html](http://www.clas.ufl.edu/docs/flcrimes/subsubsection2_1_1_2_2.html). Visited on 2 February 2008.

<sup>3</sup>See generally, Bainbridge, David I., *Introduction to Computer Law*, 2<sup>nd</sup> Ed., London: Pitman Publishing, 1993, Parts III & IV.

<sup>4</sup>[http://www.opsi.gov.uk/acts/acts1990/ukpga\\_19900018\\_en\\_1](http://www.opsi.gov.uk/acts/acts1990/ukpga_19900018_en_1). Visited on 3 February 2008.

<sup>5</sup>[http://www.msc.com.my/cyberlaws/act\\_computer.asp](http://www.msc.com.my/cyberlaws/act_computer.asp). Visited on 3 February, 2008. However, the law came into force on 1<sup>st</sup> June, 2000.

<sup>6</sup>See the Copyright (Amendment) Act, 1992 (XX of 1992).

<sup>7</sup>Civil remedies include injunction, damages, accounts and otherwise as are of may be conferred by law for the infringement of a right (s. 60). Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the Court of the District Judge (s. 65). All offences under the Copyright Ordinance, 1962 are triable by a court not inferior to that of a Magistrate of the first class (s. 72).

<sup>8</sup>See Chapters XIII & XIV of the Copyright Ordinance, 1962, as amended in 1992.

<sup>9</sup>Emphasis added by the commentator.

<sup>10</sup>See generally, Muhammad Amir Munir, "Electronic Crimes Act, 2004: The Proposed E-Law in a Judge's Perspective", in PLJ 2005 Magazine 333.

<sup>11</sup>See *Secrets of Electronic Commerce*, Lahore: The Small and Medium Enterprise Development Authority (SMEDA) & International Trade Center (UNCTAD / WTO), 2002. It provides wonderful reading on the subject of electronic commerce in Pakistan.

<sup>12</sup><http://www.fia.gov.pk/ETO.pdf>. Visited on 18 February 2008.

<sup>13</sup>S. 3 of the ETO, 2002 reads: “3. Legal recognition of electronic forms. No document, record, information, communication or transaction shall be denied legal recognition, admissibility, effect, validity, proof or enforceability on the ground that it is in electronic form and has not been attested by any witness.” See <http://www.fia.gov.pk/ETO.pdf>. Visited on 18 February 2008.

<sup>14</sup>It is pertinent to mention that already article 164 of the Qanun-e-Shahadat Order, 1984 provides production of evidence that has become available because of modern devices. However, this article could not be used to define new crimes or offences. It is only an enabling provision where existing offences and civil rights can be proved through evidence that has become available due to modern devices. Hence, the amendments introduced now have minimized the court discretion and uncertainty of admissibility of certain electronically generated documents in this regard and courts are now bound to give full evidentiary value to different electronically generated documents as per new amendments and letter of law.

<sup>15</sup>See s. 2 (l), (m) & (n) of the ETO, 2002. See <http://www.fia.gov.pk/ETO.pdf>. Visited on 18 February 2008.

<sup>16</sup>See sections 36 & 37 of the ETO, 2002. However, no case has yet been reported in law reports. But it does not mean that cases have not been registered or lodged under these provisions. In Pakistan, only those cases are reported in law reports which are decided by the superior courts. Further, as the offences so defined are compoundable and hence it is probable that the offenders use the opportunity to enter into compromise with the complainant and hence matter is not reached up to the superior court for interpretation or appeal/revision etc.

<sup>17</sup>Hereinafter may be referred as the PECO, 2007.

<sup>18</sup>*Preamble* to the Pakistan Penal Code (PPC) reads: “Whereas it is expedient to provide a *general* Penal Code for Pakistan...”. (emphasis added)

<sup>19</sup>Section 5, PPC specifically provides that the Pakistan Penal Code will not affect, *inter alia*, any special law.

<sup>20</sup>This term can be used for those persons who use internet and cyberspace for any purpose. These are 'net citizens'. It may be a derivative of the term 'citizen' and may not yet be adopted by most of the English Language Dictionaries. However, *Merriam Webster's Collegiate Dictionary*, 11<sup>th</sup> Ed., (hereinafter referred to as 'Webster's') defines this term as “an active participant in the online community of the Internet.” Further, if we google the word “netizen”, some information is available to understand the term. See

<http://www.columbia.edu/~hauben/text/WhatIsNetizen.html> or <http://en.wikipedia.org/wiki/Netizen> for more discussion about this term. Sites visited on 7 August 2008.

<sup>21</sup>See Annexure.

<sup>22</sup>AIR 1929 Lah. 217.

<sup>23</sup>AIR 1921 Cal. 1.

<sup>24</sup>PLD 1958 SC (Ind) 115.

<sup>25</sup>It has been mentioned in *The Indian Penal Code* by Ratanlal & Dhirajlal, 29<sup>th</sup> Edition, Nagpur: Wadhwa Publishers, 2003, at p. 39 that “[t]he rule of intra-territorial or extra-territorial operation of the laws has undergone drastic changes in India, in view of the enforcement of the Information Technology Act, 2000.”

<sup>26</sup>Dr. A. R. Biswas, *Encyclopedia Law Dictionary with Law Terms and Phrases Judicially Interpreted*, Lahore: Shan Corporation, nd. See also <http://encyclopedia.thefreedictionary.com/Ignorance+of+the+law+is+no+excuse> and Wikipedia websites. Sites visited on 7 August 2008.

<sup>27</sup>'Mistake of law' ordinarily means mistake as to the existence or otherwise of any law on a relevant subject as well as mistake as to what the law is. See *Tustipada Mandal*, (1950) Cut 75.

<sup>28</sup>*Mayer Hans George*, (1964) 67 Bom LR 583; AIR 1965 SC 722.

<sup>29</sup>See generally, AIR 1953 Punj. 227.

<sup>30</sup>Visit <http://faculty.law.ubc.ca/benedet/casebook/casebook9%202007.doc>. Site visited on 10 August 2008.

<sup>31</sup>On [www.pakistanlawsite.com](http://www.pakistanlawsite.com), only few cases have been mentioned under s.79, PPC.

<sup>32</sup>Section 2(b) of the Juvenile Justice System Ordinance, 2000.

<sup>33</sup>Section 2(f) of the JJSO 2000 defines the term 'offence' in following words: “'Offence' means an offence punishable under any law for the time being in force.”

<sup>34</sup>University of Virginia has published an online handbook titled “Responsible Computing at the UVa”. This guides students of UVa about ethical uses of computer and cyberspace and cautions them about criminal proceedings in case of violations. This hand book can be accessed at <http://itc.virginia.edu/pubs/docs/RespComp/rchandbook.html>. Visited on 16 August 2008.

## **Conclusion**

The above discussion reveals that the application of this law needs many delicate and new questions to be determined judicially. However, it is an important development at the statute book of Pakistan that the new types of crimes have been given due weight for their curtailment with reference to their spread without national or geographic boundaries. The above discussion is only to analyze only the nature and extent of law and few issues of its applicability to non-citizens or netizens especially when they are sitting beyond territorial jurisdiction of Pakistan. It is hoped that further discussion on the issue will help improvement not only in the law itself but also in its administration by the courts of law. Though this article did not discuss the issue of research on this law, but it is suggested that law schools and bars need to consider establishing cybercrime law centers so that they can provide academic backbone to the courts, lawyers, judges, legal academics, law students and other related organizations with respect to issues that this law has to address.

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## **Books from Istanbul Conference on Democracy and Global Security**

*Samih Teymur*

The Istanbul Conference on Democracy and Global Security was an international conference organized by the Turkish National Police, on June 14-16 2007 in Istanbul-Turkey. The conference was an initiative of the Turkish National Police with the full support from TIPS (the Turkish Institute for Police Studies) and international community and scholars who are concerned with issues relating to democracy and global security. Indeed Turkey desires to bring international scholars and practitioners to one place where they can meet and share their experiences and scholarship for promotion of democracy, security and freedoms around the globe. This opportunity was provided to these scholars and practitioners at the historical and beautiful city of Istanbul. Since everybody knows Turkey's hospitality and believes in its sincerity, so nearly 1,000 individuals accepted the conference invitation and participated in the event in 2007. Participants made presentations and shared their knowledge for three days during the conference. Articles and presentations were gathered and edited by scholars and experts and were published in a series of books. The following books are the first studies of this series.

### **1. Combating Terrorism**

This book discusses how and why terrorism is a social earthquake of nations. The authors of the book examine the nature of terrorist groups in democratic nations. They believe that terrorism is not a problem to only one nation, one state, or one country; it is the problem of the whole world. Terrorism is now a threat to our world that it can potentially trigger wars between states. Given these threats of terrorism, the only way to overcome terrorism problem is to work together with all nations. The book is edited by Samih Teymur, PhD, Habib Ozdemir, PhD, Murat Ozer, Murat Gunbeyi, Ed.D, and Oguzhan Basibuyuk.

### **2. Terrorism: A Global Perspective**

The second book is also based on the articles presented at the 2nd Istanbul Conferences on Democracy and Global Security in Istanbul in 2007. The authors of the chapters of this book discuss the reasons why nations sometimes experience hard time to struggle with global threat of terrorism. They consider that there is still no commonly agreed definition of terrorism, and this is a handicap to create a global stand against terrorism. Therefore, the authors offer that regardless of different definitions, different colors and different religions, nations should come together

against any violent activity of any groups that target human life and dignity. The book is edited by Mustafa Ozguler, PhD, Ali Ozdogan, PhD, A.Sait Yayla, PhD, Ekrem Mus, and Halim Iltas.

### **3. Global and Regional Perspectives on Democracy and Security**

Global security requires that democratic systems, states and democratic organizations should be fully established to fight against all kinds of crimes. The relationship between democracy and security is strongly debated amongst the people who, at times, believe that it is not easy to fight crimes and criminals without sacrificing democratic principles. The authors of the chapters believe that national security should be the number one priority of all states, however, democracy should not be sacrificed because of security concerns. This book has several articles that were submitted in the 2<sup>nd</sup> Istanbul Democracy and Global Security Conference in Istanbul. The book is edited by Recep Gultekin, PhD, Izzet Lofca, PhD, Cihangir Baycan, Murat Delice, PhD, and Ferhat Goktepe.

### **4. Issues in Criminal Justice**

Crime control has long been a primary concern of Turkish justice system. Since Turkey cares about democracy, freedoms, and human rights, so strategies and tactics that are used against criminal groups should be ethical and proportional. Due to its importance, the editors of this book gathered important articles related to human rights from distinguished authors. The book is edited by Ali Safak, PhD, Selcuk Zengin, PhD, Suleyman Hancerli, PhD, Derin Akdeniz, and Kutluer Karademir.

All the above mentioned books are printed in hundreds and distributed by the Turkish National Police across the world academics and practitioners for ready reference, debate and guidance. The Turkish National Police envision such world level conferences in future too. The National Police Academy at Ankara has a fully established Research Centre on Terrorism and Organized Crimes which held the 1st International Symposium on Terrorism and Transnational Crime, at Antaliya, Turkey in November 2009. The articles and presentations therein are also likely to be published very soon. Earlier, the Turkish National Police in collaboration with NATO have held excellent conferences on the subject matter, the best papers of which are also now published.

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Samih Teymur, PhD is one of the senior police officers in the Turkish National Police (TNP), who has many academic achievements to his credit in addition to his field job.

# **International Police Training in Response to Challenges of Transnational Crime: The Case of Chinese People's Public Security University**

*Dr. Mei Jianming*

In the era of globalization, the world is faced with new opportunities for development, but also non-traditional security issues such as terrorism, organized crime, drug-related crimes, human trafficking have become increasingly prominent, and pose a great threat to the prosperity and stability of the world. Since China adopted the policy of reform and opening up in 1978, the relationships and exchanges with other countries have greatly enhanced and China has made remarkable achievements in economic and social development. China has adopted effective strategies to promote China's social progress, as well as cooperating with the international community to safeguard world peace and stability and made numerous contributions in this area.

This article will introduce the international cooperation to combat transnational crime by Chinese government and its organs, especially by China Ministry of Public Security, specifically address the training of senior officers by the Chinese public security educational system. The paper will also outline the blueprint and measures for international cooperation in police training between the Chinese public security educational system and its counterparts in the Asia-Pacific region.

## **I. Transnational Crime and the Initiative of Chinese Government in Era of Globalization**

Crime has traditionally been considered as a domestic problem, but in the era of globalization, criminal offenses in one country may involve citizens, property or rights of many different countries. Transnational crime is becoming an increasingly prominent international issue. According to the United Nations definition, transnational crime involves crimes that "place of origin, prevention and the direct or indirect consequences of acts involve[e] more than one country." The UN lists 18 criminal acts as common types of transnational crime, including money-laundering, terrorism, piracy, theft of art and culture, hijacking, smuggling of firearms, computer crime, the smuggling of drugs, trafficking in persons, insurance fraud, environmental crime, bankruptcy fraud, trading in human organs, the infiltration of legitimate businesses, corruption and bribery of government officials, and other criminal activities by organized criminal groups.

## 1. International Cooperation in Combating Transnational Crimes

Among the above 18 types of transnational crime, some (such as piracy and hijacking) have a long history of existence. Dating back to the early 20th century, after the initiation of the industrial revolution, national states were burgeoning allowing for international exchanges to become more and more frequent. When the threat of transnational crime was still in its initial stages, some pioneers began to realize that it was essential to strengthen international police cooperation. This led to the inception of the ICPO-Interpol. The International Criminal Police Organization was formally established in 1923 as the principal agency to combat transnational crime. Today, the International Criminal Police Organization has 186 members, and has become the second largest international organization after the United Nations. Interpol plays a unique role in the fight against transnational crime, a role that cannot be replaced by other agencies.

In the wave of globalization in 1990s, the concept of the global village began to take shape. Advanced means of communication and transportation, lax immigration policies, and convenient means of transportation all contributed to the establishment of closer international economic and social relationships. Criminal organizations make use of the double edge of globalization, encroaching on and penetrating into a variety of fields to make profits. Contrasted to the fledgling stage of transnational crime in the industrial revolution, nowadays transnational crime is different in terms of types of crimes, organization of groups, the MO (Modus Operandi), and the consequences.

To respond to the new challenges of transnational crime, many countries and international organizations highlight the importance of international cooperation, and have put forth great effort to ensure the smooth path to cooperation in terms of building organizations, working mechanism, technical support, human resource development, and financing. For example, for building organizations, the United Nations established the United Nations Commission on Crime Prevention and Criminal Justice, the United Nations Office on Drug and Crime (UNODC); G7 established the Financial Action Task Force on Money Laundering (FATF) in 1989. For the working mechanism, in order to create an operational system and environment, the United Nations enacted a series of international conventions. In 1988 the United Nations adopted the "United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" also known as the "Narcotics Convention". The U.N. General Assembly adopted the "United Nations Convention against Transnational Organized Crime" in 2000, and the "United

Nations Convention against Corruption" in 2003. These acts have provided a solid foundation for member states to combat transnational crime.

## **2. China's International Cooperation in Combating Transnational Crime.**

As a member of the international community, China has taken measures to prevent and combat transnational crime for some time now, and actively advocates, establishes and participates in various forms of international cooperation to safeguard world peace and stability. China has made an important contribution to regional security and prosperity. China uses the following forms of international cooperation:

### **2.1 The international cooperation under the auspice of the United Nations.**

As a permanent member of the United Nations Security Council, China plays a responsible role and plays a critical role in promoting international cooperation to prevent and combat transnational crime through proposing and voting for resolutions, conventions and reports of the United Nations. China actively participated in joining and implementing conventions initiated by the United Nations. For example, in 1988 China signed the "United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," and signed the "United Nations Convention Against Transnational Organized Crime," the "International Convention for the Suppression of the Financing of Terrorism," and the "United Nations Convention Against Corruption" in 2000, 2001 and 2003 respectively. In addition, China has also actively participated in the formulation of the United Nations-sponsored legal documents such as "Model Treaty on Extradition," "Model Treaty on Mutual Assistance in Criminal Matters," "Model Treaty on the Transfer of Proceedings in Criminal Matters," and the "United Nations Model Agreement on the Transfer of Foreign Prisoners."

### **2.2 The international cooperation under the auspice of Interpol.**

China joined Interpol in 1984, and since then, China has been earnestly fulfilling its obligations under the International Criminal Police Organization. Firmly abiding by the charter and principles of the organization for the promotion of international police cooperation efforts, China has made a unique contribution to the development of the organization. In 1989, shortly after China became a member of Interpol, an Asian anti-drug seminar was held in Beijing. In 1995 China hosted the 64th Interpol General Assembly. In 2000 China hosted the Interpol 5th International Congress on heroin. During this meeting "Beijing's Proposal" was passed to call on member states to further strengthen

cooperation to effectively combat drug-related crimes. In 2005 the 15th Interpol Symposium for police training departments was held in the Hong Kong Special Administrative Region of China.

### 2.3 International cooperation under the auspice of regional international organizations.

The Chinese government prioritizes cooperation with regional international organizations. In 2001, in order to deal with non-traditional security threats and promote regional stability, the Shanghai Cooperation Organization was established by China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. Fighting terrorism, separatism, extremism and illegal drug trafficking is a fundamental mission of the Shanghai Cooperation Organization. In 2001 the heads of the Shanghai Cooperation Organization member states signed the "Shanghai Convention Against Terrorism, Separatism and Extremism." In 2004, the Fourth Summit of the Shanghai Cooperation Organization, six countries signed the Agreement on Cooperation in Combating Illegal Turnover of Narcotic and Psychotropic Substances and the Precursors Thereof. In June 2004 the Shanghai Cooperation Organization on Regional Counterterrorism Agency took effect in Tashkent, the capital of Uzbekistan. Under the auspice of the Shanghai Cooperation Organization, in 2002, 2003, 2005 and 2006, China participated in joint counterterrorism exercises aimed at improving the capabilities of the armed forces and the police.

In addition, China and ASEAN continue to carry out further cooperation in the field of non-traditional security. As early as 1993, China and the U.N. Drug Control Program (UNDCP), together with the ASEAN member countries - Laos, Myanmar, Thailand, Vietnam, Cambodia, and other countries in the anti-drug cooperation - signed a "Memorandum of Understanding" (MOU). China and ASEAN in 2000 and 2005 respectively, held a joint meeting on international anti-drug cooperation between ASEAN and China. The meeting passed the "Anti-drug Cooperation between China and the ASEAN Plan of Action," as well as other documents. In 2002, in the Cambodian capital of Phnom Penh, China and ASEAN leaders issued the "China-ASEAN Joint Declaration on Cooperation in the Field of Non-traditional Security," identifying key areas for cooperation between China and ASEAN; "the fight against drug trafficking, the smuggling of illegal migrants, including trafficking in women and children, piracy, terrorism, arms smuggling, money laundering, international economic crime and cyber-crime," and signed a

Memorandum of understanding for cooperation in non-traditional security in 2004.

#### 2.4 Bilateral or Multilateral International Cooperation.

As of 2006, China has signed criminal, civil and legal assistance treaties with 51 countries, and extradition treaties with 26 countries. In July 2006, Mr. Zhou Yongkang, Chinese Public Security Minister, was invited to visit the United States. Minister Zhou and Attorney General Gonzalez, the Department of Justice of the United States, signed a series of MOU's in the fields of counterterrorism information exchange and cooperation, countering cyber-crime, drug law enforcement, law enforcement personnel exchange, and furtherance of cooperation between the International Cooperation Department of China's Public Security Ministry and the Immigration Customs Enforcement (ICE) bureau of the United States Department of Homeland Security, and proclaimed the "Joint Announcement on Advancement of Law Enforcement Cooperation by People's Republic of China Ministry of Public Security and the Department of Justice of the United States of America." Both sides decided to further strengthen cooperation between law enforcement agencies, in line with the common interests of China and the United States, in areas such as the arrest and repatriation of criminal suspects, countering transnational organized crime, drug trafficking, counterfeit currency and money-laundering crimes, as well as, the repatriation of illegal immigrants. Both sides were willing to strengthen cooperation to combat cyber-crime, drug-related crime, and copyright infringement, while enhancing counter terrorism intelligence sharing, and participating in law enforcement exchange.

#### **B. China's Training of Senior Officers to Meet the Needs for Combating Transnational Crime**

Chinese People's University of Public Security (CPPSU), the highest educational institution directly under the Chinese Ministry of Public Security, was established in July 1948. The principal mission of the university in its early stages was on-the-job training of key police officers. In January 1984 a full time four-year program was established. In the past decades, this university has supplied more than 140,000 graduates to national criminal justice system, and earned the fame as the "cradle of the Republic's police officers." There are more than 1,200 teaching and administrative staff members, among whom nearly 600 are full-time teachers. Approximately 10,000 full-time students were admitted to all programs in 2006, among them nearly 6,000 undergraduate students, almost 1,000 graduate students, and about 3,000 senior police officers and overseas police officers being trained.

The university adheres to a principle of education for completing a degree combined with on-the-job training, and have established a multi-level education and training system which includes undergraduate education, postgraduate education and training of Chinese and overseas senior police officers.

To accomplish the mission of training police officers, China's Ministry of Public Security set up the Administrative Cadres Academy of the ministry in 1986, based on resources of this university. It was renamed the Senior Police Academy of Public Security Ministry, whose mission is to train senior police officers from public security organs at all levels in China. According to the "Public Security Organ's People's Police Training Regulation," the academy undertakes three types of training: training of newly appointed senior officers, promotion training, and specific theme training.

Training for newly appointed senior officers is for those who become new chiefs of the Public Security Bureau (PSB) at provincial and prefecture levels, and usually lasts for 30 days. Promotion training is for those whose rank will change from superintendent of the first class to commissioner of the third class, as well as for those who are directly affiliated with the Ministry of Public Security (MPS) and their rank is to change from inspector of the first class to superintendent of the third class. This training generally lasts for 30 days as well. Specific theme training is sponsored by the Chinese Ministry of Public Security and its local branches focusing on specific topics. From 1998 to October 2006, the academy has hosted a total of 15 sessions of training for 258 newly appointed police chiefs at the provincial and prefecture level. Since the inception of the promotion training sessions in 1995, the academy hosted 66 sessions of promotion training for 14,351 officers. Meanwhile, the academy also carried out many sessions of specific theme training.

The university is highly motivated in developing cooperation with overseas partners. Till now, the university has established cooperative relationships with the University of Leicester, England, the British Scottish Police College, Korean National Police University, Moscow University of the Ministry of the Interior, Russia, Sam Houston University, United States, and the Egyptian Police Academy. Since 2003, the university has communicated with partners in more than 50 countries such as the United States, the United Kingdom, Australia, South Korea, and hosted several training classes for police agencies in France, ASEAN, and some developing countries in Asia and Africa. Since 2001, the university has hosted 61 training sessions attended by more than 1,000 officers.

The China-ASEAN Training Program was set up in June, 2005. There were 33 police officers from ASEAN countries participating in the program. In 2006 there were two sessions of training for 62 senior officers of law enforcement command



and decision-making from 20 countries. Moreover, the university has developed constructive exchange and cooperation with police agencies of the Hong Kong Special Administrative Region and Macao Special Administrative Region. By July 2006, there were 455 Hong Kong police and 283 Macao police officers who participated in training sessions at the university.

In order to effectively cope with transnational crime, we have explored the effectiveness of training senior police officers, and have gained some valuable experience.

1. In curriculum design, we highlight cultivating a world view and strategic thinking of senior police officers, which can be helpful to assure the understanding of preventing and combating transnational crime, and increase awareness.

It is important to undertake timely and effective education and training to improve the capacity of the police force to prevent and combat crime, particularly to combat drug-related crime, human trafficking, money laundering, terrorism, corruption, cyber crime, intellectual property crime, and international pornography in the Asia-Pacific region and the whole world. China's Public Security Ministry stresses the importance of senior police training, while reinforcing cooperation with police agencies in other countries. The training of senior police officers focuses on improving "Four Capabilities." These four capabilities are: scientific judgment, management in complex situations, strategies in operational command, and strict and fair enforcement. As the principal agency of senior police training, Public Security University has been a pioneer in curriculum development of training of senior officers.

#### 1.1 Carrying out research on social stability and public security work.

In order to increase the capabilities of handling policing crisis and to resolve difficulties, new courses were developed. They include "Safeguarding National Security, Social and Political Stability," "Economic Crime and National Economic Security," "Illegal Drug Control in Border Areas," "Situation and Tasks to Combat Crime," "The Information Era and Cyber Crime," and "The Situation and Strategy of Counterterrorism." These courses resonate the concerns of transnational crime.

#### 1.2 Carrying out research on law enforcement and international police cooperation.

The research is used to increase capabilities of strict and fair enforcement, and to analyze severe problems in law enforcement. The courses on this

topic include “Trends in Criminal Justice,” “International Police Cooperation,” “Socialist Rule of Law,” and other courses dealing with international conventions, agreements and relevant domestic laws on transnational crime. These courses were developed to increase capabilities to combat transnational crime.

### 1.3 Carrying out comparative studies.

These courses include “Introduction to Police in Different Countries,” especially in countries in the Asia-Pacific region, “Trends of Police Reform, and Current Situation of Police Training.” These courses are used to enhance senior police officers understanding of policing in China's neighboring countries, and make preparations for future cooperation.

2. To improve potential and capabilities to prevent and combat transnational and new crime, the training methodology reinforces the integration of lectures by Public Security ministers and local leaders, domestic training and overseas visits, classroom learning and field practice, theoretical based and practical technique application, lecturing which also involves student participation.

To enhance the effectiveness of training, we use creative methods in the training of senior officers which include the following:

#### 2.1 Combining lectures by leaders of the Ministry of Public Security and of local public security organs.

Senior police officer training has received solid support from the Ministry of Public Security and local public security authorities. Specifically, in training to shape strategic vision, the Chinese Ministry of Public Security provides important support of financing and logistics. Ministers and chiefs of various departments of MPS have come to deliver presentations so that students can have a complete and timely understanding of transnational crime and its development. Chiefs of local public security organs can also provide valued experience and lessons based on their local policing practice, which can be considered as the subject of analysis and learning, and also improve mutual understanding and support in preventing and combating the crime.

#### 2.2 Combining domestic training and overseas visits.

In training of senior officers, the method of combined domestic training and overseas visits is used. For the instance of training police chiefs at provincial and prefecture levels, this method can help the trainee thoroughly understand China's policing work, a basic understanding of

overseas policing, and furthermore, can stimulate senior officers to compare similarities and differences of policing between China and overseas police agencies in the context of globalization, and can be helpful in shaping conscious awareness of strategic decision-making and management.

To provide China's senior police officers an institutionalized opportunity to observe and understand new development of policing, to learn from their foreign counterparts, and to advance the cooperation, linkage and friendship with police in other countries, we have organized a study abroad training for senior officers after the completion of their training in China. This study abroad program was instituted in 1998. The themes of study abroad include policing strategies and tactics, police command and management, crime prevention and social control, and international police cooperation. The following table represents the first to the eighth session of study abroad training for senior police officers.

Table: 1 Chinese Senior Officers Study Abroad Training

Session	Year	Host Country	Training Days in China	Training Days Abroad	Number of Trainees
1.	1998	Japan	14	14	15
2.	1999	Britain	20	24	21
3.	2000	Australia	20	24	16
4.	2001	Australia	21	18	16
5.	2002	Canada	18	24	14
6.	2003	Canada	15	21	16
7.	2004	Britain	11	22	17
8.	2005	Britain	10	20	18

### 2.3 Combining classroom learning and field practice.

The training of senior officers in accordance with the principle of combining classroom learning and field practice is effective in making a better training environment. We have established more than 20 teaching and practice bases, to which the trainee can visit depending on the needs of study. Among these bases, there are local police agencies who have achieved remarkable results in countering transnational crime.

#### 2.4 Combining theoretical based and practical technique application.

In theoretical study, we use the Chinese government's principles and policies of public security as the core teaching materials. We also introduce political theory, analysis of the international and domestic situations, law enforcement, public security leadership and decision-making, and comparative police studies. In practical technique application, based on the needs to combat and prevent transnational crime, the courses include aspects of communication etiquette, foreign norms, and foreign language study and training.

#### 2.5 Combining lecturing which includes student participation.

While lecturing is highlighted, the trainees are encouraged to actively participate in communication, developing potentials, sharing lessons, and discussing cases. Through this training we try to enhance the ability of students to complete their job.

Retrospectively considering our senior officers training in preventing and combating transnational crime, we have found a number of deficiencies, such as: the need to further and strengthen cooperation with police from neighboring countries and regions; the use of modern computer technology training needed to strengthen networking; students use of their own resources to carry out such training needs to be strengthened. Therefore, we are studying how to further optimize the existing system for the training of senior officers to better meet the needs of public security work.

### **C. Police Education and Training Institutions to Create a New Situation in the Asia-Pacific Region**

As the Senior Police Training institution in China, we will resolutely fulfill China's commitment to promote world peace and development, and safeguard regional security and prosperity. Chinese Premier Wen Jiabao's spoke highly of the cooperation of ASEAN-China in the fight against terrorism, illegal immigration, narcotics control, law enforcement, willingness to work with ASEAN to enhance maritime security, criminal investigation and other security dialogue and cooperation in the field of non-traditional security. At the APEC informal leadership meeting held in Hanoi in 2007, Chinese President Hu Jintao proposed to all countries to adopt more effective measures and resolutely crack down on all forms of terrorism and transnational crime.

CPPSU, as the leading police education and training institution in China, will further strengthen international cooperation by way of exchange programs and foreign visits of senior police officers, joint sponsorship of workshops and symposiums, to develop and advance sustainable partnerships to fight transnational crime and contribute to world peace and prosperity.

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# Pakistan Journal of Criminology

Volume 2 / Number 1 / Jan 2010

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