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# Combating a Religious Radical Ideology v. Suppressing Islamic Opposition: Jordan's Approach to Counterterrorism

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## [II]

### **Combating a Religious Radical Ideology v. Suppressing Islamic Opposition:**

#### **Jordan's Approach to Counterterrorism**

##### **A. Introduction**

In examining various case studies of states' responses to terrorism, classifying response options was the most common way of analyzing the main trends in a certain response over a specific period of time, particularly in respect to legislation and policy practices. For example, Western responses to terrorism – pre and post 9/11 – are seen to typically fall into two basic forms of a repressive response; the legal repressive model or what Ronald Crelinsten calls *criminal justice model* and the war model.<sup>1</sup> In using these two models or a hybrid of both, each western country has developed an independent approach to countering terrorism that reflects the different ways in which security has been understood, and highlights particular issues related to its history.

Overall, states concerns about terrorism have given rise to important questions of practice and principle concerning the emergence in many of those countries of a new broad antiterrorism regimes or the revitalization in other countries of older antiterrorism measures. Concerns about the abrogation of civil and political rights and a return to martial rule eras have dominated most debates. While there is much literature on the legal, diplomatic and military responses to terrorism, particularly the more coercive or repressive kinds of responses, and their clash with the many western liberal traditions, there is very little on what can be called an 'ideological' response to terrorism, and almost none on its impact on societies especially those living under

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<sup>1</sup> RONALD CRELINSTEN, *Terrorism as Political Communication: the Relationship between the Controller and the Controlled*, in CONTEMPORARY RESEARCH ON TERRORISM, 3-23 (Paul Wilkinson and Alasdair Stewart eds., 1987).

some form of authoritarian rule, wherein measures taken are politically motivated rather than driven by an all-risk approach to security issues.

Most contemporary experiences with terrorism, whether in the west, east or the south, have been connected with Islamic extremism and it is this that has shaped most significantly governments' responses. As the National Commission on Terrorist Attacks upon the United States ["9/11 Commission"] concluded in its final report<sup>2</sup> - the present general threat throughout the world is the spread of a radical ideological movement in the Islamic world that spawned terrorist groups and violence against its own societies as well as against foreign targets. In order to cut off the supply of recruits to this movement, eliminate its financial support networks, and prevent it from metastasizing into new regions and social pockets require an effective response that would ultimately undermine the movement's ideological appeal. That should not, however, be allowed to tempt us to underestimate the importance of repressive approaches to counterterrorism or oversimplify the decisive political, religious and historical forces that are at play.

Political science and security experts agree that thus far counterterrorism is nowhere close to approaching that effective counter-ideological approach against al-Qaeda or the radical ideological movement it represents.<sup>3</sup> The United States and its western allies past experience in waging successful campaigns against ideologies such as fascism and communism is currently seen inadequate to reach Muslim audiences. There is broad consensus that far more needed to be done to discredit the religious viewpoint that drives continued radicalization and recruitment.

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<sup>2</sup> NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT, 363 (U.S. Government Printing Office 2004).

<sup>3</sup> BRIAN M JENKINS, *Introduction by Jenkins, in* TERRORISM: WHAT'S COMING: THE MUTATING THREAT, 16 (James O. Ellis III ed., Memorial Institute for the Prevention of Terrorism 2007).

Thus, it is clear to most informed observers that the counter-ideological approach of any antiterrorism response is a serious problem anywhere. But nowhere has it seemed more problematic than it does in Muslim or Muslim majority jurisdiction. Since 9/11, particularly after Iraq, the prevailing perception among many Muslim countries<sup>4</sup> aided by the radical ideological movement and elements of the news media that the United States and its western allies are locked in a “war on Islam.”<sup>5</sup> And, many Muslim governments that are key allies to the United States are by proxy accused of enacting legislation and policy that is at heart anti-Islamic.

It is important to note that focusing on regional and national peculiarities does not automatically dismiss the presence of common challenges and similarities in counterterrorism laws and policies around the world. As discussed in previous part, counterterrorism law and policy may frequently be shaped at international and regional levels, but it also often has particular domestic uses. In many places, including Jordan, post-9/11 developments in antiterrorism legislation and policy

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<sup>4</sup> A May 2004 Pew survey showed that 53 percent of Jordanians and 51 percent of Pakistanis believe the real purpose of the war on terror is to target unfriendly Muslims governments and groups. See, PEW GLOBAL ATTITUDES PROJECT, AMERICA’S IMAGE IN THE WORLD: FINDINGS FROM THE PEW GLOBAL ATTITUDES PROJECT (2007), available at: <http://pewglobal.org/commentary/display.php?AnalysisID=1019>. And a 2005 Pew study found that in all five majority Muslim countries surveyed, solid majorities said they worried that the United States might become a military threat to their country. PEW GLOBAL ATTITUDES PROJECT, ISLAMIC EXTREMISM: COMMON CONCERN FOR MUSLIM AND WESTERN PUBLICS: SUPPORT FOR TERROR WANES AMONG MUSLIM PUBLICS (2005), available at: <http://pewglobal.org/reports/display.php?ReportID=248>

<sup>5</sup> According to a survey conducted by in 2004 by Zogby International for the Project on Muslims in the American Public Square, a project run out of Georgetown's Center for Muslim-Christian Understanding, more than one-third of American Muslims believe that the U.S. war on terrorism is really a war on Islam. This survey was a follows up study conducted two months after the September 11 attacks, which found that 67 percent of American Muslims believed that the United States was fighting a war on terror. An additional 18 percent of Muslims said the U.S. war was against Islam, and 16 percent said they were not sure. See, *More than third of U.S. Muslims see war on Islam*, THE WASHINGTON TIMES, October 20, 2004, <http://www.washtimes.com/news/2004/oct/19/20041019-115241-3792r/>

can only be fully understood in the context of past historical concerns and current geopolitical realities.<sup>6</sup>

Jordan's experience with terrorists incidents and threat, suggests that measures against terrorism, whether national or international in nature, are unlikely to be fully effective in the absence of appropriate political action to deal with legitimate grievances or double standards in dealing with national unrest or international crises. The government is aware that issues of inequality, discrimination, and controversial foreign policies may lie behind or contribute to the radicalization of its political opponents, thus their possible resort to terrorism.

This paper aims to highlight the main characteristics of Jordan's response to terrorism, in particular, its distinctive approach to counterterrorism post-9/11. The main argument advances a less often considered response option that addresses political capabilities, what Martha Crenshaw terms "*de-legitimation*," that is, policies and practices designed to decrease the legitimacy of the terrorists, thus undermine their political support.<sup>7</sup> I contend that the way in which the government has dealt with its political opponents and critics is a vital element of its legal strategies and antiterrorism practices. Unlike many jurisdictions, the Jordanian debate involves a different dimension; the decision to rely on law and legal procedures to reduce the coercive and political capabilities of terrorists could provide a different overall pattern through introducing institutional changes in the realm of political repression and social control. Such an approach runs through the risk of being directed at those who may share the terrorists' political goals, though not their means, but because they do not operate secretly are easier targets for the state.

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<sup>6</sup> See, part [III] of this dissertation for a more detailed discussion of these developments.

<sup>7</sup> Martha Crenshaw, Paper presented to the American Political Science Association: How Terrorism Ends (1987).

Thus, the discussion of Jordan's approach to counterterrorism would focus on the balance between combating a religious radical ideology that uses instrumental political goals to attract recruits, radicalize a population, and marginalizing political dissent without turning it into a radical opposition movement that would raise public sympathy, stimulate religious indoctrination and use of violence.

## **B. Jordan's response to terrorism**

*What makes a response option have a distinct approach?*

Almost each country that in one way or another has experienced terrorist incidents has adopted some measures in order to accommodate its legislation to the specific features of terrorists' objectives and rekindle means of combat. The considerable degree to which it has been possible to respect the principles of law and legal guarantees of the constitutional system can be both surprising and alarming. In some countries, even those with well-established democratic traditions, governments have made ample recourse, if only for limited periods of time and against certain individuals, to extraordinary measures. According to scholars; with states of emergency and exceptions to rule of law becoming more common in established democracies, the distinction between authoritarian and democratic regimes starts to blur.<sup>8</sup> Indeed, measures that include prolonged detentions, coercive interrogations of suspected terrorists, and military orders do not necessarily reflect an individualistic culture different from responses that are a typical feat of authoritarian regimes found in the east and the south. Yet, what makes one response distinct from another is the latent purpose behind use of the full force of law; the

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<sup>8</sup> GLOBAL ANTI-TERRORISM LAW AND POLICY (Victor V. Ramraj, Michael Hor & Kent Roach eds., 2005).

relationship between the legal system and its application, especially where the government is dealing with domestic groups.

In his book *Political Injustice*,<sup>9</sup> Anthony Pereira argues against what most studies assume that regimes that come to power by force or through unconstitutional manner cannot rely on law to maintain control of society or legitimize their continuity. He states that authoritarian regimes use the law to bolster their rule all the time; in particular many of them resort to court system and procedures to wipe their political opponents. However, it should not be assumed that all authoritarian regimes are similar in nature; different types of authoritarian regimes face different propensities to survive and develop towards democracy.

A study by Hadenius and Teorell demonstrates that various types of authoritarian regimes have different likelihoods of breaking down and being transformed into democracy.<sup>10</sup> The most durable regimes are either highly authoritarian or strongly democratic. The latter had a life span of 17.5 years (during the period of their investigation 1972-2003) against 25.4 years for monarchies. Given the patterns of change, traditional monarchies - the most stable and resilient to change - most often change into either non-party (party-less elections), or multiparty system within the monarchical framework. Among study conclusions; an authoritarian multiparty regime of the traditional kind is the typical stepping stone to a complete democratization. Jordan being a monarchical type of regime characterized by having multiparty system, while not being a full-fledged democracy is a very important designation that the below discussion shall draw upon.

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<sup>9</sup> ANTHONY PEREIRA, *POLITICAL INJUSTICE*, 5, (Pittsburgh Press 2005).

<sup>10</sup> Axel Hadenius and Jan Teorell, *Authoritarian Regimes: Stability, Change, and Pathways to Democracy (1972–2003)*, 9-16 (University of Notre Dame, Working Paper No. 331, 2006).

The timeframe of the below discussion is divided in three; pre-September 11, 2001 years (1968-2001), post-September 11, 2001 and pre-November 11, 2005 period, and post-November 9, 2005 years (2005-2008). Throughout the periods in question, Jordan's approach has not drastically changed. These periods continue to share common characteristics; however, there exist some distinct differences that following text aims to highlight.

### **1. Pre-9/11: a brief overview**

Jordan's approach to counterterrorism has evolved in response to both international and domestic incidents. Since the previously analyzed statistical data go back to 1968, the period examined starts in that year. Having established this cutoff point, we proceed into the classification of response options during a three-decade period. The widely used classification is the one that distinguishes between two types of response; conciliatory and repressive responses. There are two common forms of a conciliatory response; *accommodation*, which includes negotiating and possibly giving in to specific terrorists' demands, and *reform* by usually addressing the grievances without having to deal directly with terrorists. As for repressive responses, as mentioned in the introductory, its two basic forms; the legal repressive or *criminal justice model* in which counterterrorism adheres to criminal prosecution and punishment within the rule of law as terrorism is an established crime, and the war model that favors military solutions. However, the criminal justice and war model represent a coercive approach to countering terrorism; both are associated with the use of force – by police or military forces - in which serious departures from conventional criminal and judicial processing could be observed. In this respect, the



unanswered question remains; what level of force is appropriate and whether excessive use of force can ever be acceptable?

From the late 1960s until the mid-1980s, separatists, socialist groups and nationalist; particularly leftist Palestinian nationalist groups, were dealt with primarily by means of repression, namely the military model. In 1967, after the Arab-Israeli war, emergency powers were adopted countrywide to deal with the terrorist threat and in response to Black September violence<sup>11</sup> that was considered a serious existential danger to the regime. With the Black September, however, it can be argued that the government, incensed by the affront to its sovereignty, adopted a more violent approach, relying on army raid that ended in the expulsion of the entire guerrilla organization out of Jordan rather than their arrest.

In the late 1980s, the military model continued to predominate in the domestic context, though left-wing revolutionaries no longer posed a direct terrorist threat. In the wake of the 1989 riots in the southern part of the country, the military model as a counterterrorism discourse was expanded to confront domestic violent opposition. This specific incident marked the largest-scale armed fighting between government troops and domestic groups since the Black September military clashes in the 1970s.

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<sup>11</sup> The period after the 1967 Arab-Israeli war had witnessed an upsurge in the power of Palestinian resistance elements in Jordan. It was in September 1970 that open fighting erupted between the military and Palestinian guerrilla organizations *fida'yeen* in what came to be known as "*Black September*." This civil war culminated, after several broken agreements, with at least 3500 killed on all sides, and led to the expulsion of the *fida'yeen* from the kingdom to its new bases in Lebanon. For further analysis of the 1970 event see, ADNAN ABU-ODEH, JORDANIANS, PALESTINIANS AND THE HASHEMITE KINGDOM OF JORDAN, 30 (The Endowment of the United States Institute of Peace 1999), and DAVID RAAB, TERROR IN BLACK SEPTEMBER (Palgrave Macmillan 2007).

As early as 1990, the government announced the end of the state of emergency that had been in effect since 1967, and with that it abandoned the military model for the criminal justice model i.e. criminal system, in its handling both terrorism and opposition. At the time, the military model had begun to gain considerable prominence in western approaches to counterterrorism with the emergence of Islamic radical groups throughout the Middle East, and elsewhere. Nonetheless, the government had no official antiterrorist policy distinct from ordinary criminal justice policy. It regarded terrorism as a crime, and decided to deal with terrorists within the ‘rule of law.’ However, one consequence of this approach had been a trend toward the militarization of the police within the criminal justice model. One manifestation of this has been through the dispatch of *Special Forces*<sup>12</sup> to areas where domestic threat of use of violence against the government is perceived to be severe.<sup>13</sup> Such forces are mandated to use force for what might otherwise be normal police work. The prevalent solution in incidents of violent opposition has been the use of local police, with the assistance of *Special Forces* units, for the apprehension of suspects, searches and seizures, thus terminating such incidents by means of assault.

During the 1990s, granting amnesties appeared to be a proven recourse for dealing with radical Islamists and other government’s opponents. As part of a conciliatory approach to try to deal with some of the grievances professed by terrorists, the government seemed to make use of royal amnesties both as a deterrent message and as means of alleviating political tension. In its history, Jordan witnessed far more unlikely amnesties that had proved to be successful in bringing back

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<sup>12</sup> The “Royal Special Forces” is a unit within the Armed Forces of Jordan. It is directly connected to the king. In fact, the current monarch was the Commander of the unit up until he assumed the throne. Its personnel are equipped with the most sophisticated military equipment, and receive special military training. In 2007, Jordan hired the services of *Blackwater* Worldwide to train the unit.

<sup>13</sup> For background on the 1996 protests, see Lamis Andoni and Jillian Schwedler, *Bread Riots in Jordan*, 201 Middle East Report Online, (1996).

terrorists and government's opponents into conventional politics.<sup>14</sup> While this worked in the past, it can also backfire as in the case of Abu Musab Al-Zarqawi who was granted such an amnesty by the government in 1999. In this case, the terrorist violence came back much stronger and on a larger scale than before, with a move from bombing to suicide bombing.

## **2. Post - September 11, 2001 and Pre – November 9, 2005**

Some observers point to the events of September 11, 2001, as justification for authoritarian regimes to put political freedoms on hold while cooperating with the United States and its western allies in the “war on terror.” Christopher Harding was quoted as saying that it is ‘in the interest of governments to take advantage of any opportunities for extending the scope of their measures of legal control when political circumstances are conducive to such developments.’<sup>15</sup>

At a first glance, Jordan's legislative response to 9/11 seems no different than those of the Anglo-American systems. Like several jurisdictions, and in compliance with its obligations under international law, some significant amendments to the Penal Code were enacted, mainly; the expansion of the definition of terrorism, the introduction of new offences, particularly criminalizing terrorist financing, and the extensive application of penalties, including death penalty in the manner explored earlier.<sup>16</sup> Thus, along with the introduction of these amendments to the Penal Code, the legislation went beyond antiterrorism provisions to impose new legal

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<sup>14</sup> In 1957, the chief-of-staff of the Jordanian Army, Ali Abu Nuwar, led a failed military coupé against King Hussein. Not only was he not executed, he was pardoned and allowed to return to Jordan from exile in Egypt. General Ali Khairi, Abu Nuwar's deputy and conspirator was also pardoned and allowed to live in Jordan. Similarly, Nathir Rashid, a free officer who has also conspired to fell the regime, was granted amnesty and was later appointed as Minister of Interior Affairs. See, NACHMAN TAL, *RADICAL ISLAM: IN EGYPT AND JORDAN*, 221 (Sussex Academic Press 2005).

<sup>15</sup> Christopher Harding, *International Terrorism: The British Response*, Singapore Journal of Legal Studies 18 (2002), available at SSRN: <http://ssrn.com/abstract=426921>

<sup>16</sup> Part [II] *infra*.

restrictions that ultimately tighten control on political dissent, in particular, non-violent critics such as journalists and newspaper editors. This indiscriminate labeling is considered by some scholars as one of the most anti-democratic symptoms of an endangered state that confuses which violence is an action and which is a reaction.<sup>17</sup> Perhaps one of the key objectives of terrorists is to provoke states into adopting security policies that expose the limits of the rule of law and undermines the normal authority of the state. Yet, by failing to distinguish between political actors who avoid the use of violence and rely on democratic means, and those who use violence as a first resort or as a provocative method, the government may fall for the terrorist strategy.

The legal context of this discussion is Article 150, which on an initial reading, explicitly prohibits acts that result in or instigate racial, religious or sectarian bias; ultimately creating a climate of incitement to use violence.<sup>18</sup> Although the amendments introduced by Temporary Law no. 54 of 2001 were later repealed, yet such response reflects government's approach to use antiterrorism legislation against mere political opponents, thus equating between political expression, as a civil right, and incitement to political dissent and sedition; a recognized crime under international and national laws, for this purpose.

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<sup>17</sup> RONALD CRELINSTEN AND ALEX SCHMID, *Western Responses to Terrorism: A Twenty-Five Year Balance Sheet*, in WESTERN RESPONSES TO TERRORISM 324 (Ronald Crelinsten and Alex Schmid eds., Frank Cass Publishers 1993).

<sup>18</sup> It is not the subject matter of this paper to discuss the validity of Article 150 of the Penal Code. However, this article falls under what is widely recognized as 'hate speech law.' The debate in Jordan regarding measures against the abuse of freedom of speech and association to incite because of racial, religious or political motives is neither new nor different from worldwide controversy, especially in democratic societies, surrounding the respect for human rights. Hate speech and incitement are prohibited by international human rights law i.e. Article (4) of the 1965 Convention on the Elimination of All Forms of Racial Discrimination, which Jordan is party to.

The aforementioned temporary law amended Article 150 of the original 1960 text punishing for *‘every writing, speech and act intended to or resulting in the provocation of sectarian and or racial chauvinism or urging discord between the sects and different elements of the nation’* by a prison sentence of six months to three years plus a fine of 50 dinars (US\$70), to the following:

*Regardless of any other law, a prison sentence shall be imposed for any writing, speech or any act broadcast by whatever means, or publication of news in press or any publication, where such is of a nature to injure national unity or to incite commission of crimes or spread rancor and hatred and discord between individuals of the society or provoke racial or sectarian chauvinism, or injure the dignity, personal freedoms and reputation of individuals, or shake the basic foundations of society by promoting deviant behavior or immorality or by publishing false information or rumors or incitement to agitation or vigils or the holding of public meetings in a manner contravening the applicable law, or by any act liable to undermine the prestige, reputation or dignity of the state.*

A second paragraph was added to the above amended article providing for the punishment of the editor-in-chief and owner of any publication used in such an act, in addition to temporary or permanent closure of the newspapers or press *‘in accordance with a decision of the court.’* This paragraph became the focus of criticisms soon after an editor-in-chief of a political weekly was charged with *‘writing and publishing false information and rumors that may harm the prestige and reputation of the state and slander the integrity and reputation of its members’* after

publishing a critical article of the government. The constitutionality of this paragraph was challenged in court by a number of newspapers editors and owners, in addition to the Jordanian Press Association, but the court rejected the case based on lack of interest of the petitioners.<sup>19</sup> Under intense pressure from human rights groups, and criticism of the sweeping terms of this provision, the government issued in 2003 another temporary law,<sup>20</sup> in which Article 150 was changed back to its original reading: *‘every writing, speech and act intended to or resulting in the provocation of sectarian and or racial chauvinism or urging discord between the sects and different elements of the nation shall be punished by imprisonment for six months to three years and a fine of 50 [Jordanian] dinars.’*

Practically, changing the article to its *supra* original form did not much affect the government’s approach in dealing with political expression in the context of combating terrorist threat.<sup>21</sup> In 2004, the same aforementioned editor-in-chief of the political weekly was remanded in custody for two weeks, in addition to its suspension, for writing an editorial deemed to harm Jordan’s foreign relations.<sup>22</sup> Further, the government has extended the application of Article 150 to material posted on the internet. In 2007, a former parliamentarian<sup>23</sup> was sentenced to two years in prison for *‘attacking the state’s prestige and reputation’* by posting an open letter on the

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<sup>19</sup> See, discussion in Part [V] on the mechanism of challenging the constitutionality of legislation.

<sup>20</sup> Temporary Law No. 45 of 2003 amending the Penal Code.

<sup>21</sup> The International Press Institute through its annual report “World Press Freedom Review,” monitors media activities and documents threats to press freedom around the world. The 2001-2007 Jordan: World Press Review provides a comprehensive narrative of the events in which press freedom violations were committed by the government during the given period. Available at: <http://www.freemedia.at/cms/ipi/freedom.html>, last visited October 8, 2008.

<sup>22</sup> On 9 May 2004, State Prosecutor ordered Fahd al-Rimawi, editor of the political weekly “Al-Majd,” to be remanded in custody for two weeks for writing an editorial allegedly harming ties with the Kingdom of Saudi Arabia. The editorial, headlined “Cowardice Is Guideline for Policies,” reportedly accused the Saudi authorities of being the “lackeys” of the United States. On 10 May, the State Prosecutor also ordered the suspension of “Al-Majd.” INTERNATIONAL PRESS INSTITUTE, WORLD PRESS FREEDOM REVIEW: JORDAN (2004).

<sup>23</sup> Ahmad Abbadi, a member of parliament from 1989 to 1993 and from 1997 to 2001, is head of the Jordan National Movement, a party not recognized by the government. See, <http://www.jordannationalmovement.com/>

internet to United States Senator Harry Reid in which he accused the government of corruption.<sup>24</sup>

Another noteworthy change made by the temporary law of 2001, which was kept in the law promulgated by parliament in 2007, is the amendment to Article 195 of the Penal Code. This article falls under a heading titled ‘Slander, Libel and Defamation’ crimes within the chapter on ‘Crimes against Public Administration.’ In the original 1960 text, Article 195 prohibited *lèse majesté* – an offense against the dignity of the monarch. According to a study done by the World Press Freedom Committee,<sup>25</sup> few countries still prosecute against this crime. In Jordan, it is illegal to mock or criticize the King, and doing so can provoke a sentence up to three years in prison.<sup>26</sup> However, the amendment *inter alia* added a new clause to the list of the offences that constitute the crime of *lèse majesté*; making it more restrictive, it states:

*d) Whosoever gossips about His Majesty the King or commits calumny by attributing to him words or deed which the King did not say or do, or acting to broadcast such or spread it among people.*

The aforementioned study makes clear that *lèse majesté* prosecutions are fundamentally political. It concludes that such laws are often used by states to punish expression it finds offensive and insulting. Where the defendants are overwhelmingly editorial critics of the regime, dissenters, or

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<sup>24</sup> HUMAN RIGHTS WATCH, JORDAN: RELEASE CRITIC CHARGED WITH SLANDER: AUTHORITIES MUZZLING OPPONENTS DESPITE NEW LAW (2007), available at: <http://hrw.org>.

<sup>25</sup> IT’S A CRIME: HOW TO INSULT LAWS STIFLE PRESS FREEDOM, 11 (Marilyn Greene ed., World Press Freedom Committee 2006).

<sup>26</sup> See, AMNESTY INTERNATIONAL, STATE INJUSTICE: UNFAIR TRIALS IN THE MIDDLE EAST AND NORTH AFRICA (1998).

activists in an opposition party, the law becomes a convenient tool to deploy vigorously against government's adversaries in politics and journalism. In recent years, several charges were brought against regime critics. One of the most prominent cases that attracted much media attention was the charges brought against Adnan Abu-Odeh, a former head of the Royal Court for remarks he made during an interview broadcasted on Al-Jazeera satellite television. Government prosecutors had determined that Abu-Odeh's remarks could qualify as 'stirring up sectarian strife or sedition among the nation' and *lèse majesté* under articles 150 and 195 of the penal code, respectively. Nevertheless, the charges were later dropped; a move described by human rights groups as a "tactic" of intimidating political opponents,<sup>27</sup> and to lessen international attention to Jordan's "retreat from democratization."<sup>28</sup>

Charges brought under articles 150 and 195, are to be tried before the State Security Court, rather than civil courts.<sup>29</sup> However, this is neither new to the criminal justice system nor related to the 9/11 attacks. The State Security Court was first established in 1952 by constitutional authority as a special court assigned jurisdiction over civilian perpetrators accused of offences against state security.<sup>30</sup> In principle, the court is composed of a three-judge panel of either military "and/or" civilian judges,<sup>31</sup> yet it has always been formed of a military majority. Between 1967 and 1990,

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<sup>27</sup> Sarah Leah Whitson, director of the Middle East and North Africa division at Human Rights Watch said: "This apparent tactic of initiating and later dropping charges has a chilling effect on regime critics," available at: <http://hrw.org/english/docs/2006/11/07/jordan14529.htm>

<sup>28</sup> Jillian Schwedler, *Don't Blink: Jordan's Democratic Opening and Closing*, 5, Middle East Report Online (2002), available at: <http://www.merip.org/mero/mero070302.html>

<sup>29</sup> Civil Courts handles civil liability that arises from violations to Press and Publications Law no. 8 of 1998, as amended in 1999 and 2007. The law imposes financial penalties (i.e. fine) for any violation to the provisions of the law. Fines for defamation, libel, insult to religious beliefs or publication of material that fuel sectarianism or racism reaches up to US\$28,000. See, Article 38(d) and Article 46(d) of the Law. However, any act that potentially threatens the integrity of the state is prosecutable under the penalties of the penal code.

<sup>30</sup> Law no. 7 of 1952. This law was later annulled by State Security Court Law no. 17 of 1959, which apparently named the special court 'State Security Court,' giving it a permanent status, and outlined its jurisdiction and authorities in further detail.

<sup>31</sup> Article 2 of Law no. 71 of 1959.



the martial law era, it was replaced by a military martial court system, and was reintroduced in 1991. In *August* 2001, there had been an amendment through a temporary law<sup>32</sup> to the legislation establishing the State Security Court. The amendment *inter alia* restricted the right of appeal to those convicted of ‘felon’ in the State Security Court.<sup>33</sup> What does that involve? Acts committed in violation to article 150 and 195 qualify as ‘misdemeanor’<sup>34</sup> and according to the State Security Court law, those convicted do not have the right to appeal the sentence before Court of Cassation. The amendment created enormous concern among human rights and freedom of expression groups because of potential implications of its misuse to quell political dissent, whether expressed in newspapers, through political parties, in demonstrations and rallies, or through legal civil society organizations.<sup>35</sup> The case of Toujan Faisal cuts to the heart of the matter by exposing a much larger problem of severe restrictions on political expression and civil rights. Faisal, a liberal from a Caucasian origin and Jordan’s first elected female deputy (1993-1997), was sentenced in 2002 by the State Security Court for 18 months imprisonment for “seditious libel” and “spreading information deemed harmful to the reputation of the state.” This came after Faisal did an interview with Al-Jazeera television channel and published an open letter on the online newspaper, Arab Times,<sup>36</sup> in which she accused the government of

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<sup>32</sup> Temporary Law no. 44 of 28 August of 2001. In accordance with the Constitution, the law was submitted for parliamentary scrutiny and review, wherein it was approved after introducing some amendments, and promulgated by Law no. 22 of 2004.

<sup>33</sup> In accordance with the Constitution, this Temporary Law was submitted for parliamentary scrutiny and review, wherein it was approved after repealing the 2001 controversial amendment that denied individuals convicted of ‘misdemeanor’ the right to appeal before the Court of Cassation. The law was promulgated by Law no. 22 of 2004.

<sup>34</sup> Article (21) of Penal Code states that the penalty imprisonment for a misdemeanor ranges between a week and a three-year.

<sup>35</sup> In June 2002, the Jordanian Bar Association held a one-week boycott from appearing before the Court in protest of the amendment to the State Security Court Law eliminating this right of appeal. *See*, LYNN WELCHMAN, *Anti-Terrorism Law and Policy in Arab States*, in GLOBAL ANTI-TERRORISM LAW AND POLICY, 600 (Victor Ramraj, Michael Hor and Kent Roach eds., Cambridge University Press 2005).

<sup>36</sup> Until 2001, Jordan was considered a country with a relatively open internet service. However, since then, the government has asked Internet Service Providers (ISPs) to block access to some independent news sites and pushed through laws threatening freedom of expression in the media, including the Internet. Hence, all ISPs were technically forced to pass through a state company to access the Internet, which meant all online messages were

corruption.<sup>37</sup> Faisal's lawyer were unsuccessful in contesting the constitutionality of *supra* temporary law that made appeal in her case impossible. Nevertheless, she was granted a 'special' royal amnesty based on "humanitarian grounds" that released her from prison before completing her sentence, thus kept her criminal conviction. According to Jordanian laws, individuals convicted of non-political crimes such as crimes against public morality and order are unfit to practice certain professions or run for public office.<sup>38</sup>

It is often said that the choice of basic approach to counterterrorism is important. Thus, fundamental to any research concerning terrorism is a definition, especially when looking at the law. *Why?* There is a general belief that in order to combat a monster, one needs to understand its nature and *modus operandi*. A workable definition that describes the main characteristics of terrorism is seen necessary to devise domestic security policies and make certain solutions thinkable within that particular framework. Based on the above discussion, it is clear that Jordan's approach to counterterrorism in the immediate aftermath of 9/11 fails to follow suit. It is very difficult to reach any cogent analysis of Jordan's counterterrorism policy by linking between text definition of terrorism and the legal framework developed to deal with. Yet, what if the conventional discussion of construing a policy by looking at a definition is turned around? Theoretically speaking, can we attempt to enunciate a definition of terrorism from the approach used by Jordan?

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monitored by the government. Some of the websites blocked were, [www.arabtimes.com](http://www.arabtimes.com), [www.arabmail.de](http://www.arabmail.de) and [www.ammannet.net](http://www.ammannet.net). For further discussion, see source cited *supra* note 22.

<sup>37</sup> Faisal was detained in March 2002 after accusing the then prime minister, in an open letter to the government published online on the Arab Times newspaper, of "benefiting personally" from a government decision to double car insurance premiums, in one of a series of temporary laws called "essential" to the country's security. Wasn't it curious, she asked, that Abu Ragheb's [Prime Minister] family dominates the car insurance industry in Jordan? See *supra* note 28 at 1.

<sup>38</sup> For example, see Article 3(c)(2) of the Elections Law, Temporary Law no. 34 of 2001.

A paper by Jeff Goodwin offers a socio-scientific theory of terrorism that emphasizes on the strategic choice of terrorism by social movements. He suggests a theory of “categorical terrorism,” in which terrorism is directed against anonymous individuals by virtue of their belonging to a specific ethnic, religious, national or social group. He emphasizes that groups that employ this type of terrorism are oppositional *political* groups, which views terrorism as a political strategy. In recent years, it has been employed by radical Islamist groups. Goodwin defines categorical terrorism as “*the strategic use of violence and threats of violence, usually intended to influence several audiences, by oppositional political groups against civilians or noncombatants who belong to a specific ethnicity, religious or national group, social class or some other collectivity, without regard to their individual identities or roles.*”<sup>39</sup>

Given the perceived threat of radical elements within the country’s Islamic movement and their potential use of violence in order to change the political, and perhaps the socioeconomic, order in more or less fundamental ways; Goodwin’s aphorism about categorical terrorism explains – better than extant definition - Jordan’s decision to use counterterrorism law and legal procedures in dealing with political opponents who may or may not, employ a strategy characterized by the use of violence against civilians. Although Goodwin admits that his theory requires more rigorous empirical testing, however, the definition offered is entirely in tandem with Jordan’s emergent counterterrorism approach. This perception of terrorism suggests that the choice of counterterrorism approach is in large part of how opponents perceive their government. This deduction not only shows a difference in the overall pattern of political repression, but also a distinctive approach to counterterrorism.

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<sup>39</sup> Jeff Goodwin, *A Theory of Categorical Terrorism*, 84 Social Forces, 2031 (2006).

The period that followed the United States attack on Iraq in 2003, indicated the government's inclination toward adopting a different approach in dealing with political dissent and the issue of terrorism alike. It witnessed some kind of metamorphic change from mere political repressiveness into counter-ideological approach that targeted Islamic activism. Following the end of the Iraq war in April 2003, the number of Islamists detained on suspicion of belonging to Al-Qaeda witnessed a steep increase in terrorism-related arrests. According to Amnesty International's Jordan Country Report, the numbers climbed from 50 in 2001<sup>40</sup> into hundreds in the period between the years 2003 - 2005.<sup>41</sup> A constellation of favorable circumstances might have triggered this refocus. The rising tide of radical Islamist groups associated with the unparalleled level and sophistication of violence; primarily in Iraq and the Palestinian occupied territories required a careful look at the potential threat of radical Islamists. In addition, the release of the 9/11 Commission final report that summoned up the United States, and the West's, growing realization<sup>42</sup> that the enemy is one that goes beyond a finite group of people i.e. Al-Qaeda, to include a radical ideological movement was certainly encouraging to prove to the West, in particular the United States, that Jordan is a proactive and reliable ally against terror in the region.

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<sup>40</sup> U.S. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT (2004), available at: <http://www.state.gov/g/drl/rls/2004/35500.htm>

<sup>41</sup> AMNESTY INTERNATIONAL, JORDAN COUNTRY REPORT (2000- 2005), available at: <http://www.amnesty.org/>. See also, Crisis Group interviews with a court correspondent, Amman, 28 March 2005, and with Samih Khreis, defense lawyer and member of the Jordanian Bar Association, Amman, 30 March 2005. No official statistics have been published on how many of those standing trial for these charges were in Afghanistan at one time, but observers believe they constitute a majority. INTERNATIONAL CRISIS GROUP, JORDAN'S 9/11: DEALING WITH JIHADI ISLAMISM 3 (2005).

<sup>42</sup> A transatlantic poll released by the German Marshall Fund in July 2006 reported that Americans and Europeans are in close agreement that the three greatest threats to global peace over the next decade are terrorism, Iran getting a nuclear weapon and radical Islamic fundamentalism. Available at: <http://www.gmfus.org>

Yet, in an attempt to diffuse public pressure owing to mass opposition to the Iraq war and government's overall pro-western policies; Jordan set a new tone that seemed to characterize its future approach to counterterrorism. In 2004, King Abdullah II issued a statement called the Amman Message ["the Message"] calling for tolerance and unity in the Islamic world.<sup>43</sup> On the outset, it was an ideological counter-message or some form of a sophisticated attack on the distortion of Islam being made by Bin-Laden and his followers; however, it also revealed a new course in dealing with political opponents, one that is primarily focused on the Islamist movement opposition, its foreign allegiance, and essentially, its role in provoking a radical political opposition to achieve its political goals. The Message attempted to address the methods and means in which radical Islamic groups utilize to attract recruits and influence radicalism in matters of religious interpretation. Most importantly, it placed parameters for the issuance of religious edicts *fatwas* which radical Islamists use as a vehicle to spread their ideology, including the *takfiri* ideology i.e. to declare a person an apostate. In the immediate term, the Message was a benign effort to counteract and reduce the political credibility of radical Islamists. Thus, it lacked the legal framework or teeth to delegitimize such acts by making it a crime punishable under the law.

And in 2006, the Jordanian Muslim Brotherhood leadership,<sup>44</sup> in a tactical move, affirmed its adherence to the fundamentals of the Message, and its rejection "to terrorism in all its forms."<sup>45</sup>

It has also received exceptional media attention and was praised by world western leaders.<sup>46</sup>

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<sup>43</sup> The official website for the Amman Message is available at: <http://www.ammanmessage.com>

<sup>44</sup> The Message was endorsed in July 2005 Islamic Convention by religious leaders representing the eight Islamic schools of jurisprudence.

<sup>45</sup> Declaration issued by the Muslim Brotherhood of Jordan, July 2006, available at: [http://ammanmessage.com/index.php?option=com\\_content&task=view&id=46&Itemid=35](http://ammanmessage.com/index.php?option=com_content&task=view&id=46&Itemid=35)

<sup>46</sup> Former British Prime Minister Tony Blair, Remarks at the British Embassy in Bahrain (2007) (transcript available at: [britishembassy.gov.uk](http://britishembassy.gov.uk)).

However, it failed to resonate with significant audiences, including Jordanians for two main reasons: a) it was a top-down initiative<sup>47</sup> issued by pro-western monarch, who is seen as someone who does not have enough credibility as a religious figure in the Islamic world to deliver this counter-message.<sup>48</sup> Jordan's close alliance with America has weighed down such initiative to a mere United States propaganda; b) the inner circle of Al-Qaeda and its dedicated cadres who make up the ranks of affiliated terrorist groups have proved to be almost immune to counter-ideological messages, on the contrary, such messages might be viewed as provocative by radicals.

### **3. Post – November 9, 2005 [“11/9”]<sup>49</sup>**

11/9 marks a no less significant date to Jordanians than 9/11 is to Americans. Not only the country experienced the deadliest attacks in its history, it has instigated an important shift in the Jordanian legal culture. The suicide attacks were perpetrated by Iraqis who were enraged by the war in their country, and chose a close American ally as a target for their revenge. Yet, they were masterminded by a Jordanian; Al-Zarqawi, who at that time elicited high levels of domestic sympathy as a Jordanian hero who gave voice to hostilities toward the United States. Al-Zarqawi had relied in past attempts on Jordanians for domestic attacks, but his decision to recruit non-

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<sup>47</sup> King Abdullah implicitly acknowledged this in a speech in Washington D.C. in September 2005 in which he noted that “God willing, [the Amman Message] will expand to engage the popular preachers and grassroots activists -- what is called the (Muslim street).” Quoted in Jordan Times, September 14 2005.

<sup>48</sup> According to Suhail Nakhouda, editor-in-chief of the Amman-based *Islamica* magazine, Crisis Group interview, Amman, 17 April 2005. See source cited *supra* note 41 at 16.

<sup>49</sup> Three suicide bombers attacked the Days Inn, the Radisson SAS and Grand Hyatt hotels in Amman as part of a coordinated attack on three Western targets that killed 63 people (including three perpetrators) and wounded more than one hundred. The explosive device of a female suicide bomber at the Radisson SAS failed to go off and was later arrested by Jordanian authorities. Sajida Al-Rishawi made full confession of Jordanian national television. On September 21, 2006, the State Security Court in Jordan sentenced her to death by hanging. See, MIPT Terrorism Knowledge Base, available at: <http://www.mipt.org>, last visited March 30, 2008.

Jordanians in this specific incident was seen as a tactical move in which he exploited a key intelligence weakness in detecting foreign elements.<sup>50</sup>

Nevertheless, the government reasonably understood that while the attacks might have temporary lessened support to Al-Zarqawi,<sup>51</sup> many Jordanians, who share same religious ideology,<sup>52</sup> might still sympathize and even accept similar future attacks aimed at government institutions, United States and Israeli targets, and Western civilians. The regime became particularly concerned with managing its Islamic opposition not only as a potential challenge to its power and legitimacy, but as a group vulnerable to the influence of radical Islamists, inside and across its borders, who would exploit the Islamic opposition's dissatisfaction with the government to radicalize its institutions that would nurture, harbor and support terrorists.

The attacks gave the regime the leverage to announce its new counter-ideological approach that in essence builds on its earlier effort; the Message, and develops it into a legal and regulatory framework designed to stop further radicalization and new recruits. As articulated by the words of the king; the 11/9 attacks "affirm the extent of our need to adopt a comprehensive strategy to confront *takfiri* culture. Such a strategy does not envision security solutions alone, but also takes into account the intellectual, cultural and political dimensions of standing up to those who are

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<sup>50</sup> See latter source cited *supra* note 41 at 1.

<sup>51</sup> Poll conducted by Ipsos, as reported in the daily *Al-Ghad* and cited in *The New York Times*, 16 November 2005. An earlier poll had shown 60 percent support for Osama bin Laden among Jordanians.

<sup>52</sup> The Pew Global Attitudes Project released figures in July 2005 that about 60 percent of Jordanians indicated they saw suicide bombings and other violent actions as justifiable in defense of Islam, and nearly half felt that suicide bombings against Americans and other Westerners in Iraq were justifiable. See, PEW GLOBAL ATTITUDES PROJECT, ISLAMIC EXTREMISM: COMMON CONCERN FOR MUSLIM AND WESTERN PUBLICS: SUPPORT FOR TERROR WANES AMONG MUSLIM PUBLICS (2005).

charting paths of destruction and sabotage to realize their aims.”<sup>53</sup> In this context, a word of warning was sent to the media to take responsibility in promoting tolerance and fighting the radical ideology “in a way that is consistent with Jordan’s interests.”<sup>54</sup> As an incentive, the government promised amendments to media laws as part of an overall reform process to minimize state interference in the press and ease some of the restriction on journalists to freely carry out their work. Hence, article 42(2) of the Press and Publications Law no. 8 of 1998 was amended by adding a provision: “*Detention as a result of enunciation of an opinion in speech, writing or through other means of expression is not allowed.*” At the same time, other tenets of the penal code were amended to allow increased fines for defamation, libel, insult to religious beliefs or publication of material that fuels sectarianism or racism.<sup>55</sup>

Overall, the government did not abandon its previous approach that was influenced by its determination to marginalize political dissent, hence the heightened use of restrictive legal measures to curb political expression. Yet, following the 11/9 event, it was established that the forthcoming period would be about discouraging sympathizers among Islamic opposition *per se* from supporting radical adversaries, and reduce the number of potential new recruits for radical groups. According to the declaration of Marouf Bakhit – appointed Prime Minister following the 11/9 attacks – to the parliament: ‘the suicide bombers made us more determined to move forward in our *pre-emptive* war against terrorism and the ‘*takfiri*’ culture,’ and that his cabinet is determined to fight Islamic extremists.<sup>56</sup> One might question if there was a parallel strategy

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<sup>53</sup> Royal Letter of Designation from His Majesty King Abdullah II of Jordan to Prime Minister Marouf Bakhit (November 24, 2005), <http://www.pm.gov.jo/english/>

<sup>54</sup> *Id.*

<sup>55</sup> Article 195 of Penal Code no. 16 of 1960 as amended by law no. 16 of 2007.

<sup>56</sup> Jamal Halaby, *Jordan premier vows ‘pre-emptive’ war against Islamic extremism*, The Associated Press, (December 14, 2005).



devised to deal with the threat of non-Jordanian terrorists other than measures taken to increase intelligence powers. Though it seems illogical to separate between Jordanian and non-Jordanians in terms of terrorism and counterterrorism, thus this paper strives to stay focused on the domestic aspect of the threat and the approach taken as a result.

The legal framework developed here could be applied to three main issues. The first concerns dissuading radicals from attacking Jordan by enacting a special anti-terror legislation to supplement the provisions of the Penal Code. In other words, the assumption is to match “terror” with “legal terror” to deter Islamic opponents who think of using violence as a means of Islamic activism from committing such acts. The second issue concerns limiting religious space by controlling sources of radicalization or (physical environment) that radicals would use to influence their target audience. A Rand Corporation research identified three nodes or physical venues for radicalization: radicalized mosques, educational establishments and prisons.<sup>57</sup> Thus, focus is turned to the question about preventing radicals from spreading their ideology via religious services or places of worship. The last issue concerns the management of collective action through controlling platforms that expose mainstream moderate Islamists to those who may offer them alternative ideologies and alternative courses of action, including violence. The assumption here is that a state through social control manages to keep Islamic activism under surveillance.

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<sup>57</sup> GREG HANNAH, LINDSAY CLUTTERBUCK AND JENNIFER RUBIN, *RADICALIZATION OR REHABILITATION: UNDERSTANDING THE CHALLENGE OF EXTREMIST AND RADICALIZED PRISONERS*, 1, (Rand Corporation 2008).

**a. Prevention through Legal Deterrence: Prevention of Terrorism Law [“PTL”]**

Formulating an appropriate legal response to terrorism, in general, presents governments with a political dilemma. Political and security theorists suggest that by failing to act decisively, a government runs the risk of providing terrorists with the opportunity to realign in a manner that would allow for further and even more devastating attacks. Equally, there is the normative danger of over-reacting. A spate of new antiterrorism laws enacted following a high-profile attack often features enhanced penalties for acts defined as terrorism. In many jurisdictions it introduces extraordinary powers that could spread to other parts of the criminal law.<sup>58</sup>

Thus, the enactment of new criminal laws is seen to have different implications. Victor Ramraj talks about what criminologists refer to as ‘govern[ing] through crime’ and states’ tendency to rely on the law as the solution to distress a terror event.<sup>59</sup> Laura Donohue suggests that some counterterrorism measures impose fear and violence without regard to guilt or innocence in order to impress a larger audience.<sup>60</sup> Kent Roach argues that the enactment of new criminal laws after acts of terrorism implies that the existing criminal law was inadequate to respond to acts of terrorism, thus deter radicals from committing future attacks.<sup>61</sup> Though, he claims that the accuracy of such an argument depends on the baseline established by the ordinary criminal law in each particular jurisdiction.<sup>62</sup> For instance, in Jordan’s jurisdiction, in addition to having a ‘terrorism’ crime long before

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<sup>58</sup> We have seen how the amendments introduced to Jordan’s Penal Code immediately after 9/11 that spread to slander and libel crimes, in addition to *lèse majesté*.

<sup>59</sup> Victor V. Ramraj, *Terrorism, Risk Perception and Judicial Review*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 113 (2005).

<sup>60</sup> Laura Donohue, *Terrorism and Counterterrorism Discourse*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 23 (2005).

<sup>61</sup> Kent Roach, *The Criminal and Terrorism*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 129 (2005).

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

9/11, other ordinary crimes with respect to attempts, conspiracy and accomplice liability for crimes such as murder and bombings could already be applied to terrorists. In addition, tough penalties i.e. death penalty are already employed for such serious acts.

One way of determining the instrumental value of a new counterterrorism law in preventing terrorism is to examine the criminal law that existed before a successful terror attack triggered such response. As illustrated in following sections, in the aftermath of 9/11, criminal law reform in Jordan was part of the worldwide expansion of criminal laws facilitated by UNSC Resolution 1373 that was enacted under mandatory Chapter VII of the UN Charter. The resolution instigated the pattern of reactive reform by calling on all countries to ensure that terrorist acts, including the financing of terrorism, 'are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.' To a certain extent, Jordan seems to have taken the UNSC resolution provisions as a deadline for enacting new counterterrorism laws, and as an opportunity to pledge its strong support for the United States in its 'war on terror.' Probably with the exception of the new laws against the financing of terrorism,<sup>63</sup> the introduced criminal law amendments were largely offered as a symbolic response to 9/11 without fully understanding the dimensions of deterrence.

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<sup>63</sup> Although they were featured in the UNSC resolution 1373 and reflected in new criminal law amendments and counterterrorism laws, there are reasons to doubt the deterrence effect of laws against financing terrorism. The objects of such financing are not terrorists *per se* or their ideological supporters, but third parties such as banks and those who provide terrorists with financial support. These laws are seen as an expansion of the traditional scope of antiterrorism laws and the impact of security strategies that relied more on risk management strategies.

Nevertheless, one week after the Amman bombings killed sixty people and wounded around hundred others on November 9, 2005, the government proposed a new bill as an emergency measure that, in principle, was to include both punitive and self-protective measures for the state and individuals, respectively. It was not until November 2006 that the law went into effect after being promulgated by parliament and published in the *Official Gazette*.<sup>64</sup> As its title indicates, the legislation's main objective is to stop future attacks from taking place. Before, the authorities relied on the country's Penal Code to deal with terrorism-related issues, whether to punish for committed acts, or to deter through the imposition of punishment or by increasing already existing penalties.

Normally instant new criminal laws in the wake of terrible terrorist attacks rely on broader and tougher offences to punish and prevent acts of terrorism. In the American context, the Patriot Act,<sup>65</sup> incorporated new criminal offenses in a manner that asserts Professor Roach's claim and demonstrate the belief that broadening and toughening the criminal law will deter future acts of terrorism. The crime of providing material support for terrorism, which was first created in 1996 in the wake of Oklahoma City bombings, is one example of a crime that was broadened to include the provision of monetary instruments and 'expert advice and assistance' to terrorist groups.<sup>66</sup> The maximum penalty for this offence was increased from ten to fifteen years with the possibility of life imprisonment if it involves taking a human life.<sup>67</sup>

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<sup>64</sup> Terrorism Prevention Law no. 55 of 2006.

<sup>65</sup> The final bill, the Patriot Act was introduced into Congress on October 23, 2001 and approved by both Houses (357-66 vote in the House of Representatives and 98-1 vote in the Senate). It was signed into law by President Bush on October 26, 2001. However, the original version of the Bill was introduced six weeks before enactment.

<sup>66</sup> Patriot Act ss. 805

<sup>67</sup> Patriot Act ss. 810

Discussions dealing with the deterrent value of higher and harsher penalties normally differentiate between terrorists and third parties who may provide support to terrorists. Seemingly, the severity of punishment is likely to have a marginal impact on terrorists;<sup>68</sup> a suicide bomber planning a terror attack must know that he will be facing relatively high maximum penalties. Further, foreign terrorists such as the Iraqis who perpetrated the 11/9 attacks will most likely be unfamiliar with the relevant penalties for the crime they plan to commit or basically indifferent about anything besides furthering their cause. However, third party terrorists who facilitate or provide assistance may be more amenable than terrorists to deterrence. Professor Alan Dershowitz attributes that to the calculated and political nature of terrorism.<sup>69</sup> He has proposed deterrence strategies that depend in part on collective punishment.<sup>70</sup> Although he admits that this might be ‘the most immoral technique for combating terrorism,’<sup>71</sup> in which people suffer harm and stigma because of suspicions that they are terrorists, yet he concludes that ‘any effective attack calculated to reduce terrorism must include an element of collective responsibility and punishment for those supporting terrorism.’<sup>72</sup> Although this argument is more of a feature present in authoritarian regimes, yet it is apparent in the Patriot Act, which captured its essence and established a separate section<sup>73</sup> that punishes with up to ten years imprisonment ‘whoever harbors or conceals any person who he knows, or he has

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<sup>68</sup> See source cited *supra* note 61 at 138.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 137

<sup>71</sup> ALAN DERSHOWITZ, WHY TERRORISM WORKS, 117 (Yale University Press 2002).

<sup>72</sup> *Id.* at 181

<sup>73</sup> It is a federal crime to harbor aliens, 8 U.S.C. 1324, or those engaged in espionage, 18 U.S.C. 792, or to commit misprision of a felony (which may take the form of harboring the felon), 18 U.S.C. 4, or to act as an accessory after the fact to a federal crime (including by harboring the offender), 18 U.S.C. 3. See, CHARLES DOYLE, TERRORISM: SECTION BY SECTION ANALYSIS OF THE USA PATRIOT ACT, 46 (Congressional Research Service, The Library of Congress 2001).

reasonable grounds to believe, has committed or is about to commit' a long list of offences associated with terrorism.<sup>74</sup>

However, similar to other regions' immediate reactions, Jordan's legislation stirred an enormous amount of public debate among some lawmakers, human rights watchdog groups and civilian society associations. Several human rights activists warned against the legislation saying it would turn the country into a 'police state'. Fifteen Islamic Action Front lawmakers<sup>75</sup> denounced the law affirming that the PTL would encourage terrorism because its "unjust clauses and severe punishments will oppress many people and lead to the creation of more terror groups."<sup>76</sup> Secretary General of the Jordanian Muslim Brotherhood Jamil Abu Bakr said the law would "strengthen the grip of the security forces and limit public freedoms."<sup>77</sup> Leaders of other opposition groups and professional associations accused the regime of nearing the completion of a full circle back to martial rule, describing the law as "a blunt violation of the Constitutional and the International Declaration of Human Rights."<sup>78</sup> Amnesty International voiced similar concerns calling upon the government 'to repeal the legislation or amend it to bring it at minimum in line with the obligations of Jordan under international law.'<sup>79</sup>

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<sup>74</sup> The Patriot Act ss. 803.

<sup>75</sup> Fifteen out of the sixteen Islamist lawmakers who occupied House seats during the (2003-2007) parliament.

<sup>76</sup> Jamal Halaby, *Jordan parliament OKs terrorism law*, 1, The Associated Press (August 2006).

<sup>77</sup> CARNIGIE'S ARAB REFORM BULLETIN, JORDAN: GOVERNMENT APPROVES ANTI-TERRORISM LAW (2006).

<sup>78</sup> UNITED PRESS INTERNATIONAL, JORDAN: ANTI-TERRORISM LAW CALLED MARTIAL, 1 (August 29, 2006).

<sup>79</sup> AMNESTY INTERNATIONAL, JORDAN'S ANTI-TERRORISM LAW OPENS DOOR TO NEW HUMAN RIGHTS VIOLATIONS, 1, (2006), available at: [www.amnestyusa.org](http://www.amnestyusa.org)

A significant question that lays siege to above concerns over the impact of the legislation on public freedoms, mainly political expression, and the legal structure of the state: is how effective was the enactment of that particular law in accomplishing the immediate aim of the government i.e. deterrence value on radical Islamic elements. Yet, under such circumstances, how is this measure evaluated in determining the effectiveness of the regime's overall strategy of marginalizing Islamic political opposition.

To probe the matter, the argument below is based on the two assumptions that dominate the counterterrorism legal discourse: that existing criminal structure, as opposed to its enforcement, was to blame for the failure to prevent terrorism. Thus, giving the government the political legitimacy and obtaining the moral high ground to address this inadequacy by enacting special counterterrorism legislation. The second is that establishing collective responsibility and punishment for religious identification based on radical ideology is necessary to deter future terrorist recruitment. Here, the principles of individual responsibility and legality are stretched in a manner that provides the state with an opportunity to exercise an important restraining influence on public dissent.

The first assumption will be addressed through shedding light on two terror incidents that exemplifies the argument that the provisions of ordinary criminal law have been tough enough to handle terrorism, and the emphasis on the criminal sanction and retributive punishment do not necessarily create the desired level of deterrence. The first incident is part of what the 9/11 Commission Report referred to as the 'Millennium Crisis'.<sup>80</sup> It involved the trial of a group of militant Jordanians of the 'Hijazi cell'. Raed Hijazi, a dual

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<sup>80</sup> See source cited *supra* note 2 at 174.

national of Jordan and the United States, who in 2002 was sentenced to death<sup>81</sup> after Jordanian intelligence services intercepted a telephone call that helped foil a plot to blow up a fully booked, 400-room Jordanian hotel and two Christian tourist sites on the border with Israel on the eve of the millennium in December 1999. Though this plot had been implicated in the Bin Laden-linked Millennium plot in late 1999, it is believed to be Al-Zarqawi's first major attempt at a terrorist attack in Jordan. As a result, Al-Zarqawi was convicted in absentia and sentenced to death by Jordan's State Security Court for his involvement. The terror attempt took place prior to 9/11 in which intelligence services actions reflected vigilance and efficiency, and militants involved were referred to a state security court for trial on counts of crimes pursuant to Jordan's Penal Code.<sup>82</sup>

The marginal deterrent value of new tougher criminal laws and harsher penalties becomes apparent in the second incident. In December 2002, Jordanian authorities arrested two men, a Libyan and a Jordanian, who later admitted to carrying out the assassination of United States diplomat Laurence Foley in Amman in November 2002 after receiving money from Al-Qaeda leader Al-Zarqawi. The two men had been charged with murder, and sentenced to death by the military court. Six other men, including Al-Zarqawi, were sentenced to death in absentia.

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<sup>81</sup> Hijazi's death sentence was commuted to life imprisonment on 11 February 2002 by the State Security Court. On a separate note, Amnesty International has reported human rights violations relating to Hijazi's case. AI was concerned at reports that Raed Hijazi was tortured during interrogations and his confessions were made under duress, thus are inadmissible as evidence in trials and are a violation of international law. AMNESTY INTERNATIONAL, JORDAN: DEATH PENALTY/TORTURE/UNFAIR TRIAL – RA'ED MUHAMMAD HIJAZI (February 13, 2002).

<sup>82</sup> The counts of crimes are: membership in an illegal organization, conspiracy to carry out terrorist acts, possession of explosives without a license and for illegal purposes, and preparing an explosive device without a license.



Up until November 9, 2005, Jordan had been spared large scale terror attacks and suicide bombings. According to remarks made by the king to the *New York Times*, Jordan's intelligence services had thwarted since April 2004 no less than 150 other terror attempts by militant Islamists affiliated with Al-Qaeda.<sup>83</sup> Following 9/11, there has been considerable increase in prosecutions and referrals to the State Security Court for acts committed in violation of penal code that falls under its jurisdiction, in which death penalty had been employed for conspiracy offences, attempted crime, as well as committing the most serious acts of terrorism. As the Jordanian experience of subsequent terror incidents demonstrate, security services, prosecutors and courts – notwithstanding its controversy among human rights groups - have sufficient capabilities to investigate apprehended acts of terrorism. Needless to say, this had not had any deterrent effect on Al-Zarqawi, his followers and other radicals from attacking again.

However, from the above discussion flows the second interrelated assumption of this argument. Jordan's pledge to enact special counterterrorism legislation was part of an immediate impetus to do something following the high-profile attacks. It worked as a short-term measure to first; appease public anxiety by denouncing the terror acts and expressing solidarity with the victims, and second; carry strong moral and religious overtones. The state understood the political nature of the terror threat, and the danger of radicals who move from rejecting the state's legitimacy to advocating their ideologies and attempting its violent overthrow. Thus, Jordan's legislative response to the attacks instituted the notion of collective responsibility based on ideological identification to

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<sup>83</sup> Michael Slackman, *11 Top Jordanian Advisers Resign in Wake of Attacks*, 2,2, THE NEW YORK TIMES, November 16, 2005.

influence public discourse through criminalizing, and seeking to punish those ideologically supporting terrorism.

Indeed, apart from introducing the notion of collective responsibility for ideological identification in the context of a terror crime, the PTL did not propose any amendments in the realm of individual criminal responsibility and punishment to any of the relevant criminal laws nor did it introduce extraordinary measures other than those already existing under such laws. For instance, Article 8 gives the State Security Court jurisdiction over terror crimes defined and identified by the law. It only makes sense to re-establish the jurisdiction of the court over terror-related crimes if only the state's intention was to cover the notion of collective responsibility for ideological identification. *Why?* Under article 4 of the State Security Court Law of 1959, the court is assigned broad jurisdiction over individuals accused of offences - committed or attempted - against state security, including aiders, abettors and accessories. There is no jurisdictional limitation on extending collective responsibility based on mere ideological agreement that justifies the use of violence. Hence, such court has fewer procedural judicial protections than other ordinary courts since it has the discretion not to follow the regular Law of Criminal Procedures<sup>84</sup> that sets the limits to rights and freedoms. However, this notion appears implicit in the definition of terrorism. Article 2 states:

*“Any intentional act committed by whichever means that leads to killing or causing physical harm or inflicting damages to public or private property or transportation or environment or infrastructure or*

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<sup>84</sup> Law of Criminal Procedure no. 9 of 1961.

*international entities premises or diplomatic missions if the intention of that action was to disturb public order and endanger public safety and security or impede the implementation of the law or Constitution or to influence state or government's policy or force it to act or restrain or endanger national security by fear or terror or violence."*

Ostensibly, the definition does not define terrorism as *conduct* or in criminal law terms the *actus reus* or material element of the offence. Any *intentional act* covers 'inchoate' offences, where no result should necessarily occur. Thus, the *act* can vary between one that causes death, serious injury or damage to property, to a less precise act such as the one defined by Article 147 of the Penal Code which covers 'violence' or the 'threat of violence', to engaging in certain political activity.<sup>85</sup> Nevertheless, the law does not impose collective punishment or specify any penalty for *any intentional act* that qualifies, according to the definition, as terrorism.

Article 3 prohibits in more general terms such acts of terrorism, thus, designates three terrorism offences related to the formation, recruitment or membership in associations that are not necessarily illegal or a terror group but may commit acts that could fall under terrorism. In Jordan's criminal system, establishing a 'villains' association or group is

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<sup>85</sup> Article 147 of the Penal Code of 1960, as amended in 2001 and 2007, defines terrorism as follows: "*Terrorism shall mean the use of violence or threat of use thereof, whatever its motivations and purposes, occurring in implementation of an individual or collective criminal plot aimed at disturbing public order or jeopardizing the safety or security of society, where such is of a nature to spread fear among the people or frighten them or to expose their lives and security to danger, or to cause damage to the environment, or to cause damage to, occupy or take over public facilities and realty or private realty, international facilities and diplomatic missions, endangering national resources or thwarting the provisions of the Constitution and laws.*" For a detailed discussion on the evolution and subsequent amendments on Article 147, see Part III of this dissertation under heading: The role of United Nations measures against terrorism in developing the legal framework of Jordan's response to terrorism.

criminalized long before 11/9 or even 9/11.<sup>86</sup> Various forms of membership or participation in an ‘illegal’ association or group may also be punished.<sup>87</sup> However, article 3(a) challenges a basic principle of criminal law i.e. the requirement for a clear illegal act that is committed with fault. In essence, this provision introduced the concept of *virtual* association based on sharing the political cause of terrorists that is essentially ideological in nature, not on material support. It states:

*‘Attempting by any means – direct or indirect – to provide or gather or facilitate finances with the intention of using in committing terrorism acts or knowing that it will be used entirely or partially, whether the act was committed or not in the kingdom or against its citizens or interests abroad.’*

At a first glance, the above Article seems to be in conformity with the international legal order. For instance, under Article 2(1) of the International Convention for the Suppression of the Financing of Terrorism, which Jordan has ratified in 2003, the terrorist act need not be completed; the funds must have been collected in the knowledge or with the intent that they should be used to commit a terrorist act. Also under Article 2(3), in order for an act to constitute an offence, the funds collected need not actually be used to carry out a terrorist act; the fact that they were collected with the intent is

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<sup>86</sup> Article 157 of the Penal Code of 1960 criminalizes those who establish an association with the purpose of committing felonies on people or property, and requires to be punished by imprisonment at hard labor. If the criminals’ intent was to commit assault on human life, the punishment is not less than seven years of imprisonment at hard labor.

<sup>87</sup> Article 160 of the Penal Code punishes whoever becomes a member in an ‘illegal’ association that commits seditious acts, vandalism or uses force and violence to topple the government by imprisonment at hard labor. Article 162 punishes those who donate, pay membership or provide assistance, or collects donations, membership subscriptions or assistance by maximum imprisonment of six months.

sufficient. However, given the political landscape when the law was considered and then enacted;<sup>88</sup> the above provision goes beyond the particular issue of criminalizing the financing of terrorism as *actus reus*, which the Penal Code and the terrorist financing laws has dealt with. In practical terms, this article illustrates the collective responsibility argument in which sharing the political cause of terrorists *mens rea* should be punished for acts of terrorism because ‘the cause hopes and expects to benefit collectively from terrorism,’<sup>89</sup> whether the act was committed or not. Therefore, the focus on crime has led to what is called the ‘*criminalization of politics*’, wherein the government could integrate between political activism; mainly Islamic, and terrorism through the rubric of charitable works. Though there is no concrete or detailed evidence that social welfare in Jordan is central to radical Islamists’ ability to recruit, indoctrinate and fund terrorists, yet the government is anticipating such a consequence based on the assumption that Islamic social welfare organizations answer to the same political leaders who plays a hand-on role in political dissent.

Moreover, Article 3(c) asserts the assumption that mere affiliation with a political or social welfare group or organization or association, which could be a front organization for terror acts, is invoked to classify such person as a terrorist *without* committing an act of terror or a direct proof of intent: ‘*forming whatever group or organization or association or [being affiliated to] with the intention to commit terrorism acts in the kingdom or against its citizens or interests abroad.*’ Thus, the legislation provides punishment of offenders for this ‘*guilt by association*’. Article 7(a) punishes for acts

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<sup>88</sup> The emergence of Hamas as a dominant political party and a ruling one in Cabinet in January 2006. *See*, Part [III] of this dissertation.

<sup>89</sup> See source cited *supra* note 71 at 174.

listed under Article 3 by imprisonment at hard labor (between three and fifteen years) provided no harsher penalty is imposed by another criminal law.<sup>90</sup>

Article 4 provides law enforcement and intelligence with the legal teeth to expand the scope of its powers to those who are suspected of their association with terrorism. The Prosecutor General of the State Security Court,<sup>91</sup> based on ‘reasonable ground’, has the authority to put aforementioned suspects under surveillance, restrict their movement, and place a temporary hold on suspected terror funds. Several proposals offered while the law was under consideration included a range of extraordinary measures found in other criminal laws such as detention and renewal of detention, yet were not among the provisions ultimately enacted. In fact, the article limits the validity of such decisions to one month giving the state the ability to closely monitor suspects, even if their links to radical groups are loose; before applying tougher measures available in existing criminal laws. Perhaps from the state point of view, rounding up suspects and exaggerating the scope of potential threat, arguably have some deterrent value, thus provide added security.

What also asserts the precise political nature of this legislation is that it falls short from criminalizing acts of terrorism that are committed against foreign targets. For example, if a group in Jordan is engaged in fundraising under the guise of operating as a charity, but

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<sup>90</sup> Article 148(2) of the Penal Code imposes a penalty of hard labor with a minimum five-year sentence for every ‘terrorist act.’

<sup>91</sup> Article 7 of the State Security Court Law of 1959 states that State Security Prosecutors and law enforcement officers exercise their power in accordance with the Criminal Procedures Law no. 9 of 1961. However, State Security Court prosecutor has the power to detain a suspect up to seven-days without charge (in ordinary criminal cases the prosecutor must charge detainees within twenty-four hours and the criminal procedures law requires “evidence” before the prosecutor can remand a suspect in custody.

in reality channels those funds to commit terror acts abroad or against a foreign target, notwithstanding any Jordanian target or interest, then affiliation or association with such a group is excluded from the scope of the law. In fact this has been in line with Jordan's policy in dealing with Hamas in 1999 when the government refused to permit Hamas "military" wing members to reside or operate in the country but allowed other lower-level Hamas members who are engaged in the "political" and "social" wings to stay in Jordan. However, Islamists in Jordan expressed their concern that the law might be interpreted to apply to mere association with resistance movements in the region, including Hamas and several Iraqi groups. Some Islamic Action Front members in parliament proposed inserting a clause to explicitly exclude all forms of resistance against occupation and struggle for national independence from acts of terrorism. To date, the definition of acts of terrorism is rarely, if ever, enforced by the military court in its verdicts or cited by the Court of Cassation in reviewing terrorist's appeal.<sup>92</sup> Thus, it remains for possible future use when it may be necessary or expedient to counter the threat it was designed for.

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<sup>92</sup> In September 2006, Jordan's State Security Court sentenced seven people to be executed for their involvement in the 11/9 Amman bombings that triggered the issuance of the Prevention of Terrorism Law. However, the case was decided based on the articles of Penal Code no. 16 of 1960 and the Firearms and Ammunition Law no. 34 of 1952. All seven were found guilty of conspiracy to carry out terrorist acts causing death and destruction (Article 148(4) of Penal Code), and illegal possession of weapons and explosives (Article 11(a) of Firearms Law). The key suspect is the Iraqi woman Sajida Al-Rishawi, 35, who was arrested a few days after the blasts, which were carried out by three Iraqis, including her husband. Rishawi confessed over the state-run Jordan television of being part of the suicide gang, but alleged her belt failed to detonate at Radisson SAS, one of the targeted hotels. Rishawi was the only defendant in custody; all others were tried *in-absentia*, including the Jordanian fugitive Al-Zarqawi. Rishawi appealed immediately against her sentence. Initially, Rishawi said in a televised confession that her own belt failed to detonate and she fled, but she later told her trial that she was an unwilling participant in the attacks and never tried to set off her bomb. She also claimed the confessions were extracted through torture but had no evidence of this. In January 2007, Jordan's appeals court ["Court of Cassation"] said it "ratified" the military court's death sentence because Rishawi was "guilty beyond doubt of possessing explosives and having had the intention and the will to carry out terrorist attacks whose outcome is destruction and death." The appeals court's decision is final, but according to the Constitution (Article 38/9), can be overturned by the King, the ultimate authority in Jordan. *See, Jordan Hotel Bomber to Hang, Aljazeera Network* (January 2007), available at: <http://english.aljazeera.net/news/middleeast/2007/01/2008525143626473340.html>

## **b. Limiting Religious Space through Legislation**

The second bundle of legislation that Jordan enacted as part of its legal response to the 11/9 attacks came in the form of legislation that was focused on the use of religion to legitimize and mobilize recruits. In 2006, the government enacted two laws that aim to prevent radicals from utilizing several mechanisms available within the religio-spatial structure of Islamic rituals and community interaction that include, for the most part, mosque-related activities.

- i) The Law of Preaching, Guidance and Teaching in Mosques no. 59 of 2006. Amending law no. 7 of 1986.

Jordan has constantly understood the potential of mosques as an informal social platform to disseminate ideology and mobilize collective action.<sup>93</sup> Particularly where the press and publications are curtailed and constrained, the mosque becomes an important medium of expression, at once religious, social, cultural and political, purveying a message wrapped in religious symbolism. Thus, it is certainly not new for Jordan to exercise state control over religious institutions. Like many states in the Middle East, Jordan has enacted a series of measures and strategies to control Islamic religious discourse. The state's reason for regulating public religious fora was to help prevent the dissemination of "unorthodox" Islamic views that are critical of the regime, thus inhibit oppositional elements from using public religious space to mobilize dissent.

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<sup>93</sup> At one point, the regime through its intelligence services utilized mosques as a recruitment drive of potential volunteer fighters in the Afghan fight against the Soviet forces. As one Jordanian observer put it, the regime at one point "persuaded young Jordanians to go to Afghanistan to fight the Soviets" through utilizing state-run mosques. Interview by International Crisis Group with Samih Khreis, a trial lawyer involved in defending *jihadis* (March 30, 2005). See latter source cited *supra* note 41.



In fact, Islamic institutions have been incorporated since the 1960s into the state bureaucracy through the Ministry of *Awqaf* and Islamic Affairs; namely the Department of Preaching and Guidance. This means that all mosques and mosque-related activities, including Friday sermons *khutba*, are controlled by the government. However, the government's enforcement of its religious policy derives from two main practices: Prevent oppositional figures from using the mosque as a medium of opposition, and control the content of religious preaching.

In principle, mosques' Imams are government employees assigned to mosques by the ministry, with the intelligence services playing a critical role in their vetting and appointment. Thus, the growth of mosques<sup>94</sup> has surpassed the government's capabilities to staff them with qualified imams and preachers.<sup>95</sup> According to official numbers, around 50 percent of the country's 6000-plus *awqaf*-run mosques are without regime-appointed imams, due largely to lack of funding and well-trained imams.<sup>96</sup> In addition to the *awqaf*-run mosques, there are privately funded mosques that appoint their own imams, who practically can preach uncensored sermons. It has always been a core question for the government how to regulate these private mosques.

Clearly, the intelligence keeps an eye on who preaches and what is being preached, regardless of whether mosques are state or privately funded. In addition, the Department of Preaching and Guidance requests and reviews the names of prospective preachers; mainly

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<sup>94</sup> According to Jordan's Ministry of Religious Affairs; Mosques grew in number from 2710 in 1999 to 6243 in 2008. Available at: [http://www.awqaf.gov.jo/pages.php?menu\\_id=90](http://www.awqaf.gov.jo/pages.php?menu_id=90)

<sup>95</sup> Although, one of the main functions of the imam is to give the Friday sermon and religious lessons, yet not all state-appointed imams are qualified. Thus, the important functions of an imam and preacher remain unfulfilled in a substantial number of instances.

<sup>96</sup> As a result of this deficit, outside preachers are frequently brought in mainly to deliver the Friday sermon.

before the weekly Friday sermon and has the discretion to deny permission to any preacher without specifying reasons.<sup>97</sup> According to the law, individuals who violate the written ban order are punished by imprisonment for a period of one week to one month or fined a sum of US\$28 - US\$141.<sup>98</sup> Nevertheless, the law did not specify a ban period and left it open for the minister to decide when and whether to lift the ban on a specific preacher.<sup>99</sup> More outspoken or influential figures are banned for longer periods of time.

As for the control policy on preached material, it has been characterized by a certain degree of informality. Article 3 of the law states that “*the preacher should be committed to wisdom and proper preaching and shall not attack, accuse, or instigate against individuals or institutions and go beyond the guidelines of Islamic teachings.*” The informal policy is to prevent any actions that might undermine the regime and its legitimacy. There is a set of unwritten but well-recognized rules that represent limits to behavior and action tolerated by the regime. In general there are three regulative techniques that have been utilized to ensure that sermons remain uncritical of the regime. Part of the ministry’s mandate is to suggest topics for sermons, and often it requires imams and preachers to speak on certain apolitical topics that do not instigate broader opposition throughout the community.<sup>100</sup> To keep matters in perspective, the ministry rotates preachers between mosques to reduce the opportunity for possible controversial oppositional figures from cultivating a loyal constituency. However, those who cross the limits of preaching by criticizing state policy are first warned, if they

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<sup>97</sup> Article 7 of the Law of Preaching, Guidance and Teaching in Mosques no. 7 of 1986, as amended in 2006, gives the Minister of Religious Affairs unbounded authority to ban a certain preacher if he violates the provisions of this law.

<sup>98</sup> In reality the punishment is often harsher and entails referral to intelligence services for interrogation and possible detention.

<sup>99</sup> Article 7(c) of law no. 7 of 1986.

<sup>100</sup> During the 1970s, the ministry sent preachers complete sermons that could be used verbatim.

continue, they get banned. And, if they violate the official ban order, they get punished according to the law.

This practice of banning preachers became more common since Jordan signed its peace treaty with Israel in 1994, which was a move that created widespread grassroots opposition. As mentioned earlier, this opposition steered by the country's own Muslim Brotherhood movement, was viewed as potentially destabilizing, thus a threat to Jordan's national security. Under this national security blanket, intelligence intensified its surveillance and started to detain political activists; mainly Muslim Brotherhood and Islamic Action Front members.<sup>101</sup> The recent growth of Islamic opposition movements in the region following the war on Iraq has prompted the Jordanian state to tighten its control on all mosques. According to a Crisis Group report, in September 2004 the government arrested roughly thirty mainstream imam, preachers and scholars for turning the mosques into "political meeting halls that spreads anti-American sentiments."<sup>102</sup>

However, mobilization and recruitment at mosques are difficult to regulate because regimes cannot prevent people from praying. Following the November 2005 attacks, the government introduced a substantial amendment to article 7 of the Law of Preaching, Guidance and Teaching in Mosques. By this amendment the government has strengthened its efforts to effectively control mosques, and religious space in general, by making the practice of

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<sup>101</sup> Since the peace treaty, the state attempted to remove critical imams from their government positions. The case of Salah Al-Khalidi is the most cited incident in which an imam, for ten years at a central mosque in a heavy populated area, was removed from his position for vocally opposing the peace treaty. This incident was recognized by the Islamic community as a move to crackdown on imams who oppose state policies.

<sup>102</sup> See latter source cited *supra* note 41 at 15.

prohibiting any individual from preaching or getting involved in any other mosque-related activity the general rule. Article 7(a) articulated the state's new policy of zero tolerance of communicating or espousing radical ideologies through religious speech and ritual prior to acquiring the written approval of the government i.e. minister of religious affairs. Permission is contingent upon government approval of content, and this approval is only granted for those who do not link religious practices to an agenda for political change, thus openly criticize the state's policies or oppose the pre-western regime. Through this approach, the state seeks to minimize the mobilizing potential of the most important institution within religious space that provides an opportunity to disseminate an ideological message and muster support for a cause. However, the subsections concerning banning and punishing preachers who receive permission to speak but cross tolerable limits remain unchanged.

Again, the question that comes to mind is; how effective is this regulative control of mosques as physical structures. Do the limitations imposed on who operates within its context enough to diminish the mobilization and recruitment effect of mosques? Arguably, its control has substantially and significantly limited how the space can be effectively utilized. Perhaps the state's manipulation of bureaucratic processes, rules and procedures has succeeded in the past in usurping the revolutionary or oppositional potential of traditional religious institutions by blocking critical Islamic voices from participating in public discourse and mobilizing political dissent. However, there are possible reasons to believe in the inefficiency of such an approach in blocking radicals from disseminating their ideology through the use of mosques as an informal arena for recruitment.

Initially, mosques were considered the primary mobilization and recruitment site since it provided radicals with an informal network of groups of people who are predisposed to religious learning. Thus, formalizing such network by subjecting its operations to legal restrictions and administrative practices makes it visible and vulnerable for repression; yet diminish its tactical efficacy. Under such circumstances, radicals have two options: surrender to state control and its management strategies, which would require radicals to make concessions and limit their objectives. Given the ideological imperative that drives radicals' *modus operandi*, and that of the Islamic movement in general, it seems impossible give up their dogmatic trend. This leads to the second option; radicals would look for an institutional alternative or reorient themselves toward other nodes to escape regulation and state-controlled religious space.

Further, the state's own mobilization of legal constraints and administrative apparatus to limit the religious space is largely seen unpopular even among those considered to be 'balanced' thinkers. The use of hidden analogies and continued opposition by some of those preachers and imams indicate that the state even after tightening its control does not enjoy complete hegemony over the mosque and its religious space. Critical imams refer to the use of religious symbols and analogies from *Quran* to discuss political topics and mobilize opposition as a legal "loophole" in which the government cannot contradict or punish for.

Another significant reason that undoubtedly undermines the efficacy of the law is the insufficiency of deterrent penalties. A maximum one month imprisonment for those who violate the provisions of the law is unlikely to have any substantial deterrent effect upon

neither them nor future violators. In fact, many of them might consider going into prison as an opportunity to transmit radicals' ideology through personal, face-to-face interactions where they communicate, recruit, and educate.<sup>103</sup>

ii) The Religious Edict Law no. 60 of 2006.

A religious edict or *Fatwa* is a jurisprudential opinion based on Islamic Law. Though not legally binding in a secular legal system,<sup>104</sup> *fatwas* are normally used within religious space to lift ambiguity regarding contemporary issues by giving Islamic perspective. Generally, it has a significant impact on Muslims' understandings of the norms and rules that guide behavior. Like most states throughout the Middle East, religious institutions that issue *fatwas* are largely controlled by the state.

Before September 11, *fatwas* has become an instrument of the state to justify some of its actions and policies that can be viewed by many Muslim communities as anti-Islamic.<sup>105</sup> Scholars outside such state-sponsored bodies *i.e.* Muslim Brotherhood do issue *fatwas*; yet it was never a serious cause for concern. However, the utility of *fatwas* as instruments for Islamic opposition started gaining prominence as terrorist groups, particularly Al-Qaeda

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<sup>103</sup> Radicalization and extremist activities in prisons have been increasingly highlighted as of being of concern. However, there has been no legal response to radicals' activities in prison environment. See source cited *supra* note 57 at 1. On December 1, 2008, a local newspaper has reported that law enforcement has launched a new program within the context of prisoners' rehabilitation. The program aims to start a dialogue with those involved in the *takfiri* ideology. Khaluf Tahat, *Public Security Directorate launches a Dialogue Program with takfiri culture inmates*, Alrai Newspaper (December 1, 2008).

<sup>104</sup> Islamic Law application by Islamic courts is limited to personal status issues such as marriage, divorce, and inheritance.

<sup>105</sup> One of the most famous cases in which a government-controlled religious institution issued *fatwas* in support of government actions was in Egypt when its *mufti* issued a declaration in support of the Camp David Accords. In Saudi Arabia, *fatwas* were used to legitimate controversial government actions such as the use of force against some Islamic groups that occupied the Ka'ba in the late 1970s.

associated groups in Iraq, utilized in propagating their *jihadi* ideology against foreign occupation and legitimizing their actions by making it seem part of an Islamic obligation.

Before the above legislation was issued, religious edicts were primarily dealt with under article 7(c) of the Law of Preaching, Guidance and Teaching in Mosques no. 7 of 1986, which stated that formal *fatwas* are issued by state-sponsored institutions and individuals. The law was silent on legality issues relating to independent *fatwas* issued by non-state scholars. A Council of *Ifta* established in accordance with a government directive was charged *inter alia* with issuing *fatwas*.<sup>106</sup> The council is made up of individuals who are financially and structurally dependent on the state.<sup>107</sup>

The new legislation reinvigorated the state's control over the Council's work by establishing an independent body, separate from the Ministry of Religious Affairs, which governs the Council and reports directly to the prime minister and parliament. Notably, the legislation prohibits any individual or entity, beside the Council, from issuing *fatwas* on public matters or undermining the validity of issued *fatwas*.<sup>108</sup> Nevertheless, when the bill was introduced into parliament, it contained a penalty of up to one year imprisonment and a fine equivalent to US\$1400. Thus, the House of Representatives, lead by the Islamic block, vetoed the penalty provision and passed the legislation without imposing any punishment.

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<sup>106</sup> The Religious Edicts Directive no.17 of 1997.

<sup>107</sup> Chief of Islamic courts, the general *mufti*, dean of the school of *Sharia* at the University of Jordan (public university), the mufti of the armed forces, the director of the *fatwa* department at the Ministry of Religious Affairs, and five Islamic scholars appointed by Cabinet for three years. *See*, article 5 of the Religious Edicts Directive no.17 of 1997.

<sup>108</sup> Article 12(1) and (2) of the Religious Edicts Law no. 60 of 2006.

Hence, the government's enactment of this legislation came to redefine the utility of *fatwas* from an instrument used to justify state actions to one that denounces religious radicalism and terrorism by offering religious refutations of the false interpretations of religious extremists. Although such *fatwas* may not have a significant impact on current recruits or reach the majority of terrorists, their more important role is seen in de-legitimizing radicalism and terror acts in the eyes of those whom radicals seek to recruit or appeal to for support. Yet, politically radicalized and moderate Muslims may not recognize the *fatwas* that are issued by such institution. Although religious leaders and scholars serving on the Council are generally well-respected individuals in different areas of Islamic scholarship, yet they are part of an institution that falls within the purview of the state. From this it follows that their dependence on the state for their salaries and positions, undermines their religious authority and present them as mere proponents of the state's interpretation of Islam.<sup>109</sup>

### **c. The Management of Collective Action**

#### *i) Collective Action through civil society organizations*

The state's regulation of Islamic activism is inextricably linked to broader issues of social control in the state, and the authoritarian tendencies are more apparent in the sphere of civil society. In Jordan, the scope and content of social interaction is controlled through the use of the bureaucratic processes, procedures and regulations. Generally, collective action is only permitted through formal organizations. As the International Center for Nonprofit Law noted

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<sup>109</sup> As FOUAD AJAMI noted in: *In the Pharaoh's Shadow: Religion and Authority in Egypt*, in ISLAM IN THE POLITICAL PROCESS, 14, (James Piscatori ed., 1983), such institutions and individuals function to provide "religious interpretation in the service of the custodians of power."



in a detailed 2005 report,<sup>110</sup> the application process for registering a new organization is ‘onerous.’ And, after passing through several levels of bureaucracy, the government possesses veto power over all applications, and can cancel the registration of already licensed organizations. In essence, the government can use its powers to block the formation of any organization for political reasons.

A parallel pattern of Islamists activism in Jordan is done through civic organization and formal institutionalism. Beginning in the late 1950s, the Islamic movement in Jordan took advantage of its special relationship with the regime during martial law era to institutionalize its presence through a variety of formal organizations. Most of these activities have operated through the Islamic Center Charity Society, which serves as the charitable arm of the Islamic movement.

Although none of these activities was political in nature, it grew to have a political effect. The movement built schools, medical facilities, and a plethora of charitable societies. These institutions provided the movement with a point of contact with communities and an opportunity to promote a religious message through concrete projects. Furthermore, by providing these social services for communities and predominantly Muslim members, the movement was able to utilize the country’s largest charity network to mobilize political support and reach new constituencies. This is no secret; both the regime and movement members are well-aware of this organizational success. In fact, at different points in history the regime has requested the movement to promote political stability through utilizing its

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<sup>110</sup> Kareem Elbayar, *NGOs in Selected Arab States*, 6, 17, The International Journal for Not-For-Profit-Law, (September 2005).

high profile, and legitimacy to delegitimize the claims and ideologies of Islamic radical groups that would espouse violence.<sup>111</sup> At the same time, the movement has benefited from its expansion in civil society, especially after political liberalization in 1989, in developing the country's main political party.

Ever since political opposition took an Islamist discourse, the state has relied more exclusively upon administrative techniques that have been already in place since the 1950s and 1960s to diminish the prospect for opposition to mobilize within social space. Nevertheless, the resurgence of hardliners within the movement's leadership who have had apparent affinities to foreign radical Islamic groups, and have recently led an increasingly vocal opposition against state's policies, was considered alarming. Informed by a concern with controlling religious discourse, the regime decided to increase its already stringent control over civil society organizations to prevent those radicals from using them as potential vehicles for mobilization and recruitment. However, the political reality on the ground prevents the state from issuing a list of designated foreign terror organizations similar to the blacklist published by the United States Department of State or the European Union or declaring certain organizations as such based on their identification with other radical groups. In view of that, in the post-11/9 period, the state's plan was to reassert its claim over existing system of control that renders collective action predictable by subjecting the financial sources of charitable organizations to further scrutiny and legal measures.

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<sup>111</sup> The regime asked Brotherhood leaders to use their influence and strong ties to Palestinian camps to regain control during periods of domestic unrest. See, QUINTAN WIKTOROWICZ, *THE MANAGEMENT OF ISLAMIC ACTIVISM: SALAFIS, THE MUSLIM BROTHERHOOD, AND STATE POWER IN JORDAN*, 97 (State University of New York Press 2001).

As aforementioned, the legal basis for the disciplinary power of the state is not new. The Law of Societies and Social Organizations no. 33 of 1966 was, until recently, the law applicable to the establishment and operation of voluntary organizations, both foreign and national, in the kingdom.<sup>112</sup> The legislation provided the state with broad inspection powers to ensure that organizations' financial resources are not channeled to finance illegal activities that lie outside state's control or are terror-related. In the event an organization wanders beyond legislative confines, particularly failure to provide information that impairs the government's surveillance powers, the government has the power to dissolve the organization, or reorganize its leadership structure. For instance, in July 2006 the Ministry of Social Development installed temporary government management of the Islamic Center Charity Society, and a year later led a massive recruitment of new members to oust the Center's Muslim Brotherhood leadership in members' elections for a new management.<sup>113</sup>

However, there are no guidelines or limitations on the right of organizations to raise funds, especially foreign funding. By law no organization can affiliate with any foreign organization without the express permission of the government, the assumption has been that this rule could expand to cover funding.<sup>114</sup> Thus, violation of this law carried a penalty of up to three months imprisonment and US\$70 fine.

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<sup>112</sup> Freedom House described the law as being "a highly restrictive statute even in comparison to other stifling Middle Eastern NGO laws." FREEDOM HOUSE, COUNTRIES AT THE CROSSROADS GOVERNANCE BLOG (July 2008).

<sup>113</sup> HUMAN RIGHTS WATCH, WORLD REPORT: JORDAN: EVENTS OF 2007, 496, (2008), available at [http://hrw.org/wr2k8/pdfs/wr2k8\\_web.pdf](http://hrw.org/wr2k8/pdfs/wr2k8_web.pdf)

<sup>114</sup> See source cited *supra* note 110 at 6.

Driven by its fear from the growing influence of foreign radical Islamists, in addition to deteriorating domestic economic conditions, the government took a number of steps to tighten its financial control over charitable organizations. The new Societies Law,<sup>115</sup> which came into force in December 2008, aims to: offset the growing influence of the Islamic movement on mainstream society by restricting the scale of their charity operations, and cutoff the dependence of some charitable organizations on outside funding.

The legislation works to improve the system of financial disclosure and transparency through rendering all financial aspects of a society visible and subject to the surveillance of the state. Therefore, the law bans all licensed organizations from receiving foreign aid, except with the permission of the government.<sup>116</sup> In case an organization violates this prohibition, the government may decide to return, take possession of funds, in addition to imposing other penalties prescribed by law. Hence, foreign organizations that are authorized under same licensing procedures face an added prohibition from soliciting charitable contributions or receiving funds from *local* sources without the express permission of the government.<sup>117</sup>

By and large, if an organization fails to disclose its financial sources, allocations and expenditures<sup>118</sup> or committed infractions to the law or its bylaw, the government, at its discretion, issues a notice of violation, if the violation persists, it has the power to appoint a temporary board of directors to run the organization until a new board of directors is

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<sup>115</sup> The Societies Law no. 51 of 2008, published in the Official Gazette of the Hashemite Kingdom of Jordan, vol. 4928, September 16, 2008.

<sup>116</sup> Article 17(b)(1).

<sup>117</sup> Article 9(c).

<sup>118</sup> Article 17(1).

elected.<sup>119</sup> Moreover, the government has the power to dissolve the organization if it commits the violation for a second time and does not correct it within a two-month period. Like the previous legislation, it imposes penalties on those who violate its provisions; however, in the new legislation offences are expanded and penalties increased. Article 26(b) and (c) imposes a fine up to US\$7000 on the person who was responsible for failure to disclose or report received funds from local sources. A fine up to US\$14000 fine or a minimum three months in prison, or both penalties are imposed in case the received funds were foreign.

Some organizations in Jordan are registered as non-profit corporations, which have given them leeway to operate under a less restrictive law on Companies.<sup>120</sup> Notably, such non-profit organizations have had the power to determine in the articles of association their sources of funding, including receiving foreign aid. Under the new law, this option is no longer available since all such organizations are required to conform to the new legislation within one year from the date the law has gone into force,<sup>121</sup> or else it would be subject to dissolution.<sup>122</sup>

To date, the legislation has faced immense criticism. The state is under pressure to review the law not only from Islamists who described the law as being “martial” and intended for undermining the role of Islamic charity in the country, but also by Western charities; mainly

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<sup>119</sup> Article 19(a) and (b).

<sup>120</sup> Article 7(d) of the Companies Law no. 22 of 1997.

<sup>121</sup> Article 28 of Law no. 51 of 2008.

<sup>122</sup> Article 20(a)(2).

Christian groups<sup>123</sup> who now require official approval, and their finances<sup>124</sup> and transactions are subject to government scrutiny.

ii) *Alternative forms of collective action*

Another aspect of Jordan's management of social control addresses other collective action alternatives that operate outside the structure of formal organizations. The state attempts to repress unregistered groups activism within different socio-demographic niches of society, in addition to collective action that falls outside the regulative capacity of formal organizations. The state has therefore taken measures to limit the occurrence of such activities and reduce the effect of those that are permitted.

The state is mainly concerned with demonstrations or public gatherings of a political nature; not including meetings permitted through political parties. To avoid undesirable potential outcomes of demonstrations such as charging silent voices with radical opposition to government's policies, or dissipating into unpredictable forms of violent protests following a

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<sup>123</sup> Some ranking officials believe that this inclusion of western Christian groups is part of the state's counterterrorism policy. In recent years, United States Evangelicals (e.g. Jordan Evangelical Theological Seminary ["JETS"]), Free Evangelical Church registered in Jordan as Societies) have grown popular and powerful in the country through a network of social services they provide to impoverished communities, including Muslim circles. The organizational success of such societies has raised concerns: a) the state fears that the high profile of such groups might turn them in future targets for al-Qaeda-inspired terror groups. b) The number of people affiliated with the Free Evangelical Church is about 8,000 (12,000 estimated number of evangelicals, out of 150,000 estimated total of Christians in Jordan). There are about 1,800 people who attend at least one service a week of the Evangelical Free Church. The Evangelical Free church has ten branches, and is licensed to purchase land and construct church buildings. The Council of Church leaders in Jordan, which is an unofficial body that represents the different Christian denominations in Jordan, has expressed their dismay vis-à-vis their constituencies converting to Evangelicalism. The government is concerned that if it continue to support the operations of such churches in the kingdom that would eventually lead to domestic instability. Both local churches and the Islamic movement seem to share a common "enemy," and would work together to achieve a political aim i.e. expel foreign elements through resolving to violence or facilitating it. U.S. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT (2008), available at: <http://www.state.gov/g/drl/rls/irf/2008/108485.htm>.

<sup>124</sup> Some of these western charities depend on foreign aid as their only source of income. The move could virtually lead to the closure of several of such organizations.

Friday sermon or an approved meeting, the state requires that such forms of social interaction be performed through spaces that are within the reach of state's administrative practices. This state policy is based on the Law of Public Meetings of 1953, which is a regulative holdover from martial era. The law stipulated that individuals must obtain permission to hold a public meeting defined as "*any meeting called to discuss political matters.*"<sup>125</sup> In 2004, part of the government's promised political reforms to shore up its popularity in the face of domestic discontent and defuse international criticism; the government issued a new law<sup>126</sup> that introduced a different language while keeping the legal mechanisms and authoritarian practices intact.<sup>127</sup>

However, the 2005 terrorist bombings in Amman and Islamists electoral success in Palestinian and Egyptian legislative elections in 2005 and 2006 have contributed to the growing anxiety of the state vis-à-vis radicalization within Islamists ranks who would utilize such impromptu demonstrations to disseminate a radical religious ideology. Not only do such events jeopardize the state's stability and control, but also their visibility often creates momentum and energizes a radical base of supporters. Despite the rhetoric of democracy, the state reasserted its social control and repression through introducing in 2008 an amendment to the law of Public Meetings<sup>128</sup> in which it redefines "*public meetings*" in a manner that limits dissent, opposition and any informal form of activism against *state public policies*.

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<sup>125</sup> Article 2 of Law no. 60 of 1953.

<sup>126</sup> The Law of Public Meetings no. 7 of 2004.

<sup>127</sup> Article 2 of law no. 7 of 2004 defined a public meeting by "*A meeting held to discuss a general matter.*"

<sup>128</sup> Law no. 40 of 2008, amending the Law of Public meetings no. 7 of 2004.

Wrapped in the sanctity of furthering public freedoms,<sup>129</sup> the new legislation kept the basic limitation on demonstrations; organizers must obtain the permission from the district governor after submitting an application that includes detailed information about the time, place, and purpose of the demonstration, in addition to the names, addresses and signatures of the organizers.<sup>130</sup> It also provided for the same penalties to be imposed on those who violate its provisions. However, the legislation contained two substantial amendments to the original text. First, amended article 7 is riddled with vague language that is subject to broader interpretation and implementation. The article grants the district governor discretionary power to end a demonstration if it evolves into what might *endanger* the lives or public or private property or *threatens public order*. In the original text, such discretionary authority was restricted to the conditions of the given permit. As for the second amendment, article 9 extends the authority given to law enforcement officers to end a demonstration or bring back order and security, to include intelligence services. It is worth to note that intelligence forces have had a continued, ongoing heavy presence, and have infiltrated and closely monitored public gatherings in the past, yet it was a *de facto* power that was never articulated in legislation. This new language is certainly associated with Jordan's counter-ideological response to terror threat; sending a deterrent rather than an operational message to radical Islamists' sympathizers.

The propensity to control alternative forms of collective action could include any form of mobilization that is not necessarily radical in nature, thus be used toward the suppression of

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<sup>129</sup> Article 3(a) excluded a number of formal meetings from the scope of application of the law. Hence, the excluded meetings are all well-regulated under special laws e.g. Societies Law no. 51 of 2008, Political Parties Law no. 19 of 2007.

<sup>130</sup> Article 4 of law no. 7 of 2004, as amended 2008.



political opposition. For instance, in spite of low internet penetration rate,<sup>131</sup> the Islamic movement in Jordan is using websites and individualized online platforms such as blogs, as an alternative form of activism to adapt to the increasingly restrictive legal measures that are being justified under the pretext of terrorism.<sup>132</sup> Thus far, the state has not taken any specific measure to raise the level of visibility of activists in the Jordanian blogosphere, but interpreted that existing restrictive measures apply to online activism.<sup>133</sup> Given that the global source of threat comes from a relatively small group of radical Islamists, who rely heavily on information technology to reach millions of people, disseminate ideological themes, and recruit new supports;<sup>134</sup> under these developments the state may desire to maintain its hegemony over online media activism. Thus, to maintain constant surveillance, the state may develop administrative apparatus and regulation against a counter-public sphere of discourse that has the potential to penetrate and radicalize mainstream.<sup>135</sup>

### C. Conclusion

In the aftermath of 9/11, criminal law reform in Jordan was part of the worldwide expansion of criminal laws facilitated by UNSC Resolution 1373 that was enacted under mandatory Chapter VII of the UN Charter. The introduced criminal law amendments were largely offered as a symbolic response to 9/11, it was built on the assumption of inadequacy of criminal law without

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<sup>131</sup> 14.8 percent in 2007 and 18.2 percent in 2008. See, INTERNET WORD STATS, JORDAN: INTERNET USAGE AND MARKETING REPORT (2008), available at: <http://www.internetworldstats.com/me/jo.htm>

<sup>132</sup> Pete Ajemian, *The Islamist opposition online in Egypt and Jordan*, Arab, Media and Society, (2008).

<sup>133</sup> In January 2006, the government issued national security charges against one of the IAF's leaders, Jamil Abu Bakr, for "harming the dignity of the state." Abu Bakr, the editor of the party's website, posted an article in December 2004 on the website of the Islamic Action Front. The articles, which criticized favoritism in the appointment of senior government officials, were written by two IAF parliamentarians. See, HUMAN RIGHTS WATCH, JORDAN: EDITOR PROSECUTED FOR POSTING ARTICLES BY MPS, 1,2 (2006).

<sup>134</sup> WILLIAM ROSENAU, WAGING THE "WAR OF IDEAS," 1136 (Rand National Security Research Division 2006).

<sup>135</sup> J. Downey and N. Fenton, New media, *Counter Publicity and the Public Sphere*, 5 New Media & Society, 185-202 (2003).

fully understanding the dimensions of deterrence. Probably with the exception of the new laws against the financing of terrorism, the state had a whole range of extraordinary measures available if not morally, then practically to counter terrorism.

Jordan also took advantage of the political circumstances to extend the scope of its measures of legal control while cooperating with the United States and its western allies in the “war on terror.” It was clear not too long before the events of September 11, 2001 that the government did not intend to move toward further political and social reforms. The regime’s vision of a new Jordan defined by its modern, pro-Western political, economic and cultural agenda was at odds with the exigencies of national security and stability, domestically and regionally. Opposition from all political trends, including Islamists, made it clear that public opinion has arrived at an unprecedented state of agreement on opposing state’s policies that are fundamentally political in nature, along with economic and social aspects that cannot be ignored. However, in the immediate aftermath of 9/11, the Islamic movement *per se* was dealt with in no separate trajectory than that of mainstream political opposition. It was in 2004 that the state’s anxiety vis-à-vis radicalization within its own Islamic movement’s ranks started to reflect on its terrorism policy.

In 2005, following the terrorist bombings in Amman, the state announced its new counter-ideological approach that is primarily focused on the Islamist movement opposition, its foreign allegiance, and essentially, its role in mobilizing a radical political opposition. The counter-ideological approach had three arms: a) special terrorism legislation that establishes the concept of collective responsibility and punishment as a deterring element to prevent new recruits; b)

controlling the minutiae of religious activity in the kingdom through regulating Islamic space and rituals. The regime attempts to produce a depoliticized and non-radical interpretation of Islam, at the same time mobilize religious institutions to promote its interests; c) management of collective action through controlling social platforms and possible alternative forms that expose mainstream Islamists to those who may offer them alternative ideologies and alternative courses of action, even terrorism. Evidently, the legal provisions of this counter-ideological approach provided a legal and regulative rather than punitive framework, heretofore, had minimal deterrent value in terms of imposed penalties.

Such an approach inevitably raises questions of civil liberties, since it could be directed at those who may share with radical Islamists political goals, though not their means, but because they do not operate secretly are easier targets for the state. Although, the state has been relatively restrained in its use of these restrictive powers, the provision's can be implemented at any moment given the extreme circumstances in the region. Jordanian officials often argue that any restrictive measures are actually quite moderate, when compared to most other states in the region. Hence, some conservative voices from the liberal West seem to justify the use of such measures by authoritarian but useful regimes, saying that these measures are certainly no harsher than many of other widely used coercive tools in the global campaign against radical Islamists terrorism.

Demonstrating the Jordanian counter-ideological approach was an attempt to find out whether such legal measures would lead to greater radicalization, perhaps terrorism against its own society, as well as foreign targets, or whether it would translate to political disengagement or

disaffection. In theory, to answer this question we must differentiate between two possible audiences; radical Islamists who utilize instrumental political causes within social and religious space to mobilize new recruits, and Islamic opposition who represent legitimate dissent. In terms of radical Islamists, such group depends primarily on informal networks that operate outside state controlled organizational space to connect like-minded Islamists to one another as they promote their radical message of religious change. The reliance on face-to-face interactions through informal networks is most likely the reason why such groups tend to mobilize through religious and social activities within civil society. To a certain extent, the state's restrictive body of legislation tends to constrain their reach, reduce the message and mobilizing effect on main stream Islamists; however, radicals will always seek alternative informal structures to transmit its message of change.

As for legitimate political dissent, which happens to take an Islamic discourse, the state's restrictive measures may ultimately serve to alienate the moderates who currently make up the overwhelming majority of its activists and drive them toward radicalism, thus empowering the radical Islamists. However, this renders relative moderation more of a political challenge than radical Islamist forms of political mobilization itself.

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