

**COMBATING A RELIGIOUS RADICAL IDEOLOGY V. SUPPRESSING ISLAMIC OPPOSITION:
JORDAN'S APPROACH TO COUNTERTERRORISM**

A PROPOSAL FOR A NEW ANALYTICAL FRAMEWORK

by

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ABSTRACT

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This study is an appraisal of Jordan's counterterrorism policies and measures targeting Islamic extremism. The 9/11 Commission Report concluded that the present threat around the world is the spread of a radical ideological movement in the Islamic world. The Jordanian legal response to fight the threat of terrorism presents a particularly significant case study. Jordan claims to be a moderate Islamic country and a successful democracy wherein Islamic opposition is the largest and most influential. Under the veneer of democracy, the state applies an array of legal mechanisms and practices to limit dissent and associational activities.

My empirical research addresses the issue of continued radicalization and potential terrorist recruitment. I claim that the legal strategies Jordan has adopted post 9/11 to fight the ideology that supports violent extremism are more likely to increase radicalization among the Islamic opposition. I argue that certain policy choices by the state are a core instance of the problems of balancing an effort to reduce radicalization, and a concern that by being heavy-handed and cutting off legitimate forms of dissent, one is likely to encourage radicalization. Radicalization, however, is difficult to measure since it is a concept that can hardly be quantified. Therefore, I analyze the impact of adopted legislation on radicalization through a historical lens. I look back in time to spot long-term trends and distill lessons learned. Studying Jordan's response to terrorism helps to point out important downsides in the current approach, determine how terrorism might evolve in the future, and offer new strategies.

In this analysis, I seek to show that the only way to strike the right balance in applying a restrictive policy to counter the radical ideology that supports extremism, without risking the empowerment of radical opposition, is to develop a multidimensional approach that focuses on ways to strengthen moderate forces within the legitimate Islamic opposition. This paper aims to extrapolate from the Jordanian case to the theoretical framework, thereby adding a new perspective to the ongoing debate over responding to the terrorist threat. There are two intended audiences. The first audience consists of scholars and policymakers in Jordan. My hope is to provide some perspective and start a discussion that encourages alternative legal solutions and strategies. The second audience consists of foreign scholars, whom this paper seeks to familiarize with the Jordanian case.

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*“...since the city must constantly be re-examining and revising its laws,
its Guardians would do well ...
to send out mature citizens to study especially good laws elsewhere.”*

Professor Mary Ann Glendon

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A PROPOSAL FOR A NEW ANALYTICAL FRAMEWORK

I. Introduction

In recent years Islam has been widely seen as the root cause of terrorism, and particularly suicide terrorism. Disparate religions have produced terrorist groups, and studies show that many terrorists have been atheists, so the notion that Islam and terrorism are inextricably linked is not true.¹ Terrorism is diverse and cannot be captured by a single model.²

Nevertheless, there has been a noticeable growth in the number of Islamist terrorist groups over the past few years.³ These groups, which remain a minority in the Islamic population, have committed irresponsible acts in the name of religion that have distorted the image of Islam, and have caused enormous fear and disruption. Numerous historical precedents for terrorism suggest that the current threat, like others before it, eventually will take its course. Terrorism experts, however, agree that the threat of terrorism guided by a radical Islamic ideology and leadership will remain the dominant source for the foreseeable future. The process of radicalization will certainly continue, and terrorist tactics will persist as a means of political expression.

¹ LOUISE RICHARDSON, *WHAT TERRORISTS WANT*, 61 (Random House 2006).

² Martha Crenshaw, *The Organization of Terrorism*, in *TERRORISM: WHAT'S COMING: THE MUTATING THREAT*, 20 (James O. Ellis III ed., Memorial Institute for the Prevention of Terrorism 2007).

³ In 2004, of forty terrorist groups listed by the U.S. Department of State to have some mixture of religious and political motives, thirty-seven are Islamist groups. See, OFFICE OF THE COORDINATOR OF COUNTERTERRORISM, UNITED STATES DEPARTMENT OF STATE, *PATTERNS OF GLOBAL TERRORISM 2003* (April 29, 2004).

Some of those who embrace radical ideology will be recruited to violence. Many others will influence how Muslim societies, including the Jordanian, behave internally and interact with others.

There is consensus in the ‘terrorism studies community’ that the current counterterrorist approach is exclusively focused on operational counterterrorism rather than the issue of continued radicalization and recruitment.⁴ Indeed, we usually pay attention to the capturing, killing and disrupting terrorist operations. But radicalization as a means of persuasion may ultimately have a greater long-term effect as it determines how long the religiously motivated terrorist threat would stay. The National Commission on Terrorist Attacks upon the United States [“9/11 Commission”] concluded in its final report,⁵ 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.

An effective counterterrorist response is required in order to cut off the supply of recruits to this radical ideological movement, and prevent it from metastasizing into new social pockets. A comprehensive strategy is needed, one that not only reduces the operational capabilities of extremist groups, but also addresses their political

⁴ 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).

⁵ NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, *THE 9/11 COMMISSION REPORT*, 363 (U.S. Government Printing Office 2004).

capabilities, what Martha Crenshaw terms “*de-legitimation*,” that is, policies and practices designed to decrease the legitimacy of the terrorists, and thereby undermine their political support.⁶

The past experience of the United States and its Western allies in waging successful campaigns against ideologies such as fascism and communism is currently seen as inadequate to reach Muslim audiences and counter al-Qaeda or the radical ideological movement it represents.⁷ Since 9/11, particularly after the war on Iraq started, it has been the general perception among the vast majority of Muslim countries and societies⁸ that the United States and its Western allies are locked in a “war on Islam.”⁹ And many Muslim governments that are key allies of the United States are by proxy accused of enacting legislation and policy that is at heart anti-Islamic. As opposed to the military approach taken by the Western countries in

⁶ Martha Crenshaw, Remarks at the American Political Science Association: How Terrorism Ends (1987).

⁷ WILLIAM ROSENAU, WAGING THE “WAR OF IDEAS,” 1136 (Rand National Security Research Division 2006).

⁸ A May 2004 Pew survey showed that 53 percent of Jordanians 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>

⁹ According to a survey conducted 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/>

response to 9/11, Muslim nations need to plan and implement a more subtle counter-ideological approach to terrorism in their own countries.

It is important to note, however, 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. Counterterrorism law and policy may frequently be shaped at international and regional levels, but it also often has particular domestic uses. In Jordan, as discussed below, post-9/11 developments in antiterrorism legislation and policy can only be fully understood in the context of past historical concerns and current geopolitical realities.

Today, many may see that issues of inequality, poverty, and controversial foreign policies lie behind or contribute to the radicalization of Jordan's religious political opposition, and to its possible resort to violence. Understanding local drivers of radicalization that terrorists latch on to lead large numbers of people to adopt al-Qaeda ideology is vital. Sometimes the reality on the ground makes it difficult for the state to make concrete changes in certain public policy aspects or compromise strategic alliances even though pursuing such policies may jeopardize its national security. This paper, however, strives to stay focused on the impact of the legal strategies Jordan has adopted on radicalization, in particular, on shrinking the pool of recruits among its religious opposition. Although it is difficult to come up with a single cause of terrorism, but my study suggests that the causes of terrorism are found

in conditions that combine a disaffected group, and an enabling legal environment for continued radicalization and recruitment activities.

Here, I offer a new perspective with respect to the state's reliance on law and legal procedures to reduce the coercive and political capabilities of religious extremists. I declare that the state's repressive policy against its religious opposition is a crucial element of its legal strategies and antiterrorism practices to combat radicalization. Such legal strategies and practices, however, run the risk of being directed at those who may share the terrorists' political goals, though not their means. But because legitimate dissenters do not operate underground they are easier targets for the state to intimidate and coerce. Hence, I suggest a different approach in applying the legal strategies to containing the threat of terrorism and extremism, one that relies on depriving terrorists of new recruits. I realize that readers differ in principles. Some may be curious about my own moral position in this regard no matter how effectively I argue my claim. Jessica Stern in her book *Terror in the name of God* pointed out that in scholarship there is always a difference between empathy and sympathy, and that this is not always clear to readers.¹⁰ To empathize is to "understand" without necessarily "agreeing" or "having a favorable attitude" of the entity under study.¹¹ Understanding, however, is necessary to offer practical solutions.

¹⁰ JESSICA STERN, *TERROR IN THE NAME OF GOD*, xvi (Harper Collins 2003).

¹¹ *Id.*

In this analysis, I claim that the legal strategies Jordan has adopted post 9/11 to fight the ideology that supports violent extremism are more likely to increase radicalization among the Islamic opposition. I argue that certain policy choices by the state are a core instance of the problems of balancing an effort to reduce radicalization, and a concern that by being heavy-handed and cutting off legitimate forms of dissent, one is likely to encourage radicalization.

This paper consists of four parts. In the introduction (Part I), I state my thesis and argument, and introduce subsequent parts. In Part II, I describe who the Islamic movement in Jordan is, and explain the source of the state's anxiety towards its growth. I propose the centrality of Islamic activism in the evolution of Jordan's approach to counter terrorism and extremism. I examine some factors that suggest that the Islamic movement in Jordan provides the platform for both radical groups and political opposition to join forces.

In Part III of the paper I provide an analysis of the evolution of Jordan's counterterrorism response. The timeframe of the discussion is divided into three periods: 1) pre-September 11, 2001; 2) post-September 11, 2001 and pre-November 9, 2005; and 3) post-November 9, 2005. This division is helpful in terms of showing where Jordan started, and how events of the last four decades have affected its response options. In my view, describing the historical evolution in the pre-September 11, 2001 is necessary to understand why Jordan re-framed

counterterrorism law as a type of legal intervention designed to extend the scope of political repression. Studying Jordan's legal response to terrorism and extremism helps to point out important downsides in the current approach, determine how terrorism might evolve in the future, and offer new strategies. In this section, I present a critique of the theoretical assumptions underlying criminal law reforms, and an account of the potential impact of the new legal measures and practices on radicalization. In the section about the newest administrative measures adopted for the regulation of civil society and religious space, I discuss the importance of achieving a balance between combating a religious radical ideology that uses instrumental political goals to attract recruits, and marginalizing legitimate religious dissent without turning it into a radical opposition movement that would stimulate religious indoctrination.

Radicalization, however, is difficult to measure since it is a concept that can hardly be quantified. This makes analyzing the impact of new legislation on radicalization difficult to assess, particularly in cases wherein it is too early to tell the outcome of the application. Therefore, I rely on past evidence found in archives, newspaper, journals and state documents to support my argument. History is instructive. I look back in time to spot long-term trends and distill lessons learned. Most importantly, that the state's utilization of criminal coercive measures, and civil administrative or regulatory practices to counter terrorism has in certain cases driven some radical leaders to consider alternative forms of mobilization, driving opposition

further underground, where they are harder to monitor and less likely to be subjected to moderate influences.

Jordan should consider reviewing its legal strategies and act in a manner that would preempt the negative outcome of bad policies. In the final part (Part IV), I conclude that responding with blanket repression of an entire suspect group is a bad policy to pursue. Jordan should refrain from exercising legal repression, where repressive policies are more likely to increase radicalization. If Jordan wants to succeed in fighting extremism, it should draw a line between the radical minority and the moderate mainstream majority, and focus on ways to strengthen moderate forces within the Islamic opposition.

II. Terrorism and the Islamic movement in Jordan: How real is the threat?

Radical extremists gain strength by either escalating violence or mobilizing more people to become a bigger movement. As the opening paragraph of this paper indicates, religious extremism is not synonymous with Islam, but it is hard to separate the two as they share similar ideological pillars, and this enables radicals to attract uncommitted or sympathetic audience, confuse religious opponents, and constrain counterterrorism efforts, which they interpret and exploit as an assault on Islam.

The legal and regulatory framework of Jordan's approach to counterterrorism seems to target first and foremost Islamic activism. Various Islamic groups and

individuals have contributed to the growth of the Islamic movement in Jordan. However, it was the Muslim Brotherhood that has institutionalized the movement through the formation of a myriad of legal organizations. For the purpose of this study, the term “Islamic movement” will be used interchangeably with the Muslim Brotherhood without regard for subtle differences. It refers to the Muslim Brotherhood as an active legitimate movement, including its political and social arms. Throughout the analysis below, I will be using the term “politically radicalized” to represent the radical wing of the movement, who are or could be someday linked with extremism and terrorism. I will also be using the term “radical minority” in reference to leaders of the radical wing, who use religious connotations to make sense of violence and legitimize its use, thus provide the social setting that could motivate the most introverted and independent individuals to engage in violence. The mainstream majority, which essentially represents the silent majority, includes moderates, independents, and sympathetic or uncommitted audience.

Moreover, this section provides the background facts that the rest of the discussion draws upon. The reason I gave this section a place of prominence is to prevent the reader from making the wrong assumption that associates the Islamic movement in Jordan with the ‘terrorist.’ I point out the fact that the Muslim Brotherhood is a legitimate grassroots movement that builds its strength through the support of its constituency. It is not a terror organization, and, to date, there has been no evidence that links its members to domestic terrorist incidents or to terror groups

responsible for such incidents. Having said that, however, does not dismiss the potential threat of the movement as a hotbed for radicalization and a recruitment base for terrorists.

Hence, in this part I attempt to assess whether the state had enough reason to view its Islamic movement through the prism of extremism. I address two main reasons behind Jordan's nervousness at the growing strength of its Islamic movement. I might not agree with certain state policies and practices to contain the threat, but, in my view, it is realistic for the state to consider the Muslim Brotherhood more of a security threat than a political challenge. Jordan would make a terrible mistake if it ignores the potential threat of the Islamic movement. Ignorance is a wrong policy to pursue and would ultimately serve to strengthen the radical minority in the movement.

A. The growth of the Islamic movement: Background Brief

The origins of the Muslim Brotherhood can be traced to 1946.¹² Like its parent organization in Egypt, the Jordanian Muslim Brotherhood started with a general social, charitable and educational focus. Over the years, it built a broad constituency of community support through the creation of schools, healthcare facilities, cultural centers and plethora of charitable societies. It gained substantial grassroots support in poorer communities. Most of these activities operate through the Islamic Center

¹² QUINTAN WIKTOROWICZ, *THE MANAGEMENT OF ISLAMIC ACTIVISM: SALAFIS, THE MUSLIM BROTHERHOOD, AND STATE POWER IN JORDAN* 96 (State University of New York Press 2001).

Society [“ICS”], which serves as the charitable arm of the Muslim Brotherhood. In principle, the Muslim Brotherhood’s activities were not part of an insidious political scheme to destabilize the kingdom. It was more of an attempt to promote a moderate religious message through its grassroots community organizations.¹³ Its members often called for the implementation of Islamic law, and condemned cultural practices deemed non-Islamic. Neither, however, was regarded as posing significant security challenge to the state.

Nonetheless, the Muslim Brotherhood gradually expanded its reach into the political field with a heavy interest in the Palestinian conflict with Israel.¹⁴ In 1992, the Muslim Brotherhood took advantage of some political liberalization measures and formed its political party, the Islamic Action Front [“IAF”]. The formation of the IAF moved the Muslim Brotherhood to another operational level. It provided a credible body to pursue the Muslim Brotherhood’s political agenda, and broadened its reach since it also appealed to independents.¹⁵ Currently, the IAF is the largest political party in the country,¹⁶ and may be the most democratic in terms of internal operations. It has utilized a set of democratic structures.¹⁷ Party leaders are elected by

¹³ *Id.* at 109.

¹⁴ NATHAN BROWN, *JORDAN AND ITS ISLAMIC MOVEMENT: THE LIMITS OF INCLUSION?* 5 (Carnegie Endowment 2006).

¹⁵ *Id.* at 6

¹⁶ Most of the other 30 registered political parties have no more than several hundred members, lack clear agendas, and grassroots support. INTERNATIONAL CRISIS GROUP, *THE CHALLENGE OF POLITICAL REFORM: JORDANIAN DEMOCRATIZATION AND REGIONAL INSTABILITY*, 19, (2003). *See also*, MARWAN MUASHER, *THE ARAB CENTER: THE PROMISE OF MODERATION*, 249, (Yale University Press 2008).

¹⁷ Islamic Action Front Basic Law, 7th Edition, 8/1/2002, available at: <http://jabha.net/body7.asp?field=jbh%20&id=1>

the membership every four years, and there is regular turnover in top positions.¹⁸ It also selects its candidates in a process that begins with local offices holding primaries before forwarding names to party leadership, and it polls its members for guidance on contentious decisions.¹⁹ Such democratic practices enjoy high levels of public trust and popularity amongst the Muslim majority population.²⁰ A 2005 Pew Global survey²¹ found that 97 percent of Jordanians favored a growing role of Islam in politics, which could be attributed *inter alia* to the liberal democratic values that the IAF seemed to provide. This figure, however, is indicative of a notable rise in religiosity in the country and an increase in the Muslim Brotherhood's cultural and political power.

The party's ideological orientation has embraced participation in the political environment despite an electoral system designed to allow the IAF to participate only as a minority bloc.²² In general, the IAF presents itself as the "nation's conscience,"²³

¹⁸ *Id.* §3

¹⁹ *Id.* §4

²⁰ Sunni Muslim 92%, Christian 6% (majority Greek Orthodox, but some Greek and Roman Catholics, Syrian Orthodox, Coptic Orthodox, Armenian Orthodox, and Protestant denominations), other 2% (several small Shia Muslim and Druze populations).

²¹ Islamic Extremism, *supra* note 8.

²² The electoral system in Jordan is engineered in a manner that gives disproportionate representation to urban centers on electoral lists with the largest concentration of Islamists, and prescribes a system that favors tribal candidates and undermines large parties. The Election Law adopts the "one person, one vote" principle in which voters cast one vote for one candidate, even when an electoral district is allocated more than one seat. Since voters select a single candidate; many opt for familiar candidates or tribal names. Before the introduction of the "one person, one vote" principle in 1993, a multi-voting system in which voters were given as many votes as the number of seats in their respective voting district was the rule. This arrangement allowed Islamists in the 1989 elections to win an unprecedented number of seats in the parliament (28 percent). In order to preempt a similar success for the Islamists in the future, in particular after the Muslim Brotherhood established its political party in 1992, the government introduced the new "one person, one vote" system, which managed to undermine opposition in the 1993 elections, and again in 2003. [Election Law no. 22 of 1986 (Jordan) as amended

raising a broad range of issues. Its electoral platforms have often criticized state policies, placing great emphasis on political and electoral reforms.²⁴ In recent years, the United States war on terrorism and its invasion and occupation of Iraq have dominated the IAF's opposition agenda and deeply colored its relationship with the liberal, pro-Western regime. Both have come to regard each other as a rival to be treated with suspicion. In 2003, however, the radical minority saw in the American "democracy promotion" agenda an opportunity to put pressure on the state to undertake political reforms that would expand freedoms and popular participation.²⁵ As a result, the IAF toned down its criticism of the United States, and hostility to the Western world in general, so as to allow channels of communication to be opened.²⁶ However, U.S. reactions to Hamas' victory and the war in Lebanon in 2006 were clear evidence to party leaders that the U.S. had abandoned its calls for free elections in the Arab world.²⁷ Although the IAF continued to publicly reject terrorism; however, many of its religious slogans echo the radical ideology that validates violent extremism.

in 1989, 1993 and 1997, Election Law no. 34 of 2001 (Jordan) as amended in 2002, and 2003, Regulation no. 42 of 2001 (Jordan) for dividing electoral districts and allocating its parliamentary seats].

²³ Brown, *supra* note 14 at 14.

²⁴ Islamic Action Front's 2003 electoral platform: Domestic Affairs, <http://www.jabha.net> (last visited Dec. 24, 2008).

²⁵ AMR HAMZAWY, ISLAMIST MOVEMENTS IN THE ARAB WORLD AND THE 2006 LEBANON WAR, 15 (Carnegie Endowment 2006).

²⁶ *Id.* at 8.

²⁷ Ellen Knickmeyer, *Jordan Vote Reflects Islamic Parties' Slide*, THE WASHINGTON POST, November 27, 2007.

B. Source of the state's anxiety towards the Islamic movement

To the state, the major threat stems from what the party might actually do if it gained power or became estranged from the regime. Recent regional events, mainly Hamas' victory in the 2006 Palestinian legislative elections, suggested that if such an opportunity arises, it may be seized by leading radicals amongst the party. For example, immediately after Hamas won the 2006 elections, Azzam Al-Hneidi, head of the IAF bloc in parliament, surprised the state by going beyond the claim that under a fair law "Islamists in Jordan would obtain a majority" to assert that they "are prepared to assume control over the executive branch to realize the hopes of the people."²⁸ The state worries that radicals, once empowered, may succeed in promoting the gradual evolution of the society in a radical direction inclined toward violence. This is because radical leaders are more likely to adopt a political agenda that makes sense of violence and legitimizes its use against Western and pro-Western targets. A radical leadership would provide the social setting that terrorists would exploit to expand their recruitment activities. This is something that would jeopardize Jordan's national security, with the possibility of transforming it to a stage for retaliations and targeted assassinations of individuals who are seen as 'enemies.' In addition, some government and security officials believe the IAF wants to replicate the Iranian experience; using democratic means to take over the government and then denying competing minority and political groups the same right after they achieve

²⁸ Islamists of Jordan: Prepared to Assume Authority, ISLAM ONLINE, January 29, 2006. <http://www.islamonline.net/English/>

their objective. To be sure, there are two main reasons behind the state's anxiety towards the growing power of the Islamic movement.

1. Close identification with Hamas and the risk of the movement's breakdown

A major complicating factor in the relationship between the state and the IAF is linked to the latter's close identification with Hamas. The IAF has consistently regarded the Palestinian question as central, dedicating large portions of its electoral programs to clarifying its position. All leading members of the IAF share a basic position: support for the Palestinian cause, and opposition to the Jordanian-Israeli peace treaty and normalization with Israel.²⁹ However, this unity is divided by fundamental disputes over links with Hamas. The IAF and the Muslim Brotherhood in general have an increasingly influential "Hamas" trend which is seen to be more radical and less committed to the Jordanian state.³⁰ A large portion of IAF's leaders and supporters often refer to themselves as "hawks" or "Hamas wing." With this close identification with Hamas, observers go further to describe the IAF as a "surrogate" for the Palestinian political movement in Jordan.³¹ In fact, some influential leaders in the movement who also serve on the administrative board of

²⁹ IAF's 2003 Electoral Platform - under "International Affairs" - contained fiery language against normalization with Israel, available at: <http://jabha.net/body7.asp?field=jbh%20&id=2> (last visited Dec. 24, 2008).

³⁰ Marc Lynch, Jordan and the Iraq War, Remarks at the Conference cosponsored by the Brandeis Crown Center and the MIT Center for International Studies (October 27, 2006).

³¹ Brown, *supra* note 14 at 14.

Hamas have repeatedly called for a systematic coordination mechanism between the two parties.³²

The ‘ticking time bomb’ of the radical element inculcated in its membership threatens dangerous consequences. Some IAF leaders wish to develop a more broad-based agenda and a number of native Jordanians, or the so-called “Dove wing,” support this tendency.³³ Several “dovish” members have left the party precisely because they felt that the party had not gone far enough to resolve ambiguities in its positions on various issues, in particular being too supportive of Hamas.³⁴ Nevertheless, this wing does not enjoy a solid support among the party’s constituency who are largely of Palestinian origin. In the 2007 parliamentary elections, the IAF entered the elections with a list of candidates that included no known members of the “Hamas wing.” The elections, however, resulted in what observers considered an unprecedented defeat for the IAF.³⁵ It won 6 seats in the 110-member Lower House out of the 22 seats it contested,³⁶ down from 17 seats it won in the 2003 elections. According to media reports, IAF’s candidates list came out after an agreement

³² Khulood Katatbeh, *Muslim Brotherhood Consultative Council explores dual coordination with Hamas*, ALRAI NEWSPAPER, August 13, 2009, available at: http://alrai.com/index.php?archive_date=2009-8-13

³³ Brown, *supra* note 14 at 14.

³⁴ A small group formed a new political party the *Hizb Al Wasat* [Central Party], which presents itself as a more moderate and less oppositional Islamic party.

³⁵ The number of Islamist deputies in the 15th Parliament will be the lowest representation for the Islamist movement since parliamentary life was revived nearly two decades ago. *See*, Mohammed bin Hussein, *Islamists dealt heavy blow in elections*, JORDAN TIMES NEWSPAPER, November 22, 2007, available at: <http://www.jordantimes.com/index.php?news=3817>

³⁶ IAF’s candidates received 96 thousand votes compared to 166 thousand votes in 2003 elections. *See*, Editorial, *Implications of dissolving the Jordanian Muslim Brotherhood’s Consultative Council*, ALRAI NEWSPAPER, December 2007, available at: http://www.alrai.com/pages.php?news_id=184860

between the government and leaders of the IAF's "dovish" faction to keep "extremists" off their list.³⁷ Apparently, this discouraged many voters, mainly the Palestine base of supporters, from turning out at the polls.³⁸ The state often has difficulty resisting the temptation to prey on divisions within the party since the alternative to an umbrella legitimate opposition could be the formation of a radical group that would operate outside the bounds of law. In the current political scene, there is an inescapable risk of future alliances with other regional religious radical groups and terrorist organizations who would seek to exploit the discord between radicals and the state.³⁹ Jordan's fear of a growing Iranian influence is no secret.⁴⁰ King Abdullah II has openly spoken about the rising Iranian threat and warned against the spread of a militant radical ideology.⁴¹ After Hamas won Palestinian

³⁷ Sources refer to the meeting that took place at the Prime Minister's residence. Press Release, Bakhit meets with Islamic movement's leadership, Prime Ministry's archives, September 20, 2007, available at: http://www.pm.gov.jo/arabic/index.php?page_type=news&part=1&id=3571

³⁸ HASSAN BARARI, ELECTIONS IN JORDAN – POOR SHOWINGS FOR ISLAMISTS, 1 (Washington Institute for Near East Policy, December 2007).

³⁹ For further discussion on alliances between terror organizations, see, ELY KARMON, COALITIONS BETWEEN TERRORIST ORGANIZATION: REVOLUTIONARIES, NATIONALISTS AND ISLAMISTS (Martinus Nijhoff Publishers 2005).

⁴⁰ SCOTT LASENSKY, JORDAN AND IRAQ BETWEEN COOPERATION AND CRISIS, 13 (United States Institute of Peace 2006).

⁴¹ See, Interview published in the Spring 2005 issue of The Middle East Quarterly, at 75-76. In addition, a book written in 1993 by a member of the National Council of Resistance of Iran - a 500 member broad coalition representing democratic Iranian organizations, groups and personalities - states that the Iranian leadership during 1991 and 1992 was searching for a suitable replacement for Lebanon. The author wrote that Jordan's common borders with the occupied territories and Israel, Saudi Arabia, Iraq, and Syria, in addition to the presence of active Islamic fundamentalist elements and currents, make Jordan an ideal alternative. The book refers to a confidential report written by a high-ranking delegation that visited Jordan in 1991, delivered to Iran's leadership, read in part: "*After Lebanon, Jordan is an excellent theater of activity for us. Albeit a small country, its strategic location carries great significance. The press there is relatively free and the setting for activities is quite suitable...We must pay special attention to them, for people who were attracted to our viewpoints during the era of repression in Jordan are quite valuable to our cause. We must offer them direction and guidance to lead them to power. The ambassador who goes to Jordan, therefore, must be very capable and intimately involved in the Lebanese experience, so that we avoid making the same mistakes here as we did in Lebanon.*" See, MOHAMMAD MOHADDESSIN, ISLAMIC FUNDAMENTALISM:

parliamentary elections in January 2006, Iran leaders sought to exploit the refusal of Western powers to deal with Hamas to influence its policy making apparatus and develop its military wing into an external military arm of Iran, similar to Hezbollah.⁴² In light of the close identification between the IAF and Hamas, Iran would attempt to exploit the possible alienation of the IAF's radical wing to advance its regional agenda. Undoubtedly, this would pose a direct challenge to Jordan's political stability and domestic security.

2. Potential cross-religious political activism

Another major security concern stems from the IAF's ability to form coalitions with other political and minority groups who seem to be marginalized or lack popular support. The IAF has scored significant successes in reaching out to groups that currently have no political weight, such as leftist and Arab nationalist groups. It presents itself as an all-inclusive political party that transcends religious and ideological differences. In a recent tactical development that raised the state's nervousness about the growing strength of the party and, for that matter, the Muslim Brotherhood, the IAF has expanded its base to include Christian participation.⁴³

THE NEW GLOBAL THREAT, 11 (The National Council of Resistance of Iran 1993), <http://islamic-fundamentalism.info/index.htm>

⁴² "Hamas-Iran alliance—a blessing for the Palestinian people?," Al Bawaba Middle East News Information, November 15, 2006, available at: <http://www.albawaba.com/en/news/205939>

⁴³ *1st Christian board member of Jordanian Islamist party resigns days after taking post*, INTERNATIONAL HERALD TRIBUNE, February 25, 2007, available at: <http://www.iht.com/articles/ap/2007/02/25/africa/ME-GEN-Jordan-Islamists-Christians.php>

Although Christians constitute no greater than 4 percent of the population,⁴⁴ the election of a Christian, Aziz Musa'ida, in 2007 to a leadership position has reinforced some of the concerns regarding a “potential cross-religious political activism.”⁴⁵

In principle, there is a growing concern about the Islamic movement as a potential source for extremist recruitment and radicalization activity. Terrorism experts assert that identification with radical groups commonly lead to political awakening and subsequent radicalization.⁴⁶ Social welfare and charitable works become instrumental in recruiting supporters based on concepts of benevolence and selflessness.⁴⁷ The Islamic movement in Jordan is a religious social movement and has the largest and most viable opposition group that enjoys considerable popular support. In my view, the aforementioned sources of the state's anxiety towards the Islamic movement are sufficient enough to trigger the state's response to the threat. Although the politically radicalized and the mainstream majority movement have not been involved in terrorist incidents thus far, one cannot discount the influence of the radical minority who are or could someday be linked with extremism and political violence. The radicalization process is a very important component in religious extremism and terrorism. Undermining it is an understatement of the threat.

⁴⁴ Population of Jordan 6,342,948 (July 2009). CENTRAL INTELLIGENCE AGENCY, THE WORLD FACT BOOK, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/jo.html> (last visited Aug. 10, 2009).

⁴⁵ Marc Lynch, *Christian Leader of Islamic Action Front in Jordan?*, POMED BLOG, February 28, 2007, http://abuaardvark.typepad.com/abuaardvark/2007/02/jordans_christi.html

⁴⁶ Richardson, *supra* note 1 at 42.

⁴⁷ Stern, *supra* note 10 at 41.

III. Jordan's response to terrorism

A. Common denominator between different responses to terrorism: Coercion

Almost every country that in one way or another experienced terrorist incidents has adopted some measures in order to accommodate its legislation to the specific features of terrorists' objectives, strategies and methods. The considerable degree to which states have been able to respect the rule of law and legal guarantees of their constitutional systems is noteworthy. 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. Extralegal measures that include preventive detentions, coercive interrogations of alleged terror suspects, and military orders are no longer limited to authoritarian regimes. According to a group of scholars; with states of emergency and exceptions to rule of law becoming more common in established democracies, the distinction between democratic and authoritarian regimes starts to blur.⁴⁸ However, the distinction will remain apparent where an authoritarian regime uses its coercive capacity as a survival strategy and a tool of repression against political dissent.

⁴⁸ GLOBAL ANTI-TERRORISM LAW AND POLICY 9 (Victor V. Ramraj, Michael Hor & Kent Roach eds., 2005).

B. Coercion and political repression

In his book *Political Injustice*,⁴⁹ Anthony Pereira argues against what most studies assume: namely 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 rely on the law to bolster their rule all the time; in particular many of them resort to courts and legal procedures to wipe out their political opponents. As discussed in greater detail below, the historical account of Jordan's response to terrorism and violent opposition is consistent with Pereira's theory and provides evidence of how the longevity of an authoritarian regime rests on the selective application of the law in order to survive political threats brought by opposition movements. This explains why the Jordanian regime would consider abusing counterterrorist measures to repress political opposition.

C. The need for political repression as a survival strategy

A study by Hadenius and Teorell demonstrates that different types of authoritarian regimes have different likelihoods of breaking down and transforming into a democracy.⁵⁰ The study showed that traditional monarchies are the most stable and resilient to change. During the period of their investigation, 1972-2003, monarchies were found to have a life span of 25.4 years. Given the patterns of

⁴⁹ ANTHONY PEREIRA, *POLITICAL INJUSTICE* 5 (Pittsburgh Press 2005).

⁵⁰ 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).

change, monarchies most often change into either non-party (party-less elections), or multiparty systems within the monarchical framework. The study concludes that an authoritarian multiparty regime of the traditional kind is the typical stepping stone to democratization leading to the termination of the authoritarian regime. Jordan has had a monarchical regime for more than sixty years. It is a monarchy characterized by having a multiparty system wherein the Muslim Brotherhood's political party represents the main and only viable opposition party in the country.⁵¹ In conclusion, the Jordanian regime is threatened by democracy in much the same way by terrorism.

As shown below, a major component of Jordan's approach to counterterrorism is focused on marginalizing its political adversaries among the Islamic movement to prevent radical leaders from mobilizing through the dissemination of a radical ideology that supports violence as a means of political change. This approach, however, is considered by some scholars as an anti-democratic symptom of an endangered state that confuses political activists and legitimate dissent with extremists who use violence as a first resort to achieve political goals.⁵² To a large extent, this is true. After all we are discussing the case study of an authoritarian regime, which by definition lacks some democratic features. However, the focus of this paper is on whether the state is creating an enabling legal environment in which the politically radicalized would pursue radical agendas that are supportive of

⁵¹ Brown, *supra* note 14 at 3.

⁵² 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).

violence as a means of political expression, and where their supporters could be pushed to perpetrate violence in Jordan.

D. Discussion of Jordan's response

Jordan's counterterrorism response can be usefully divided in three parts: pre-September 11, 2001 (1968-2001), post-September 11, 2001 and pre-November 9, 2005, and post-November 9, 2005 (2005-2008). While each part focuses on a different aspect of Jordan's counterterrorism policy, they are essentially interconnected. These interconnections are apparent throughout the different parts of this paper. Some parts require that discussions set out in a later part be preempted, and some earlier parts be revisited. Going back and forth between what went before and after a specific period is, in some cases, necessary to provide evidence for the analysis.

Throughout the three periods in question, Jordan's approach has not drastically changed. These periods continue to share common characteristics; however, there exist some distinct differences that the following text aims to examine. Primarily the discussion will highlight the change from a general repressive policy that targets political dissent across the board into a counter-ideological approach that targets religious opposition in particular. I attempt to illustrate where Jordan committed policy mistakes by the selective application of the law, criticize the assumptions that

led to enforcing new policies and enacting new counterterrorism legislation, and argue whether the legal strategies adopted had any impact on radicalization.

1. Pre-9/11: a brief overview

a. Setting the stage

Jordan's approach to counterterrorism has evolved in response to both international and domestic incidents. The literature, however, on domestic terrorism is very limited both in terms of number of papers and in depth, largely due to the absence of any official or public database of terror incidents that goes back to the kingdom's early years. For purpose of this study, most statistical information on terrorism was obtained from the Terrorism Knowledge Base ["TKB"] developed by the Memorial Institute for the Prevention of Terrorism.⁵³ Between 1968 and 2007, there were 86 terrorist attacks in Jordan reflecting the historical context of political violence in Jordan, and the region at large. The predominant motivation and the perpetrators' identity in incidents that took place in the 1970s, for instance, reflects the kingdom's past inclinations toward conservatism, pragmatism, and close relations with the West on the one hand, and the Middle East's crises and the rise of pan-Arab nationalism, on the other. It also exposes Jordan's uneasy relations with most of its neighbors, owing to the rise of socialist-leaning governments in Egypt and Syria that

⁵³ The Memorial Institute for the Prevention of Terrorism ["MIPT"] is a non-profit organization that was established after the April 1995 bombing of the Murrah federal building in Oklahoma City. The TKB, however, ceased operation on March 31, 2008. TKB was open to the public over the past four years. Nevertheless, MIPT decided to refocus its efforts to become a national terrorism prevention training and exercise center for the Department of Homeland Security.

were ideologically at odds with monarchical regimes and Islamic political organizations. In Jordan, both the regime and the Muslim Brotherhood felt threatened by socialist forces and united against what they saw as a common enemy.⁵⁴ At that time, the monarch feared losing his power and control of the kingdom, and the Muslim Brotherhood wanted to avoid having a similar fate. Though there have been times of disagreements,⁵⁵ the Muslim Brotherhood in general enjoyed a pragmatic relationship with the regime, which it took advantage of during the period of martial law to institutionalize its presence.⁵⁶ As noted below, the Muslim Brotherhood during the 1970s refrained from supporting Palestinian leftist groups and reinforced its commitment to the regime during the periods of crisis. However, its relationship with the regime took another turn in the 1990s when radical religious groups emerged on the political scene.

Below is a description of the historical evolution of political violence in the pre-9/11 period, which will be useful in evaluating Jordan's approach to fighting religious extremism among the Islamic opposition. To provide context for the subsequent discussion, I will first outline some of the response options available for studying terrorism, which will be helpful in framing Jordan's response.

⁵⁴ Wiktorowicz, *supra* note 12 at 95- 100.

⁵⁵ Examples: In 1956 when the state adopted policies that permitted a substantial British presence in the country. In the late 1970s, divisions between the movement and the regime over the latter's supportive policy toward the Shah of Iran. In 1978, when the King refused to break ties with Egypt after the Camp David Accords. And, in the early 1980s when the king's rapprochement with Syria lead to a crackdown on the Muslim Brotherhood to prevent any alliances against the Syrian regime. *See, Id.* at 99.

⁵⁶ This will be discussed in greater detail in the section about the regulation of civil society. *See, Part III(D)(3)(b): The Management of Collective Action.*

b. Characterization of Jordan's approach pre-9/11

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. Counterterrorism scholars generally distinguish between two types of response; repressive and conciliatory responses.⁵⁷ The two most common forms of repressive response are: 1) the legal-repressive or criminal justice model, which adheres to criminal prosecution and punishment and their penological goals of deterrence; and 2) the war model, which favors military solutions. Repressive responses represent a coercive approach to countering terrorism; both are associated with the use of force – by law enforcement or military forces - in which serious departures from conventional criminal and judicial processing are employed. The two most common forms of conciliatory response are: 1) accommodation, which includes negotiating and possibly giving in to specific terrorists' demands; and 2) reform, which usually includes addressing grievances without having to deal directly with terrorists. In using these two models or a hybrid of both, each country has developed an independent approach to countering terrorism that reflects the way in which security has been understood, and highlights particular issues related to its history. In a similar vein, Jordan adopted a mixed approach to address real security threats in the three-decades that preceded 9/11.

⁵⁷ Crelinsten, *supra* note 52 at 309.

i. The 1970s timeline

Most terror incidents in Jordan took place between 1970 and 1972.⁵⁸ Many well-known nationalist, separatists and socialist groups claimed responsibility for these incidents. Leftist Palestinian groups that formed after the Six Day War of 1967 committed many terrorist attacks in Jordan,⁵⁹ including the assassination of a Jordanian Prime Minister in 1971. The state imposed martial law⁶⁰ and adopted a violent approach to deal with the terrorist threat. In September 1970, open fighting erupted between the military and Palestinian guerrilla organizations *fida'yeen* in what

⁵⁸ TKB data show that 31 incidents (out of the 86 terror incidents in Jordan) took place during the 1970s. However, 26 incidents were recorded between 1970 and 1972.

⁵⁹ Another kind of incidents that are not part of Jordan's terrorism statistics, although a significant part of its experience with terrorism; are those incidents that were initiated somewhere else and terminated on a Jordanian territory. In 1970, in a well-coordinated plan, members of the Popular Front for the Liberation of Palestine hijacked three airliners bound for New York from Europe, and diverted them to various locations in the Middle East. A TWA 707 flight en-route from Frankfurt was hijacked to "Dawson Field," a landing strip at Zerka in Jordan (described by the hijackers as the "Revolution Airport." A Pan American World Airways 747 was first ordered flown to Beirut, then to Cairo, where it was blown up a few minutes after the passengers and crew were evacuated. A Swissair DC-8 en-route from Zurich was also hijacked to Dawson Field. A fourth hijacking of an El Al Israel Airlines plane en route to London from Amsterdam was foiled when a security guard aboard the plane killed one of the hijackers and wounded another, a woman named Laila Khaled. The PFLP demanded Khaled's release - as well as the other Palestinian extremists. To emphasize the point, a few days later the group hijacked a BOAC VC-10 on course from Bombay to Beirut, and also had it flown to Dawson Field in Jordan, bringing the total number of hostages held in the desert to 300. These hijackings were thought as a "first dramatic gesture on the part of the PFLP" that triggered the onset of Black September,⁵⁹ and the fierce repression undertaken by King Hussein against the *fida'yeen*. See, Jean-Charles Brisard, 'Zarqawi,' THE NEW YORK TIMES, September 18, 2005. MIPT TERRORISM KNOWLEDGE BASE, POPULAR FRONT FOR THE LIBERATION OF PALESTINE (PFLP) ATTACKED AIRPORTS AND AIRLINES TARGET, (Sep. 6, 1970), <http://www.mipt.org/>, last visited: March 31, 2008.

⁶⁰ Under Martial Law, the civil system was paralyzed and the military took control of the state's institutions, including the judiciary. Designated martial law crimes included espionage, bribery of public officials, trafficking in narcotics or weapons, black marketing, and security offenses. Political parties, freedom of speech, assembly were banned. Political rights, in general, were denied.

came to be known as “Black September.”⁶¹ The military confrontations ended in the expulsion of the *fida'yeen* from the kingdom and the slaughter of hundreds.⁶²

The 1970s were characterized by the rise of attacks on U.S. targets. Statistics show that over half of total attacks on U.S. targets took place in the 1970s,⁶³ mainly by the above leftist Palestinian groups, supported by Syria. This concentration of attacks was largely attributed to the United States' uneven approach in handling the Palestinian-Israeli conflict, and the fact that Jordan shifted its policy from pro-Arab nationalism toward a pro-Western position after receiving promises of continued economic and military assistance from the U.S. in 1973.⁶⁴ This period saw the gradual growth of anti-American sentiments among Jordanians, which currently provides ideal recruiting fodder to radical opposition. Attacks associated with hostilities toward the U.S. and its allies were less fatal than religious radical terrorism in recent years.⁶⁵ 61 percent of total incidents involved vandalism of public utilities as an immediate cost for the state's Western alliances. This is largely because of the

⁶¹ For further analysis of the 1970 events *see*, ADNAN ABU-ODEH, *JORDANIANS, PALESTINIANS AND THE HASHEMITE KINGDOM OF JORDAN 188-192* (The Endowment of the United States Institute of Peace 1999), and DAVID RAAB, *TERROR IN BLACK SEPTEMBER* (Palgrave Macmillan 2007).

⁶² Abu-Odeh, *supra* note 46.

⁶³ 15 out of the 28 terrorist attacks on U.S. targets took place in the 1970s.

⁶⁴ In 1972 King Hussein offered a plan in which he proposed the creation of a federated Arab state comprising Jordan and the Israeli-occupied West Bank. Nationalist Arab governments and the Palestinian organizations were unanimously opposed to such a state, and effectively vetoed the plan. *See*, Office of King Hussein, *History: Jordan in the 1970s*, http://www.kinghussein.gov.jo/his_periods6.html (last visited March 15, 2008).

⁶⁵ According to TKB, 79 percent of the attacks during the 1970s involved no deaths.

different ideology and tactics of the perpetrators who intended to cause destruction to public utility rather than deaths.⁶⁶

As aforementioned, the Muslim Brotherhood had no role in the 1970s terrorist incidents. Based primarily on common interests, it made its support to the regime and its policies clear. In fact, Jordan presents a unique case in which an Islamic movement was in support of coercive state policies to restrict the evolution of other destabilizing movements, such as nationalist and socialist movements. The lesson that can be drawn from this earlier period with respect to counterterrorism is that heavy-handed state military repression works, and leads terrorist groups to give up violence against the state. As noted, the regime dealt with leftist Palestinian groups that formed after the 1967 war by means of military repression. Martial law was imposed and the military took control of the state's institutions. Open fire confrontations between the Jordanian military and the Palestinian guerillas have succeeded in expelling the latter out of Jordan. The success of the military approach in dealing with security threats during the past period should not suggest that it is the right approach to follow in combating the current threat of terrorism and extremism. Although leftist Palestinian groups used Palestinian nationalism and anti-Americanism in their rhetoric to justify acts of violence in Jordan just as radicals today invoke *inter alia* the suffering of Palestinians and other Muslims to justify extremism and terrorism, the military repression model is not ideal or acceptable. First and foremost, military solutions as

⁶⁶ 77 percent of total terror incidents in Jordan between 1968 – 2007 involved no loss of life.

shortcuts to addressing a specific problem or threat are morally corrupt. Second, the Islamic movement in Jordan, including its social and political arms, is a legitimate organization. The vast majority of its members are Jordanian citizens, regardless of origin. Whether the Islamic movement is perceived as a political challenge or a security threat, military repression would push the Islamic movement to consider a more radical and violent path. Third, the threat to the state is more today than it was in the 1970s because the religious ideology that underlies the current radical threat is more inclusive and transcends national prejudices.⁶⁷ This makes the radical threat more difficult to contain,⁶⁸ in particular by the military repression model.

ii. The 1980s

In the 1980s, Palestinian leftist groups no longer posed a direct terrorist threat. Incidents perpetrated by such radical groups dropped 55 percent following their expulsion from Jordan.⁶⁹ However, a number of terrorist incidents were committed against Jordanian targets abroad, including the assassination of a Jordanian diplomat in Bucharest in 1984, a near-simultaneous grenade attack in March 1985 against Jordanian airline offices in Athens, Rome, and Nicosia, a rocket attack in April 1985 against a Jordanian airliner in Athens, and the assassination in July 1985 of a Jordanian diplomat in Ankara.⁷⁰

⁶⁷ Jenkins, *supra* note 4 at 8.

⁶⁸ Richardson, *supra* note 1.

⁶⁹ TKB data show that terrorist incidents committed by leftist groups dropped from 15 in the 1970s to 7 during the 1980s.

⁷⁰ COUNCIL ON FOREIGN RELATIONS, ABU NIDAL ORGANIZATION: TERRORISM: QUESTIONS AND ANSWERS, (February 22, 2008), <http://www.cfr.org/publication/9153/>

It is worth noting, however, that the state during this period utilized the military repression model in responding to domestic unrest and political challenges. For instance, in the wake of widespread riots and protests in several southern towns in 1989 denouncing the government's decision to lift subsidies on basic commodities such as bread and fuel, the military was used to stifle political dissent. This specific incident marked the largest-scale armed fighting between the armed forces and political opposition since the Black September military clashes in the 1970s.⁷¹ The protests were not planned or organized by the Muslim Brotherhood or any other organization; however, they had a religious face. Residents of the southern part of the kingdom are considered highly conservative and religious.⁷² At that point, the state seemed to have recognized that military repression could be counterproductive in terms of containing religious dissent and may contribute to a rise in religious extremism. Following the riots the state moved toward a conciliatory approach, in which it decided to initiate political liberalization measures to placate the situation.⁷³ Although the riots *per se* were not a protest for greater political freedoms, yet the regime deemed it necessary to adopt political reform to survive in the face of domestic instability.⁷⁴ As a result, parliamentary elections were held in 1989, martial

⁷¹ Jillian Schwedler, *Occupied Maan: Jordan's Closed Military Zone, I*, MIDDLE EAST REPORT ONLINE (2002), available at: <http://www.merip.org/mero/mero120302.html>

⁷² *Id.* at 5

⁷³ Challenge of Political Reform, *supra* note 16 at 4.

⁷⁴ Quintan Wiktorowicz, *Civil Society as Social Control: State Power in Jordan*, 33 COMPARATIVE POLITICS 47, (2000). See also, Russell E. Lucas, *Deliberalization in Jordan*, 14 JOURNAL OF DEMOCRACY 137-144, (2003).

law was lifted,⁷⁵ and political parties were permitted to form.⁷⁶ These reforms ultimately contributed to the evolution of an organized Islamic opposition - the IAF - in 1992, which by most accounts is stronger and more numerous than any former opposition group. This incident is an example of a time when Jordan's intervention had an unintended effect. By opening the political system and permitting the IAF to form, the state provided Islamists, and radicals for that matter, with the legitimacy and platform to mobilize and expand their base.

In my view, this marks the first policy mistake that contributed to the emergence of a radical force within the Islamic movement. I understand that this claim raises the question: Had the state did not permit the Muslim Brotherhood to participate politically, giving it room to dissent and freedom to mobilize, would not it radicalized it more? My answer to this is yes and no. I believe there are two options: 1) the Muslim Brotherhood would have become more radical and moved to operate underground. In this case, the IAF would not have been as popular as it is today. This is because the Muslim Brotherhood would have become an illegal underground movement. Sympathetic audience would be reluctant to join or support, rendering it a minority groups. But because the state formalized its existence, it gave its radical leaders the legitimacy and credibility to mobilize and reach out to larger constituencies; 2) the Muslim Brotherhood would have continued to operate within an

⁷⁵ In January 1990, Jordan announced the end of the martial law that had been in effect since 1967.

⁷⁶ In 1992, the state issued The Political Parties Law no. 32 of 1992 (Jordan) in which political parties - banned for almost 36 years - were officially legalized.

essentially closed political system and under a controlled social environment.⁷⁷ In this instance, the state could have succeeded, as it did in the four decades that preceded political reform, in containing the radical threat. Under both scenarios, the outcome would have been different since radical leaders, who depend on their constituency to thrive and survive, would not have had today's opportunity. However, the consequences of relaxing restrictive policies are irreversible. Any attempt to rectify the situation by inflicting highly coercive measures or imposing blanket repressive policies is counterproductive from a security point of view. Blanket repression would lead to bolstering the confidence of the constituency and may help to expand the base of support, generating assistance, and recruits from the uncommitted or sympathetic audience. As noted below, blanket restrictions imposed on civil society and religion drove radical dissent underground, raised the stature of radical leaders and pushed them to consider alternative platforms for mobilization.

iii. The 1990s

During the 1990s, the ideological driver of terrorism started to change with the emergence of religious-based radical groups, particularly after the return of "Arab Afghans."⁷⁸ Tensions stemming from the Gulf War, the escalating Palestinian-Israeli conflict following the 1989 first *intifada*, in addition to the signing of a peace treaty

⁷⁷ See, Part III(D)(3)(b): The Management of Collective Action.

⁷⁸ Arab and other Muslim fighters who came to Afghanistan during and following the Soviet-Afghan War to help fellow Muslims fight Soviets and pro-Soviet Afghans. See, James Bruce, Arab Veterans of the Afghan War, JANE'S INTELLIGENCE REVIEW, April 1, 1995, at 175. Also, JAMES PHILLIPS, DEFUSING TERRORISM AT GROUND ZERO: WHY A NEW U.S. POLICY IS NEEDED FOR AFGHANISTAN, The Heritage Foundation (July 12, 2000).

between Jordan and Israel in 1994, have stimulated many radical individuals with no known association to any terrorist group to conduct attacks against Western targets in Jordan, mainly Israeli targets.⁷⁹ Many of the reported incidents were carried out by unknown radical groups drawn to the struggle or *jihad* against foreign domination or what is seen as an invasion and occupation of Muslim lands.⁸⁰ Some of these attacks, however, were evidently the work of indigenous radical Islamic groups.⁸¹

In the early 1990s, Abu Musab Al-Zarqawi,⁸² the Jordanian terrorist who claimed responsibility for the suicide attacks on November 9, 2005 against three hotels in Amman,⁸³ returned to Jordan from Afghanistan. He was first arrested by the

⁷⁹ TKB data show that 29 incidents (out of the 86 terror incidents in Jordan) took place during the 1990s. However, 20 incidents were perpetrated against Western targets. 9 out of the 10 fatalities were Israelis.

⁸⁰ According to TKB, 44 percent of reported incidents were carried out by unknown radical groups. This is a limitation found in different datasets as perpetrators could not be determined from open-sources. There are two main reasons: for that: (i) in most instances open-source reporting contains little confirmed or corroborated information that identifies the organization or individuals responsible for terrorist attacks; (ii) identifying attackers got even more difficult as extremist groups in the Middle East/Persian Gulf region form breakaway groups or merge with others, make false claims, or deny allegations.

⁸¹ For instance, in April 1999 the Jordanian State Security Court sentenced members of an outlawed “Reform and Defiance Movement,” a small indigenous radical Islamic group, for conducting a string of small bombings in Amman between mid-March and early May 1998, including targeting the “Modern American School.” While the database cites the incident, it lists the perpetrators as being an “Unknown Group.” OFFICE OF THE COORDINATOR OF COUNTERTERRORISM, UNITED STATES DEPARTMENT OF STATE, PATTERNS OF GLOBAL TERRORISM, JORDAN: 1999 OVERVIEW, 28-30 (2000).

⁸² Al-Zarqawi was the most wanted man in Jordan and Iraq, having participated in or masterminded a number of violent actions against Iraqi, Jordanian and U.S. targets. The U.S. government offered \$25 million U.S. dollars reward for information leading to his capture, the same amount offered for the capture of Osama Bin Laden before (in July 2007 this figure was doubled). See, FEDERAL BUREAU OF INVESTIGATION, FBI UPDATES MOST WANTED TERRORISTS AND SEEKING INFORMATION – WAR ON TERRORISM LIST (February 24, 2006). Michael Isikoff and Mark Hosenball, *The World's Most Dangerous Terrorist: Who is Abu Musab Al-Zarqawi?*, NEWSWEEK (June 23, 2004).

⁸³ Al-Zarqawi was deemed responsible for the killing of U.S. Diplomat Lawrence Foley in 2002, and was the mastermind of various terrorist plots, including the 2000 Millennium attacks and the 2004 chemical attacks on domestic and Western targets. See *infra* text accompanying notes 161, 179, and 181.

authorities in 1992 for attempting to start local militant groups. In 1995 he was arrested again after the police found explosives in his car. He was sentenced to seven years in jail. Al-Zarqawi was released from prison in 1999 as part of a general amnesty declared shortly after King Abdullah's accession to the throne. In its past, the state relied on royal pardons in dealing with security threats, as a tool to neutralize extremist activity, and to alleviate political tensions in general. Amnesties were successful in co-opting political opponents and bringing them back into conventional politics.⁸⁴ This strategy, however, proved to be a grave mistake. While this approach might have worked in some instances that involved non-religious opposition, it was unsuccessful in dealing with extremists. For example, in the case of Abu Musab Al-Zarqawi, who after receiving amnesty, came back to mastermind major attacks and suicide bombings that will be discussed in greater detail below.

Throughout the 1990s, no evidence was found connecting the Islamic movement to terror groups or terror attacks in Jordan. During periods of greater religious strife, repressive state policies, and economic downturn the movement remained committed to a non-violent approach. However, the aforementioned events of this decade had significant influence in shaping the direction of the Islamic movement towards fundamentalism. The state's attempt to co-opt a terrorist or neutralize extremist

⁸⁴ 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 against 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).

activity had backfired, and only served to strengthen terrorism networks. While the Muslim Brotherhood continues to denounce terrorist attacks when they occur, its standpoint and solidarity with the late leader of Al-Qaeda in Iraq and other religious radical groups in the region is important. As discussed below under Jordan's response to the November 9, 2005 attacks, some radical members of the Muslim Brotherhood attended Al-Zarqawi's funeral and honored him with martyrdom; turning him into a source of inspiration for others. Instead of renouncing their colleagues' behavior, the Muslim Brotherhood supported them and threatened to withdraw from politics.⁸⁵ This came at a time when Jordan was in 'war' with al Zarqawi's organization. The idea that the death of Al-Zarqawi ends the fight against terrorism or undermines the threat of religious extremism is too simplistic. Although Al-Zarqawi is gone, there are no guarantees when another inspired leader will emerge, or when the next terrorist attack will happen. The events that followed Al-Zarqawi's death have highlighted the threat posed by religious extremism, which is no less significant than acts of proven violence.

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

a. 9/11 attacks: A justification for increased political repression

Some observers point to the 9/11 attacks in the U.S. as justification for authoritarian regimes to put political freedoms on hold while cooperating with the

⁸⁵ Abdul Rahman Al-Rashed, *Jordan's Muslim Brotherhood Vs. its Own People!*, ASHARQ ALAWSAT (June 22, 2006).

United States and its Western allies in the “war on terror.”⁸⁶ British Professor Christopher Harding said 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.”⁸⁷

At 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, Jordan’s parliament enacted some significant amendments to the Penal Code:⁸⁸ mainly, the expansion of the definition of terrorism, the introduction of new offences, particularly terrorist financing,⁸⁹ and the application of the death penalty to a wide range of offences far beyond acts that lead to the killing of a person.⁹⁰ In addition, the legislation imposed new legal restrictions on political dissent.

Indeed, an important component of Jordan’s approach to counterterrorism is to restrict political speech. Terrorism experts explain that what connects political speech

⁸⁶ Christopher Harding, *International Terrorism: The British Response*, SINGAPORE JOURNAL OF LEGAL STUDIES 18, 16 - 29 (2002), available at SSRN: <http://ssrn.com/abstract=426921>

⁸⁷ *Id.*

⁸⁸ In October 2001, the government promulgated the amendments to the Penal Code by issuing Temporary Law no. 54 of 2001 (Jordan) by a royal decree. 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. 16 of 2007 (Jordan).

⁸⁹ Article 147(2) of the Penal Code (Jordan) criminalizes banking transactions linked to terrorist activities.

⁹⁰ Article 148(4) of the Penal Code (Jordan) was amended by adding to the death penalty provision acts committed using ‘means’ that were previously included in the definition of terrorism; i.e. explosives, inflammable materials, poisonous, or incendiary products, or epidemic, or microbe, or chemical agents, or radiation.

intimately to terrorism is that the former may be a motivating factor for individuals to engage in the latter.⁹¹ This understanding of the connection between dissent and terrorism is not limited to authoritarian regimes. In the U.S. historical context, for instance, Professor Laura Donohue cites the eighteenth century Alien and Sedition Acts, and twentieth century Espionage and Sedition measures. She points out that these laws and measures, while introduced to address real threats, illustrate the tendency of the government to apply restrictions to political opponents, and not just those engaged in violence.⁹² There is, however, the danger that the government by being heavy-handed and cutting off legitimate forms of dissent, it is likely to encourage radicalization, and for that matter violence. Thus, the balancing act between addressing a real threat and preventing abuse of laws to penalize dissent presents a serious challenge. One may wonder, however, about the constitutional context or protection for speech in Jordan. A Constitution in an authoritarian regime does not play the same role as in a democracy. Because such constitutions are rife with loopholes that guarantee free speech so long as such freedom does not infringe upon “national” values or “legal” restrictions. This applies to the case of Jordan. In general, the Constitution⁹³ of Jordan ensures freedom of expression and opinion provided that such freedom does not violate the law,⁹⁴ which is fundamentally passed

⁹¹ Laura K. Donohue, *Terrorist Speech and the Future of Free Expression*, 27 *Cardozo L. Rev.*, 327 (2005).

⁹² *Id.* at 239.

⁹³ The Constitution of Jordan (Jordan) as amended was promulgated in 1952 [“The Constitution”].

⁹⁴ Article 15 of the Constitution states: (i) The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law; (ii) Freedom of the press and publications shall be ensured within the limits of the law; (iii) Newspapers shall not be

by compliant legislatures and upheld by compliant judges. This leaves the door open to large-scale as well as small-scale diversions. Although the Constitution of Jordan separates state power among three branches of the government: an executive, a bicameral legislature, and the judiciary,⁹⁵ but in practice the real power lies in the hands of the king. The king appoints members of the executive, the Senate,⁹⁶ and judges.⁹⁷ At his discretion, the king may dissolve parliament or any of its chambers, and postpone House elections.⁹⁸ He also has the power to issue legislation through the executive branch.⁹⁹ Moreover, Jordan does not have a constitutional court to decide the constitutionality of executive decisions and legislation.¹⁰⁰ Courts as well do not have an explicit power to exercise constitutional review.¹⁰¹ However, a person may bring a case on the grounds of implied cause of action. In such cases, the court would not strike down the law, but rather declare that a certain measure is

suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law; (iv) In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law; (v) Control of the resources of newspaper shall be regulated by law.

⁹⁵ The Constitution (Jordan), Articles 24-27.

⁹⁶ The Constitution (Jordan), Articles 35 and 36.

⁹⁷ The Constitution (Jordan), Article 98.

⁹⁸ The Constitution (Jordan), Article 34.

⁹⁹ The Constitution (Jordan), Article 94.

¹⁰⁰ The Constitution (Jordan) in Articles 55 and 57 establishes a High Council, and outlines its composition. Its primary task is to try ministers for misconduct. Thus, Article 122 authorizes the High Council to interpret the provisions of the Constitution upon a request from cabinet or either Houses of parliament - based on a simple majority vote. Such interpretation once published in the *Official Gazette* becomes effective as law.

¹⁰¹ The Court of Cassation is the highest court in the Jordanian judicial structure. This court has jurisdiction to consider questions of law. It developed through its review of lower courts' application of the law a *de facto* competence to review the constitutionality of disputed laws.

inapplicable to the affected person in a ‘specific’ situation.¹⁰² Thus, the Constitution cannot curb the Executive’s ability to impose restrictions on political speech.

Below, I discuss three provisions in the Penal Code (149, 150 195) that the government amended in response to 9/11 to counter the threat posed by Al-Qaeda as well as those inspired by its ideology. The new provisions, however, are anti-dissent in nature. While provision 149 falls under the section on terrorism in the Penal Code, it is an anti-dissent measure. Provision 150 is a counter-measure against what is widely recognized as ‘hate speech.’ And, provision 195 that penalizes criticism of the king falls under the *lèse majesté* provision of the Penal Code. The purpose of the discussion is to assess whether the new speech-restrictive provisions were effective in intimidating uncommitted or sympathetic audience, and preventing religious dissenters from joining the radical opposition. As discussed below, the restrictions may have had a chilling effect on free speech deemed harmful, threatening or otherwise offensive to the regime, however, they were not applied as part of a strategy to mitigate terrorist threats or counter religious extremism.

b. New legal restrictions on political dissent: Articles 149, 150 & 195

Jordan sought to counter the danger of terrorism in two ways. It criminalized acts that are seen as preparatory to terrorism but are not definite enough to result in

¹⁰² Court of Cassation decision no. 7658/99 of 26 December 1999. In this court’s decision, the court “*suspended the application*” of paragraph (5) of article 389 of the Penal Code because it contradicts with Article 7 of the Constitution that states “*Personal freedom shall be guaranteed.*” Available at: <http://www.lob.gov.jo/ui/principles/index.jsp>

conspiracy or other overt charges. Article 149, one of the three articles in the section on terrorism in the Penal Code, was amended to read as follows:

- 1) *A penalty of temporary hard labor shall be imposed on whosoever embarks upon any act to destroy the system of political rule in the kingdom, or to incite to oppose it, and on whosoever embarks on any individual or collective act with the intention of changing the economic or social character of the state or the basic mores of the society.*¹⁰³

The general and ambiguous wording of this provision raises a number of interpretation issues, making it more susceptible to abuse. This provision is broad enough to cover political activism that might be seen by the regime as revolutionary or threatening to its stability. It does not require that the committed acts, whether individual or collective, fall under the definition of terrorism. To date, state authorities have not enforced the criminal provision of this paragraph against political opponents or terrorists. There are, however, no guarantees that this provision will not be used as an additional tool for repressing dissent.

The second way Jordan sought to counter the danger of terrorism was by criminalizing speech that suggests sympathy or support for terrorism. 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 that

¹⁰³ Before its amendment in 2001, Article 147 of the Penal Code (Jordan) defined terrorism as: *Terrorist acts shall mean all deeds that aim at creating a state of panic and which are committed by means such as explosives, inflammable materials, poisonous or incendiary products or epidemic or microbe agents of a nature to cause public danger.*

ultimately incite hatred and violence.¹⁰⁴ The original 1960 text of Article 150 punished *'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 and a fine of 50 dinars (US\$70). In 2001, this text was amended to read as follows:

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 article that provided for the punishment of the editor-in-chief and owner of the publication for defying restrictions on content, in addition to the suspension or permanent closure of the newspapers or press based on the *'decision of the court.'* The state did not seem to distinguish between those who are urging violence, and those who are merely opposed to the pro-Western regime and its liberal policies. In case after case, journalists were detained, prosecuted, and investigated under the above amendment. Reports indicate that by the end of 2002, it

¹⁰⁴ It is not the subject matter of this paper to discuss the validity of Article 150 of the Penal Code (Jordan). 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, to which Jordan is a party.

was government critics such as political activists, journalists and newspaper editors, and not individuals suspected of terrorism or extremism, who were being sent before the courts to investigate alleged violations of the article.¹⁰⁵

In a case that had a chilling effect on free speech, the state prosecutor charged Fahd Al-Rimawi, editor-in-chief of the political weekly *Al-Majd* with “*writing and publishing false information and rumors that may harm the prestige and reputation of the state*” after publishing an article in 2002 critical of the government.¹⁰⁶ He was subsequently detained for 15 days. Soon after this case, the amendment with its sweeping terms became the focus of critical discussions. A number of newspapers editors and owners, in addition to the Jordanian Press Association, challenged the constitutionality of this provision in court. As discussed earlier, only an affected person may be able to bring an action based on personal injury. The court, therefore, refused to hear the appeal for lack of standing.¹⁰⁷ Under intense pressure from local and international human rights groups to repeal the amendments, the government issued a new amending law in 2003¹⁰⁸ in which Article 150 was restored to its original reading.

¹⁰⁵ COMMITTEE TO PROTECT JOURNALISTS, ATTACKS ON THE PRESS 2002 (March 2003), available at: <http://cpj.org/2003/03/attacks-on-the-press-2002-jordan.php>

¹⁰⁶ Lynn Welchman, *Anti-Terrorism Law and Policy in Arab States*, in GLOBAL ANTI-TERRORISM LAW AND POLICY, 599 (Victor Ramraj, Michael Hor and Kent Roach eds., Cambridge University Press 2005).

¹⁰⁷ *Id.*

¹⁰⁸ Temporary Law No. 45 of 2003 (Jordan) amending the Penal Code.

As a practical matter, changing Article 150 to its original form had no effect on the state's approach in restricting political expression.¹⁰⁹ While government officials said that these laws would no longer be enforced, and would eventually be cancelled, criminal charges against government critics remained frequent.¹¹⁰ In fact, the movement from de jure to de facto enforcement of the article led to a new level of crackdown on dissent. In 2004, the state Prosecutor ordered again Fahd Al-Rimawi to be remanded in custody for two weeks for criticizing “friendly” nations,¹¹¹ and the paper's publication was suspended without court authorization.¹¹²

The Penal Code amendments passed in 2001 also included a significant amendment to Article 195. 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

¹⁰⁹ 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 that period. Available at: <http://www.freemedia.at/cms/ipi/freedom.html> (last visited October 8, 2008).

¹¹⁰ In July 2005, senior government officials told Human Rights Watch that Jordan would suspend application of the controversial articles of the Penal Code, including Article 150, until the legislation could be reformed. In June 2006, the government assured Human Rights Watch in a private meeting of its continuing commitment to protect freedom of expression. Despite its assurance, the government has not repealed the controversial articles and continues to prosecute its critics. Human Rights Watch in 2006 has documented six cases, in which unjustified charges threatened freedom of expression. HUMAN RIGHTS WATCH, JORDAN: REPRESSIVE LAWS STILL USED TO INTIMIDATE CRITICS, CHILLING EFFECT OF CHARGES AGAINST EX-ROYAL ADVISER (November 2006).

¹¹¹ Al-Rimawi wrote an editorial for *Al-Majd* 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).

¹¹² *Id.*

Committee,¹¹³ few countries still prosecute 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.¹¹⁴ 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.

Lèse majesté prosecutions are fundamentally political. Where the defendants are editorial critics of the regime, dissenters, or activists in an opposition party, this provision becomes a convenient tool to quell any form of criticism against the regime.

Jordan is a country that its rulers often claim to be a ‘state of laws.’ To a large extent, this is true. In fact, the vast majority of restrictive measures and coercive practices are applied in the name of the law and under some color of legal authority. The General Intelligence Directorate [“GID”], the country's powerful security agency, plays a major role in the effective application of the different legal strategies adopted under the guise of national security. Intelligence agents infiltrate the society and its many civil institutions (political, social, and religious) and ensure that the body of law on restrictive issues is well respected. This is primarily achieved by the heavy presence of intelligence personnel, who often through ‘passive intimidation’ pre-empt

¹¹³ IT’S A CRIME: HOW TO INSULT LAWS STIFLE PRESS FREEDOM, 11 (Marilyn Greene ed., World Press Freedom Committee 2006).

¹¹⁴ See, AMNESTY INTERNATIONAL, STATE INJUSTICE: UNFAIR TRIALS IN THE MIDDLE EAST AND NORTH AFRICA (1998).

law violations. In addition to threatening legal action and ‘passive intimidation,’ authorities exert pressure on freedom of expression. Journalists spoke of security forces arrests and harassment on several occasions in an effort to restrict critical speech. Yasir Abu Hilala, Jordan bureau chief for Al-Jazeera, told Human Rights Watch that the GID arrested him in November 2002. The GID, however, released him a short while later without charge. Abu Hilala believed that the purpose of the arrest had been to confiscate footage he had taken depicting some protests, to prevent it from airing.¹¹⁵

Human rights groups’ reports on Jordan between 2001 and 2005¹¹⁶ indicate that Jordan’s legal strategies were primarily focused on silencing criticism of government corruption, and criticism of the king. Although it is difficult to ‘prove a negative’ claim - particularly under an authoritarian regime, it is only logical to conclude that the new speech-restrictive provisions did have a chilling effect on free speech deemed harmful, threatening or otherwise offensive to the regime. The September 11 events seemed to provide a justification for increased political repression resulting in arrests and show trials for political opponents. However, they were not applied as part of a strategy to mitigate terrorist threats or counter the rise of religious extremism. There have been some cases in which speech restrictions were invoked against members from the Islamic movement; however, it was not to counteract any ideological

¹¹⁵ HUMAN RIGHTS WATCH, JORDAN: SUSPICIOUS SWEEPS: THE GENERAL INTELLIGENCE DEPARTMENT AND JORDAN’S RULE OF LAW PROBLEM, 39 (2006).

¹¹⁶ Reports issued by Human Rights Watch, Human Rights First, Amnesty International between (2001 – 2005).

tendencies but rather part of curbing dissent. For example, the prosecutor issued criminal 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 written by two IAF parliamentarians in December 2004 criticizing favoritism in the appointment of senior government officials.¹¹⁷

c. Jordan’s stance vis-à-vis the threat of radicalization

As noted, prior to the start of the war on Iraq in 2003, religious opposition was not viewed through the prism of radicalization, and the Islamic movement *per se* was dealt with in no separate trajectory than that of liberal opposition. In fact, Jordan did not recognize the critical role radical ideology plays in mobilizing particular segments within the Islamic movement until later. The state’s position vis-à-vis radicalization was best reflected in a 2000 Court of Cassation decision in a case involving the question of radical ideology. The Court of Cassation is a court of law. However, when it agrees to hear a case involving a political issue or controversy, its judicial answers are typically reflective of the state’s position. In this case, it said:

“the defendant saying that he shares the same radical “jihadi” ideology with another defendant is a general statement and does not indicate membership in a jihadi organization, ..., and the possession of books and journals about Islamic jihad or political brochures does not support allegations of or evidence that the defendant is affiliated with an ‘illegal’ radical ideology because a ‘radical ideology’ involves a wide spectrum of jihadi jurisprudence some of which is legal and the other is illegal, for example, propagating jihad or peacefully calling for jihad is legal, whereas jihad through terror acts or by weapon or

¹¹⁷ HUMAN RIGHTS WATCH, JORDAN: EDITOR PROSECUTED FOR POSTING ARTICLES BY MPS (2006).

murder is illegal and subject to punishment. The decisive factor in determining the illegality of the radical ideology is to commit a clear physical act that intends to use illegal means to achieve the [jihadi] purposes.”¹¹⁸

In the period following 9/11, however, opposition from all political trends – secular and religious- made it clear that public opinion arrived at an unprecedented state of agreement on opposing the state’s foreign policy. Political grievances were increasingly channeled by the Islamic movement who at that time became Jordan’s dominant opposition force. Religious leaders were particularly critical of the state’s alliance with the United States in its “war on terror,” which was largely perceived as a war on Islam and a pretext to control the region’s resources through foreign military occupation.¹¹⁹ During the build-up to the Iraq war in 2002, public opinion in Jordan overwhelmingly opposed the war. According to a CBS News report “not one Jordanian of those interviewed supported the war.”¹²⁰ Laith Shubailat, a leading voice for the Islamic opposition¹²¹ and an outspoken critic of the war in Iraq, wrote an open letter to the king, asking him to condemn the invasion. Ninety-nine former Jordanian government officials signed the letter, including four former liberal prime ministers.¹²² According to one influential Jordanian columnist, “people have totally

¹¹⁸ Mahkamat al-Tamiez (Tamiez) [Court of Cassation] Decision no. 190/2000 of July 2, 2000, Lawyers Association Journal, January 2001, p. 2716.

¹¹⁹ Hamzawy, *supra* note 25 at 8.

¹²⁰ Rebecca Leung, *Anti-War Anger In Jordan: Public Opinion Overwhelmingly Against The War*, CBS NEWS, 3, (April 6, 2003).

¹²¹ Shubailat is a former IAF parliamentarian whom the state managed in 1992 to remove permanently from parliamentary opposition following a criminal conviction. He was sentenced to death in 1992 for allegedly trying to overthrow the government, but pardoned 48 hours later. And in 1996, he opposed Jordan’s peace treaty with Israel and was accordingly sentenced to three years in prison for allegedly “violating the King’s dignity.” *See*, The New York Times, King Hussein Gives His Foe Ride From Jail (November 10, 1996).

¹²² Leung, *supra* note 120 at 2.

taken the side of looking at this invasion, at this incursion into Iraq, as a colonial aggression.”¹²³ From the outset, anger appeared to be aimed at the United States, but a large part of it was also directed toward the king for agreeing to allow the United States to station Patriot missiles and a number of troops along Jordan’s border with Iraq.¹²⁴ Senior officials tried to defend the decision saying that “the fact that we feel angry at what this war is resulting, in terms of human casualties and in terms of further suffering by the Iraqi people, should not be seen as an excuse for us to compromise our relationship with the United States, which is very special and very important for us -- politically, strategically, militarily and economically.”¹²⁵

The IAF issued a number of statements and press releases branding the state’s cooperation and permission for U.S. troops to operate in the kingdom as a “grave sin” and a violation of national principles and interests. In a 2002 *fatwa*, the IAF’s committee of religious scholars - responsible for formulating the party’s religious policies - called on the Muslim population to support and join Iraqis in their fight against the foreign invasion and occupation of their land.¹²⁶ In fact, a number of

¹²³ *Id.* at 2-3.

¹²⁴ In 2003, the government acknowledged the presence of a number of U.S. troops to operate Patriot antimissile batteries (as a defensive measure). Independent estimates put the true figure at around 5,000 U.S. and coalition forces in Jordan at the time of the war. For further reports on Jordanian logistical assistance to the U.S.-led coalition, see David Filipov, *U.S. Troops Deployed in Jordan*, BOSTON GLOBE, February 25, 2003. In addition to providing logistical support during the war, Jordan strongly supported the Iraqi elections and has provided military and police training, and donated military and police equipment for Iraqi security forces. Capt. Steve Alvarez, “Jordanian Military Helps Its Neighbors,” *American Force Press Service*, February 2, 2006, available at: <http://www.defenselink.mil/news/newsarticle.aspx?id=14978>

¹²⁵ Leung, *supra* note 120 at 4.

¹²⁶ Fatwa issued by the IAF’s committee of clerics prohibiting the participation in the military attack on Iraq, July (2002), available at: <http://jabha.net/body5.asp?field=ftawa&id=13>. See, *Clerics Issue*

religious Jordanians were moved to embrace the concept of *jihād* and traveled to Iraq to join the foreign-fighters. Many of these fighters were not hardened terrorists but new recruits who seemed to be drawn to the struggle by the Iraq war.¹²⁷ In 2005, a U.S. army official provided a list to NBC News of the top 10 countries from which foreign fighters in Iraq came.¹²⁸ Jordan was on the list.

The war was only a few days old when angry demonstrations took place in the streets of the capitol Amman, as they did throughout the world. Demonstrators in Jordan, however, rallied in opposition to foreign occupation in general, and Israeli occupation and practices in Palestinian lands in particular.¹²⁹ The state became concerned about the apparent influence of the religious opposition, in particular the radical wing of the IAF, as demonstrations went out of control and context. Its initial reaction relied on traditional ‘authoritarian’ methods for exercising state power against opposition voices, including use of violence and police harassments. New legal restrictions on freedom of assembly,¹³⁰ however, have not stopped political

Fatwas Against the U.S. (Amman political wing of Muslim Brotherhood calls on Jordanians to wage a religious war against the United States), APS DIPLOMAT RECORDER, November 2002.

¹²⁷ Based on a personal knowledge of a few cases in which non-terrorist individuals who belong to relatively moderate families left in 2003 to join the fighters in Iraq.

¹²⁸ Lisa Myers, *Who are the foreign fighters in Iraq?* THE NBC INVESTIGATIVE UNIT, June 20, 2005, available at: <http://www.msnbc.msn.com/id/8293410>

¹²⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, JORDAN: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2004).

¹³⁰ The Law of Public Meetings no. 60 of 1953 (Jordan), which is a regulative holdover from martial era, required that individuals must obtain permission to hold a public meeting defined as “*any meeting called to discuss political matters.*” Under the law, violators face imprisonment and a fine. In 2004, the government issued a new law that expanded the reach of its powers to “*meetings held to discuss a general matter.*” And in 2008, an amendment was introduced to the legislation in which it redefined public meetings in a manner that makes discussing “*state public policies*” off limits to opposition. In addition, the amendment contained two substantial provisions. First, Article 7 granted the district governor discretionary power to end a demonstration if it *threatened public order*. In the original text,

opposition, professional associations and other civil society organizations - all controlled by the Islamic movement – from organizing massive protests. Security forces reportedly conducted mass arrests of suspected Islamists and Muslim Brotherhood members on allegations of belonging to Al-Qaeda. According to Amnesty International’s Jordan Country Report, the number of arrests climbed from 50 in 2001 into hundreds in the period between the years 2003 - 2005.¹³¹

Clearly, issues that drive radical opposition are also important to moderates or mainstream opposition. Both groups are concerned about Western dominance, and political interference. According to a study that analyzed a multiyear Gallup research study of 35 nations that are predominantly Muslim or have a substantial Muslim population,¹³² the critical difference between these two groups is one of prioritization, intensity of feeling, degree of politicization, and alienation.¹³³ Most importantly, the politically radicalized, are predisposed to have a more sympathetic ear for religious

such discretionary authority was restricted to the conditions of the permit. As for the second amendment, Article 9 extended the authority given to law enforcement officers to end a demonstration or bring back order, to include intelligence services. It is worth to note that intelligence services have infiltrated, and closely monitored public gatherings in the past, yet it was a *de facto* power that was never articulated in legislation.

¹³¹ 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. INTERNATIONAL CRISIS GROUP, JORDAN’S 9/11: DEALING WITH JIHADI ISLAMISM, 3 (2005).

¹³² The study conducted by Georgetown Professor John Esposito surveyed a sample representing more than 90 percent of the world’s 1.3 billion Muslims. Professor Esposito claims that his study is the largest, most comprehensive study of contemporary Muslims ever done. JOHN ESPOSITO, DALIA MOGAHED, WHO SPEAKS FOR ISLAM? WHAT A BILLION MUSLIMS REALLY THINK , xi (Gallup Press 2007).

¹³³ *Id.* at 91.

extremists and terrorists, and could be pushed to support or maybe perpetrate violence. This, however, represents the core challenge in assessing the terrorist threat.

d. Misreading the political landscape and associated threat

At the time of the war, it was clear that future terror attacks against Jordan would likely be carried out by Al-Qaeda, its associated networks, or those who share Al-Qaeda's ideology. There were important indications associated with the rise of religious extremism that Jordan seemed to ignore. TKB data indicate that since 2001 the number of religious-based terrorist groups in Jordan had increased as a proportion of the active terrorist groups.¹³⁴ 6 out of the 7 active terror groups were religious.¹³⁵ A Pew survey showed that in 2002 Jordanians had the second highest rate of support for suicide bombings against civilians (43 percent found them to be often or sometimes justified).¹³⁶ Confidence in Osama bin Laden tactics regarding world affairs had hit a record high of 56 percent in 2003.¹³⁷ Although these indications are not directly linked to the Muslim Brotherhood, but they are reflective of the enabling environment in which the movement's members operate in. The larger the exposure,

¹³⁴ This increase, however, was largely part of a growing trend of religion-inspired terrorism associated with the emergence of "idiosyncratic millennium movements" and religious-based radical groups rather than a direct outcome of the 9/11 attacks. In spite of the transnational nature of terrorism, however, this paper strives to stay focused on the domestic aspect of the threat and the measures taken in response.

¹³⁵ Between September 11, 2001 and November 9, 2005, there were 6 recorded incidents that were carried out by radical groups, including Al-Zarqawi's. According to remarks made by the king, the intelligence services had thwarted during the period between April 2004 and November 2005 no less than 150 terror attempts by militant radical Islamists affiliated with Al-Qaeda in Iraq. Michael Slackman, *11 Top Jordanian Advisers Resign in Wake of Attacks*, THE NEW YORK TIMES, November 16, 2005.

¹³⁶ Islamic Extremism, *supra* note 8.

¹³⁷ *Id.*

the greater is the risk for the mainstream movement to defect. In spite of that, the government did not respond to the potential threat by enforcing the provisions restricting radical speech, which it allegedly enacted as part of an anti-terrorism effort. Instead, the regime allowed its radical critics room for dissent from its position on the war, and to express their frustration with the government. Given the motivational value of persuasive political speech, allowing room for the politically radicalized to express their anger was wrong. I do not mean to suggest in any way that the state's restrictions on free speech are ideal or encourage taking coercive measures against dissent; however, restrictive measures are sometimes a necessary and an appropriate response. It was rather unrealistic on the part of Jordan to participate in an unpopular war, and at the same time allow room for radical dissent without expecting a corresponding increase in radical opposition.

This was another instance where Jordan committed a policy mistake by its selective application of the law. This, however, should not be understood as an appeal to repress the Islamic movement being the main opposition in Jordan. Having a legitimate strong moderate religious opposition is healthy, and as discussed below, is needed to fight the rise religious extremism. The emphasis here is on the empowerment of leaders within a politically radicalized group. Legal repression is a useful tool when targeted at radical forces. The use of repressive legal policies is also time critical. The regime wasted the opportunity to prevent radicals from gaining strength from others inability to express their dissatisfaction with the status quo.

Harvard Professor, Louise Richardson explains the difference between a leader in an organization (terrorist and non-terrorist) and their followers.¹³⁸ The role of the leader is crucial in turning eager volunteers into an organized force. The leader provides an ideology and articulates a strategy. A targeted repressive policy would prevent the emergence of a radical leader from within religious opposition, thus prevent turning the opposition into a radical movement. Professor Richardson asserts that this symbolizes a real vulnerability for any movement as the removal of a leader can undermine the strength of the base.¹³⁹ However, some might ask the question of whether the removal of a radical leader would trigger a more radical reaction from the constituency. Recent history shows that the removal of radical political leaders did not impact radicalization.¹⁴⁰

e. Conclusion: Lessons learned and consequences to avoid?

Jordan's response to the Iraq war in terms of dealing with radical opposition suggests that the state has underestimated the role of radical speech in strengthening support to radical leaders, and motivating individuals to engage in violence. As discussed in greater detail below, it was not until a group of terrorists committed the attacks of November 9, 2005 that Jordan took stringent legal measures against *fatwas* and other radical statements issued by the religious opposition that supports violent extremism and calls to wage *jihad* against the 'enemy.' Jordan could have avoided

¹³⁸ Richardson, *supra* note 1 at 45.

¹³⁹ *Id.*

¹⁴⁰ In 1999, the state was successful in using coercion against Abu Zant, a radical leader and a member of the Muslim Brotherhood. *See infra* text accompanying note 264.

some substantial negative consequences had it taken from the beginning a less sympathetic or tolerant approach towards persuasive religious speech.

The two short-term consequences that could have been significantly mitigated had Jordan taken a proactive approach to restrict radical speech. First, as noted above, the foreign-fighters phenomenon has undoubtedly benefited from the mistake Jordan committed in permitting radical voices among the Islamic movement to openly call for *jihād* in Iraq. Such calls were exploited by terrorists to recruit “freedom fighters” to resist the West and allegedly protect Muslims. It was not until after the collapse of Saddam Hussein’s regime and the rise of insurgency in Iraq that Jordan grew nervous about the potential influence of a new influx of foreign-fighters to whom violence is a means of political expression. So far there have been no reported cases, but the risk remains high that many of these new fighters will eventually take the training they gained in Iraq and put it to use against local and Western targets, much as the Arab Afghans, including Al-Zarqawi and his followers, did on their return in the 1990s. Second, radicals within the Muslim Brotherhood and the IAF *per se*, have exploited anger toward the United States to mobilize their social base and strengthen support for the opposition. Through its radical anti-occupation rhetoric, the opposition has condemned a new generation of young Jordanians to hatred for the United States linking it directly to the Israeli-Palestinian conflict. From the movement’s perspective, the United States is the major power that continues to unconditionally support Israel, which in turn drives the Israeli power, and leads Israelis to feel that

they should not compromise when it comes to Palestinian demands. According to radical voices in the Islamic opposition, Jordan's support for the United States and its failure to denounce its war on Iraq "has dragged Jordan to what people think is treason to the Arab cause [end of Israeli occupation]."¹⁴¹ As will be discussed below, this has contributed to the empowerment of radical leaders within the Islamic movement, namely the Hamas-wing, who managed to score significant electoral success in 2003.

The above analysis indicates that the regime's vision for Jordan's future as a country defined by its pro-Western policies was undoubtedly at odds with the exigencies of national security. Jordan should understand two things. First, based on the direction pursued by leading Islamic movements in the region, violence could potentially be the strategic choice of the politically radicalized in Jordan to influence the course of politics, if they can no longer pursue their political agenda within the boundaries of legitimate political activism. In the past Jordan was able to accommodate Islamists political agenda. For example, Jordan's position towards the first Gulf War or the 'Desert Storm' was the opposite of its stance during the 2003 war on Iraq. Jordan's unwillingness to join the allied coalition against Iraq in the (1990 – 1991) war had severed its relations with the United States. The kingdom lost a substantial amount of sympathy in Washington, as well as U.S. foreign

¹⁴¹ Leung, *supra* note 120 at 2.

assistance.¹⁴² However, its monarch's supportive position to Saddam Hussein (despite being officially neutral) paid off economically in terms of trade and oil supply, was popular among Jordanians, and resulted in probably the closest relationship with the Muslim Brotherhood.¹⁴³ Jordan's policy during that period enabled the kingdom to navigate the turbulent Gulf War period, and avoid the emergence of a radical opposition. In recent history, however, the Muslim Brotherhood's political agenda was seldom in line with Jordan's strategic interests, particularly after Jordan started negotiating its peace treaty with Israel. Supporting a radical agenda is certainly not the right approach to contain the threat, and would only serve to strengthen radical forces.

Second, restrictive legal policies and repressive measures would not be fully effective without altering Jordan's pro-western alliance that allegedly spawns support for radical opposition. Under current circumstances, this is unrealistic. Jordan is a country with limited natural resources, and its economy is increasingly dependent on foreign aid. It is currently the fourth largest recipient of United States aid worldwide, after Israel, Egypt, and Colombia. Supporting the 2003 U.S. war on Iraq was a strategic move, and in many ways, the government benefited from the war. Due to security concerns inside Iraq, many American agencies, reconstruction NGOs, and

¹⁴² DAVID SCHENKER, BETWEEN BAGHDAD AND WASHINGTON: JORDAN'S BALANCING ACT, (The Washington Institute for Near East Policy 2000).

¹⁴³ For example in 1991, Muslim Brotherhood members were given the most important domestic portfolios, including education, health, justice, social development, and religious affairs. *See*, Wiktorowicz, *supra* note 12 at 99.

other groups working in Iraq have located in Amman.¹⁴⁴ The influx of about 450-500,000 Iraqi refugees,¹⁴⁵ although filled with political risks, social tensions,¹⁴⁶ and security concerns,¹⁴⁷ yet brought a significant amount of capital¹⁴⁸ – some \$2 billion in Iraqi money has entered the Jordanian banking system - which has fueled a housing boom and economic growth.¹⁴⁹ Jordan was also rewarded with growing American Aid.¹⁵⁰ After the war in Iraq began, Washington doubled its annual grants to Jordan to around \$450 million (\$250 million in economic aid and \$200 million in military assistance), in addition to more than a \$1 billion supplement to offset the effects of the war on Jordan's economy and bolster its security. In 2008, the United States provided \$513 million under economic aid, and \$300 million under military assistance.¹⁵¹

Beginning in late 2002, Jordan took a series of initiatives that were intended to shore up its waning popularity without compromising its strategic needs. Initiatives

¹⁴⁴ Lynch, *supra* note 30 at 2.

¹⁴⁵ Fafo's Study "Iraqis in Jordan: Their Numbers and Characteristics," released November 14, 2007, available at: http://www.dos.gov.jo/dos_home_e/main/Iraqis%20in%20Jordan.pdf

¹⁴⁶ In February 2005, reports of Jordanians celebrating a terror attack carried by a Jordanian suicide bomber with alleged links to Zarqawi's group in the Iraqi town of Hilla provoked a diplomatic crisis, and fueled anti-Jordan sentiments among Iraqis in Jordan and abroad as it was clearly designed to ignite sectarian fighting between Sunnis and Shiites.

¹⁴⁷ HODSON NATHAN, IRAQI REFUGEES IN JORDAN: CAUSE FOR CONCERN IN A PIVOTAL STATE, (The Washington Institute for Near East Policy 2007).

¹⁴⁸ Suleiman Al-Khalidi, "Iraqi influx drives Jordan's post-war boom," Reuters, March 9, 2005

¹⁴⁹ Lynch, *supra* note 30 at 1.

¹⁵⁰ The United States has provided economic assistance and military aid to Jordan since 1957. Level of aid had fluctuated, increasing in response to threats faced by Jordan and decreasing during periods of political differences. The United States, however, has markedly increased its aid to Jordan since the mid-1990s to help Jordan strengthen its economy, maintain domestic stability, and pursue of normalization with Israel. *See*, ALFRED PRADOS, JORDAN: U.S. RELATIONS AND BILATERAL ISSUES, Congressional Research Service Issue Brief, 6 (March 14, 2006), updated (June 22, 2007).

¹⁵¹ *Id.*

like “Jordan First” and the National Agenda¹⁵² all called for addressing problems with respect to basic political rights and civil freedoms. In light of current regional and domestic political dynamics, it is unforeseeable to put through any serious reforms that would translate the aims and principles outlined in the above initiatives. Since the outcome of more civil and political freedoms would mean the empowerment of the radical leadership of the Islamic movement.

Nonetheless, in an attempt to discredit radical leaders who embrace religious ideology that supports violent extremism and continues to derive radicalization, King Abdullah issued in 2004 the Amman Message [“the Message”] calling for tolerance and unity in the Islamic world.¹⁵³ It was a counter-ideological message in the form of a sophisticated attack on the distortion of Islam being made by Al-Qaeda. The Message addressed the methods that radical groups use to attract recruits and influence radicalization in matters of religious interpretation. Most importantly, it placed moral parameters for the issuance of *fatwas*, which radicals primarily utilize as

¹⁵² The National Agenda (started in February 2005) outlines a 10-year plan for comprehensive reforms, including political development. It provides timelines to achieve objectives identified in specific focus areas and adopts performance indicators to monitor its implementation. The document provides a set of proposals that redefines the relationship between the state and its citizens. For instance, it proposes a plan to adjust the electoral process equitably by amending the current electoral system by assigning one portion of the seats to district candidates and another to party lists, with the mix being decided by the government according to the evolution of the political process. It also proposes legislation that allows civil society organizations to pursue their activities without state interference. Although the document was developed in consultation with people across the spectrum of political, social, and economic forces, the National Agenda faced vicious opposition that was successful in making public cast doubt on an effort that meant to improve the quality of their lives. Muasher, *supra* note 16.

¹⁵³ The official website for the Amman Message is available at: <http://www.ammanmessage.com>

a vehicle to disseminate their ideology. At the time it was issued,¹⁵⁴ the Message received exceptional media attention and was praised by world Western leaders.¹⁵⁵ However, it failed to resonate with significant audiences, including Jordanians for two main reasons. First, it was a top-down initiative¹⁵⁶ issued by a pro-Western monarch, who did not have enough credibility as a religious figure in the Islamic world to deliver this counter-message effectively.¹⁵⁷ Jordan's close alliance with the United States has made the initiative seem part of an American propaganda effort; therefore, it lost its credibility. Second, the Message is a document that lacks the legal bite to delegitimize issuing *fatwas*, making such an act a punishable crime. Hence, it was a benign effort that had no significant effect on religious radicalization. While the Islamic movement affirmed its adherence to the fundamentals of the Message,¹⁵⁸ the inner circle of the movement, especially those who belong to the radical wing, have proved to be almost immune to counter-ideological messages. As explained below under the section that discusses the use *fatwas* as tool for political dissent, radical leaders continued to issue *fatwas* on behalf of the IAF, which called for *jihad* against the 'enemy' and considered those who cooperate with the West as traitors.¹⁵⁹ In

¹⁵⁴ The Message was endorsed in July 2005 Islamic Convention by religious leaders representing the eight Islamic schools of jurisprudence.

¹⁵⁵ Former British Prime Minister Tony Blair, Remarks at the British Embassy in Bahrain (2007) (transcript available at: britishembassy.gov.uk).

¹⁵⁶ 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.

¹⁵⁷ According to Suhail Nakhouda, editor-in-chief of the Amman-based *Islamica* magazine, Crisis Group interview, Amman, 17 April 2005. Dealing with Jihadi Islamism, *supra* note 131 at 16.

¹⁵⁸ 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

¹⁵⁹ Section III(D)(3)(c)(ii).

addition to other statements issued by IAF leaders to support the violent actions of insurgent groups in Iraqi, Hezbollah in Lebanon, and Hamas in Gaza and the West Bank.¹⁶⁰

To address the threat of religious extremism, it seems that the state should consider how its actions are perceived by a group of radical opponents. Neither accommodating the opposition's political agenda nor changing the state's foreign policy would discredit radicals and marginalize their appeal, thus contain the threat. On the contrary, it might serve to increase radicals' popularity, presenting religious extremism as a viable option to manipulate the state into achieving political goals. This would also open the door for other regional radical groups and terrorist organizations to pursue their own agendas in Jordan. Whether a group of radical leaders remains a small group or grows into a movement will depend on a range of factors, notably the legal response from the authorities.

3. Post – November 9, 2005 [“11/9”]

November 9, 2005, or 11/9, marks a no less significant date to Jordanians than 9/11 is to Americans. That day marked the deadliest attacks in Jordan's history accounting, for nearly 68 percent of total terror deaths from 1968 - 2007. In comparison with the U.S. population, Jordan lost on 11/9 as many victims as America lost on 9/11. The attacks were named in 2005 as one of the ten most lethal attacks

¹⁶⁰ See, the website the Islamic Action Front [“Jabha”] official website. [http:// www.jabha.net](http://www.jabha.net).

worldwide.¹⁶¹ Jordan has been attacked by radical religious groups in the past years, but the 11/9 attacks were the first of its kind in the country. It was the first suicide bombing in Jordan. The bombing incidents killed sixty people and wounded around a hundred others, when a group of four Iraqi suicide bombers, including a female, attacked the Days Inn, the Radisson SAS and Grand Hyatt hotels in Amman.¹⁶² Apparently, the perpetrators were angered by the war in their country, and chose to take revenge and punish a close American ally. The attacks, however, were masterminded by a Jordanian terrorist; Al-Zarqawi, the late leader of an insurgent group in Iraq (Al-Qaeda Organization in the Land of Two Rivers), who was able to exploit the perpetrators resentment towards the U.S., re-direct it towards its ally and succeed on 11/9.

Jordan understood that while the 11/9 attacks might have temporarily reduced support for terrorism,¹⁶³ many Jordanians - especially after Al-Zarqawi apologized for the loss of Muslim lives in two web messages¹⁶⁴ - sympathized with him as a national hero who gave voice to hostilities toward the United States.¹⁶⁵ The state

¹⁶¹ MIPT TERRORISM KNOWLEDGE BASE, TKB TERRORISM TRENDS 2005 POSTER, <http://www.mipt.org/>, last visited March 31, 2008.

¹⁶² The explosive device of the female suicide bomber at the Radisson SAS failed to go off. She was later arrested by Jordanian authorities. Sajida Al-Rishawi made full confession on Jordanian national television. On September 21, 2006, the State Security Court sentenced her to death. *See*, MIPT Terrorism Knowledge Base, available at: <http://www.mipt.org/>, last visited March 30, 2008.

¹⁶³ Pew Global Attitudes Project Key Indicators Data Base shows that in Jordan, support for the Al Qaeda leader has dropped following the 11/9 attacks from 56 percent in 2003 to 24 percent in 2006. <http://pewglobal.org/database/> (last visited February 18, 2010).

¹⁶⁴ Associated Press, November 18, 2005.

¹⁶⁵ A poll conducted by the University of Jordan's Centre for Strategic Studies (CSS) following the death of Al-Zarqawi in 2006 found that 30 percent of the national sample felt sad or angry at the demise of Zarqawi. The poll results indicate that 38 percent of those who reacted negatively to the

became particularly concerned with managing its Islamic opposition as a group vulnerable to the influence of extremists, inside and across its borders, who would exploit the opposition's dissatisfaction with the status quo to radicalize the entire movement in Jordan. As indicated earlier, the Islamic movement, both the mainstream and the politically radicalized, was not associated with the 11/9 attacks, or any other terrorist incident. However, the attacks have deepened fears that a radical leadership would take the Muslim Brotherhood into a different direction that is more inclined toward violence. The growing presence and power of radical Islamic movements in the region had contributed to the regime's anxiety towards witnessing a similar trend in its own movement. As noted,¹⁶⁶ internal disagreements between the Muslim Brotherhood's two wings have highlighted the possibility of division, and adversary alliances with other radical groups. The regime's alignment with the U.S. has complicated matters even more. Jordan's position towards the U.S. military action against Iraq was only one part of a comprehensive alignment with Washington's policies in regional politics; primarily, the refusal to deal with the Palestinian government formed by Hamas after its victory in legislative elections, relationship with Iran, and Lebanon war.

Following the attacks, Jordan announced its intentions to pursue a new approach to counter religious extremism. The new approach aimed at developing the

news of the death of Al-Zarkawi perceive him as a martyr or *mujahid*, and a fighter against foreign occupation. PUBLIC OPINION POLL ON CURRENT ISSUES: TERRORISM: THE AFTERMATH OF THE KILLING OF AL-ZARQAWI, (Center for Strategic Studies, University of Jordan, July 2006), available at: <http://www.css-jordan.org>

¹⁶⁶ Section II(B): Source of the state's anxiety towards the Islamic movement.

Message¹⁶⁷ into a legal and regulatory framework intended to prevent further radicalization and new recruits. As articulated by the king, the 11/9 attacks “affirm the extent of our need to adopt a comprehensive strategy to confront *takfiri* culture.”¹⁶⁸ 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 charting paths of destruction and sabotage to realize their aims.”¹⁶⁹ 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.”¹⁷⁰ The official response to the attacks indicates that the new strategy against terrorism was justified on the grounds that it would apply only to those who embrace the ‘*takfiri*’ ideology. But as illustrated below, the counterterrorist measures tend to restrict a larger group that shares particular characteristics with those guilty of terrorism.

The legal framework developed to counter the rise of religious extremism relied on both criminal coercive measures, and civil administrative or regulatory practices. Hence, the discussion of Jordan’s approach will revolve around three principal themes. The first concerns deterring extremists and their followers from committing future attacks by enacting special counterterrorism legislation that supplements the

¹⁶⁷ See *supra* notes 153-158 and accompanying text.

¹⁶⁸ Takfiri doctrine means declaring one who is, or claims to be, a Muslim an apostate. This belief allows Takfiris to justify the use of violence against fellow Muslims.

¹⁶⁹ 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/>

¹⁷⁰ Jamal Halaby, *Jordan premier vows ‘pre-emptive’ war against Islamic extremism*, THE ASSOCIATED PRESS, (December 14, 2005).

provisions of the Penal Code. The underlying premise is that the new legislation provides the necessary legal authority to expand the security court's prosecution powers over terror suspects. The presumed objective of the legislation is to: (a) legalize pre-existing extra-legal practices, such as arbitrary detention; (b) minimize the influence of radical leaders by imprisoning them; and (c) intimidate supporters of radical opposition leaders and third parties from embracing the ideology or joining radical groups. The second theme concerns the management of collective action through controlling social platforms that expose mainstream moderate Islamists to radical forces who would exploit civil society institution to offer them alternative ideologies and courses of action, including violence. The last theme addresses the potential of transforming religious institutions into recruitment centers for terrorists. A Rand Corporation study identified mosques as one of the major nodes or physical venues for radicalization.¹⁷¹ The discussion focuses on the effectiveness of the use of administrative techniques that restrict religious freedoms on the ability of radicals to mobilize within the religious sphere.

a. Terrorism Prevention through General Deterrence: The Terrorism Prevention Law

i. Overview of the problem

Formulating an appropriate legal response to terrorism presents governments with a political dilemma. Political and security theorists suggest

¹⁷¹ GREG HANNAH, LINDSAY CLUTTERBUCK AND JENNIFER RUBIN, RADICALIZATION OR REHABILITATION: UNDERSTANDING THE CHALLENGE OF EXTREMIST AND RADICALIZED PRISONERS, 1, (Rand Corporation 2008).

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 more devastating attacks. Equally, there is the normative danger of overreaching in ways that would do little to identify actual terrorists, and do a great deal to radicalize the communities under suspicion.¹⁷² The purpose of the analysis below is to investigate Jordan's legal response to the 11/9 attacks, and examine further the appropriateness and value of the new criminal law.

ii. Different implications of a legal response

New counterterrorism laws enacted following a high-profile attack often feature enhanced penalties for acts that fall under the definition of terrorism. In many jurisdictions such laws introduce extraordinary powers that could spread to other non-criminal parts of the law. Legal experts suggest that the enactment of coercive measures or nontraditional sanctions have different implications. Victor Ramraj talks about the tendency to look at the law as the solution to distressing events, or what criminologists refer to as 'governing through crime' by seeking heavier penalties in the wake of horrific crimes.¹⁷³ Laura Donohue suggests that some counterterrorism measures impose fear and violence without regard to guilt or innocence in order to impress a larger

¹⁷² DAVID COLE & JULES LOBEL, *LESS SAFE, LESS FREE: WHY AMERICA IS LOSING THE WAR ON TERROR*, 254 (The New Press 2007).

¹⁷³ Victor V. Ramraj, *Terrorism, Risk Perception and Judicial Review*, in *GLOBAL ANTI-TERRORISM LAW AND POLICY*, 113 (2005).

audience.¹⁷⁴ The majority of scholars, however, argue that the enactment of new criminal laws is a form of recognition that the deficiencies in the available legal authority have contributed to the failure to thwart a terrorist attack. This means that the criminal structure is insufficient to respond to future acts of terrorism.¹⁷⁵

One way of determining the instrumental value of a new counterterrorism law in preventing terrorism is to examine the law that existed before a successful terror attack triggered such response. 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 rather than in response to a domestic terror incident. The resolution called 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.”¹⁷⁶ As noted, Jordan took the UNSC resolution provisions as a justification for enacting new criminal laws to place greater restrictions on political opposition. In addition, the resolution presented the opportunity for Jordan to pledge its strong support for the United States in its ‘war on terror.’ Probably with the exception of the new

¹⁷⁴ Laura Donohue, *Terrorism and Counterterrorism Discourse*, in GLOBAL ANTI-TERRORISM LAW AND POLICY, 23 (2005).

¹⁷⁵ Kent Roach, *The Criminal Law and Terrorism*, in GLOBAL ANTI-TERRORISM LAW AND POLICY, 129 (2005).

¹⁷⁶ S.C.Res. 1373, U.N. Doc. S/RES/1373 (September 28, 2001).

laws against the financing of terrorism,¹⁷⁷ the introduced criminal law amendments were not intended to be applied to fight terrorism, but to silence criticism deemed harmful, threatening or otherwise offensive to the regime.

Nevertheless, immediately after the November 9, 2005 attacks, the government pledged to enact a new bill, the Terrorism Prevention Law [“TPL”], as an emergency measure that, in principle, would include both punitive and self-protective measures. It was not until November 2006 – a year after the attacks - that the law was enacted.¹⁷⁸ As the title suggests, the legislation’s main objective is to prevent future attacks. In the past, the authorities relied exclusively on the Penal Code and other criminal statutes to respond to terrorism-related issues, whether to punish criminals for certain committed crimes, or to achieve deterrence by the repeated use of a harsh punishment strategy.

iii. Understanding the role of deterrence in achieving security: Two Assumptions

In devising its response to the 11/9 attacks, the government seems to have entertained two assumptions that dominate the counterterrorism legal

¹⁷⁷ 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.

¹⁷⁸ Terrorism Prevention Law no. 55 of 2006 (Jordan).

discourse. First, that the existing criminal structure, as opposed to its enforcement, was to blame for the failure to prevent the 11/9 attacks. Based on this assumption, the government acquired the moral high ground and the political legitimacy to address this legislative insufficiency by enacting special counterterrorism legislation to prevent radicals from attempting, committing or conspiring to commit terror attacks. The second assumption embraces the concept of collective punishment. By punishing a collective for the act of an individual member, even if some or all other members of the collective bear no responsibility for the act, the government would discourage individuals from joining radical groups. Here, I claim that the principles of individual responsibility and legality are, under the new legislation, stretched in a manner that allows the state's prosecutor to impose collective punishment based on guilt by mere association.

1) First assumption: Legislative insufficiency to respond to terror attacks

The assumption that the criminal law that existed before the 11/9 attacks was insufficient to prevent Al-Zarqawi from plotting, recruiting and perpetrating the attacks is wrong. Prior to 11/9 the Jordanian authorities had successfully thwarted both large-scale attacks and suicide bombings by Al-Zarqawi and other militant radical groups.¹⁷⁹ According to remarks made by

¹⁷⁹ The most high-profile case that, if successful, would have combined both elements was the April 2004 thwarted "chemical" attack targeting the intelligence headquarters, the Prime Ministry and the United States embassy. Intelligence services alleged that the attack could potentially have killed 80,000 people and injured a further 160,000. The attack entailed driving trucks loaded with explosives

the king, the intelligence services had thwarted during the period between April 2004 and November 2005 no less than 150 terror attempts by militant radical Islamists affiliated with Al-Qaeda in Iraq.¹⁸⁰ Jordan's experience with terrorist incidents pre-11/9 demonstrates that the security services, prosecutors and courts had sufficient capabilities to investigate, prosecute and punish terror-related crimes. Furthermore, the emphasis on criminal sanctions and retributive punishment do not necessarily create the desired level of deterrence. Therefore, the new law was unnecessary to respond to terrorism even in the most extreme situations because terrorists are not "deterable" by harsher laws. This assertion finds support in two major incidents masterminded by Al-Zarqawi.

A) The 'Hijazi cell'

This case is an example of a terrorist incident committed and adjudicated before any terror-related criminal law reforms were introduced. As noted above, Jordan in response to 9/11 introduced several amendments including the expansion of the definition of terrorism and the application of the death penalty.¹⁸¹ The 'Hijazi cell' incident suggests that the state had the capability

and chemical agents into the targets. *See*, Dealing with Jihadi Islamism, *supra* note 131. However, a chemical expert brought to the court by the defense lawyer argued that while the materials the defendants possessed were hazardous, it would have required great expertise to turn them into an effective weapon. *See*, *Chemical Expert Testifies That Defendants Had Dangerous Chemicals*, THE JORDAN TIMES, October 6, 2005.

¹⁸⁰ Michael Slackman, *11 Top Jordanian Advisers Resign in Wake of Attacks*, THE NEW YORK TIMES, November 16, 2005.

¹⁸¹ *See supra* text accompanying notes 90-92.

through its security services and criminal law structure to put suspected saboteurs under surveillance, charge them with crime, and punish them to the maximum extent of the law. It confirms that criminal law reforms in Jordan were unnecessary because the system already provided for a severe method of punishment. The case falls under what the 9/11 Commission referred to as the ‘Millennium Crisis’.¹⁸² It involved the trial of a group of militant radical Jordanians, known as the ‘Hijazi cell’. The plot was Al-Zarqawi’s first major attempt at a terrorist attack in Jordan after the king granted him amnesty in 1999. Intelligence agents were able to intercept a telephone call that helped foil a plot to blow up a fully booked, 400-room hotel and the historical Baptism site on the border with Israel on the eve of the millennium in December 1999. Raed Hijazi, the group leader, was tried in 2000 and sentenced to death¹⁸³ on counts of crimes pursuant to Jordan’s Penal Code.¹⁸⁴ Al-Zarqawi was convicted in absentia and sentenced to death as well.

B) The 2002 terrorist attack against U.S. Diplomat Laurence Foley

The second case provides reason to believe that deploying new coercive criminal measures and harsher penalties have only a marginal deterrent effect.

In 2002, Al-Zarqawi, already sentenced to death succeeded in recruiting local

¹⁸² 9/11 Commission Report, *supra* note 5 at 174.

¹⁸³ 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.

¹⁸⁴ Hijazi’s death sentence was commuted to life imprisonment in February 2002 by the State Security Court. AMNESTY INTERNATIONAL, JORDAN: DEATH PENALTY/TORTURE/UNFAIR TRIAL – RA’ED MUHAMMAD HIJAZI (February 13, 2002).

radicals living in Jordan to assassinate U.S. diplomat Laurence Foley, the executive officer of the U.S. Agency for International Development in Jordan. Unlike the ‘Hijazi cell’ incident, the intelligence services failed to intercept the communications that led to the recruitment of the perpetrators. Apparently, the criminal law, as amended following 9/11, did not have any deterrence value neither on Al-Zarqawi and his aides nor on his ability to recruit. The perpetrators had been charged with murder, and sentenced to death by the military court in accordance with the Penal code. And for the second time, Al-Zarqawi received a death sentence for his involvement in the attack.

II) Second assumption: New provisions are needed to allow the prosecution of radical leaders and their supporters

Prior to the 11/9 attacks, the state had a very low rate of criminal convictions and prosecutions of terrorism suspects, and has come up noticeably short in high-profile cases. A Human Rights Watch study¹⁸⁵ that investigated the interrogation and detention of individuals in sixteen cases between 2002 and 2005, found that one was acquitted, eight were released without charge, five were charged with offences but were never brought to trial, and two remained in detention.¹⁸⁶ The main reason behind the failure to prosecute was that the suspects have not committed criminal acts that fall within any of the categories of offences associated with terrorism. It was

¹⁸⁵ Jordan: Suspicious Sweeps, *supra* note 115 at 2.

¹⁸⁶ No recent reports are available on the status of the two detainees.

impossible for the state to prosecute suspects based on their identification with a radical ideology or mere affiliation with a religious group.

In an attempt to address its failures in criminal prosecutions, the TPL contained a new definition of terrorism. The new definition allows flexibility in how a suspect can be charged, offering a series of strained legal interpretations to determine guilt. Article 2 of the TPL states:

“Every intentional act committed by any means that leads to killing or causing physical harm or inflicting damage to public or private property or transportation or environment or infrastructure or international entities premises or diplomatic missions if the intent of that act 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.”

The above definition is broadly worded as to allow the prosecution of suspects for acts that are not criminal in nature but may result in a terror-related crime. Unlike other countries’ terrorism laws, intentional acts are not identified as being criminal or as those in violation of criminal laws.¹⁸⁷ An intentional act is not confined to activities that involve violent or life-

¹⁸⁷ The United States has defined terrorism under the Federal criminal code. 18 U.S.C. §2331 defines “international terrorism” as activities that “(A) involve **violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State....**” And defines “domestic terrorism” as activities that “(A) involve **acts dangerous to human life that are a violation of the criminal laws of the United States or of any State**” The USA Patriot Act defines acts of domestic terrorism are those which: “(A) involve **acts dangerous to human life that are a violation of the criminal laws of the U.S. or of any state, that (B) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping, and (C) occur primarily within the territorial jurisdiction of the U.S.**”

threatening acts or other crimes as defined in the Penal Code. The new definition of terrorism provides the court with the flexibility to overlook one or more of the traditional elements of a crime. In comparison to the definition of Article 147 of the Penal Code,¹⁸⁸ which requires the use of violence or the threat of the use of violence as an element of the terrorism crime, the above definition does not define terrorism as *conduct* or in criminal law terms the *actus reus* or material element of the offence. In addition, *intentional acts* cover ‘inchoate’ offences, where no result or immediate result should necessarily occur. Any activity, whether criminal or non-criminal in nature, which develops over an unspecified period of time into violent activism, may fall under this definition. This could include anything from suicide bombing to preaching in a mosque.

Moreover, Article 3 of the TPL lists three specific acts of terrorism: 1) terrorism financing (*Article 3(a)*); 2) recruiting terrorists (*Article 3(b)*); and 3) group affiliation or formation (*Article 3(c)*). Article 3(c), however, modifies an existing legal authority within the criminal law in order to provide grounds to prosecute terrorism beyond material support. It criminalizes the affiliation

¹⁸⁸ Article 147 of the Penal Code (Jordan), 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.”

with or formation of a group with the intent to commit acts of terrorism, as defined by Article 2 of the TPL. In addition, Article 3(c) does not define a terrorist group or require that the group be illegal. The group is defined by its actions, which could be anything under the above definition of terrorism. Under Penal Code, establishing a ‘villains’ association or an illegal group was made a crime long before 11/9 or even 9/11, however, the group should form with the intent to commit a felony.¹⁸⁹ The Penal Code punishes an individual who joins either a legal or an illegal association that incites or solicits in its bylaws, acts of sedition, vandalism or the use of force against the state.¹⁹⁰ In practical terms, the broad wording of Article 3(c) permits the de facto use of the court’s prosecution system against suspects associated with any group of individuals, or even belonging to a family, involved in preaching or advocating *jihadi* ideology. It follows that the security court could enforce punishment¹⁹¹ on those who share the ideology that according to legal scholars “hopes and expects to benefit collectively from terrorism.”¹⁹² The below discussion of the incident that motivated the enactment of the TPL illustrates the state’s intended application of the law.

¹⁸⁹ Article 157 of the Penal Code (Jordan) criminalizes the act of establishing an association with the intent of committing a felony against people or property, and is punished by imprisonment at hard labor.

¹⁹⁰ Article 160 of the Penal Code (Jordan).

¹⁹¹ Article 7(a) of the Terrorism Prevention Law of 2006 (Jordan) provides for the same punishment under the Penal code for the affiliation with such groups. The penalty shall be imprisonment at hard labor (between three and fifteen years).

¹⁹² ALAN DERSHOWITZ, *WHY TERRORISM WORKS*, 174 (Yale University Press 2002).

A) Motive to enact the TPL: Radicals' reaction to the killing of Al-Zarqawi in 2006

The enactment of the TPL in November 2006, a year after the 11/9 attacks, came in response to a non-terrorist incident that highlighted the potential connection between the Muslim Brotherhood as a hotbed for radicalization and a recruitment base for terrorists on one side, and future terrorist attacks on the other. The incident, as discussed below, demonstrates the state's intended application of the law to instances that involve acts that are not criminal by definition, thus fall through the cracks of the pre-existing criminal legal system.

Immediately after U.S forces killed Al-Zarqawi in Iraq in June 2006,¹⁹³ four members of parliament, belonging to the ' Hamas wing ' of the IAF visited the Zarqawi family and conveyed their condolences. One of the four parliamentarians made a statement in praise of Al-Zarqawi and declared him a martyr.¹⁹⁴ Apparently, the state considered the parliamentarians visit to Al-Zarqawi's family and the statement issued as threatening to national security since it challenged the state's position against violent extremism and showed support for a terrorist. Upon the government's instruction,¹⁹⁵ however, the

¹⁹³ Jordan openly celebrated the role it claimed to have played in the operation. Interview by Der Spiegel weekly magazine with King Abdullah II, June 19, 2006, available at: <http://www.jordanembassyus.org/hmka06192006.htm>

¹⁹⁴ The statement or *fatwa*, however, has triggered another response from the state that will be explored in further detail below. See *infra* Part III(D)(3)(c): Limiting Religious Space through Legislation.

¹⁹⁵ HUMAN RIGHTS WATCH, JORDAN: RISE IN ARRESTS RESTRICTING FREE SPEECH (June 2006).

prosecutor from the Court of First Instance in Amman ordered the arrest of the four members and charged them with violating Article 150 of the Penal Code. As discussed above, the article bans all writing, speech or acts that are “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.” However, the prosecutor subsequently decided that the charges against the men fell outside the court’s jurisdiction, and transferred the case to the military prosecutor at the State Security Court¹⁹⁶ who ordered their detention. After a two-week trial, the military court found two of the four members guilty of “stirring internal strife and national divisions,” based on Article 150 of the Penal Code. Sheikh Mohammad Abu Faris received a two-year sentence for describing Al-Zarqawi as a “martyr and a fighter,” and Ali Abu Sukr, a prominent campaigner against the state’s policies, was given a one-and-half year prison term. The other two parliamentarians were acquitted.

A number of Islamists expressed their opposition to the state’s intervention, and considered the manner in which it dealt with the parliamentarian’s incident as unacceptable and illegal. Similar concerns were echoed by international human rights organizations. As Sarah Leah Whitson from Human Rights Watch has put it,

¹⁹⁶ See *infra* text accompanying note 200.

Expressing condolences to the family of a dead man, however murderous he might be, is not a crime. And it shouldn't be grounds for prosecution. Nor should a dubious comment about an alleged terrorist leader, even by a member of parliament, be considered incitement to violence. Going after these people is an unacceptable violation of their basic rights to free speech.¹⁹⁷

The two convicted parliamentarians were pardoned by the king in September 2006,¹⁹⁸ a move deemed necessary to defuse the anger of the party's leadership and supporters until the state enacted legislation that would provide the legal cover for its actions. The government needed a legal authority to criminalize the acts of the four parliamentarians based on national security rather than a violation to the law restricting speech since the former has the moral credibility, or the patriotic leverage, that the latter lacks. In addition, the pardon was designed to divert international attention and escape criticism over the State Security Court law and procedures, in particular in terror-related criminal investigations that were seen to lack clear rules and give rise to frequent occasions of abuse.¹⁹⁹

B) The role of the State Security Court in the application of TPL

The State Security Court ["the Court"] was first established in 1952 by constitutional authority as a special court assigned jurisdiction over civilian

¹⁹⁷ Jordan: Rise in Arrests Restricting Free Speech, *supra* note 195.

¹⁹⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, JORDAN: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2007).

¹⁹⁹ Jordan: Suspicious Sweeps, *supra* note 115.

perpetrators accused of offences against state security.²⁰⁰ In principle, the court is composed of a three-judge panel of either military “and/or” civilian judges,²⁰¹ yet it has always had a military majority. The role of the Court in the fight against terrorism, and the effectiveness of the legal system in general, are often overshadowed by the intelligence services broad powers.

Indeed, the interplay between the powers of the Court prosecutor and the intelligence services operation in Jordan is often vague and lacks predictability to an ordinary person. The Court prosecutor is a military officer appointed by the head of the Joint Chiefs of Staff, ultimately under the same administrative authority as the intelligence officials.²⁰² The prosecutor is vested with the power to issue arrest warrants, produce charges against detainees, and authorizes their detention pending trial in the cases that fall under the jurisdiction of the Court. The General Intelligence Directorate [“GID”], in its turn, is charged with investigating threats to national security, a far-reaching authority that could cover any suspicious act or persons. To demonstrate the breadth of its powers, the GID on its website describes its duties as including “Combating subversive thoughts that generate material

²⁰⁰ Law no. 7 of 1952 (Jordan). This law was later annulled by State Security Court Law no. 17 of 1959 (Jordan), which apparently named the special court ‘State Security Court,’ giving it a permanent status, and outlined its jurisdiction and authorities in further detail. When martial law was imposed between 1967 and 1990, the State Security Court was replaced by a martial court military system; however, it was reintroduced in 1991.

²⁰¹ Article 2 of the State Security Court Law no. 17 of 1959 (Jordan).

²⁰² *Id.*

acts of subversion, and combating any attempt to infiltrate the Jordanian society.”²⁰³

As a matter of law, the prosecutor and law enforcement officers are responsible for criminal investigation once a charge is filed. The intelligence services, in principle, do not have the right to exercise the general powers of law enforcement. In practice, however, the prosecutor delegates his powers to the intelligence officers who carry out the investigations, including interrogations and production of evidence.²⁰⁴ Moreover, the GID operates its own detention facility. Suspects held at the GID detention facility for the purpose of interrogation are not considered “detained,” therefore, do not enjoy the procedural due process protections that normally set the limits for arrests and detentions. A 1998 court ruling supported this view and reasoned that detention powers can only be exercised by the prosecutor.²⁰⁵ In all cases, the legality of detentions is not subject to review during any ongoing investigation. The law does not provide for habeas corpus suits. It allows the prosecutor to grant bail, but it excludes this possibility for terror-related

²⁰³ The General Intelligence Directorate Homepage, http://www.gid.gov.jo/ar/duties_ar.html (Arabic) (last visited April 12, 2009).

²⁰⁴ Article 9 of the Law of Criminal Procedure no. 9 of 1961 (Jordan) contains a list of a number of persons and officers of specific institutions who are authorized to exercise law enforcement powers. Intelligence officers are not on the list. The same article gives the prosecutor the authority to delegate law enforcement powers to other unspecified officials. However, the military prosecutor de facto designates such powers to intelligence officers.

²⁰⁵ Jordan: Suspicious Sweeps, *supra* note 115 at 17.

crimes.²⁰⁶ While the Court has a general jurisdiction over national security issues, it is the intelligence that actually controls the judicial review process. Realistically, any new legal strategy for dealing with terrorism and extremism would require the intelligence services cooperation to guarantee its effectiveness.

C) Application of the TPL

Despite the fact that the Penal Code provides for a number of vaguely-worded offences that allow the Court to issue verdicts without having to adduce specific evidence of individual criminal responsibility,²⁰⁷ the Court could not convict the two parliamentarians who were part of the group that visited Al-Zarqawi family. Since its enactment in 2006 until the end of 2008, there are no available data on whether the security court has invoked the new provisions of the TPL in any of its decisions. But in theory, the enactment of the TPL could achieve two goals: 1) criminalize radical speech as an intentional act that is non-violent or life-threatening, but gives rise to killing or causing damage; 2) convict and punish individuals other than the actual

²⁰⁶ Articles 122 and 123 of the Law of Criminal Procedure no. 9 of 1961 (Jordan).

²⁰⁷ Human rights groups report a number of cases, including the cases of a former Parliamentarian and a former head of the Royal Court, wherein the court charged suspects under the controversial articles of the Penal Code - including the previously discussed articles 150 and 195 - with “stirring up sectarian strife or sedition among the nation” or “seditious libel” and “spreading information deemed harmful to the reputation of the state.” *See*, Jordan: Repressive Laws Still used to intimidate critics, *supra* note 112. Moreover, the security court law does not require that evidence meet a particular legal standard. Article 5 of The State Security Law no. 17 of 1959 (Jordan) provides the court with discretionary authority to follow the general body of legislation that applies to ordinary crimes. According to a defense lawyer who regularly defends terror suspects before the State Security Court, “95 percent of the evidence for the prosecution’s case typically rests on confessions alone.” *See*, Jordan: Suspicious Sweeps, *supra* note 115 at 35.

perpetrator of the wrongful act, based on affiliation with a group that any of its members committed the act, therefore avoid the ‘legal gap’ in Article 150²⁰⁸ of the Penal Code that criminalizes the act of only those who violate the law restricting speech. In the case of the four parliamentarians, the radical statement or *fatwa* issued by one of the parliamentarians qualifies as an intentional act that incites violence and leads to death, serious injury or damage to property, in the future or immediate future. The rest of the parliamentarians, although may have been faultless, are criminally liable based on their affiliation with the group that one of its members issued the *fatwa*. This explanation illustrates the essential point about collective punishment in countering radicalization, wherein several individuals are punished for the wrongful act of one. Such a measure would also have a deterrent effect on followers from joining radical groups. In other words, collective punishment tends to cause defection from the group.²⁰⁹

The case of the four parliamentarians has brought to the surface a controversial measure that the state utilizes in terror-related cases. In practice, the new counterterrorism legislation would expand the authority of the Court’s prosecutor to legalize the arbitrary detention of terror suspects. The intelligence services often rely on indefinite detention as a measure against

²⁰⁸ See *supra* text accompanying note 104.

²⁰⁹ Richard Posner, *Collective Punishment*, The Richard-Posner Blog, July 23, 2006, <http://www.becker-posner-blog.com/>

radical Islamists in case where they are accused of belonging to extremist groups, but prosecution is not possible due to the lack of legal authority. In recent years, the state prosecutor has arrested and issued charges against suspects based on suspicions of involvement or association with radical family members or groups, and without having any legal authority or evidentiary basis. Mahdi Zaidan, for example, has four sons who were arrested on several occasions.²¹⁰ According to him, his family is very religious. They had at one point belonged to a radical group and they held opinions opposed to state policies, but they did not support or engage in violence. One of his sons, Mahmoud, lives in Afghanistan, where he went in 1997; another son, Ibrahim, is currently detained by the U.S. at Guantanamo Bay after being caught in Afghanistan in 2001. In 2004, intelligence forces arrested Umar, who spent three months in detention, and his younger brother Muhammad Zaidan, who spent two months. The prosecutor charged the Zaidan brothers with conspiracy to commit crimes, without specifying the crimes in question. However, they were both released without being prosecuted for planning, or supporting, or engaging in terrorist acts.

Allegations of unspecified danger are not sufficient grounds to indefinitely detain a person. Despite the state's attempts to dismiss the abuse as isolated and in some cases necessary to respond to a terrorist threat, there are few other

²¹⁰ Jordan: Suspicious Sweeps, *supra* note 115 at 34-35.

recorded cases that provide evidence of a pattern of such extra-legal practices. Adnan Abu Nujila, for example, was arrested in Azerbaijan in 2003, and held under detention in Jordan for intelligence interrogation for almost three years without being charged.²¹¹ According to a statement he made to his family, the GID waited for a year before it started interrogation.²¹² In a similar case, the GID arrested Fahmi S., the seventeen-year-old brother of Rami S., who was in Saudi Arabia at the time. Fahmi told Human Rights Watch that an officer remarked during the arrest: “We’ll take you instead of [your brother].”²¹³

Conspiring to engage in a terrorist act is undoubtedly a serious act. One cannot rule out that the intelligence services may have had in the above cases some information relating to specific alleged criminal activity. Deprivation of liberty in certain instances becomes necessary and an appropriate response to obtain further intelligence and protect the state and its citizens from a terrorist threat. But keeping a person in detention based on a suspicious link with a terror suspect is wrong. Arresting an individual without having reasonable grounds is also wrong. Preventive detention as a method of fighting the dissemination of a radical ideology may be appropriate in the short-term to

²¹¹ *Id.* at 27.

²¹² *Id.*

²¹³ *Id.* at 29.

alienate a leader and prevent the formation of a base of support,²¹⁴ however alienating ‘the base’ would generate in the long-term substantial negative cost.

iv. Evaluation of Jordan’s response: Counterproductive

The enactment of tougher security laws following a terrorist attack to punish and prevent future acts of terrorism is not unusual. This has been, in fact, the situation in almost every country examined that has experienced some form of terrorism, including the world’s largest democracies. In comparison to other countries’ experiences, the TPL is by far the shortest piece of emergency legislation passed in response to the criminal phenomenon of terrorism. The two-page legislation with its nine articles represents a response that was based on fear rather than on evidence of danger. After all the 11/9 attacks were perpetrated by a group of Iraqi suicide bombers who were recruited by a Jordanian terrorist. It was fear of a repeated attack by terrorists who would recruit from the local religious opposition. This was affirmed by the government’s response following the visit of the parliamentarians to Al-Zarqawi family. While the court has not yet applied the provisions of the new legislation, there are concerns that its application might actually contribute to the increase of radicalization. Islamists themselves have warned against its radicalizing potential. Fifteen Islamic Action Front

²¹⁴ The case of Abu-Mohammad Al-Maqdisi is an example of an influential radical leader, who is considered by the state as a key figure in the growth of the *Jihadi* movement in Jordan. According to a Crisis Group report, Maqdisi’s incarceration led to an apparent downturn in *jihadi* activity in Jordan. *See, Dealing with Jihadi Islamism, supra* note 131 at 11.

lawmakers²¹⁵ denounced the law affirming that it would encourage terrorism because its “unjust clauses and severe punishments will oppress many people and lead to the creation of more terror groups.”²¹⁶ Other human rights activists warned that the legislation would turn the country into a ‘police state’.²¹⁷ Leaders of civil society associations accused the state of nearing the completion of a full circle back to martial rule, describing the law as a blunt violation of basic rights.²¹⁸

Given that the threat of terrorism and extremism comes from a relatively small group of radical leaders, imposing collective punishment is not the right course. Collective punishment is considered an extremely costly method of punishment, because several or many people are punished for the wrongful act of one.²¹⁹ It becomes problematic when the cost of punishment to the members of the group is disproportionate to their guilt. Imposing severe punishment might temporarily succeed in intimidating third party or sympathetic audience from group formation.²²⁰ But individuals who suffer harm and stigma based on suspicions of their support to violent extremism are

²¹⁵ Fifteen out of the sixteen Islamist lawmakers who occupied House seats during the (2003-2007) parliament.

²¹⁶ Jamal Halaby, *Jordan parliament OKs terrorism law*, THE ASSOCIATED PRESS (August 2006).

²¹⁷ Mohammad Ben Hussein, *Deputies speak out about anti-terrorism legislation*, THE JORDAN TIMES, January 3, 2006.

²¹⁸ UNITED PRESS INTERNATIONAL, *JORDAN: ANTI-TERRORISM LAW CALLED MARTIAL*, 1 (August 29, 2006).

²¹⁹ Posner, *supra* note 209.

²²⁰ *Id.*

likely to become more supportive to radical rhetoric. In the long-term, this could help extremists to become stronger and a bigger movement.

The calculated and political nature of terrorism,²²¹ however, demands a strict and narrowly tailored response from the state to deter potential recruits from joining radical groups. In fighting extremism, the state should again differentiate between radical leaders and third parties or passive supporters who embrace the radical ideology, and may under certain circumstances become active or engage in acts of terrorism.²²² The key is to limit punishment and other coercive measures, to the extent possible, to the radical minority.

2. The Management of Collective Action

i. State manipulation of civil society institutions

The state's management of Islamic activism as part of its policy to counter the radical religious ideology that supports violent extremism is inextricably linked to broader issues of state social control. The state's power is apparent through the regulation of collective action within its civil society. A key element of the state's regulatory power is to break down civil society into small administrable units of closely associated institutions instead of having a single, centralized organization that is too big to manage. To guarantee that

²²¹ Roach, *supra* note 175 at 138.

²²² *Id.* at 137.

these institutions do not challenge the regime or the state policies, the state strictly prohibits civil society institutions from engaging in political activities. Therefore, a non-governmental organization is prohibited by law from having any political goals. Members of the society can only engage in political activities through political parties, which are subject to similar, yet independent set of strict legal conditions.

Nevertheless, the legal basis for the organization of civil society institutions was created in the Law of Societies and Social Organizations of 1966. As defined by the state, the societies and organizations are those created with the objective “to provide social services with no intention of making profit, achieving personal gains or political goals.”²²³ Practically, this law applies to all non-governmental organizations in any field of activity. The state developed an administrative apparatus that allows it to observe, register, record, inspect and monitor all possible forms of organizational activities. In order to organize in civil society, a group must submit a draft bylaw that clearly stipulates the goals, objectives and activities of the prospective organization. The most important requirement is that the organizations must maintain a detailed record of all activities, which is submitted in annual report to the state or the respective department. The record includes details on finances, correspondence, board meetings, fixed assets, revenues and

²²³ Article 2 of Law of Societies and Social Organizations no. 33 of 1966 (Jordan).

disbursements, and active members. These requirements might seem to be similar to the registration practices of various other countries. Yet this system is intended to produce documentation all designed to more effectively regulate social interactions by subjecting all possible forms of organization to oversight and surveillance.

In practice, the state uses the above administrative and regulatory practices to limit the scope of participation and to prevent informal social groups from organizing or acting outside this state-delineated space. The government has full discretion to reject or accept applications to register an organization. Thus, critical groups are prevented from forming any organization.²²⁴ And of those accepted, the state can amend or remove specific activities from their proposed bylaws. All of these requirements provide the state with the legal basis for the dissolution of the organization's administrative board, or in some instances its termination,²²⁵ should the organization exceed the confines of its bylaw or fail to disclose information that renders surveillance possible. If an organization violates the provisions of the law or continues to operate against

²²⁴ Wiktorowicz, *supra* note 12 at 27.

²²⁵ Dissolution is more common in occurrence. Reports indicate that the Jordanian Society for Citizens Rights (JSCR) was shut down in October 2002 making it the first civil society institution to be closed since 1989. The JSCR had to end its activities after the state ordered its closure and the cancellation of its registration for alleged violation of the Societies and Social Organizations Law. However, the JSCR claimed the closure was for political reasons, including the JSCR's reporting of citizens from a Palestinian origin who were prohibited from returning to the Kingdom because of the absence of proper documents. *See*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, ARAB POLITICAL SYSTEMS: BASELINE INFORMATION AND REFORMS – JORDAN, 16, (2007), Jordan: Country Reports on Human Rights Practices (2004).

the state's decisions, the Penal Code considers such organization 'illegal' and its members are subject to criminal penalties.²²⁶

ii. The growth of Islamic opposition within the system of control

Ironically, the state's administrative practices and regulatory framework for managing collective action within civil society indirectly enabled the growth of the Islamic opposition. As noted above, in its quest to prevent the emergence of organized nationalist opposition within civil society in the late 1950s, the state regarded Islamists as a strategic ally in undermining nationalist and leftist forces in the kingdom. Thus, the Muslim Brotherhood organization was given broad maneuvering room to operate in multiple spheres of activity within the society. It successfully built an organizational social network that includes schools, hospitals, cultural societies, and charitable centers. Throughout most of this period, the Brotherhood respected the limits of organizational space as determined by the logic of administrative practices and did not seek revolutionary change or articulate a radical, politicized Islamic discourse.²²⁷

The Brotherhood's expansion in civil society allowed it greater opportunities for reaching new constituencies. It provided a point of contact

²²⁶ Article 159 & 160 of the Penal Code (Jordan).

²²⁷ There have been some disagreements over the implementation of Islamic law and some cultural practices deemed non-Islamic, thus not posing any significant challenge to the state.

with communities and an opportunity to publically display its achievements through concrete projects. Although these social organizations did not engage in political activities, they had a political effect. In 1989 when parliamentary elections resumed after a hiatus of over three decades, the Brotherhood leaped beyond its past performance in the 1950s,²²⁸ where it had succeeded in less than a handful of races, to win 28 percent of the total seats. By providing social services for communities and members, the Brotherhood developed the solid popular base necessary to mobilize political support.

iii. State harassment of Islamic activism within civil society

Following strong showings by Hezbollah in Lebanon, the Muslim Brotherhood in Egypt, in addition to the election of Hamas in the West Bank and Gaza in 2006, the state became alarmed at the level of Islamists influence as a potent force of mobilizing political opposition. In addition to the criminal reforms Jordan has adopted to fight the threat of extremism, the government turned to its civil society in an attempt to marginalize the role of the social networks that radicals can utilize as a vehicle to garner support and recruit.

²²⁸ Before Martial law was imposed in the aftermath of the 1967 war with Israel and parliamentary activity came to halt, members of the Muslim Brotherhood were encouraged by the state to participate in parliamentary elections against nationalist and communist groups. However, members of the Muslim Brotherhood did not participate as representatives of a political movement.

I) *The case of the Islamic Center Society*

The state used its regulatory framework for civil society to restrict the expansion of the Brotherhood through its social networks, thus prevent the radical minority from gaining strength from the constituency. The case of the *Islamic Center Society* [“ICS”] provides clear evidence of the state’s tactics of intervention.²²⁹ The center, founded in 1963, is the Brotherhood’s charitable arm, dispensing aid and social services to community members. Article 3 of its bylaw states that “*the Society does not in any way seek or engage in the spheres of politics, religion, or sectarianism, and it offers its services to all citizens equally.*” According to its former president, the center runs 14 healthcare centers and two large hospitals, 50 schools at all levels catering to 16,000 students, and 56 centers for 12,000 orphans. Some estimate that the charity controls over \$1 billion in assets.²³⁰ In July 2006, the state dissolved the administration of the ICS and appointed a new temporary administrative board for alleged violation of the above article of the Center’s bylaw.²³¹ By law, a temporary administrative board serves for a maximum of 60 days,²³² during which the center’s general assembly should vote in a new administration. However, the state constantly renewed the temporary board’s

²²⁹ HUMAN RIGHTS WATCH, JORDAN: SHUTTING OUT THE CRITICS: RESTRICTIVE LAWS USED TO REPRESS CIVIL SOCIETY IN JORDAN (December 2007).

²³⁰ Prados, *supra* note 150 at 5.

²³¹ The government referred the charity’s case to the (civil) prosecutor’s office for legal action after a joint committee comprising officials from the Audit Bureau and the Social Development Ministry reportedly found unspecified discrepancies in the society’s records. The prosecutor, acting under article 9.b(1) of the Law on Economic Crimes, charged some board members with crimes under the same law. However, no convictions to date.

²³² Article 18(b) of the Law of Societies and Social Organizations no. 33 of 1966 (Jordan).

term for more than a year. In that period, the board led a massive effort to increase the membership of the ICS's general assembly.²³³ The state argued that diversifying the membership was necessary to fulfill the center's objectives. For its part, the Brotherhood argued that the massive increase in membership and failure to hold elections within the two-month period prescribed by the law was designed to weaken its influence. In a statement made to Human Rights Watch, the center's former president said that new members obtain the right to vote after one year of membership, and the state was waiting to have a majority of liberal members eligible to vote before scheduling new board elections.

iv. The enactment of new restrictive measures

In 2008 the state enacted a new law to block the loopholes that previously facilitated the growth of the Brotherhood's ICS, and avoid a similar confrontation in the future. Under the new Societies Law²³⁴ the state would continue to control the registration and the activities carried out by civil society institutions. However, the new legislation allows the state to micromanage almost every aspect of an institution's activities. From the state's point of view, the extra administrative measures maximize its ability to maintain constant monitoring that would limit opportunities for underground

²³³ According to ICS former president, between July 2007 and August 2008, around 525 new members joined the center's general assembly, in addition to the 350 original members. However, in a statement by the government appointed president, 367 new members joined.

²³⁴ Societies Law no. 51 of 2008 (Jordan).

activities. Civil society institutions are now obliged to submit *in advance* to the authorities their annual plan of activities and the state has the power to exercise a veto right over particular types of activities.²³⁵ Decisions concerning holding a general assembly meeting and the appointment of an administrative board²³⁶ shall only enter into force after they are approved by the state. In addition, the state retains the right to delegate a representative to attend the approved meetings. To prevent mobilization outside the state-tailored structure of civil society institutions, the state issued another legislation that withholds permission for civil society members to hold meetings.²³⁷ Events, lectures, and activities are regulated so that they maintain an unambiguously apolitical content.

The law also includes measures that aim at cutting off the Brotherhood's charities' access to foreign or regional funding to limit the scale of its activities and reach. To achieve this goal, the law banned institutions from receiving funds or accepting donations from abroad without prior approval from the state.²³⁸ Of particular significance is that the absolute ban on foreign funds expands the legal grounds on which the state can dissolve an existing charity. Politically, the state would use the ban as an instrument to fight the

²³⁵ *Id.* at Article 16(a).

²³⁶ *Id.* at Article 14(c)(2).

²³⁷ Public Meeting Law no. 40 of 2008 (Jordan).

²³⁸ Article 17(b)(1) of Societies Law no. 51 of 2008 (Jordan).

formation of new alliances with other regional religious radical groups, particularly with Hamas and Hezbollah.

The civil society legislation triggered a widespread public outcry that should not be ignored. Local press has been highly critical - to the extent it is permitted - of many of the coercive measures it included. Some mainstream media reports described the new measures as “an attempt to nationalize” social activities.²³⁹ The Brotherhood said in a statement that the measures represent “a stark image of a policy of repression against the Islamist movement.”²⁴⁰ Hard-line members went further in their criticism and accused the state of manipulating the law “to rob the Brotherhood of its freedom and undermine its role in the country.”²⁴¹

v. Dangerous implications of pursuing an overall restrictive approach

The state’s goal to defend itself against the homegrown threat of radicalization is certainly legitimate. It was only natural for the state to develop its practices and policies in response to the ever-changing nature of the threat. Nevertheless, the state must be aware of the implications of

²³⁹ Emad Abdelrahman, “Law of Societies and Social Organizations: Clash between Vision and Interests or an Intention to Nationalize Social Activities?,” ALRAI NEWSPAPER, June 22, 2008, http://alrai.com/pages.php?news_id=217444

²⁴⁰ Mohammad Ben Hussein, Muslim Brotherhood moves to end internal feud, Jordan Times, (August 16, 2009).

²⁴¹ *Jordan enacts laws restricting demonstrations, NGOs*, THE ASSOCIATED PRESS, (July 1, 2008).

advancing aggressive mechanisms that target the activities of a large group whose members share particular characteristics with a suspect group.

I) Driving opposition to operate underground

A dangerous implication of cracking down on formal Islamic organizations is the risk of driving opposition further underground, where they are harder to monitor and less likely to be subjected to moderate influences. The history of the state's dealings with the Brotherhood suggests that this is a real concern. The state's role in the talks between the Palestinian Liberation Organization and Israel at the Madrid Conference in 1991, and later signing its peace treaty with Israel in 1994 ran into considerable Islamic opposition. The state adopted a series of measures to undermine this opposition. In addition to cracking down on its social organizations, mass arrests and police harassment the government introduced an amendment to the electoral law, known as the "one person, one vote," which, as discussed above, diluted the Muslim Brotherhood vote.²⁴² As a result, the peace treaty with Israel was ratified by an overwhelmingly conservative and pro-regime parliament. In the years afterward, however, Islamic opposition only grew. When the Brotherhood could not prevent the treaty, change the electoral system, or mobilize through the formal institution of civil society, its members turned to an alternative form of political activism.

²⁴² See *supra* note 18.

For example, the Brotherhood became a leading part of the “*anti-normalization*” movement in Jordan to prevent society-to-society relationships with Israel. It thereby created a basis for its political activism within the most influential professional associations e.g. engineers, lawyers, medical doctors. Similar to other civil society institution, these entities have a limited institutional ability to change the course of politics since they are not allowed to engage in political activities or have political goals. But in spite of that, Brotherhood candidates who won the leadership posts of almost all professional associations established an informal “anti-normalization committee.” The committee, consisting of the presidents of the various professional associations, began to amass “blacklists” with names of journalists, politicians, academics, artists, and businessmen who advocate cross-cultural and economic ties with Israel.²⁴³ Each association in turn expelled those individuals by canceling their membership in the association, which is a legal prerequisite to practicing any profession in Jordan.

The potential of this committee as a nucleus of an underground movement cannot be undermined. Al-Qaeda as a global militant network started as a support group in the Afghanistan-Soviet war, and now has hundreds of

²⁴³ FREEDOM HOUSE, FREEDOM IN THE WORLD: COUNTRY REPORT: JORDAN (2002), http://www.freedomhouse.org/modules/mod_call_dsp_country-fiw.cfm?year=2002&country=1475 , last visited December 5, 2009.

autonomous underground cells. As Paul Scham at the Middle East Institute in Washington D.C. puts it “the fight over normalization in Jordan is in some real respects a conflict that goes beyond the merits of dealing with Israel.”²⁴⁴ In recent years, committee members gave fiery speeches, threatened disciplinary action against persons who supported the Peace Treaty or conducted business with Israelis.²⁴⁵ It mobilized thousands of people for coordinated rallies many of which ended in violence.²⁴⁶ Whether this group remains small or grows into a broadly based movement will largely depend on the way the authorities deal with its leadership activities.

In response, the state invoked coercive administrative measures to limit the politicization of such grassroots associations. In November 2002, the government requested the judiciary to dissolve the council of the Engineers Association - the richest and most powerful of all associations, and whose leadership steer the anti-normalization committee. It also declared the Professional Associations Council, which is the umbrella organization for all professional associations, to be illegal.²⁴⁷ To date, the government threatens to dissolve the Professional Associations Council if its leaders do not cease the

²⁴⁴ Paul L. Scham, “*Normalization*” and “*Anti-Normalization*” in *Jordan: The Public Debate*, MIDDLE EAST REVIEW OF INTERNATIONAL AFFAIRS 5, 68 (2001).

²⁴⁵ *Id.* at 59.

²⁴⁶ By U.S. standards set by *Branderburg v. Ohio* 395 U.S. 444 (1969), for instance, the committee’s advocacy of the use of force and unlawful activities is illegal and subversive since (a) it is directed at inciting (b) imminent, lawless action, and (c) is likely to incite or produce such action.

²⁴⁷ JULIA CHOUCAIR, *ILLUSIVE REFORM: JORDAN’S STUBBORN STABILITY*, 13 (Carnegie Endowment 2006).

anti-normalization committee's activities. Here, the government ought to draw the line between the leadership and the body it manipulates. Instead of taking down an institution for the actions of its leadership, the government should apply its measures based on the individual responsibility of its members.

II) Raising radicals' status within civil society: ' Hamas wing' taking over the leadership of the IAF

The wrongful use of restrictive legal measures may serve in the long-term to raise radicals' status within civil society rather than to undermine their influence. The experience of the state with the growth of the radical wing of the Brotherhood is a case in point. One should not underestimate the influence of other external political and economical factors that have contributed to the radicals' increased popularity. But it appears that the state's restrictive measures have, in fact, failed to curb the growth of an increasingly influential radical or "*Hamas wing*" trend within the Brotherhood's political party.

As aforementioned, the relationship between the state and the Brotherhood has been characterized by increased wariness and mutual hostility over the latter's strong identification with Hamas leaders.²⁴⁸ The state views Hamas as an adversary that could further radicalize the Islamic opposition and start

²⁴⁸ The Islamic Resistance Movement ["Hamas"] was founded in 1987 by Sheikh Ahmed Yassin in the Gaza Strip at the beginning of the Palestinian *intifadah* against the Israel occupation of the West Bank and Gaza. It is an affiliate branch of the Muslim Brotherhood in Egypt.

another cycle of violence, much as leftist Palestinian movements did in the aftermath of 1967. In recent years, the government has taken some legal measures against Hamas members who live in Jordan in order to limit their ability to mobilize support or issue statements supporting anti-Israel violence. Hamas was one of the few Palestinian rejectionist groups that the regime permitted to run a political bureau or “information office” in Amman. The presence of such offices might seem to fall outside the aforementioned social control system that the state created for its own civil society institutions but their presence was dictated by the nature of the then Arab-Israeli conflict. There are two possible explanations for this. First, Jordan wanted to demonstrate to its people that entering into a peace treaty with Israel was a strategic choice and does not mean abandoning the Palestinian cause. Second, the state thought that by allowing Hamas to operate this office, it would reduce the possibility of driving its members to operate underground. In 1999, the state realized that Hamas’ presence in Jordan had become a security concern, especially after a failed assassination attempt on Khaled Mashal, the head of Hamas’ political office in 1997.²⁴⁹ In view of that, the authorities in a step that fueled public outrage raided and closed the bureau offices, detained a host of Hamas activists,²⁵⁰ and in an unconstitutional move expelled four of

²⁴⁹ Israel to probe assassination attempt in Jordan, CNN WORLD NEWS, October 6, 1997, <http://www.cnn.com/WORLD/9710/06/israel.netanyahu/>

²⁵⁰ Charges against the Hamas leaders included possession of weapons and explosives for use in illegal acts; crimes that can carry the death penalty.

its leaders,²⁵¹ all Jordanian citizens, including Mashal. The government refused to reverse the expulsion order unless they renounce their Hamas affiliation.²⁵² Since then, Jordan has been heavy-handed in dealing with Hamas supporters, resorting to law enforcement harassment, permit denials, and restrictive regulations²⁵³ to tighten its control on any potential to regroup outside the current institutions of the Muslim Brotherhood. It was mentioned earlier, that legal repression is a useful tool when targeted at radical forces to remove them away from the base that enables them to survive; however repression in excess of the authority imposing it would defy its rational ends. In other words, the government should limit its restrictive measures within the boundaries it created to control civil society institutions. Similar to the impact of the relaxation of restrictive policies, applying them in excess would be exploited by radicals expand their activities and strengthen their support.

Despite the state's claims to have successfully dealt with the threat, the truth is that its repressive approach failed to curb Hamas' influence on civil society. No matter how legitimate it seems for the state to protect itself against

²⁵¹ The expulsion was a controversial move since the Article 9(i) of the Constitution (Jordan) prohibits the expulsion of its own citizens. The four Hamas leaders were Jordanian citizens. *See*, William Orme, *Jordan Frees Four Hamas leaders and Expels them*, THE NEW YORK TIMES, November 22, 1999, available at: <http://www.nytimes.com/1999/11/22/world/jordan-frees-four-jailed-hamas-leaders-and-expels-them.html>

²⁵² In 2001, Jordan permitted Ibrahim Ghawsheh - one of the four deported citizens and Hamas spokesman - to return to Jordan only after he agreed not to engage in any political activity for Hamas.

²⁵³ For example, in 2003 the Central Bank of Jordan instructed local banks to freeze assets belonging to individuals suspected of Hamas affiliation without necessarily being active in Jordan. *See*, OFFICE OF THE COORDINATOR OF COUNTERTERRORISM, UNITED STATES DEPARTMENT OF STATE, PATTERNS OF GLOBAL TERRORISM: JORDAN (April 29, 2004), available at: <http://www.state.gov/s/ct/rls/crt/index.htm>

a threat, the effort will not be accepted if it relies on measures that threaten citizenship rights and go beyond the ‘legal limits’ of repression. The mass arrests and deportations have only contributed to Hamas’ increased popularity among the bulk of Jordan’s population, which is largely of Palestinian descent.²⁵⁴ This fact was solidified when Hamas sympathizers took over the Brotherhood’s political party leadership in March 2006 by electing Zaki Bani Irsheid – a radical known for his close ties with Hamas’s political head Khaled Mashal - as the Secretary-General of the Islamic Action Front.

vi. Manipulating civil society can no longer be the only option

The state’s control of civil society has undoubtedly played a major role in limiting the use of social space as an arena for political activism. In theory, the state’s restrictive body of legislation does constrain the ability of radicals within the Brotherhood to mobilize mainstream members. But it is clear from the above discussion that the state’s utilization of repressive mechanisms has driven radicals in the recent history to consider alternative forms of mobilization, such as informal networking. In addition, such repressive measures have created resentment that inadvertently raised radicals’ stature. The fact that radical leaders have succeeded in taking over the reins of the Brotherhood’s leadership is alarming. The threat posed by radical Islamists

²⁵⁴ According to a September 2002 official statement, Palestinians constitute 43 percent of the Jordanian population; however, unofficial estimates indicate that Palestinians comprise 55 percent to 70 percent of the population. Prados, *supra* note 150 at 2.

remains real, and requires the state to act. The problem with the current approach is that the state seems to consider the Islamic movement as terrorist sleeper cells; therefore it imposes blanket restrictive measures that have a broad social impact on an entire group. This is not the right approach.

vii. Recommended course of action: Work to empower moderate forces

Jordan should read the situation as an opportunity to fight radicalization from within. While the targeted application of repressive legal polices that are not in excess of law authority is helpful in fighting radical leaders, it is not enough. Jordan needs to focus on the moderate forces within the Brotherhood and to work closely with its leaders if it seeks to develop an effective administrative and regulatory framework to identify, monitor, and counteract potential radicals therein. There is little evidence that the state's repressive approach on civil society has decreased radicalization. However, there are considerable grounds to believe that it has fueled more opposition that in recent years took an Islamic character. Jordan's continued use of aggressive mechanisms that are not simply directed against radicals, but against legitimate opposition as a whole, threatens to further radicalize those who have been unfairly targeted. The substantial negative impact of this approach on civil society would generally deepen the isolation of the Brotherhood and give incentive for radicals and non-radicals to group together.

As a matter of law, the state should consider substantial revisions to the law that would offset any negative cost generated by the application of restrictive measures. As a principle, broad powers should not be allowed to overstay the necessity that justifies them; the enactment of certain measures should be an exception to address a specific situation and not the general rule. Thus, meaningful inclusion of a temporal dimension would prove a worthwhile endeavor. The state and its legislators should consider the introduction of *sunset provisions* used by many democracies to periodically reexamine and assess the utility of certain state powers, such as surveillance powers, bans or limitations on certain activities and rights. In light of the regulatory framework for civil society that targets first and foremost Islamic activism, such provisions would prove valuable on different levels. First, it would create a much needed mechanism for review – even if temporarily - to determine whether, in fact, a certain measure that was considered necessary and proper to address a relatively short-term security concern is still appropriate to use. For example, if the aforementioned ban on receiving foreign funds prior to state approval was set to cease after a fixed period of time unless the parliament reenacted it, that would send a strong message that the state is not acting arbitrarily but responding to an evolving threat that requires deploying harsh measures. In addition, the sunset process allows both the state and the legislature to assess what the measure was able to demonstrate effectiveness. In view of its experience, the state might decide to

eliminate the ban if it proved to be ineffective or counterproductive. The state might realize that the negative consequences of applying the measure require using a different approach to monitor the flow of foreign funds and donations, perhaps through a regulatory framework. By contrast, it might decide to modify the legal authority of the administrative body that oversees the implementation of the ban and provide it with more tools.

Some legal experts question the effectiveness of sunset provisions²⁵⁵ on the ground that such provisions once employed in legislation, actually do not “sunset” or repeal, even in cases where measures have gone unused. Because when the government gains greater power - especially in the field of surveillance and law enforcement - it is quite reticent to give such power up, even if the new power is set to sunset. The government will always make the case that withdrawing such provisions will lead to terrorism. This reduces the power of the legislature in curbing the executive’s authority since it is difficult for congress to demonstrate that the powers are no longer necessary. Indeed, there is the possibility that certain extraordinary powers could continue indefinitely based on the concept of legal necessity. But in an authoritarian regime this does not make a difference because the government will always have the upper hand in passing legislation and defining its powers. For instance, martial law was by far the most repressive body of legislation that

²⁵⁵ LAURA DONOHUE, *THE COST OF TERRORISM*, 338- 341(Cambridge University Press 2008).

the regime imposed for more than two decades but it eventually came to an end. As noted, some counterterrorist legislation such as the TPL and Article 149 of the Penal Code were enacted but to date were never enforced. The law, however, in its written form is the first ‘act’ that the public gets to see and react to. Opposition usually reacts to the state’s intentions to use the enacted measures rather than its actual enforcement. Whether driven by perceived or real injustices, radicals tend to exploit public outrage against the state’s intentions to bolster their credibility and expand recruitment activities. Radicals rely on a ‘war of words,’ framing their views through a powerful religious context accusing the government of engaging in the West’s war on Islam by enacting legislation that is anti-Islamic. Why should not the government aim to undermine radicals’ influence through the same tool terrorists use to mobilize? If the government is in a situation that requires the expansion of law and procedures, the sunset provision would have a significant moderating influence. By demonstrating good intentions from the part of the government, and a will to include the legislature in making tough policy choices, the state might generate some kind of general acceptance of the logic behind its actions. In the midst of counterterrorist dialogue, such a step would come across as part of a government effort to reform or democratize its laws. Individuals would be more willing to give up more of their rights as long as a sunset provision is attached to the adopted measure.

Once this legal mechanism is in place, a new opportunity will present itself for the state to rebuild its relationship with mainstream members of the Brotherhood, which fundamentally depends on trust. This trust has been compromised by treating the organization as a suspect rather than a partner in the fight against extremism. The use of blanket restrictive measures has generated substantial opposition and hostility toward the state. The Brotherhood is aware of its limited ability to influence the state's policies or legislation; however, the history of cooperation between the state and the Brotherhood provides a factual basis to believe that they can reinstitute trust and develop a workable relationship to offset the influence of potential radicals within its civil society institutions.

c. Limiting Religious Space through Legislation

In 2006, the state enacted further measures that aim to prevent radicals from utilizing several mechanisms available within the religio-spatial structure of Islamic rituals to mobilize new recruits, and at the same time produce a depoliticized and unthreatening interpretation of Islam. In the name of fighting extremism, however, the state enforced large-scale repressive administrative practices on the predominantly Muslim population, Brotherhood members and independent Islamists. But how would this response serve the state's interest in fighting radicalization, when such measures play directly into the hands of radicals who seek to portray the state

as anti-Islamic. Below is a discussion of two major pieces of legislation that Jordan has adopted following the 11/9 attacks. This presentation aims to contribute to the debate about the appropriateness and value of the use of regulatory strictures in the counterterrorist dialogue, in particular in the religious space.

*i. The Law of Preaching, Guidance and Teaching in Mosques no. 59 of 2006
(amending law no. 7 of 1986)*

1) Religious institutions and mobilization potential

Jordan has constantly understood the potential of mosques as an informal social platform to disseminate religious beliefs and mobilize collective action. Through the mosque, individuals congregate, listen to religious lessons, gather and dispense donations, and receive *fatwas*. In fact, in the mid-1980s, the state's intelligence services utilized state-run mosques as recruitment centers to reach out to radicals to mobilize volunteer fighters to join the so-called "Arab Afghan"²⁵⁶ movement in its fight against Communist forces in Afghanistan.²⁵⁷ The presence of radicals within religious space was never an issue of concern provided their main energy and calls for *jihad* were directed against targets outside Jordan's borders. But ever since domestic political dissent took a religious character, and in light of the legal restriction on

²⁵⁶ Bruce, *supra* note 78.

²⁵⁷ Interview by International Crisis Group with Samih Khreis, a trial lawyer involved in defending *jihadis* (March 30, 2005). Dealing with Jihadi Islamism, *supra* note 131 at 11.

freedom of speech, the mosque has become an important medium of expression, at once religious, social, cultural and political, purveying a message wrapped in religious symbolism.

II) State control of religious space

Similar to the system of state control over civil society institutions, Jordan has enacted a series of administrative measures to prevent radical opposition from using public religious space to garner support for its causes. Islamic institutions have been incorporated into the state bureaucracy through the Ministry of *Awqaf* and Islamic Affairs; namely the Department of Preaching and Guidance. All mosques and mosque-related activities, including Friday sermons [*“khutba”*], are subject to state control, which is based on two main practices: (1) preventing hard-line Islamic clerics [*“imams”*] from reaching the pulpit; and (2) censoring the content of sermons that often fuse religious and political symbols to mobilize opposition.

The law provides the state with unbounded authority to ban any *imam* from preaching without specifying a reason. The law, in addition, does not offer any criteria for determining whether a ban is reasonable or not.²⁵⁸ In practice, the state had broad powers to keep outspoken or influential figures

²⁵⁸ Article 7(c) of the Law of Preaching, Guidance and Teaching in Mosques no.7 of 1986 (Jordan).

banned for longer periods of time.²⁵⁹ The government often rotates preachers between mosques to limit the opportunity for possible controversial oppositional figures from cultivating a loyal constituency.

As for the state's censorship of preached material, the law states that the preacher "*shall not attack, accuse, or instigate against individuals or institutions and go beyond the guidelines of Islamic teachings.*"²⁶⁰ In reality, however, there is a set of unwritten but well-recognized rules that represent limits on speech tolerated by the state. In general, these limits are interpreted as prohibiting any criticism directed against the state. Going beyond such limits often entails referral to the intelligence service for interrogation, facing criminal charges under article 150 and 195 of the Penal code, and possible detention. In recent years, the *Awqaf* went one step further by requiring *imams* to speak on specific apolitical topics that do not trigger controversy or instigate opposition throughout the community.

Example: The case of Abu Zant

Evidence suggests that the manipulation of bureaucratic processes, rules and procedures was effective to a large extent in restricting the revolutionary or oppositional potential of traditional religious institutions by blocking critical voices from participating in public religious discourse. The practice of

²⁵⁹ Wiktorowicz, *supra* note 12 at 61.

²⁶⁰ Law no. 7 of 1986 (Jordan), *supra* note 257 at Article 3.

banning certain preachers has survived an important test that began immediately after Jordan signed its peace treaty with Israel in 1994. The opposition, steered by the Brotherhood's radical wing, became a source of contention as a security threat that could have profoundly destabilizing consequences. Law enforcement and intelligence agents intensified their surveillance and were successful in removing radical *imams* from their government positions,²⁶¹ and detaining political activists. A famous case involves Abdul Munem Abu Zant, a member of the Muslim Brotherhood and an IAF party parliamentarian from 1989 to 1997 who is close to Hamas and a vocal supporter of its activities. In 1999, the governor of Amman placed Abu Zant under administrative detention for refusing to sign a pledge not to deliver pro-Hamas sermons.²⁶² This incident sparked heated opposition from Islamists, who viewed it as part of an increasingly severe repression of religious opposition. Beyond this opposition, however, there were no significant consequences recorded such as violence or attempts by Abu Zant and his supporters to mobilize outside the bounds of law. This case also demonstrates that restrictions on speech do sometimes work in terms of marginalizing radical figures.

²⁶¹The case of Salah Al-Khalidi is the most cited incident wherein a ten-year state appointed imam at a central mosque in a heavy populated area was removed from his position for publicly opposing the peace treaty. Wiktorowicz, *supra* note 12 at 62.

²⁶² *Id.*

III) Limits on state's capabilities to control religious activism

In recent years, however, the growth of mosques²⁶³ has surpassed the government's capabilities to supervise and staff them with 'qualified' imams and preachers.²⁶⁴ In some cases, radical activism was presented without direct government surveillance, and it became more difficult to regulate. This has prompted the state to tighten its control on all mosques. Religious activists told Human Rights Watch that intelligence agents closely observe radical opposition groups and individuals. Mustafa R. reported that following the war in Iraq he was arrested and charged with "breaching of state security" for attempting to travel to Iraq. During the course of his interrogation, officers were mostly interested in learning the names of mosque prayer leaders.²⁶⁵ Other reports also note that agents observed those who regularly perform prayers, in particular the 'dawn prayer.'²⁶⁶ In the month of September 2004 the government arrested around thirty mainstream imams, preachers and scholars for turning mosques into "political meeting halls" for allegedly stirring radical opposition.²⁶⁷

²⁶³ The number of mosques in the kingdom grew in number from 2710 in 1999 to 6243 in 2008. Ministry of Awqaf and Religious Affairs Available at: http://www.awqaf.gov.jo/pages.php?menu_id=90

²⁶⁴ Although, one of the main functions of the imam is to give the Friday sermon and religious lessons, not all state-appointed imams are qualified or possess the required skills. According to published data, out of the 2002 state-employed imams only 950 are classified by the Ministry of Religious Affairs as being qualified i.e. academic qualification beyond high school certificate. Available at: http://www.awqaf.gov.jo/pages.php?menu_id=90

²⁶⁵ Jordan: Suspicious Sweeps, *supra* note 115 at 38.

²⁶⁶ *Id.* at 25.

²⁶⁷ Dealing with Jihadi Islamism, *supra* note 131 at 15.

As a result, in 2006 the government introduced a comprehensive ban on all forms of religious speech and ritual that communicate radical beliefs and espouse violent extremism. Only those who obtain the state's approval are allowed to engage in mosque-related activities. Permission is contingent upon the state's approval of the content. The amendment was associated with coercive measures to obtain compliance with the new obligations. In September 2007, it was reported that the authorities arrested nine members of the Brotherhood on charges of preaching in mosques without official approval. They were forced to sign a pledge not to engage in mosque-related activities without prior approval from the authorities.²⁶⁸

IV) Question of radicalization

Again, the central question remains: would a default martial-like law on who operates within the context of religious space be adequate to diminish the role of mosques as a forum for mobilization and recruitment, or for that matter, decrease radicalization? It is extremely difficult to assess the perceived impact of such an approach on a concept that can hardly be quantified. But in practice, restrictive measures appear to limit the risk posed by foreign radical organizations who would exploit Jordan's religious space to muster support for their own causes, in particular external radical sources led by Al-Qaeda. This assertion is supported by the fact that Al-Zarqawi, who until the 11/9

²⁶⁸ Arab Political Systems, *supra* note 225 at 16.

attacks enjoyed considerable support among religious Jordanians, had to rely on ethnic Iraqis to carry out the attacks to avoid thorough surveillance by the intelligence services.²⁶⁹ The pre-existing law arguably constrained Al-Zarqawi's ability to recruit new members in local networks. Thus, greater restrictions would increase the level of protection. It would presumably immunize the state against the threat coming from the politically radicalized, whom under the cover of the legitimate opposition would exploit the religious institution to expand their network.

A) Institutional alternatives to the religious structure

However, there are reasons to believe in the inefficacy of this regulative and administrative approach to domestic mobilization. Mosques were always considered the primary mobilization and recruitment site, since they provided radical leaders with an informal network of individuals who are predisposed toward a particular religious ideology. Formalizing such a network by subjecting its operations to legal restrictions and administrative practices diminishes its tactical efficacy. Under such circumstances radical leaders have two options. They can surrender to state control and its management strategies, which would require radical leaders to make concessions and limit their objectives. Given the ideological imperative that drives radicals' *modus operandi*, this is unlikely. Instead, radical leaders would look for an

²⁶⁹ Dealing with Jihadi Islamism, *supra* note 131 at 13.

institutional alternative or reorient themselves toward other nodes to escape regulation and state-controlled religious space. Alternative forms of collective action could include any form of mobilization that is not necessarily religious in nature. The jihadist ideology is already spread through thousands of internet websites. And, a relatively small group of radical Islamists has been able through information technologies to reach millions of people, disseminate ideological themes, and recruit new supporters.²⁷⁰ In Jordan, the IAF has, in fact, started using the Internet and its blogosphere as an alternative form of political activism to adapt to the increasingly restrictive legal measures that are being justified under the pretext of counterterrorism.²⁷¹ Perhaps the low internet penetration rate in Jordan²⁷² that suggests a relatively limited audience has not yet put the threat posed by radical bloggers on the state's radar screen. But if circumstances change, and the blogosphere becomes the anonymous virtual meeting place, where radicals organize and form virtual relationships that bring together like-minded individuals, would the state enforce more restrictive measures in response to the threat?

²⁷⁰ Rosenau, *supra* note 7.

²⁷¹ Pete Ajemian, *The Islamist opposition online in Egypt and Jordan*, Arab, Media and Society, (2008).

²⁷² 18 percent in 2008. *See*, INTERNET WORD STATS, JORDAN: INTERNET USAGE AND MARKETING REPORT (2008), available at: <http://www.internetworldstats.com/me/jo.htm>

B) Encouraging radicalization through the heavy-handed application of the law

It is natural for rules to change over time to respond to changed circumstances. But the costs and dangers of having rules that are overly restrictive might outweigh any potential gains. There is a concern that by resorting to more heavy-handed methods to counter the radical threat, the state is more likely to encourage radicalization. As aforementioned, radicalization is a concept that cannot be quantified, but that does not mean it is absolutely immeasurable. Concepts such as corruption, democracy, *etc.* are measured through a list of indicators that reflects the levels of corruption or democracy in a specific society. Any future initiative that would take on developing a country radicalization index or a standard to measure religious radicalization must, in my view, include resentment towards the United States policies and interference in regional affairs as an indicator to reflect the growing inclination towards religious extremism.

The growth of anti-Americanism was not only among radicals but also among a significant mainstream majority in the Muslim world, and in many other parts of the world. Radical opposition, however, tends to portray the United States as an aggressor against Islam, posing a real threat to its very survival. Georgetown Professor John Esposito in his book *Who Speaks for Islam* contends that a primary catalyst or driver of radicalism in Muslim

countries is the threat of political domination and foreign occupation.²⁷³ The U.S. invasion of Iraq, for example, is largely seen as a security disaster. It has sparked intense and unprecedented anti-Americanism and led to increased terrorists attacks by radical religious groups beyond Iraq. Some terrorism experts refer to radical terrorist groups as “anti-American terrorist groups.”²⁷⁴ Professor Esposito explains that the heightened sense of the West’s threat has reinforced the desire of radical forces to limit the power of the West, and other regimes that they regard as authoritarian, anti-Islamic, and most importantly complacent with the West.²⁷⁵ A British intelligence report, for example, concluded that “events in Iraq are continuing to act as motivation and a focus of a range of terrorist related activities in the U.K.”²⁷⁶ Another report by an influential private research company said that Britain’s participation in the war in Iraq had made it more vulnerable to terrorist attacks.²⁷⁷ One of the four London bombers responsible for the 7/7 terrorist metro attacks, Mohammad Khan confessed his motives on Al-Jazeera TV: “Until you stop the bombing, gassing, imprisonment and torture of my people we will not stop this fight. We are at war and I am a soldier.”²⁷⁸ The 2004 bombings in Madrid is another example. The bombing was carried out by a group of radical terrorist not

²⁷³ Esposito, *supra* note 132 at 91.

²⁷⁴ Cole, *supra* note 172 at 153.

²⁷⁵ *Id.* at 93.

²⁷⁶ Cole, *supra* note 172 at 151.

²⁷⁷ *Id.*

²⁷⁸ Esposito, *supra* note 132 at 90. In 1998, Osama Bin Laden phrased it more dramatically: “The truth is the whole Muslim world is the victim of international terrorism, engineered by America and the United Nations.” Osama bin Laden interview with John Miller of ABC News, May 1998. Available at: <http://pbs.org/wgbh/pages/frontline/shows/binladen/who/interview.html>.

against occupation in Spain, but to terrorize Spaniards before elections and thus defeat the incumbent Prime Minister who supported Iraq's invasion and occupation.²⁷⁹ In Jordan, as noted earlier, the Iraq war has provided great grievances. A Jordanian mother described how her 25-year-old son, Zeid Horani, became angrier and angrier as he watched television images of the U.S. troops in Iraq. He and his friends decided to "go do jihad" and went off to the local mosque.²⁸⁰

There can be little doubt that the high levels of resentment to the U.S. and its policies in the Middle East are associated with a similar rise of anger and dissatisfaction with Jordan's pro-western alliance. In light of the limits on freedoms of speech and expression in Jordan, public outrage is generally more explicit against the U.S. policies, and is often used to voice the growing radical opposition to the country's unpopular alliance with the United States. As noted earlier, opposition to the war on Iraq was in part against the government for agreeing to support and assist the U.S. military. That said, Anti-American attitudes, which grew recently to unprecedented levels, indicate a similar level of hostility towards the United States' allies.

²⁷⁹ Esposito, *supra* note 132 at 79.

²⁸⁰ Richardson, *supra* note 1 at 93. It was reported that Zeid Horani was sent to trial, accused of establishing a recruitment network for Jordanian jihadists. James Glanz, In Jordanian Case, Hints of Iraq Jihad Networks, THE NEW YORK TIMES, July 29, 2005.

Following the 2006 amendment to the law, press reports indicated that the ban on religious speech had sparked strong opposition, even among moderate religious scholars. Religious dissent immediately blamed the U.S. for the state's amendment. IAF party members said that the government pressed for the changes "to appease the United States and Israel by cracking down on Muslim hardliners."²⁸¹ A Pew research poll conducted in 2008 showed that 81 percent of the Jordanian population has unfavorable views of the United States.²⁸² This is a significant percentage in a predominantly Muslim population with a dominant Islamic opposition.²⁸³

The alarming fact is that this resentful mood, guided by a radical ideology will remain so for the foreseeable future. A poll conducted by the Center for Strategic Studies at the University of Jordan following the election of President Barak Obama's in 2008 to measure public perspective regarding the future course of America's approach toward the Middle East found that 60 percent of Jordanians believed that President Obama's election would not have a positive impact on foreign policy issues (66 percent on the Palestinian issue and 63 percent on the Iraq).²⁸⁴

²⁸¹ Jamal Halaby, *Jordan works on Mosque law*, THE ASSOCIATED PRESS, (September 24, 2006).

²⁸² PEW GLOBAL ATTITUDE PROJECT, GLOBAL PUBLIC OPINION IN THE BUSH YEARS (2001-2008), (2008), available at: <http://pewglobal.org/reports/display.php?ReportID=263>

²⁸³ See *supra* note 20.

²⁸⁴ MOHAMMAD AL-MASRI, POLL ON JORDANIAN PUBLIC OPINION TOWARD THE ELECTION OF BARAK OBAMA, 7 (Center for Strategic Studies, University of Jordan, December 2008), available at: <http://www.css-jordan.org>

One cannot underestimate the influence of external political events on the increase of radicalization among the religious opposition. But recent history shows that events beyond the government's control, such as the Israeli-Palestinian conflict, the Israeli-Hezbollah problem and the U.S. war on terrorism, have been features for a few decades. In other words, anti-Israel and anti-U.S. aspects are a constant in the counterterrorist debate, in particular its impact on radicalization in Jordan. The threat of Islamic activism on national security in terms of domestic terrorism arises inasmuch as the regime gets involved in the external events, and for that matter support the U.S. It was when Jordan entered into peace negotiations with Israel in the early 1990s that the Muslim Brotherhood rose to prominence as security concern. And, when the regime assisted the U.S.-led coalition against Iraq in 2003, and later on joined the U.S. nuanced position on Israel and Hezbollah war in 2006 that the Islamic movement adopted a more radical rhetoric against the state and its Western alliance.

Critics also refer to other social and economic factors as the driving force behind the rise of religious extremism. In Jordan the relationship between poverty, inequality and terrorism has long been debated, with some critics pointing to the impoverished Palestinian refugee camps as spawning grounds for terrorist, and others pointing to allegations about the exclusion of Jordanians from a Palestinian origin from the state as a driving force behind

the radicalization of the Islamic movement.²⁸⁵ Harvard Professor Louise Richardson in her book *What Terrorists Want* studied different terrorist groups, including Islamic extremists. She concluded that poverty and inequality are risk factors that could increase the likelihood of terrorism rather than causing it.²⁸⁶ She argued that if there were a direct link among poverty, inequality and terrorism, the places with the highest rates of poverty and inequality - like Africa and Latin America - would have the highest rates of terrorism, but they do not. Nevertheless, Professor Esposito in his aforementioned study²⁸⁷ of contemporary Muslims investigated how demographic factors interact with specific predispositions and attitudes, including perceptions of serious threats to Islam and the intensity of religious orientation, to explain who would consider terrorism against Western and pro-Western targets. He explains that understanding religious extremism extends beyond the conventional wisdom that a combination of religion, poverty, unemployment and lack of education drive extremism and terrorism. In his analysis - based on Gallup's World Poll - he explained how the contention

²⁸⁵ Critics often use the demographics of the Jordanian society to highlight issues of social inequality and disproportionate representation within the context of the electoral law [discussed in text accompanying Fn. 23]. This is true, but it does not tell the whole story. These discussions deal with a specific flaw in the elections system that cannot be generalized. Jordanians of Palestinian descent are not excluded from the state and do control centers of power in Jordan, whether in the economy (private sector e.g. banking, trade unions) or the government (executive, legislative (senate), and judiciary). For example, in the current government (November 2009), the Prime Minister, Foreign Minister, Minister of Justice, Minister of Social development, and Minister of Tourism are Jordanians of Palestinian descent. For at least the past two decades, the President of the Senate and the Chairman of the Central Bank of Jordan have been of Palestinian descent, in addition to the current Head of the Court of Cassation.

²⁸⁶ Richardson, *supra* note 1 at 57.

²⁸⁷ Esposito, *supra* note 132.

that poverty and lack of education are associated with extremism is wrong. He highlighted the fact that radicals were no more economically disadvantaged or less educated than the mainstream.²⁸⁸ For instance, when radicals were asked about their finances, they were more satisfied with their financial situations, standard of living, and quality of life. Hence, economic problems can generate broad-based discontent. Issues of social inequality, whether true or not, will always be exploited by disadvantaged groups and ousted politicians to gain support and sympathy. But according to terrorism experts and pundits, radicals may not be driven to terrorism by poverty, inequality or lack of education.

Nevertheless, the threat posed by radical leaders will not go away anytime soon. One of the key objectives of radicals is to provoke states into adopting security policies that expose the limits of the rule of law. The regime by failing to distinguish between political activists who in principle reject violence, and terror activists who advocate violence as a means of political change, it falls for the terrorist strategy. Therefore, it is essential for the state to provide more latitude for credible, independent preachers and religious teachers to operate, including those who represent legitimate dissent, in order to discredit radical extremists. In effect, the state may consider going back to the original text of Article 7 in which the banning practice is the exception

²⁸⁸ *Id.* at 70 – 72.

rather than the rule. Thus, the state would rely on its disciplinary power and make intelligence the critical tool in identifying those who seek to operate outside the scope of the state's bureaucracy. The original text of Article 7 may fall short of democratic standards that encourage free religious speech, but it is less likely to encourage divergent patterns of religious activism. This might seem to contradict an earlier prescription for more repression to counter the threat of radicalization, however, it is not. Targeted repression is needed to stop a vocal radical from turning into a leader and growing a base of grassroots supporters. Blanket repression directed at the mainstream majority would deepen the isolation of the entire movement and give incentive for radicals and non-radicals to group together. Therefore, it is equally important to empower the moderate mainstream. By providing room for moderate views, even those reflecting on critical issues, the state would indirectly achieve three things. First, it contributes to the growth of a moderate force that would influence the same audience that radicals target, thus win them over to the moderate point of view. Second, the state would counter radical's appeal or calls and prevent those moderates and committed audience from joining the radical camp by providing them with an alternative platform for religious activism. Third, the subtle and non-criminal nature of the behaviors involved in radicalization, would present a challenge for the state to identify radical voices in an overall suppressed environment. Relaxing the restrictions on preachers would allow all voices to come out making radical voices more

identifiable and subject to legal responsibility. Again, this begs the questions of whether this policy would risk radicalizing opposition even more by driving it further underground. Whether or not radical voices move to operate underground, in an environment where moderate voices are heard, radicals' influence would be less as they can no longer feed on the general dissatisfaction of the opposition to assert control. In reference to an earlier discussion on the value of underground movements,²⁸⁹ going underground would only alienate the radical minority and render them an outlawed group.

Having said that, there is no definitive answer to whether working with moderates would decrease radicalization. Empowering the moderate forces within the Brotherhood, and at certain instances working closely with its leaders, is a logical deduction based on available policy options and alternatives. There is a risk that this approach might not work, or maybe backfire. But what are the alternatives? If the state continues with its blanket repression, radicalization in Jordan is more likely to increase. But, if the above suggested course proves to be effective, then the state will definitely be in a better position in containing the radical threat. If tolerating moderate dissent will allow the Muslim Brotherhood to grow stronger as a moderate counterforce, this is, in my view, a step in the right direction.

²⁸⁹ See *supra* note 77 and accompanying text.

ii. *The Religious Edicts Law no. 60 of 2006*

I) *Significance of fatwas*

In almost all instances throughout the Middle East, including Jordan, religious edicts, or *fatwas* are normally used within the religious sphere to remove ambiguity or confusion surrounding a contemporary issue by interpreting Islam in local contexts and disseminating a particular Islamic perspective. Though not legally binding in a system dominated by secular codes,²⁹⁰ *fatwas* do have a significant impact on people's understandings of certain norms and rules that guide social behavior.

The state has accordingly moved to control the institutions and individuals who issue *fatwas* through the same administrative and regulatory laws.²⁹¹ It appointed individuals or *muftis* who had moderate views and whose loyalty to the regime's policies was unquestionable. At one point, *fatwas* had become an instrument for the state to justify actions that were viewed as anti-Islamic or to encourage certain practices that would reflect support for the state's policies. For instance, in the 1997 parliamentary elections, the state used *fatwas* to encourage the public to vote following Islamists' decision to boycott the elections in protest against some of the aforementioned legislative

²⁹⁰ Islamic Law application by Islamic courts is limited to personal status issues such as marriage, divorce, and inheritance.

²⁹¹ Before 2006 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. A Council of *Ifa* established in accordance with a government directive was charged *inter alia* with issuing *fatwas*. The council is made up of individuals who are financially and structurally dependent on the state.

amendments to the elections law and other laws restricting free speech. The state's *mufti* issued a *fatwa* claiming that the Islamic principle of *musalaha* or public interest required Muslims to vote, thus making it both a legal and religious duty of every citizen to cast their vote.²⁹²

II) Fatwas a tool for political dissent

However, Islamic opposition has increasingly come to rely on *fatwas* as a method of political expression being a relatively less restricted alternative to other forms of legitimate dissent. The use of *fatwas* has become a serious security concern to the state after the IAF issued a number of *fatwas* that resonate with those issued by Al-Qaeda and other militant Islamic groups in Iraq calling for a holy war against the United States and its allies. As noted above, this started in 2002, during the build-up to the Iraq war, when the IAF's committee of religious scholars—responsible for formulating the party's religious policies— issued a *fatwa* calling on Jordanians to wage a jihad against the United States, and demanding the government “to stop hosting U.S. military exercises on Muslim soil, and dubs those who co-operate with Washington on Iraq as traitors.”²⁹³ The message was interpreted as one calling upon the local Muslim community to wage a war on the regime by virtue of its historic relations and alliance with the United States. One expression of the Brotherhood's radical outlook is a *fatwa* issued in 2004 by

²⁹² Wiktorowicz, *supra* note 12 at 72.

²⁹³ See, the website the Islamic Action Front “Jabha” official website. [http:// www.jabha.net/fatwa.asp](http://www.jabha.net/fatwa.asp)

Dr. Ibrahim Zayed Kilani, the head of the Council of *Ulama* [religious scholars] of the Brotherhood that supported the *jihad* in Iraq and Palestine and demanded that Arab leaders, including Jordan's king, rally Muslims to join the fight or else "they would be committing an act of treachery and declaring war on God and his prophet, and abandoning their obligation toward the community of Muslim believers."²⁹⁴ In other words, and according to *Jihadist* interpretations, this makes the state a *heretic* that should be fought against.

III) State's reaction to the threat of radicalization

In response to such religious messages, the state launched an aggressive campaign in which it intensified its intelligence activities against Islamists. This led to the detention of dozens of preachers and religious scholars. The state's reaction, however, and the measures it spawned did not stop radical religious leaders from propagating Al-Qaeda-inspired ideology against foreign occupation. The major incident that drove a larger wedge in the relationship between the state and Islamic opposition came in June 2006 following the killing of Al-Zarqawi by American forces in Iraq. The statement issued by the IAF parliamentarian, declaring Al-Zarqawi a martyr, and legitimizing his bombings on November 9, 2005 was taken by the party's large constituency as a *fatwa*. A public opinion survey conducted after the killing of Al-Zarqawi showed that the percentage of those who regarded Al-Zarqawi and his

²⁹⁴ This religious ruling was published on August 14, 2004. *See, Id.*

organization as a terror organization dropped from 72 percent immediately after the attacks in Amman to 54 percent following the parliamentary statement.²⁹⁵ The fact that the IAF, and the Brotherhood for that matter, refused to refute the statement's content was seen as an unprecedented provocation that reflected the widening chasm between the regime and the opposition.²⁹⁶ Not only did the state intensify its coercive measures, and apply its criminal terror-related laws to the fullest extent against the parliamentarians, this incident gave the state the political push to draft the legislation that invalidates and de-legitimizes *fatwas* issued by non-state actors.

The objective of the Religious Edicts law of 2006 is to strengthen the state's control over the religious establishment by granting primary authority to issue *fatwas* to a state council that would work to refute the radical interpretations of religious extremists. At the same time, the law prohibits "unqualified" or extremist figures from issuing *fatwas*. To achieve that, the law prohibited any person or institution from issuing *fatwas* on issues pertaining to public policy, or undermining state-issued *fatwas*.²⁹⁷ Through

²⁹⁵ YAIR MINSILI, THE JORDANIAN REGIME FIGHTS THE WAR OF IDEAS, 3, Hudson Institute (2007). See, IPSOS-STAT, OPINION POLL: PERCEPTIONS TOWARD AL ZARQAWI (June 2006), <http://www.alghad.jo/uploads/Al-Zarqawi%20Ipsos%20Poll.pdf>

²⁹⁶ Moreover, during Israel's military operations in Lebanon in July 2006 the IAF issued another *fatwa* that made it a duty to support Hezbollah's resistance against Israel and unequivocally called for the "unity of action and jihad." Statement of the Muslim Brotherhood on the situation in Palestine and Lebanon, July 13, 2006, available at: <http://www.ikhwan-jor.com>

²⁹⁷ Article 12(1) and (2) of the Religious Edicts Law no. 60 of 2006 (Jordan).

this provision, the state sought to block the legal loopholes in the previous legislation, which was silent on the legality of independent *fatwas* issued by non-state scholars. In addition, the law was an attempt by the state to give its earlier effort, the Message,²⁹⁸ enforceable bite against violators. The original draft of the bill introduced in Parliament faced strong Islamic opposition who argued that the legislation gives the state wide latitude to interpret religion as it pleases and a free hand to punish its opponents.²⁹⁹ However, the opposition bloc in parliament was successful in undermining its deterrent effect by producing a law that lacks a penalty clause.³⁰⁰

IV) Less state coercion more regional collaboration

In terms of its effectiveness in discrediting radical ideals and mobilizing the moderate Islamic forces, the legislation is inadequate for three main reasons. First, modern communication technologies ensure that cyber-*fatwas* coming from external sources will continue to reach a wide religious audience receptive to the ideology. Second, the legislation's lack of punitive measures against those who violate its provisions renders it toothless with regard to radical leaders' ability to issue *fatwas*, invalidate state-issued *fatwas*, or endorse cyber-*fatwas*. Third, the counter-*fatwas* issued by the state's institutions are unlikely to offset the negative influence of those issued by

²⁹⁸ See *supra* notes 153-158 and accompanying text.

²⁹⁹ Clerics issue Fatwas, *supra* note 126.

³⁰⁰ At the time the draft legislation was introduced into parliament, it contained a penalty of up to one year imprisonment and a fine equivalent to US\$1400.

radicals or advocate particularly for the adoption of moderate Islam. The fact that those religious leaders and scholars are part of a religious institution under the purview of the state undermines their religious authority and presents them as mere advocates of the state's interpretations of Islam.³⁰¹ According to a number of Islamists who were interviewed in a study,³⁰² religious scholars affiliated with these Islamic institutions are considered "*sheikhs of the authority.*"³⁰³ It is doubtful that Jordan can succeed by itself in this effort to confront the threat of radicalization and recruitment activities. The long-term objectives of the legislation, however, require regional collaboration and dialogue rather than coercion. The negative consequences of the heavy-handed application of the legislation compromise its objectives. It undermines the value of any regional initiative to mobilize moderate Islamic forces in the society, and instead empowers radical voices. As mentioned above, Jordan started this effort prior to the 11/9 bombings with the publication of the Message. It must continue to work on getting the support of prominent religious scholars³⁰⁴ from across the board to limit the authority of issuing *fatwas* to a regional group of widely accepted scholars.

³⁰¹ 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.*"

³⁰² Wiktorowicz, *supra* note 12 at 48.

³⁰³ *Id.*

³⁰⁴ Between July 2005 and August 2006, six Islamic conferences were organized under Royal auspices. Minsili, *supra* note 295 at 5-6.

IV. Conclusion

In the immediate aftermath of 9/11, as the Jordanian regime considered how to cooperate with the United States and its Western allies in the global war on terror, the regime saw an opportunity to extend the scope of its measures of legal control to bolster its rule and continuity. It introduced legislative amendments that went beyond antiterrorism provisions to impose new restrictions on political dissent. Jordan's primary focus was on silencing criticism of government corruption, criticism of the king, and dissent deemed detrimental to Jordan's relations with other states. The September 11 events provided justification for increased political repression resulting in many arrests and show trials for opposition members – religious and secular alike.

When the war started in Iraq, not only was it overwhelmingly unpopular, but Jordan's cooperation with the United States and refusal to denounce the war generated radical domestic opposition. The state became particularly concerned with the growing strength of its Islamic opposition, whose radical members exploited anger towards the United States in order to mobilize their constituencies and strengthen support for radical beliefs. It was not until Jordan was attacked in November 2005 by three suicide bombers that it recognized the potential threat of its Islamic opposition as a vehicle for radical mobilization and recruitment for terrorists. As a result, Jordan announced a more restrictive approach to counterterrorism that is primarily focused on marginalizing its radical adversaries in order to counter the dissemination of the disruptive ideologies that support violent extremism.

However, the state's selective application of its restrictive policies has arguably contributed to the current threat of terrorism and extremism. In examining the historical evolution of Jordan's counterterrorism response, it was the profound misjudgment that propelled the state in the early 1990s to initiate political liberalization measures to prevent instability during an economic crisis that led to the emergence of an organized Islamic opposition. In fact, the Muslim Brotherhood is unique in that it supported martial policies to combat the evolution of other destabilizing movements. The Brotherhood pursued and expanded its activities under this very restrictive environment and never sought greater political freedoms until the state, in 1992, allowed it to form a political party and run on a platform of opposition. In responding to terrorist attacks, the state's policy of granting amnesty in dealing with security threats generally proved to be a grave mistake. Al-Zarqawi is a case in point. After he was sentenced to seven years in jail for the possession of explosives, Al-Zarqawi received a royal pardon after which he fled the country and proceeded to plot his deadliest attacks in Iraq. Unfortunately, in this case, the attempt to co-opt terrorists or neutralize extremist activity backfired and Jordan learned a hard lesson. With respect to the threat of radicalization, the state's decision to allow its radical critics room for dissent from its position on the war in Iraq and express their anger and frustration with the government's foreign policy has proved to be the wrong course.

In short, it was not the lack of restrictive measures or coercion that contributed to the evolution of a politicized Islamic opposition, radicalization, and terrorist activities; rather it was the state's complacent and sympathetic approach in dealing with Islamists that ultimately strengthened support for the Islamic opposition and empowered radicals. However, the consequences are irreversible and any attempt to rectify the situation by inflicting highly coercive measures or imposing further restrictions is counterproductive from a security point of view. The record shows that prosecuting those who support radical ideology or physically barring those who espouse its ideals does not necessarily solve the problem. Legalizing arbitrary detentions does not make the state seem less repressive. And those imprisoned will eventually come out, more radicalized and resentful of the state, thereby increasing the threat of future terrorism. Subjecting civil society institutions to legal restrictions and administrative practices to monitor and manipulate its membership and internal operations is the prime example of recognition of the danger that civil society poses in the mobilization of dissent and radical opposition. Recent history suggests, however, that the state's utilization of aggressive mechanisms has in fact driven some radical leaders to consider alternative forms of mobilization, driving opposition further underground, where they are harder to monitor and less likely to be subjected to moderate influences. And while enforcing a martial-like law on those who operate within the context of religious space might have kept foreign radical organizations from exploiting Jordan's religious institutions, it has encouraged local preachers and religious leaders to reorient themselves toward other nodes that are not necessarily

religious in nature. As aforementioned, radicalization is a concept that can hardly be quantified; therefore, it is difficult to accurately assess the impact of the state's approach on radical ideology. But if polls and surveys are an indicator, there is reason to believe that the majority of the population is indeed inclined toward more radical beliefs and actions. The state's adoption of harshly coercive measures has led a strong wave of radical opposition that is vulnerable to the overtures of terrorists.

In this paper, I have sought to show that the only way to strike the right balance in applying a restrictive policy to counter the radical ideology that supports extremism, without risking the empowerment of radical opposition, is to develop a multidimensional approach that focuses on the moderate forces within the Islamic movement which so far have been unfairly targeted. In order to develop an effective legal framework to identify, monitor, and counteract radical influences, the state needs to rebuild trust within the mainstream movement and to work closely with its leaders. In effect, the state should provide more latitude for credible, independent religious figures to operate within social and religious spheres, including those who represent legitimate dissent. The above analysis of the legality and efficacy of measures to counter terrorism may lead the state to back down from some of its recent policies or consider some revisions to the law to offset the cost generated by the application of restrictive measures. And when harsh coercion is seen necessary to address a specific security concern, the state should consider the introduction of a time limitation to guarantee that coercion does not exceed the circumstances that

justified it. This route, if supported by other trust building measures, promises wider acceptance and less resentment of the state's actions.

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