



The United Nations, Counter-Terrorism, and Human Rights



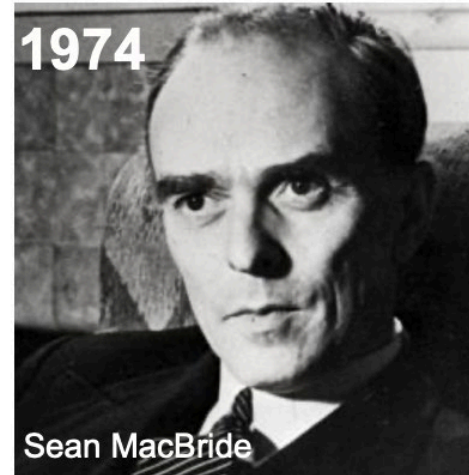
No Settled International Definition

In 1926, Romania raised for the first time a proposal to draft a terrorism convention at the League of Nations, and since that date states have consistently struggled at the international level to agree on a universally applicable definition of terrorism.



Obstacles to Definition

- ***Sympathy for a cause***
(National Liberation)
- ***Thresholds of violence***
(Criminal act or act of war)
- ***Political offense exemption***
(Protecting dissidence)
- ***State use of force***
(Covert Operations)



Draft Terrorism Convention (1937)

“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.”



Draft Comprehensive Convention (1996)

Since 1996, India has sponsored a Comprehensive Convention on International Terrorism which continues to be discussed in an *ad hoc* committee established for this purpose by General Assembly Resolution 51/210 and in the UNGA Sixth Committee (Legal). Defining terrorism continues to be a sticking point.



International Legal Instruments



- 19 United Nations Terrorism Conventions and Protocols (beginning in 1963 with the Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft).
- *Prosecute or extradite*
- Regional Conventions (such as Council of Europe Convention on the Prevention of Terrorism)

For more information go to www.un.org/en/terrorism/instruments.shtml

September 11th Attacks

Security Council Resolution 1373



Beslan School Massacre

Security Council Resolution 1566



SCR 1373: Invoking Chapter VII

“Acting under Chapter VII of the Charter of the United Nations [the Security Council]... decides that all States shall... take the necessary steps to prevent the commission of terrorist acts... [and] calls upon all States to... become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999... [and] increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism.”

SCR 1566: Functional 'Definition'

“Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or abstain from doing any act, and all other acts which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.”

UN Global CT Strategy

In 2005 the United Nations passed by consensus its Global Counter-Terrorism Strategy (A/RES/60/288). The strategy is organized in four pillars:

- 1) Measures to address conditions conducive to the spread of terrorism;
- 2) Measures to prevent and combat terrorism;
- 3) Measures to build States' capacities to prevent and combat terrorism;
- 4) Measures to ensure respect for human rights and the rule of law as a fundamental basis of the fight against terrorism.

UN PVE Plan of Action

- Preventing Violent Extremism (PVE) can be distinguished from Countering Violent Extremism (CVE) because it seeks to upstream government intervention by aiming to pre-empt radicalization processes and extremists' recruitment efforts.
- The United Nations PVE Plan of Action was presented to the General Assembly in December 2015 and forms the framework within which UN agencies seek to address PVE challenges.
- The UN Plan emphasizes a holistic and joined-up approach to preventing violent extremism.

UN Counter-Terrorism Institutions

- 1) Office on Counter Terrorism (UNOCT, UNGA);
- 2) Counter Terrorism Executive Directorate (CTED, UNSC);
- 3) Office on Drugs and Crime (UNODC), Terrorism Prevention Branch (UN Secretariat)
- 4) Global Counter Terrorism Coordination Compact (43 entities across the 3 UN pillars of Peace and Security, Sustainable Development and Human Rights and Humanitarian Affairs);
- 5) Counter Terrorism Center (UNCCT, UNGA);
- 6) UN Special Rapporteur on human rights and counter-terrorism (Human Rights Council, Special Procedures Mechanism).

Peremptory Norms of International Law

Some human rights are considered to be peremptory norms (or *jus cogens*) of customary international law - meaning that they are actually binding on States whether an individual State is a party to the relevant treaty or not. The prohibition of torture, slavery, genocide, racial discrimination, and crimes against humanity are widely regarded as being peremptory norms of international law.



Universal Declaration of Human Rights

The Universal Declaration of Human Rights of 10 December 1948 - while not a legally binding treaty - encapsulates the belief of the founding members of the United Nations that fundamental human rights reflect the “inherent dignity” of all members of the human family and are the “foundation of freedom, justice and peace in the world.”



International Covenant of Civil & Political Rights

The ICCPR entered into force in 1976 and enshrines the rights enumerated in the Universal Declaration of Human Rights in treaty form. Articles 6 to 11 may be regarded as core provisions for the protection of the life, liberty and physical security of the individual. Articles 14 to 16 deal with how a person must be treated by the judicial process. Articles 17 to 22 set out fundamental freedoms to be enjoyed free of unjustified external interference.



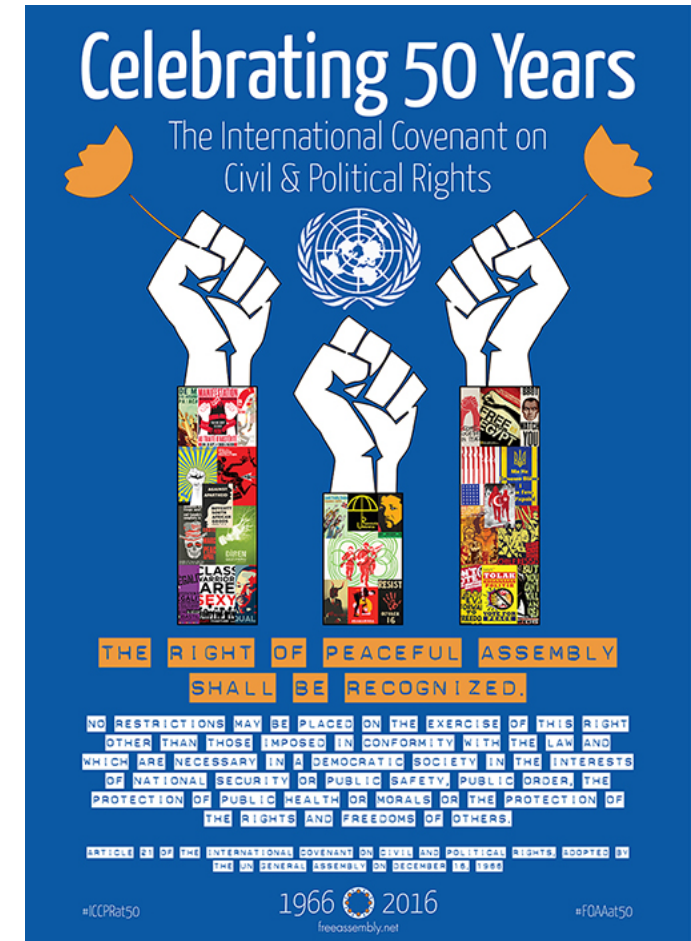
Absolute Rights

Some of the rights articulated in the ICCPR are absolute and cannot be infringed or curtailed in any way. Articles 7 (Prohibition on torture), 8 (Prohibition on slavery), 14 (Equality before the law, due process and the presumption of innocence), 15 (Non-retroactivity) all enumerate rights that cannot be limited or restricted.



Limited and Qualified Rights

Other rights protected by the ICCPR are subject to certain limitations or qualifications, where provided by law and necessary for specific enumerated purposes. Articles 17 (Privacy), 18 (Freedom of Thought, Conscience and Religion), 19 (Right to Opinion), 21 (Peaceful Assembly), 22 (Freedom of Association) and 25 (Equality in Public Life) all expressly permit some form of restriction. This restriction should serve a compelling public interest, or strike a balance between competing protections.



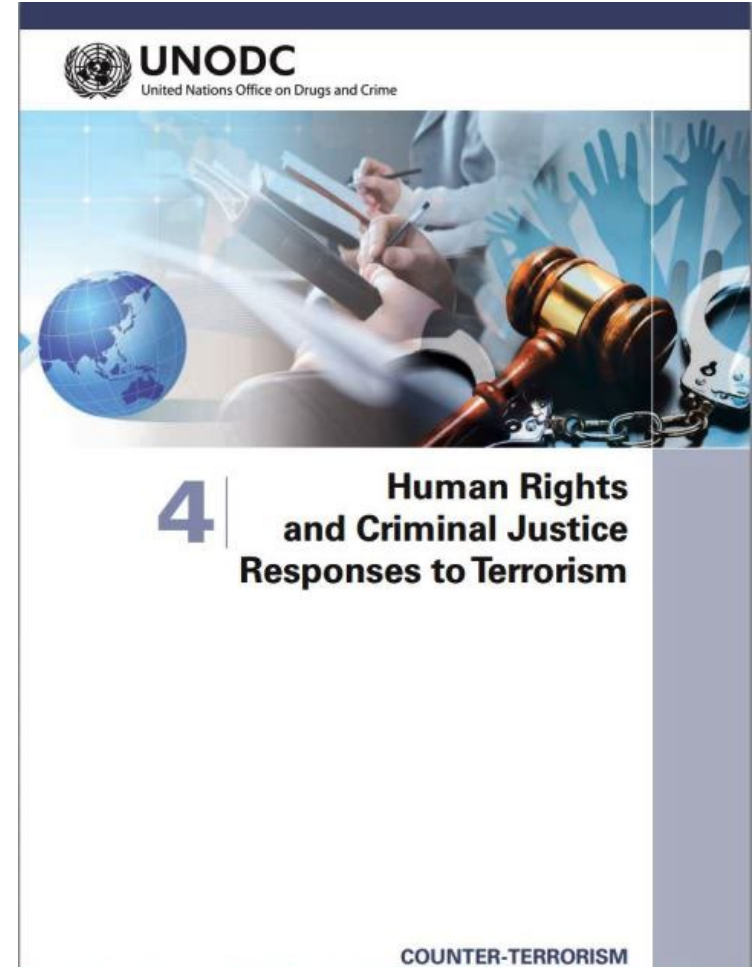


“The use of accurate intelligence is indispensable to preventing terrorist acts and bringing individuals suspected of terrorist activity to justice.”

- Navi Pillay

Fundamental Investigative Standards

International law actually accords States considerable latitude in responding to terrorist threats. Investigative resources are limited for the most part only by the requirement that they are **defined in law**, that **due process** is observed in their application, and that they are used in a manner that is **reasonable**, **necessary** and **proportionate** to the threat posed by criminal activity.

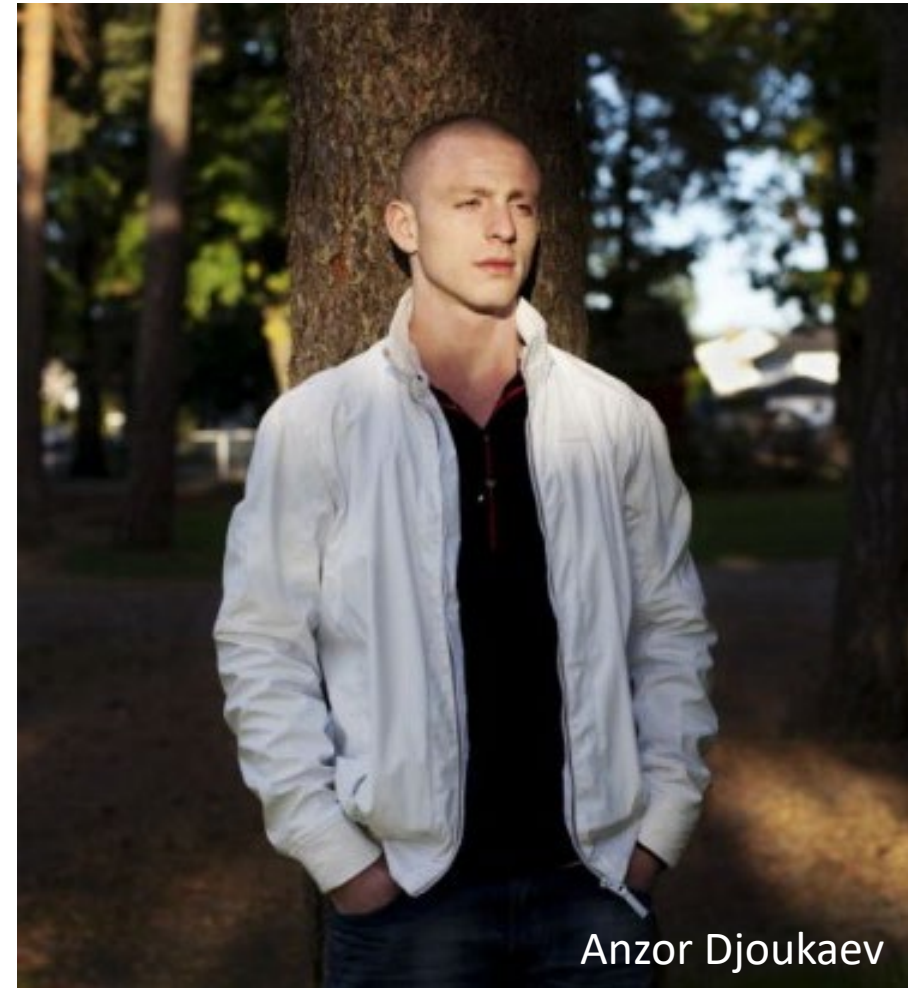


Presumption of Innocence

The apparent facts at the outset of a case rarely remain unchanged as the case progresses.

Article 14(2) of ICCPR states:
“Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.”

The HRC considers the presumption of innocence to be a peremptory norm of international law.



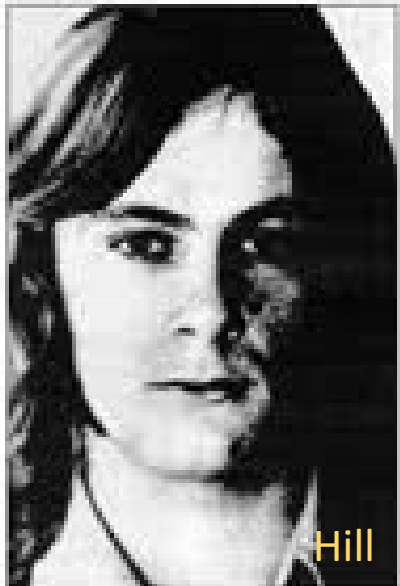
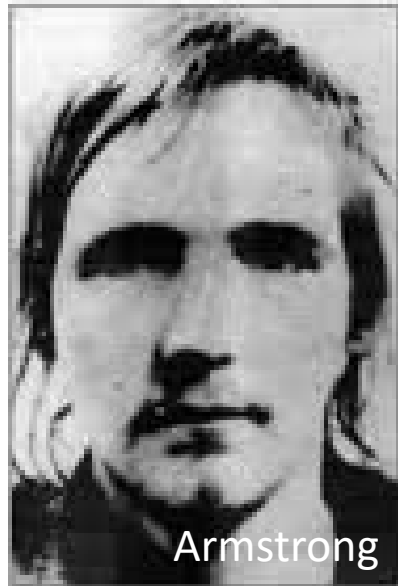
Non-Discrimination

Freedom from discrimination is also regarded to be an absolute human right. Article 1 of the UN Charter describes one of the core purposes of the United Nations as promoting respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion. The General Assembly has identified “ethnic, national and religious discrimination” as one of the “conditions conducive to the spread of terrorism”.





On 5 October 1974, the Provisional IRA planted an 6lb IED in the Horse and Groom Pub in the garrison town of Guildford, Surrey. The bomb exploded without warning at 8.30 pm killing 5 people and injuring 65 others. Four of the fatalities were off-duty British Army personnel.



After 6 weeks the Surrey Police arrested 4 suspects who soon confessed to the bombing under intense coercive pressure.

3 years later 4 members of an IRA unit caught in London after a shoot-out with police claimed responsibility for the Guildford attack but their claim was ignored.

It would emerge that the police had falsified their notes from the interviews and the Appeals Court concluded their evidence was unreliable.

The Guildford Four's convictions were finally overturned in October 1989 and they were released - after each serving 15 years in prison.

The Dangers of Tunnel Vision

“Tunnel vision is insidious. It can affect an officer or, indeed, anyone involved in the administration of justice with sometimes tragic results... Anyone, police officer, counsel or judge can become infected by this virus.”

- Judge Peter deCarteret Cory

Special Investigation Techniques

International Human rights law anticipates that States may need to recruit informants, run agents, deploy undercover operatives, conduct sting operations, intercept communications, deploy audio and visual electronic surveillance measures, conduct covert searches, and utilize GPS tracking tools – they are simply required to do so lawfully.



Using SITs

IHRL requires that the use of Special Investigation Techniques must be:

- Lawful (enabling legislation/due process)
- Foreseeable (by potential targets)
- Reasonable (objective grounds for suspicion)
- Proportional (to the threat and to the end sought)
- Necessary (to safeguard democracy/subsidiarity)
- Specific (no fishing expeditions)
- Passive (no entrapment/agent provocateurs)
- Fair (disclosure/data retention)

Interviewing Suspects

1. The legal perspective – building a case and ensuring justice;
2. The victim perspective – bearing witness and addressing trauma;
3. The historical perspective – creating an accurate record for posterity.



Right to Silence

Closely related to the presumption of innocence is the right not to be compelled to testify against oneself enshrined in Article 14(3)(g) of the ICCPR. Commonly described as the right to silence, a distinction is sometimes drawn between the clearly expressed legal prohibition on any attempt, direct or indirect, physical or psychological, to force an individual to testify against his or her wishes, and the potential conclusions that can be drawn from the exercise of his or her right to remain silent.



“Whether suspects cooperate depends on the skill of the interrogator and the mindset of the suspects — not whether they’ve been told they can remain silent. When legally required, I’ve read some top Qaeda terrorists their rights and they’ve still provided valuable intelligence.”

- Ali Soufan

Forms of Detention

There are four categories of lawful detention:

- Administrative detention,
- Pre-trial detention,
- Punitive detention, and
- Confinement of Prisoners of War.

A fifth form of detention - arbitrary detention - is outlawed altogether.



Lawful Detention

An individual can be lawfully detained if there are reasonable grounds to believe that he or she has committed an offence when: 1) The offence exists in national law; 2) The objective in detaining the individual is to bring him or her before a competent legal authority; and 3) there are objective grounds for suspecting the individual committed the offence in question.



Judicial or Administrative Review

Article 9(4) of the ICCPR states that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” A detainee must always be given the opportunity to challenge the circumstances of his or her detention.



Clearance of Sketch Artist Courtroom Drawings
The drawing to which this label is attached has
been examined and approved for public release
Signed: *Mark M. Wood*
Security Officer, Office of Military Commissions

Humbert
HUMBERT 7/24/11

Lawful Use of Force



Force can only be applied to the degree that it is both proportional and necessary to do so:

- Proportionality imposes “an absolute ceiling on the permissible level of force based on the threat posed by the suspect to others.”
- Necessity imposes an obligation to minimize the level of force applied “regardless of the level of force that would be proportionate.”
- Lethal force is only permitted “in order to protect life.”

Derogation

For a derogation to be in line with the ICCPR, the Human Rights Committee stated that two fundamental conditions must be met:

- The situation must amount to a public emergency which threatens the life of the nation; and
- The State Party must have officially proclaimed a state of emergency.

Furthermore, any restriction introduced must be limited “to the extent strictly required by the exigencies of the situation” and full rights observance must be restored at the earliest appropriate opportunity. There can be no derogation regarding absolute rights.

The Redlines

In summary, IHRL establishes some redlines that States cannot cross in any circumstances, even when confronting terrorism: States cannot disappear suspects; States cannot detain suspects indefinitely without trial; States cannot torture suspects or render them to be tortured by someone else; States cannot discriminate against certain groups; and States cannot use lethal force with impunity.



The Six Core Themes of Terrorist Doctrine

- **Asymmetrical warfare** – human, material, and financial (Kravshinski, Ford, Mao, Guevara, Marighella, Grivas, Beam, al Suri, bin Laden)
- **Attrition** - long war doctrine (Morozov, Collins, Adams, Qassem, bin Laden)
- **Propaganda by deed** – terrorism as theater (Brousse, Morozov, Kropotkin, O'Donovan Rossa, Singh, Stern, Sendic, Abane, Adams, bin Laden, Breivik)
- **The revolutionary prototype** – concepts of martyrdom (Engels, Nechaev, Guevara, Qutb, Arafat, Azzam, Prabhakaran, bin Laden)
- **Contesting legitimacy** – centrality of popular support (Begin, Ben M'Hidi, Mandela, Fanon, Arafat, Meinhof, Lane, al Zawahiri)
- **Provoking an overreaction** – political ju-jitsu, polarization (Nechaev, Ben Bella, Proudhon, Marighella, Krutwig, al Hasan, bin Laden, al Muqrin, *Dabiq*)

Retaining Legitimacy

Menachem Begin: “We knew that *Eretz* Israel, in consequence of the revolt, resembled a glass house... the transparency of the ‘glass’ was our shield of defence.”

Osama bin Laden: “You have claimed to be the vanguards of human rights... However, all these things vanished when the *Mujahedin* hit you.”

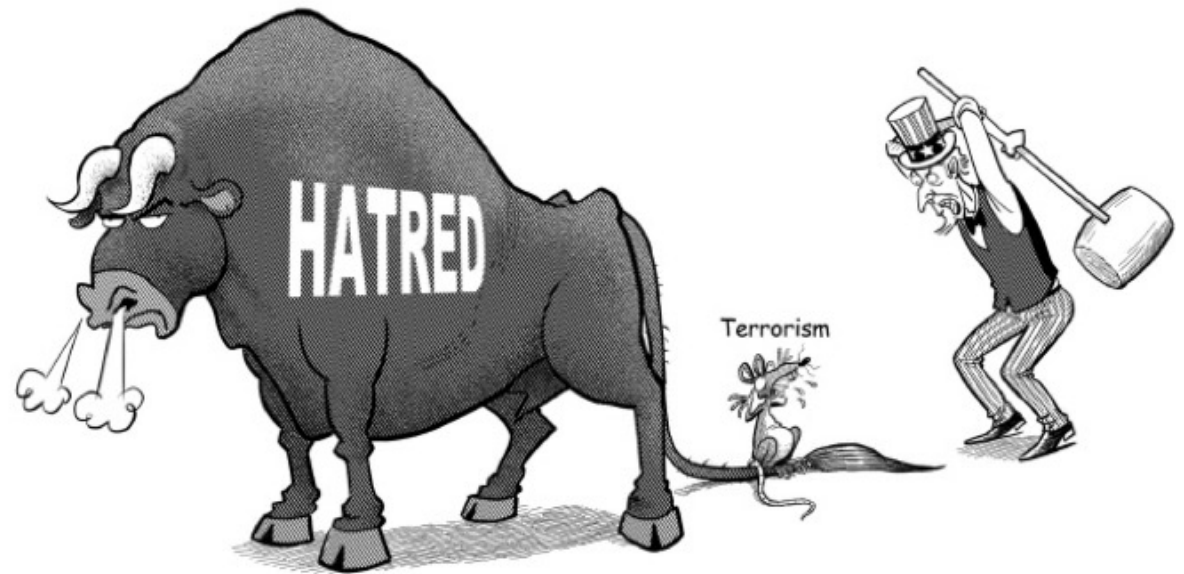
David Petraeus: “Abu Ghraib and other situations like that are non biodegradable. They don’t go away. The enemy continues to beat you with them like a stick.”

Abu Mus’ab al-Zarqawi: “I do not think that any intelligent person remains who believes in the monstrous lie of promised democracy after the revelations of Abu Ghraib and the joke of Guantanamo.”

Provisional IRA Green Book: “We exploit the enemy’s mistakes by propagating facts.”

Provoking an Overreaction

Terrorism is a contingent political tactic. Most terrorist groups don't stop at simply trying to neutralize the coercive organs of the state, they actively seek to put them to work on their behalf. David Fromkin christened this strategy "political *ju-jitsu*."



The Boomerang Effect

Santiago Salvador: “The death of Pallás produced in me a terrible feeling and in order to avenge his death... I conceived of a plan in which it was possible to terrorize those who had enjoyed killing him.”

Dan Breen: “The frightfulness of the [British] proved a boomerang against those who had cast it, for the people were finally goaded into such fury that they made up their minds... never to give way before such tyranny.”

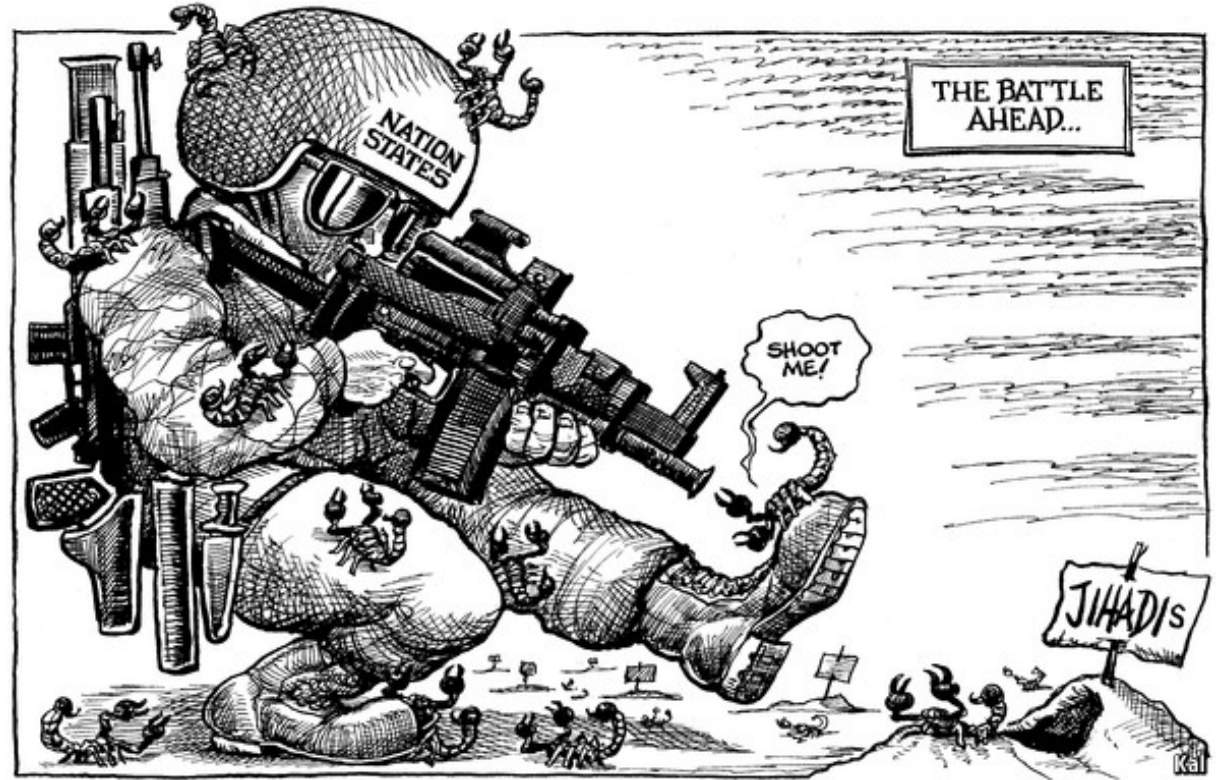
Saadi Yacef: “You kill one, you create ten.”

Des Long: “Every fella who gets his head cracked open by a [policeman’s] baton is a potential recruit.”

Baitullah Mehsud: “Every drone strike brings me three or four new suicide bombers.”

Avoiding the Terrorist Trap

Terrorism is a contingent political tactic. Terrorists want to provoke governments to ignore, and even abuse, human rights, and ramp up repression in the face of terrorist threats. Respecting human rights can help States to avoid falling into this trap.





- Terrorism is often described as the war of the flea, but Mao's analogy is frequently misunderstood.
- Mao writes that the real damage is done not by the fleas but by the dog scratching at the fleas' bites.
- The existential threat posed by terrorism is not posed by the attack itself, but by how we respond.
- The war of the flea is actually all about the dog.

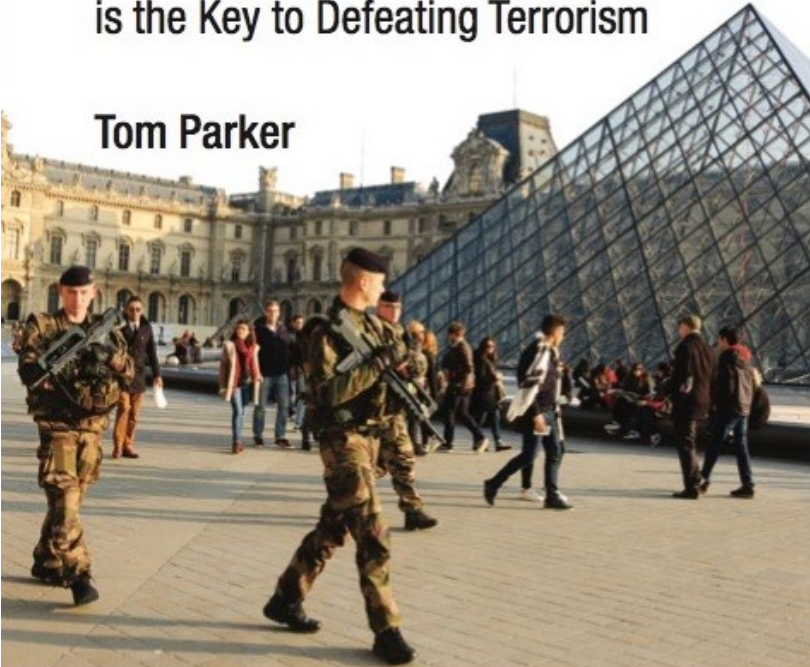
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Volume
12

Avoiding the Terrorist Trap

Why Respect for Human Rights
is the Key to Defeating Terrorism

Tom Parker



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