Terrorism: A Global Phenomenon Mandating a Unified International Response

Jacqueline Ann Carberry
Indiana University School of Law

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TERRORISM: A Global Phenomenon
Mandating a Unified International Response

JACQUELINE ANN CARBERRY*

INTRODUCTION

"Base! Base! Terrorism! Terrorism!" shouted Benson Okuku Bwaku, the guard manning the United States Embassy in Nairobi, over his walkie-talkie. He let out this alarming cry in response to the 3.5-ton Mitsubishi Canter carrying the bomb that moments later killed 247 people and injured over 5000. Retaliating thirteen days after the deadly embassy bombings, the United States launched missile strikes against the terrorist camps in Afghanistan. President Clinton boldly stated: “Our mission was clear—to strike at the network of radical groups affiliated with and funded by Osama bin Laden, perhaps the pre-eminent organizer and financier of international terrorism in the world today.”

This all too recent tragedy brings to light the ever-present threat of terrorism. Terrorism is a complex and highly pervasive global problem which continues to threaten the international community. It defies courts, police, intelligence agencies, national governments, and the United Nations alike. States agree that international cooperation is vital to combating terrorism; however, coordination of international efforts has proven extremely

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* J.D. Candidate, 1999, Indiana University School of Law—Bloomington; B.A., 1992 Davidson College. I would like to dedicate this Comment to my parents, Richard and Jacqueline Carberry and to my sister, Alicia, for their unconditional love and immeasurable support throughout every dream I have pursued. Their encouragement and guidance should be a model for every family.
2. See id. After a visit to Kenya and Tanzania, a panel commissioned by the State Department recommended $14 billion be allocated over the next ten years to upgrade diplomatic posts. See Panel Calls for More Embassy Security, HERALD TIMES (Bloomington, Ind.), Jan. 9, 1999, at A3.

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complicated. The processes of globalization\(^5\) and internationalization\(^6\) are key facets to the vexing challenge of effective antiterrorist enforcement measures.

The global problems and challenges facing the international community transcend States' capabilities to deal with them effectively as autonomous entities.\(^7\) Terrorism, like the spread of infectious diseases, threats to the environment, and human rights violations, represents a global phenomenon. Because terrorism affects humankind, regardless of national boundaries, it is, therefore, more precisely defined as a global, rather than an international, problem.\(^8\)

What makes terrorism “global?”\(^9\) Several factors contribute to terrorism’s global nature. First, terrorism is not restricted to any one region, State, or jurisdiction. The force of its impact goes beyond any one designated area; humankind feels its repercussions. Second, the increased mobility of terrorists to cross borders, acquire resources in numerous States, and access advanced communication systems, like the Internet, creates a global setting. Third, the victims of terrorist attacks are not necessarily even members of the same State. For instance, when a terrorist targets an airplane, the passengers might

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5. In this modern age, “[d]ifferent sorts of problems—those of environment, disease, human rights, and other ‘global issues’—have also become important.” Wendy Schoener, Note, Non-Governmental Organizations and Global Activism: Legal and Informal Approaches, 4 Ind. J. Global Legal Stud. 537, 537 (1997). The multiplying number of global issues, the increased number of non-State actors, in this instance—terrorists, and the recognition of the need to confront such problems for the sake of “the common good” present a global context.


7. See id. at 292. See also An Interview with U.N. Secretary-General Kofi A. Annan, Fletcher Forum World Affairs, Summer/Fall 1997 [hereinafter Annan]. Annan stated, “[o]rganized crime, ethnic and religious conflict and terrorism are all part of a complex array of problems that pose fundamental threats to societies and the global social order—and are thus of urgent concern . . . .” Id. at 3. Mr. Annan expressed his view that State sovereignty “must, in extreme circumstances, give way to the overriding moral imperative to alleviate human suffering, including systematic violations of human rights, and to achieve common benefits on a global or regional framework.” Id. at 1.


9. “Global” is not synonymous with “universal.” See id. at 11.
potentially be citizens of numerous countries. Furthermore, the organizational structure of modern terrorist groups is diffuse. The task of detecting and apprehending terrorists, therefore, is not the atomized effort of any one particular State, nor is any one State assigned the task of single-handedly curtailing this global threat.

The challenge of combating terrorism intricately intertwines globalization and internationalization. Though States remain the key actors in the fight against terrorism, the growing pressure for heightened cooperation has become critical to the development of effective antiterrorist measures. "The globalization and brutalization of modern violence make it abundantly clear that we have entered a new 'age of terrorism' with all its frightening ramifications." Terrorism as a global force demands more from States. Terrorism exceeds the authority of any one State; this phenomenon transcends the borders and the jurisdiction of individual States. As such, current enforcement devices are predominantly international. However, international cooperatives to combat terrorism are hindered at a certain point by individual States' varying definitions of terrorism, differing internal legal systems, and conflicting conceptions of the proper role of government. While States continue to act in response to this global threat, the pressure of terrorism appears to require a higher level of integration, uniformity, and harmonization.

10. A targeted airplane, carrying members from various States, highlights the global threat of terrorism transcending State borders while accentuating the international State actors which must respond to protect their citizens.

The postmodern paradox here is that such an international political context, to the extent that it does exist within the U.N. is entirely dependent upon individual States; but, the world community 'international terrorism' creates is in fact not that. It is a community of air travelers with many diverse passports and no single representative government.


This Comment examines the nexus between the global force of terrorism and internationalized antiterrorist efforts. The goal of a terrorism counteraction policy “is to make the general political, economic and psychological climate in which terrorists operate more hostile” in order to reduce terrorism to a point where it cannot divert a nation from its stated policies.\(^1\) However, in dealing with a global force like terrorism, the crux of the challenge arises when the legislation, policies, and conceptions of terrorism differ within cooperating States. The global threat of terrorism compels each State to look beyond its own borders and national interests to more fully comprehend and cooperate with the policies of other States. Terrorism, as a global force, is confirming limitations on States’ rights and sovereignty. Unilateral policies are becoming increasingly rare and traditional State-centered perceptions are being modified.

Part I of this Comment compares antiterrorism legislation in the United States and the United Kingdom to exemplify the differences between just two of the many countries involved in the international fight against terrorism. Part II analyzes the global threat of terrorism under the analytical framework of extradition and deportation schemes, accentuating the interplay between domestic and international cooperation. Part III discusses the international conventions and conferences adopted and the implications of these multilateral antiterrorist efforts. Part IV focuses on police enforcement agencies, primarily in the context of the European Union, and also addresses the shift in the United States toward exercising extraterritorial jurisdiction of its enforcement agencies. Part V reviews the obstacles surrounding the enforcement of counterterrorist efforts. Part VI provides suggestions and proposals for future international remedies. This author supports the creation of an International Criminal Court, but offers changes to the proposed Court’s jurisdictional scheme.

I. LEGISLATIVE INITIATIVES

A. Recent U.S. Legislation

In the early to mid-1990s, the United States continued to face the global threat of terrorism. On March 4, 1994, four individuals were convicted for

bombing the World Trade Center in New York. In the first month of 1995, the United States, in accordance with an executive order, froze the assets of several terrorist groups. On February 7, 1995, Ramzi Ahmed Yousef was arrested in Pakistan and returned to the United States for trial. April 12, 1995, marked the extradition date of Abdul Hakeem, a defendant charged in the Philippine air case, to the United States. Four months later, Ishmail Najim, also a suspected world terrorist involved in the World Trade Center bombing, was arrested in Jordan and relinquished to the United States. Sheik Rahman was convicted in New York on October 1, 1995. During his sentencing, he and his followers threatened retaliation against the United States.14 These terrorist activities and countless others served as the backdrop to the United States’ enactment of the Anti-Terrorism and Effective Death Penalty Act (AEDPA).15

The tragic bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995, focused the U.S. government’s attention on the need for new antiterrorist legislation. At the time of the bombing, President Clinton’s proposed antiterrorist legislation was pending before the House.16 Following the tragedy, both the House and the Senate scrambled to introduce bills. On April 27, 1995, the Comprehensive Terrorism Prevention Act of 1995 was introduced in the Senate17 and passed on June 7, 1995.18 The Comprehensive Anti-Terrorism Act of 199519 was introduced in the House on May 25, 1995; however, it was not until March 14, 1996, that the House passed a revised version, the Effective Death Penalty and Public Safety Act of 1996.20 Congress approved the Anti-Terrorism and Effective Death Penalty Act of 1996,21 a conference bill resembling the House version, on April 17 and 18, 1996. President Clinton signed the bill into law on April 24, 1996.

The AEDPA is extensive, although not as sweeping as the President and Congressional leaders originally intended. The legislation includes provisions allotting one billion dollars over the next four years to numerous antiterrorism

programs, requiring violators to make restitution to their victims, granting immigration authorities heightened power to restrict entry into the United States of persons belonging to organizations identified as terrorist organizations by the State Department, increasing governmental powers to deport foreigners convicted of crimes, and mandating that plastic explosives contain chemical taggants for tracking purposes.

Although these are substantial provisions, numerous initial proposals were deleted from the legislation. The President initially requested an extension of the statute of limitations for firearm violations, heightened governmental access to suspected terrorists' credit reports and other records, increased wiretapping abilities by the FBI of suspected terrorists' telephones, and military involvement in cases including biological and chemical weapons, amongst other provisions.

Critics argue that "many of the substantive enhancements deleted from the AEDPA would have been constitutional and were perhaps necessary to ensure the legislation's effectiveness." The AEDPA and the controversy surrounding it, however, point to the delicate balance that must be achieved in the United States between the constitutional liberties of U.S. citizens and the increased investigatory powers of the FBI when implementing antiterrorist measures. For instance, the original House and Senate bills included terrorism-related offenses for which the FBI could gain permission to intercept wire and oral communications. The original House bill even expanded the permissible uses of tracing devices to include foreign counterintelligence

22. See id. §§ 811-822.
23. See id. §§ 201-211.
24. See id. §§ 401-443.
25. See id.
26. See id. §§ 601-607.
28. Note, Blown Away? The Bill of Rights After Oklahoma City, 109 HARv. L. REv. 2074, 2080 (1996). Whether or not the deleted legislative proposals were reasonable or constitutional is beyond the scope of this Comment.
searches. The AEDPA currently does not include provisions pertaining to the FBI's surveillance power. Additionally, the original House and Senate bills provided an opportunity for the FBI to secure an ex parte order instructing any common carrier, storage facility, public accommodation facility, or vehicle rental service to produce records in its possession that relate to a counterterrorism investigation. The AEDPA contains no such provisions.

While the majority of U.S. citizens agree that terrorism is a major concern, there is no consensus in the United States regarding how the government should meet this challenge. The AEDPA exemplifies the legislative controversy regarding the balance the United States must strike between granting heightened powers to the government for effective antiterrorist responses and protecting the cherished, fundamental liberties, and civil rights of U.S. citizens. In promulgating the AEDPA, U.S. legislators wrestled with the appropriate scope of antiterrorist measures within its domestic context.

B. Britain's Anti-Terrorism Legislation

The bulk of antiterrorism legislation in the United Kingdom has been primarily influenced by and directed at the ongoing struggle between the Catholic and Protestant populations. Among other provisions, the United Kingdom Prevention of Terrorism (Temporary Provisions) Act of 1984 (Act of 1984) proscribed the Irish Republican Army (IRA) and the Irish National Liberation Army (INLA), placed the powers of detention, arrest, and exclusion in the hands of the Executive, designated that contributing to acts of terrorists as a crime, and provided the police with the authority to conduct security checks on travelers.

32. See S. 735, 104th Cong. § 502(a); accord H.R. 1710, 104th Cong. § 304(a) (1996).
33. See Matthew H. James, Comment, Keeping the Peace—British, Israeli, and Japanese Legislative Responses to Terrorism, 15 DICK. J. INT'L L. 405, 416 (1997).
34. Smith, supra note 27, at 278.
35. Id.
36. Id.
37. Id.
It was not until the following year, 1985, that telephone tapping became illegal in the United Kingdom. "English law, unlike American law, drew no distinction between electronic surveillance for ordinary criminal investigations and law enforcement, on the one hand, and national security purposes on the other, the latter being further subdivided into surveillance of domestic activities and of foreign powers. All were treated alike." However, Britain did not make telephone tapping illegal on its own accord. The European Court of Human Rights did not look favorably upon the lenient British law and announced its disapproval. In response, the British government enacted the Interception of Communications Act of 1985, making telephone tapping illegal.

Like prior antiterrorism legislation, commentators highly criticized the Act of 1984 for the large number of suspects detained year after year. The European Court of Human Rights again expressed its disfavor with Britain’s antiterrorist legislation. The Court found the provision allowing individuals to be detained for a potential seven-day period without a court appearance to be a violation of the European Convention on Human Rights. Compared to the high number of detentions, very few resulted in formal charges.

However, the British government did not amend its law this time. "The government maintained that the seven-day period was essential and that the sensitivity of the information on which detention was based rendered its

39. Id. at 786.
40. See generally JAMES R. FOX, DICTIONARY OF INTERNATIONAL AND COMPARATIVE LAW 99 (1997) (defining the Court as an "organ of the Council of Europe; the 34 Member States have accepted the jurisdiction of this court which can issue binding rulings on whether a government has violated its obligations under the European Convention on Human Rights").
41. See generally PETER WALLINGTON & JEREMY MCBRIDE, CIVIL LIBERTIES AND A BILL OF RIGHTS 44-80 (1976) (discussing the impact the European Court has on the legislative and judicial branches of government in Britain).
42. See Smith, supra note 27, at 280.
43. The Prevention of Terrorism Bill was enacted in November of 1974 and many criticized it. "[W]hat is surprising—if not shocking—to the foreign observer in the light of English history in the preceding century, is the alacrity with which the English surrendered practically the totality of their cherished liberties to the discretion of government officials . . . ." BARTON L. INGRAHAM, POLITICAL CRIME IN EUROPE 295 (1979), reprinted in DONNA M. SCHLAGHECK, INTERNATIONAL TERRORISM 108 (1988).
44. Smith, supra note 27, at 278.
45. Between 1974 and 1986, 6246 persons were detained while only 515 were charged. See Zellick, supra note 38, at 817.
presentation to a court in the presence of the detainee impossible.\textsuperscript{46} Britain argued that it based its derogation on the "public emergency" exception, despite concern that detention served merely as a mechanism for the British government to harass its citizens.\textsuperscript{47}

In 1989, the United Kingdom promulgated the Prevention of Terrorism (Temporary Provisions) Act (PTA).\textsuperscript{48} The PTA, basically a reincarnation of the Act of 1984, banned any form of financial assistance to terrorists,\textsuperscript{49} gave the Secretary of State the power to exclude persons suspected of terrorist involvement without court review,\textsuperscript{50} and empowered police to arrest an individual without a warrant if the officer reasonably suspected involvement in acts of terrorism.\textsuperscript{51}

A year and a half of peace between Northern Ireland and Britain ensued. However, when the IRA renewed its bombing campaign, the British government enacted the Northern Ireland (Emergency Provisions) Act of 1996 (EPA),\textsuperscript{52} which came into force on August 25, 1996.\textsuperscript{53} This piece of legislation served as Britain's leading antiterrorist legislation until 1998, representing the fifth emergency legislative act.\textsuperscript{54} In conjunction with prior legislation, the EPA grants the police additional powers to search and arrest, proscribes ten paramilitary organizations (in addition to the two organizations in the PTA), and grants the Executive powers of detention.\textsuperscript{55} The EPA also closely monitors private security services located in Northern Ireland to prevent potential terrorist infiltration of the private sector. "A constable is authorized to enter any premises where a business involving the provision of security services is operated and inspect employment records."\textsuperscript{56}

\textsuperscript{46} Id. at 815.
\textsuperscript{47} Id. at 816 (citing European Convention on Human Rights, § 1, art. 15(1)).
\textsuperscript{48} See Prevention of Terrorism (Temporary Provisions) Act, 1989, ch. 4 (Eng.) [hereinafter PTA].
\textsuperscript{49} See id. §§ 9-13.
\textsuperscript{50} See id. §§ 5-6.
\textsuperscript{51} See id. §14(1)(b).
\textsuperscript{52} Northern Ireland (Emergency Provisions) Act, 1996, ch. 22 (Eng.) [hereinafter EPA].
\textsuperscript{53} See James, supra note 33, at 421.
\textsuperscript{54} See Smith, supra note 27, at 282.
\textsuperscript{55} See id. at 282-83; see also James, supra note 33, at 422-23.
\textsuperscript{56} James, supra note 33, at 423.
Most recently, Britain has enacted the Criminal Justice (Terrorism and Conspiracy) Act of 1998 (Terrorism and Conspiracy Act). The Terrorism and Conspiracy Act was published in draft form on September 1, 1998, and debated in the House of Commons and the House of Lords until September 4, 1998. The Act received royal assent and came into force on September 4, 1998. This legislation is significant for several reasons. First, the Terrorism and Conspiracy Act makes it easier to secure the conviction of those who are members of proscribed organizations. Membership in a prohibited organization has been illegal for years under the PTA, but it has been difficult to prosecute for membership alone. Further, the Terrorism and Conspiracy Act makes it an offense to conspire in the United Kingdom to commit a crime in another country, provided the act carried out would be an offense both in the United Kingdom and the country where the offense occurs. Upon conviction, the assets of individuals found to be members of a terrorist group would be subject to forfeiture if they were used in support of that group.

Britain’s Home Secretary, Jack Straw, recently announced, “In the last 25 years terrorism has exacted a terrible toll. This is not just the result of Irish terrorism. In the last 20 years there have been more than 80 international terrorist incidents in this country.” As a result, he expressed an intention to replace the current temporary PTA and EPA with permanent United Kingdom-wide counterterrorism legislation, possibly as early as 1999.

C. Comparison of U.S. and British Legislation

The contrast between the United States and British antiterrorist legislation represents the stark dichotomy between the legislative responses to terrorism in only two countries. Clearly, international cooperation involves many
cooperating States; these are only two links in the international chain. Therefore, even a comparison of two Western democratic nations illustrates key distinctions.

In the United States, the basic separation of powers principle is fundamental. However, in Britain there are important structural distinctions.

The chief points of difference between the two nations are . . . the absence of a supreme constitution and hence of an entrenched bill of rights, the absence of constitutional adherence to the separation of powers and the accepted merger of executive and legislative functions, the absence of a federal system of government, and the absence of a power of judicial review of primary legislation. 64

These differing frameworks significantly affect the breadth of legislation and the powers afforded to governmental officials. "British law grants more power to its government to control terrorism through formalized anti-terrorism legislation than does American law." 65 Yet, despite the absence of a national constitution or formal bill of rights, the European Court of Human Rights repeatedly pressures the British government, though not always successfully, to confront the civil liberties and rights of British citizens. 66

Further, the British government has continually passed specific antiterrorism legislation while the United States, on the other hand, has typically assimilated antiterrorism measures into other laws. 67 Perhaps the AEDPA indicates a change and represents U.S. legislation geared toward terrorism. Whether additional antiterrorism legislation in the United States will follow depends on future decisions Congress and the President will make after weighing the need for additional antiterrorism legislation against the

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65. Smith, supra note 27, at 283.
66. Id.; see also Williams, supra note 64, at 965 (stating that British judges are increasingly aware of rulings from the European Court of Human Rights).
cherished principles of civil liberties and rights. For example, the original proposed legislation was more comprehensive than the bill which was signed into law. President Clinton endorsed warrantless wiretapping; however, this proposal did not pass the balancing test. As a result, the constitutional rights of U.S. citizens to be free from unreasonable searches and seizures prevailed.

Antiterrorism legislation not only affects a particular country's domestic context, but the international community as well. The balance between broadly fashioned legislative initiatives, providing more effective deterrence of terrorist activities, and narrowly tailored ones providing increased protection of individual liberties, is paradoxical. A review of antiterrorist legislation in the United States and the United Kingdom indicates the dilemma of combating terrorism on the domestic front. On the international level, interconnecting numerous countries with varying conceptions of how to curb the global threat of terrorism becomes an increasingly complicated challenge.

II. EXTRADITION AND DEPORTATION SCHEMES

Extradition and deportation schemes provide a suitable analytical framework with which international cooperation in the fight against terrorism can be assessed. Lack of uniformity in these areas creates stumbling blocks to internationalized efforts. The global force of terrorism pushes States to harmonize, at least to a greater extent, their legal responses. Otherwise, terrorists might continue to benefit from disjointed international efforts.

Extradition is defined as "the surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender." Extradition, unsurprisingly, is a mainstay in the area of international cooperation involving terrorism.

68. Smith, supra note 27, at 274-76. In August of 1996, the House of Representatives voted in favor of the Aviation Security and Anti-Terrorism Act, which would increase counter-terrorist measures. However, the National Rifle Association ("NRA") and American Civil Liberties Union ("ACLU") vigorously objected to provisions allowing wiretapping and taggants on explosives, and these were deleted from the bill. Id at 274-75.

69. See id.

70. BLACK'S LAW DICTIONARY 585 (6th ed. 1990); see also MALCOLM N. SHAW, INTERNATIONAL LAW 422 (1991) (defining extradition as the process by which one jurisdiction turns over a suspected or convicted criminal to another jurisdiction); RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402 (1987).
In extradition jurisprudence, much controversy has surrounded the “political offense exception.” Persons accused of terrorism often argue that they are engaged in political activities, and, as such, are not to be extradited according to the “political offense exception.” Lack of consistency between treaties in defining a “political offense” further complicates the issue. Since international law does not obligate States to extradite, treaties establish this duty. Confronted with this “escape hatch” for terrorists, governments have begun to alter the category of extraditable offenses. For example, the Supplementary Extradition Treaty of 1985 between the United States and the United Kingdom excluded a number of offenses from the “political offense exception,” regardless of the fact that some were, in reality, political. The list of excluded offenses includes politically motivated crimes of murder, kidnaping, hostage-taking, and the making of explosives.

Recently, two notable trends have occurred in the European Union’s extradition jurisprudence. First, extradition procedures have become more liberal and flexible. Presently, treaties allow extradition for any serious offense, whereas the previous list of extraditable offenses was more limited. This shift implies that the “political offense exception,” traditionally based on the concept of State sovereignty, has lost significance. Second, as a by-product of increased international cooperation, extradition procedures and

72. Smith, supra note 27, at 253.
73. Phillips, supra note 71, at 338. Extradition, therefore, should be viewed as an imperfect obligation, only having the force of international law when there is an agreement committing the parties to extradite. See generally IAN BROWNLEE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 315 (4th ed. 1990) (stating “[w]ith the exception of alleged crimes under international law, in the absence of treaty, surrender of an alleged criminal cannot be demanded as of right”).
76. Phillips, supra note 71, at 352 (stating this change was in response to the IRA’s invocation of the political exception doctrine).
77. Smith, supra note 27, at 253.
78. Vermeulen & Vander Beken, supra note 74, at 266.
79. Id.
requirements are less complex and rigid. Expanding the reach of extradition laws might create new complications, potentially decreasing trust between States or threatening State sovereignty. However, increased simplification of extradition procedures also creates a risk of inadequate legal protection for individuals suspected of terrorist involvement, potentially infringing an individual’s civil liberties.

Traditionally, the “political offense exception” has served many objectives: to avoid one country taking sides in the internal affairs of another country; to protect the political offender from a potentially impartial trial; and to recognize that political dissent may be legitimate. However, the ongoing struggle to define “political offense” creates unnecessary confusion and hinders international cooperation in the extradition of terrorists. Political offenses are often categorized as either “pure” political offenses or “relative” political offenses. There is general agreement in the international community that “pure” political offenses are those directed exclusively at the State and, as such, merit the exception. However, the “relative” political offense category creates a gray area that presents serious uniformity problems. Relative political offenses are those which have a “hybrid nature” and are handled differently between States. Great Britain and the United States demand the crime be “incidental to and form part of political disturbances.” Courts in Switzerland, on the other hand, selected a “predominant motive” or “proportionality” test. This more restrictive approach demands that the crime not only involve a political agenda, but also that the crime must have been necessary to satisfy the proportionality prong. Therefore, the political nature of the criminal offense must exceed components of a common crime. In contrast, France balances the perpetrator’s motive against the egregiousness of the crime. The more serious the crime, the greater the need for extradition.

The death penalty further complicates extradition jurisprudence. Even when there is an extradition treaty, nations may deny extradition if the treaty allows refusal based on the death penalty. In 1989, the United States was

80. Id.
81. Id. at 266-67.
82. Phillips, supra note 71, at 341.
83. Id. at 341-43.
84. Id. at 343 (quoting In re Castoni, 1 Q.B. 149, 166 (1891)).
85. Id. at 346.
86. See id. at 348.
operating under twenty extradition treaties which held that the other nation could deny extradition if there was a possibility the suspect would face the death penalty in the United States. One of those countries was the United Kingdom. In that same year, the European Court of Human Rights decided a pivotal case in international law pertaining to extradition. In *Soering v. United Kingdom*, a young German man, Jens Soering, fled from the United States after he and his girlfriend murdered her parents in Virginia. The couple fled to England, where they were later arrested. While his girlfriend negotiated with prosecutors, Mr. Soering vigorously opposed extradition to the United States. Pursuant to the Extradition Treaty of 1972, the British government required assurances that the death penalty would not be sought. Mr. Soering argued that his possible punishment, if extradited, would constitute degrading and inhuman treatment. The court agreed with Mr. Soering that the United Kingdom had a duty to protect him from the possibility of waiting six to eight years for execution. After considering the options available, the court decided to extradite Mr. Soering to his homeland of Germany for prosecution where there would be no threat of the death penalty.

Although the *Soering* case did not involve terrorist activities, it amply illustrates another gaping hole in extradition law. The same problem would pertain when a nation has a terrorist within its borders and refuses to extradite the individual because it knows the law permits the imposition of the death penalty. A refusal to extradite would frustrate apprehending terrorists for prosecution. There is an intense debate between those who believe the death penalty sends a powerful message to terrorists and serves to deter future acts and those who want to abolish it.

Similarly, deportation laws require international cooperation among States. A suspected terrorist’s removal from one country potentially affects the deportee’s country. In this modern age of advanced technology,
communication, and transportation, deporting a terrorist might serve to remove the threat from one State only to increase the threat in the receiving State.

In the United States, the recently enacted AEDPA provides for deportation of suspected terrorists under proceedings in which the accused is denied privileges to review classified evidence. "While the provision makes it much quicker to remove undocumented aliens from the United States, the thousands of foreigners who illegally entered the United States face removal from the country without judicial review."^95 Prior to the AEDPA, aliens convicted of crimes, resulting in the possibility of deportation, had the opportunity to petition federal circuit courts. In response to the petition, if the judge found that government officials had incorrectly decided to deport the petitioner, then the case could be remanded. The AEDPA prohibits particular alien felons from this petition process.6

The AEDPA targets aliens who have committed particularly serious crimes and eliminates those individuals from deportation exemptions.97 This change in the handling of suspected terrorists by the United States not only alters its domestic context, but also affects the deportee's country. "Recent changes in U.S. law that encourage the deportation of persons convicted of serious crimes is having repercussions in the deportees' native countries."^98 For example, in response to an influx of violent crimes and other crime-related problems, Caribbean nations are asking the United States to evaluate its deportation system.99 Thus, the ramifications of deportation are not only domestic, but also international.

95. Smith, supra note 27, at 270.
97. See Smith, supra note 27, at 271.
99. See id.
III. INTERNATIONAL RESPONSES

A. Antiterrorist Conventions

The global force of terrorism increasingly offers incentives to States to consensually surrender bits of their sovereignty through treaties in order to fashion advantageous arrangements. For example, the international community has adopted a host of multilateral antiterrorist conventions. The goal of these conventions is to create a framework for international cooperation to combat acts of international terrorism. In accordance with those aims, the New York Convention, for instance, mandates cooperation in preventing attacks on diplomats both inside and outside their territories, open exchange of information regarding the circumstances of the crime and the alleged suspect's identity, and coordination of administrative efforts against such attacks. The State possessing the alleged offender has an obligation to take measures to extradite or prosecute the individual, and to notify interested States and international organizations of any action taken.


102. See New York Convention, supra note 100, at art. 4.
Further, State parties are to submit all relevant evidence to assist in appropriate criminal proceedings. 103

Likewise, the Hostages Convention 104 requires States to either extradite or prosecute any person involved in a terrorist offense. This Convention's "effectiveness, however, was greatly weakened by a number of exceptions that enabled States to avoid extradition or prosecution." 105 Additionally, the Hostages Convention provides States with the opportunity to renounce the Convention by written notification and fails to grant procedures for dealing with recalcitrant States. 106

The Tokyo Convention 107 criminalizes offenses committed by an individual on board any aircraft registered in a contracting State even when the aircraft is in flight outside the borders of that State. 108 "The Tokyo Convention [only] mentions acts of interference, seizure of, or other wrongful exercise of control of an aircraft" to describe what constitutes a hijacking. 109 Similarly, the Hague Convention 110 fails to provide a clear definition of hijacking. For example, the Hague Convention refers to the use of physical force, threat, or intimidation to take control of an aircraft as elements of hijacking. 111 Although the Montreal Convention 112 also lacks definitive terms regarding the offense of hijacking, it did broaden the occasions wherein the offense could take place. For example, a hijacking occurs even if the doors of the aircraft are not closed and the offender is not personally present. 113 After three separate conventions, no precise definition of hijacking has evolved. "The failure of all attempts at identifying the offence of hijacking

103. See Pilgrim, supra note 101, at 193.
104. See Hostages Convention, supra note 100, at art. 8.
105. William M. Gianais, The New World Order and the Need for an International Criminal Court, 16 FORDHAM INT'L L.J. 88, 97 (1992). See Hostages Convention, supra note 100, at art. 9 (providing exceptions if a State believed the extradition request served the purpose of prosecuting or punishing an individual on account of race, religion, or nationality).
106. See id.
107. See Tokyo Convention, supra note 100, at art. 11.
108. Id. at ch. 1, art. 1(2).
110. See Hague Convention, supra note 100, at art. 1.
111. See Abeyratne, supra note 109, at 475.
112. See generally Montreal Convention, supra note 100.
113. See Abeyratne, supra note 109, at 476.
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and formulating a cogent system of preventive criteria attains its culmination in political terrorist acts."  

These conventions establish certain obligations upon signatories to cooperate. However, these obligations are challenging to fulfill due to unfriendly States; States with differing legal systems, such as common law versus civil law systems; or States’ varying interpretations of the “political offense exception” or the definition of hijacking. Additionally, the “enforcement mechanisms are absent or very weak, as demonstrated by Uganda’s assistance to hijackers in the 1976 Entebbe episode, despite that nation’s ratification of the conventions.” Although Uganda offered aid to the hijackers, Uganda never received punishment or censure.

Criticisms of these multilateral conventions abound. The international community has unsuccessfully entered into effective antiterrorist treaties for two reasons: “the aura of ambiguity that shrouds the nature and force of an international agreement” and “the lack of enthusiasm on the part of most States to label terrorism as an offense against humanity.” A further criticism is that there are large gaps in the area of prevention: no guarantee of the offender’s trial is included, no duty binds contracting States to extradite the offender, and no common standards of precaution or safety are contained within the agreements.

B. International Conferences

More recently, international conferences highlight the issue of global terrorism. The G-7, which includes Canada, the United States, Britain, Germany, France, Italy, and Japan, have repeatedly discussed the issue of terrorism. In June of 1995, the G-7 Summit leaders agreed to strengthen international cooperation and efforts to combat international terrorism. The next year, terrorism remained a priority following the bombing of the United States military installation in Saudi Arabia and the IRA bombing in England.
These leaders then issued a Declaration on Terrorism. They met in Paris a month later at the Ministerial Conference on Terrorism to discuss feasible antiterrorist measures. On July 30, 1996, at the Ministerial Conference on Terrorism, the G-7 leaders and Russian leaders adopted twenty-five practical antiterrorism resolutions. This plan included increasing public transportation security measures, implementing global standards for detecting bombs, tightening border controls, policing the Internet, improving exchange of intelligence information, and drafting a treaty compelling countries to prosecute or extradite suspected bombers.

Although the G-7 gives terrorism considerable attention and continually places it on its agenda, in reality, the result is not much more than a general condemnation of terrorism, accompanied by additional pledges to cooperate in combating terrorism. The Bonn Declaration, for example, bound signatories to halt bilateral air traffic with countries which declined to extradite or punish hijackers or refused to return aircraft and passengers. However, the only time the countries invoked the Bonn Declaration was in 1982 when West Germany, France, and Britain cut off all air transportation with Afghanistan.

Additionally, the agreement regarding the G-7 leaders’ adoption of certain practical measures has not gone uncriticized on the domestic front. In the United States, the American Civil Liberties Union (ACLU) declared its opposition to the twenty-five point proposal. The Global Internet Liberty Campaign, a coalition including the ACLU, voiced its objections to government regulation of the Internet since there are no borders in cyberspace. It argued that the U.S. government cannot be permitted to limit dissemination of information or to gain access to coded communications through international avenues when Congress and the courts have not extended such

123. See Smith, supra note 27, at 286.
125. See Pilgrim, supra note 101, at 198.
authority. Again, the United States' struggle to participate in international agreements to effectively combat the global threat of terrorism gives rise to the delicate balance between increased governmental intervention for protection purposes and citizens' liberties.

At the 1995 World Summit for Social Development, 117 national leaders gathered together to address global problems such as terrorism, drug trafficking, and human rights violations. These leaders labeled such problems as urgent and compelling. Additionally, in October 1997, Japan and the Association of Southeast Asian Nations (ASEAN) held a conference to discuss measures to combat terrorism, following the aftermath of the hostage crisis at the Japanese Ambassador's official residence in Peru. The crisis lasted four months until Peruvian troops stormed Ambassador Aoki's home, killing the fourteen hostage-takers while releasing all but one of the seventy-two hostages. Japan's Prime Minister Ryutaro Hashimoto stated, "I expect Japan and ASEAN to further strengthen cooperation in the fight against abhorrent terrorism.

The World Summit and ASEAN conference demonstrate two more international conferences aimed at curtailing terrorism. These conferences continue to provide a forum for States to condemn terrorism, yet unified and synthesized effective antiterrorist measures seldom follow. The global threat of terrorism mandates more; implementation of these proposals is the next step required.

IV. POLICE COOPERATION

A. Interpol

Police agencies throughout the world have played a vital role in the fight against terrorism. However, notions of State sovereignty have resulted in a heavy reliance on domestic forces and have consequently served as a barrier to more integrated international enforcement agencies. The global force of terrorism is pressuring police agencies to further harmonize their resources and support systems.

126. See Smith, supra note 27, at 289.
127. See Annn, supra note 7, at 3.
The International Police Organization (Interpol) is a formalized association of police throughout the world, facilitating the sharing of information and fostering international comity. Interpol "represents the height of multilateral police cooperation, significantly encouraging the internationalization of law enforcement and advancing away from the unpredictability of ad hoc police cooperation." Each Member State in Interpol creates a National Central Bureau (NCB) to serve as a liaison with other countries. Each NCB has three specific duties: to openly communicate with police agencies in its own country; to keep channels of communication open with other NCBs; and to provide necessary and appropriate communication with the Interpol General Secretariat. The goal, therefore, is to effectuate a more efficient response to transnational crimes like terrorism.

Prior to resolutions passed in 1984, Interpol lacked the authority to intervene in cases of religious, racial, or political character. "[B]y removing the political ramifications of several crimes regarded as terrorist," the range of Interpol's antiterrorist involvement expanded. Despite this change, Interpol continues to serve primarily in the limited capacity of a communication network system to assist local law enforcement in locating terrorists.

B. Europol

The development of an integrated financial market within the European Union (EU) included the elimination of border controls between Member States. As a result of this single financial market, economic unity, and the free movement of services and funds, new opportunities for illegal activity arose. EU Member States quickly recognized the need for international police cooperation to control illegal transnational activities. Member States established the European Police Office (Europol), the embryonic Europe-wide police agency, to improve cooperation among Member States' authorities in

131. See id. at 721.
132. Id.
133. See Monaco, supra note 12, at 247.
134. See id. at 248.
their efforts to prevent increasing money laundering, drug trafficking, terrorism, and other serious transnational crimes.\textsuperscript{136}

In many ways, Europol resembles Interpol, set within the context of the EU. "The primary function of Europol is to gather and analyze information held by the different national police forces."\textsuperscript{137} Beyond that designated function, Member States lack a unified view on how far Europol’s authority should extend. Since its formation, the EU has attempted to collectively act as one powerful unit, but the issue of national sovereignty serves as a barrier.\textsuperscript{138}

The designated role of Europol illustrates this tension. For example, Germany desired the placement of nuclear smuggling within Europol’s authority, and Spanish leaders thought Europol should be empowered with significant counter-terrorism intelligence sharing responsibilities. France and the United Kingdom, on the other hand, believed that Europol should have a diminished role to play and remain clearly subordinate to the control of national governments.\textsuperscript{139}

Even those in favor of Europol do not fail to overlook the impediments to police enforcement. Law enforcement confronts two large hurdles: tension between a State’s multiple branches of government and the delicate balance between the government’s need to investigate and the realm of citizens’ protected civil liberties.\textsuperscript{140}

Yet, the nature of transnational crimes, like terrorism, pressures cooperating States to overcome these obstacles. The creation of Europol marks a move in the right direction and a recognition of the mobility and resourcefulness of these nonterritorial actors.

Global interdependence, however, is a defining characteristic of the modern world, and increasingly, criminal activity does not recognize national boundaries. Crime often arises in the context of international networks, operating beyond the control of any single sovereign nation. In addition to the

\begin{footnotesize}
\begin{enumerate}
\item[138.] See id. at 646.
\item[139.] See Kellman & Gualtieri, supra note 130, at 722 n.226.
\item[140.] See Monaco, supra note 12, at 253.
\end{enumerate}
\end{footnotesize}
problems encountered in domestic law enforcement, international law enforcement must overcome problems that stem from issues of sovereignty, conflicting legal systems, and political conflict between governments.\textsuperscript{141}

One commentator, in response to the function of police enforcement within the European Union, focused not only on the age-old issue of State sovereignty, but also on the global nature of crimes like terrorism:

Politicians—usually least likely to admit an erosion of state sovereignty—have encouraged this shift by repeatedly stressing the growing impact of transfrontier crime. The admission that international crime establishes a genuine threat to the internal security of EU Member States has forced them to acknowledge the limitations of national law enforcement policies. European police cooperation, and particularly also the activities of Europol, is beginning to be based on the principle of subsidiarity: criminal activities that cannot be effectively combated at a local, regional or national level as a result of inadequate resources may increasingly become [the] subject of concerted international police cooperation.\textsuperscript{142}

The future of Europol, and other enforcement agencies, depends on how States envision their role in the global fight against terrorism. Notions of State sovereignty currently undermine Europol’s authority. “Although there are obvious concerns relating to the centralization of a police force, such as leakage of classified national security information and abdication of control over national protection, such risks are necessary to establish an organized force to thwart organized crime.”\textsuperscript{143} Unless international efforts are synthesized to a greater extent, the global threat of terrorism will continue to mount.

\textsuperscript{141} Id. at 253-54.
\textsuperscript{142} Monica den Boer, Paper Presented at Cyprus Police Academy Seminar 3 (Dec. 1994), \textit{reprinted in Monaco}, supra note 12, at 255.
\textsuperscript{143} Solomon, supra note 137, at 646-47.
C. United States Extraterritorial Jurisdiction

On the United States’ front, a shift has also occurred. Due to the global nature of terrorism, States rely less frequently on exclusively unilateral policies toward terrorism. Reliance on international cooperation has become critical. In recognition of the shortcomings, or at least limitations, of a unilateral policy, the United States moved toward exercising extraterritorial jurisdiction. Accordingly, the Omnibus Anti-Terrorism Bill of 1986 empowered U.S. domestic law enforcement agencies, particularly the FBI, by giving them heightened authority to act overseas when the crimes involved U.S. citizens.

“Recognizing that activities which occurred wholly outside its country’s borders could at times have a substantial domestic impact,” the United States increased its enforcement powers abroad. Since the enactment of the Comprehensive Crime Control Act of 1984 and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, the United States FBI has responded, for example, to “207 incidents, 105 of which are in South America.” Clearly, the success of U.S. efforts abroad relies not only upon coordination with the Department of State, but also upon the permission and cooperation of the host country.

Two factors in deciding the level to which the United States can and should extend its authority to other countries are the degree of harm that might develop and the degree to which other States might be able to prevent the threat from occurring. If grave danger will ensue and it looks as though other countries will not react, then “the United States has a moral obligation, which should form the basis for a legal obligation, to prevent this serious harm

144. See Martha Crenshaw, Unintended Consequences: How Democracies Respond to Terrorism, 21 FLETCHER F. WORLD AFF. 153, 155 (1997).
146. Gibney, supra note 145, at 298.
148. See id.
149. See Gibney, supra note 145, at 320.
from occurring." In this way, tackling the global threat of terrorism is portrayed as serving some interest beyond the national level. This raises the level of response to terrorist acts to a higher level: protection of "humankind" or the "common good." This synthesis of cooperating States' efforts is increasingly important in crippling the global threat of terrorism.1

V. OBSTACLES

A. Varying Definitions

One of the obstacles surrounding the enforcement of antiterrorist measures is the lack of a set definition of terrorism. "Numerous definitions of terrorism have circulated, many of which are overinclusive or mutually inconsistent." States agree that terrorism mandates effective responses and that terrorist acts are becoming increasingly violent. However, agreement fails when it comes to identifying "terrorism" and who should be classified as a "terrorist." A quick glance at a handful of "terrorist" definitions illustrates the variance. "The term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience." The AEDPA references the Immigration and Nationality Act's (INA) provisions on terrorist activity instead of defining it. Since the AEDPA's definition covers only

150. Id.
151. See generally ETHAN A. NADELLENNANN, COPS ACROSS BORDERS: THE INTERNATIONALIZATION OF U.S. CRIMINAL LAW ENFORCEMENT 1 (1993). Exhaustive research has been conducted regarding international law enforcement activities of the United States. Ethan A. Nadelmann has examined the evolutionary process of multilateral law enforcement agencies. This process denotes law enforcement agencies working together to reduce the tensions generated by conflicting legal systems and political tensions. Nadelmann describes this harmonization as a regularization of relations among law enforcement agencies in various States and a homogenization of systems with a common norm. Nadelmann does recommend, however, additional research of this harmonization process is necessary to achieve more effective relationships between governments and international organizations. See generally id.
153. See Smith, supra note 27, at 249.
155. AEDPA, supra note 15, § 401(a).
violent activities, federal agencies have relied on their own definitions. The Oxford English Dictionary describes "terrorism" as "[a] policy intended to strike with terror those against whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized." The PTA defines terrorism as "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear."

The struggle to clearly define terrorism creates an obstacle to reaching international agreements on terrorism. Trying to distinguish, for instance, terrorist activity from legitimate activities of national liberation movements becomes complex. The old cliché, "[o]ne man’s terrorist is another man’s freedom fighter," presents clear cultural and ideological differences.

In addition to the countless definitions of terrorism, two dissimilar "terrorist" paradigms exist, further muddying the waters. One paradigm portrays terrorism as a species of military war. Deterrence becomes the key to combating this type of terrorism. The other paradigm portrays terrorism as a criminal offense. Here terrorism becomes a concern of law enforcement. The focus switches from deterrence to emphasis on the government’s task of apprehending and punishing terrorists. The two paradigms not only view terrorism quite distinctly, but also conceptualize the response to terrorism in differing manners.

To avoid definitional inconsistencies, some argue that a particular definition need not shape a State’s counteraction policy. As a result of this global trend, the general repulsion States share toward terrorist violence should instead be the guide. The common thread of wanting to eradicate terrorism should suffice. Nonetheless, current definitional inconsistencies serve as a distraction for unified international responses to effectively counter global terrorism.

158. See PTA, supra note 48, § 20(1).
160. See Smith, supra note 27, at 254.
161. Id.
162. See James, supra note 33, at 406-07 (comparing legislative antiterrorist initiatives of the United Kingdom, Israel and Japan even though Japan and Israel have not adopted a precise statutory definition of terrorism).
B. Modern Day Context

In response to the United States’ effort to “stretch the long arm of the law,” some U.S. politicians suggested that the money spent on antiterrorist efforts abroad might be more wisely allocated on domestic responses. However, “there’s just one problem: When you’re talking about today’s border-crossing criminals, home just isn’t what it used to be.” Today, the international community is more tightly interwoven, particularly as a result of global forces like terrorism. Terrorism, along with other transnational crimes, encourages States to harmonize their efforts to effectively combat forces which transcend State boundaries.

The increased mobility of terrorists has greatly undercut the effectiveness of unilateral terrorist policies and has highlighted the need for uniform, integrated responses.

[T]he mobility of terrorists, their ability to cross borders, to acquire resources in one state to use against another state, to find asylum in foreign sanctuaries, to commit a crime in one state with weapons from another state against the citizen of a third state and flee to yet a fourth state, has meant that a unilateral terrorist policy is problematic.

International cooperation is essential. States, therefore, cannot rely on exclusively unilateral policies to curb the global threat of terrorism.

The increase in tourism and international migration, particularly in Western Europe, mandates heightened security controls. “Another catalyst for violence is an intensified freedom of movement that has developed on an
enormous scale."168 In addition to the mobility of terrorists, communication, advanced travel, progressive weaponry, and global publicity have served as tools for modern terrorists. A recent newspaper article noted that "leading security experts predict that it is only several years before a terrorist or rogue nation is capable of an on-line, hacker-style attack against the United States, causing massive failure of such crucial elements as banking or the financial markets, transportation systems, the power grid or telecommunications."169

Concern regarding use of communication systems, like the Internet, by terrorists is mounting. "On the Internet, if you’re interested, you can get the formula for sarin, the nerve gas that was employed in the attack in the Tokyo subway. Such organizations as Sinn Fein and the Shining Path, the Peruvian terrorists, now have web pages on the Internet."170 The fear that the Internet will aid terrorists not only by providing a source for spreading propaganda, but also by offering a simple and speedy way to deliver their messages, is increasing.171

Further, the organization of terrorist groups have changed considerably over the past thirty years.172 Earlier, terrorist groups were organized in hierarchical structures. However, terrorist groups today are no longer tightly arranged or cellular; instead, many are decentralized. For example, right wing groups in Western Europe are informal and operate with leaderless resistance.173 These changes in the composition of terrorist groups make detection and apprehension even more challenging.174

VI. FUTURE PROPOSALS

Numerous proposals have been offered as to how the international community can curtail this global threat. Some argue that the answer to combating terrorism lies in an authority beyond the traditional State:

168. Id. at 413.
170. Senate Hearing, supra note 14, at 35.
171. See id.
173. See Crenshaw, supra note 144, at 155.
174. Id.
The modern state is capable only of a kind of policing that some call prevention or of judgment and punishment that exiles perpetrators, figured as inherently evil, from any notion of the body politic. The ethics are in place, but the symbolic dynamics are askew: none of them leads to a reevaluation of the parental role of the state. Such a reevaluation would point, I think, to some new authority other than that of the nation state. It would point perhaps to an institutionalization of forms of transnational governance, seeds of which exist at present in such instruments as trade agreements, Interpol, international conventions and protocols against war crimes and genocide, and human rights legislation. We might envision a body to which prospective perpetrators might bring grievances even if those prospective perpetrators do not enjoy legitimation as a state, as is currently necessary to qualify for the jurisdiction of the World Court.\textsuperscript{175}

Others recommend measures adopted by the government coupled with the assistance of other entities: military installations, municipal operations, defense contractors, and the private sector.\textsuperscript{176} In this view, the fight against terrorism operates on a localized level and entails a joint effort between the particular State and other actors within it.\textsuperscript{177}

There are still others who seek a harmonization of international terms and concepts. They recommend, for example, trying to reach a general agreement on terms like “political exception” or to recognize terrorism in a broader sense as a crime against humanity to avoid definitional inconsistencies. “If strongly enforced with unanimity, measures such as the imposition of laws, which bind all nations to view terrorist acts as crimes against humanity can be an effective

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\textsuperscript{175} Allen, \textit{supra} note 10, at 11-12.

\textsuperscript{176} See James, \textit{supra} note 33, at 411 n.24.

deterrent.” Likewise, another proposal to effectuate uniformity is to transnationalize extradition by creating a “single treaty subscribed to by all nations.” Additionally, others suggest, in the event that a uniform definition of terrorism is not feasible, tackling a particular crime frequently associated with terrorism. For instance, terrorist hijacking incidents could be curbed by treating the offense the same throughout the international community. They suggest uniformity regarding the appropriate punitive measures taken.

Recognizing that the “international legal order lacks a general central law enforcement authority,” and realizing the shortcomings of the current status of international law enforcement, has led to proposals for the establishment of a permanent international criminal court. Currently, no viable alternative has garnered more time and attention than the International Criminal Court (ICC). The International Law Commission (ILC) issued a report in 1993 containing a draft statute. After considering comments, the ILC revised its draft in the following year.

In December 1995, the General Assembly adopted a resolution creating the United Nations Preparatory Committee and designated it with the task of establishing the ICC. The Preparatory Committee’s mandate was to prepare a widely accepted text of a convention for such a court using the ILC’s draft statute as a framework. At the time of this writing, the Preparatory Committee has held three, two-week meetings in 1997 and most recently held a Diplomatic Conference in Rome, Italy from June 15 to July 17, 1998, to finalize and ready the treaty for signature. The Statute of the ICC (Rome Statute) was adopted in July at the close of the

178. Abeyratne, supra note 109, at 491.
180. See Abeyratne, supra note 109, at 474.
conference in Rome. The ICC will come into effect once sixty States have ratified the treaty. Presently, the Rome Statute is open for signature in New York until December 31, 2000.

The ICC marks a positive international achievement in curtailing global threats like terrorism. In a general sense, the ICC would reduce the increasing level of international crimes and also provide a sense of order. It would provide a fair and impartial forum within which to try accused criminals. Such a neutral forum, with a diverse judiciary, offers an opportunity for increased confidence in the quality and fairness of the proceedings. As a result, the fear of foreign court bias underlying the exceptions to extradition for political offenses would decrease. Requests to deliver an accused to the ICC, rather than comply with extradition requests, offers assurances of neutrality to distrustful States. Further, the ICC would “facilitate the discovery and evaluation of evidence located in different nations.” The ICC may present an opportunity to end choice of law problems; a single, unified body of law would apply. Additionally, States adhering to their international obligations often fear for the safety of the citizenry. The ICC might, therefore, diminish a terrorist’s inclination to target the citizens of a particular State as potential hostages or objects of retaliation.

There are two critical issues presented by the ICC: the scope of the court’s jurisdiction and its relationship to national judicial systems. Although the ICC offers numerous noteworthy advantages, there are two significant ways to improve the ICC Statute. First, the ICC’s jurisdiction should be expanded to encompass any international crime. Second, the ICC should be designed so that States may consent to jurisdiction on a case-by-case basis.


188. At this time, seventy-nine States have signed the Rome Statute, but only Senegal has ratified it. See Rome Statute Signature and Ratification Chart (visited April 4, 1999) <http://www.ige.org/icc/rome/html/ratify.html>.

189. See Rome Statute, supra note 186, at art. 125.

190. See Gianaris, supra note 105, at 110.

191. See Rome Statute, supra note 186, at art. 36(7).

192. See Gianaris, supra note 105, at 111.

193. See Phillips, supra note 71, at 356.

The Rome Statute’s preamble provides that the ICC “is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole.”\textsuperscript{195} Article 1 also states that the ICC “shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern.”\textsuperscript{196} However, the Rome Statute fails to define what constitutes a serious crime. This creates opportunities for confusion. Would a crime be serious, for example, based upon the severity of the sentence or based upon the magnitude of the crime or some combination of the two? Terrorism, unlike the crime of genocide, sometimes only involves an individual or a small number of individuals. Would genocide, therefore, fall under the ICC’s jurisdiction while creating a potential loophole for terrorists?

Additionally, the ICC could find a case inadmissible if it lacks “sufficient gravity.”\textsuperscript{197} What does that language mean? Could the ICC simply refuse jurisdiction because the case was not serious enough, even when individual States supported its jurisdiction? The ambiguous statutory language will provide unnecessary interpretational problems.

Genocide, aggression, war crimes, and crimes against humanity constitute the core crimes of the ICC’s jurisdiction.\textsuperscript{198} The ICC should not be limited to these designated crimes, which presumably qualify as serious, but rather the ICC should serve as a forum for any international crime. Crimes, such as terrorism or narcotics trafficking, represent just two examples of the wide variety of criminal activities that are of growing concern. To be an effective tribunal, the ICC needs flexibility and versatility to respond to the diverse nature of crimes facing the international community. Otherwise, the ICC runs the risk of becoming another inadequate remedy, similar to the extradition-based system, by severely limiting its jurisdiction.

With respect to the ICC’s jurisdiction, a State which becomes a party accepts the jurisdiction of the Court for the crimes set forth in Article 5.\textsuperscript{199} Except in the cases of genocide, aggression, war crimes, and crimes against humanity, the ICC also has jurisdiction if a State files a prospective

\textsuperscript{195} Rome Statute, supra note 186, at preamble.
\textsuperscript{196} Id. at art. 1.
\textsuperscript{197} Id. at art. 17(d).
\textsuperscript{198} Id. at art. 5.
\textsuperscript{199} Id. at art. 12(1).
declaration with the ICC’s Registrar. This is an unrealistic arrangement in light of the age-old and revered concept of State sovereignty. Further, such meaningless provisions undermine the future efficacy of the ICC. It is highly unlikely that sovereign States will commit to the court’s jurisdiction in advance and risk having to surrender their nationals to an unfamiliar tribunal for crimes that have not yet occurred. Instead of relying on these prospective declarations, States should be allowed to consent on a case-by-case basis.

Allowing States to consent on a case-by-case basis recognizes valid national interests. Undoubtedly, States are deeply concerned with ceding national power to such a supranational body. However, the ICC, for example, offers an alternative solution to a situation like Lockerbie, Scotland, where it is highly unlikely that the suspects will be extradited for trial in either the United States or the United Kingdom without a change in the Libyan government. Libya opposed the extradition of two Libyan citizens who were indicted in the United States for the 1988 bombing of Pan Am Flight 103 over Scotland. The guarantee of a neutral forum might encourage such States to participate in the fight against terrorist acts. Benefits of this nature and magnitude should lead States to seriously consider yielding some authority to the ICC so a greater number of international criminals are held accountable.

The likelihood that the ICC will develop into a vital and dynamic institution is debatable if the ICC does not obtain flexibility to deal with a host of diverse situations and if States do not retain the ability to consent on a case-by-case basis. The two suggested changes represent a compromise between the competing tensions of State sovereignty and the global need for an effective international tribunal.

CONCLUSION

Terrorism continues to pose a serious global threat to the international community. Disunity and inconsistencies surrounding the enforcement of antiterrorist measures continue to linger and, simultaneously, hinder effective international responses to the global force of terrorism. "Terrorism is usually the genus of the species of political discord between nations. The terrorist is

200. Id. at art. 12(3).
201. See Phillips, supra note 71, at 356.
202. See Barbara Crossette, U.S. Dismisses Libyan Offer on Neutral Trial Site for Bomb Suspects, N.Y. Times, Mar. 3, 1992, at A10 (providing that Libyan Foreign Minister Bishari would be inclined to turn over the two suspects before a neutral court).
well aware of this situation and usually exploits political disharmony among nations.203

The aforementioned proposals all differ in scope and in detail; yet, they all recognize the need for a harmonized international response. The fight against terrorism mandates State action; however, conflicting legislative initiatives, differing legal systems, varying conceptions of terrorism, and restricting notions of State sovereignty are hindering effective antiterrorist measures. Terrorism currently pressures States to bond in a new way. The permanent ICC offers a viable solution. States must consider the value of yielding some national power to a supranational body, like the ICC, to curb the global threat of terrorism. To be successful, it is necessary for the Rome Statute to delicately balance the concern of States in retaining the right to try suspects in their own national courts against the global interest in an effective international tribunal. Accordingly, "[a]ny international agreement in the fight against terrorism must, in a world community marked by heterogeneity and diversity of interests, inevitably offend the sensitivities of some States, hold out the prospect of infringing on their national sovereignty, and in domestic terms possibly even violate well-established civil rights."204 The ICC represents a positive step forward for a community of nations; an internationalized response to not only condemn, but also to combat heinous crimes like terrorism.

203. Abeyratne, supra note 109, at 471.
204. Smith, supra note 27, at 254-55.