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Regulating terrorism before the act of terror: A comparative study

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Abstract

In light of the growing risks that terrorism presents to civilised society, Western governments have adopted a broad range of laws and administrative regulations designed to thwart terrorists before they can commit acts of terror. Beyond mere conspiracy or attempt, these laws have sought to proscribe activity that exists as a stand-alone offence but that acts as a proxy for the sorts of offences that constitute true terror activity. This article serves to examine these various approaches. It groups these approaches into four categories: prohibitions on membership in terror organisations; intangible support to terror organisations; restrictions on travel to areas that have terror groups operating openly; and money laundering and other financial crimes tied to the financing of terror organisations. It then identifies a single example within each group to use as a case study to explore the contours of the specific approach, while tying the example to larger trends within Western countries' legal systems. Finally, this article considers the implications for countries considering adopting one or more of these approaches, including the ways that multiple approaches can work in tandem. The article does not make specific recommendations, but rather recognises that each country's government must consider the benefits and costs of adopting these approaches carefully and with an eye to both its security and its society.

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Introduction

When a terrorist attack occurs or is thwarted at a late stage in its development, most countries have well-developed legal mechanisms for prosecuting or otherwise punishing both the operational terrorists and those who have supported and assisted them. In seeking tools to allow legal intervention at earlier stages in the development of terrorist plots, however, many Western countries have begun to adopt statutes and regulations that prohibit activities further and further removed from the actual terror event. These efforts include prohibiting membership in certain terrorist organisations, criminalising intangible support and other abstract forms of assistance to terrorist organisations without reference to a specific planned attack, restricting travel to certain countries or areas under the control of terrorist organisations, and regulating attempts to finance terrorist organisations.

Each of these efforts – which often are used in tandem – uses status as a proxy for action. Put another way, these efforts seek to punish individuals for their relationships with terrorist organisations rather than for any act of terror, actual or inchoate. By doing so, these efforts permit the government to intervene to punish individuals for supporting terrorism in more abstract forms, rather than punishing individuals for conducting or supporting a specific terror attack. The goal, of course, is to stop a terrorist plot at its earliest stages and reduce the risk that the plot comes to fruition. At the same time, by moving further away from the actual act of terrorism, these efforts can impose penalties based on ephemera, ensnaring individuals whose connections to acts of terrorism are either non-existent or so tenuous as to go beyond the bounds that society recognises as meriting punishment.

This article summarises the various statutes and regulations that countries have taken to implement this approach. This article then discusses the effect of each of these efforts in preventing terrorist attacks as well as the risks that these efforts present, including prohibiting otherwise lawful activities unrelated to terrorism. Last, this article considers these efforts as a whole and makes recommendations for the effective use of these laws and regulations for countries seeking to use the law to prevent acts of terror from occurring.

Legal restrictions

Combating terrorism is one of the great challenges that the world faces today. In 2013 alone, acts of terror killed almost 18,000 people in countries as

diverse as Syria, Iraq, and Afghanistan to the United States of America (USA), where Tamerlan and Dzhokhar Tsarnaev killed three and injured dozens at the Boston Marathon, and Nairobi, Kenya, where al Shabaab attackers killed nearly seventy people at the Westgate Mall.¹

Countries have always had at their disposal the laws and regulations necessary to punish specific acts of terror – murder, assault, kidnapping, and the like. Further, countries possess legal theories prohibiting inchoate offences, such as intent, conspiracy, or aiding and abetting, which allow authorities to prosecute those that facilitate a terror attack. But as the threat of terrorism grows and the harm it causes rises, governments have sought to expand the range of criminal and regulatory options available to them to punish terrorists in situations where there is no specific or concrete terrorist act.

Membership

The USA and the western European nations historically have taken different approaches to criminalising mere membership in an organisation, and these differences have affected how these countries have used their legal authority to prohibit membership in terrorist organisations. In the USA, attempts to criminalise membership in the Communist Party and various communist organisations were ultimately rejected by the USA Supreme Court (Supreme Court), which ruled them unconstitutional.² In Europe, however, prohibitions on membership in the Nazi Party or Nazi-affiliated hate groups have been incorporated into criminal law.³ As a result, European countries have been able to adopt laws that restrict membership in terrorist organisations, while the USA has not taken this path.

The USA Constitution prohibits criminalising or otherwise taking an adverse Government action against someone for membership in an organisation. Fearing post-second world war communist influence in USA politics and society, Congress passed the Smith Act, which, among other things, prescribed criminal sanctions for anyone who ‘becomes or is a member of, or affiliates with, any such society, group, or assembly of persons [that seeks to overthrow the federal

¹ United States Department of State, *Country reports on terrorism 2013*, April 2014, 12, 17 <http://www.state.gov/documents/organization/225886.pdf> on 16 August 2016; United States Department of State, *Country reports on terrorism 2013: Annex of statistical information*, April 2014, 3 <http://www.state.gov/documents/organization/225043.pdf> on 16 August 2016.

² See, for example, *Yates v United States*, 354 U.S. 298 (1957).

³ See, for example, *Verbotsgesetz 1947 (Austria)* http://www.ris.bka.gv.at/Dokumente/BgblPDf/1945_13_0/1945_13_0.pdf on 16 August 2016.

government], knowing the purposes thereof.⁴ The Supreme Court struck down the application of the statute in two cases decided in 1961, each of which involved an appeal from a conviction for violation of the statute by members of the Communist Party: *Scales v United States*⁵ and *Noto v United States*.⁶ The Supreme Court found ambiguity in the term ‘member,’ and sought to clarify the difference between ‘active’ members and ‘nominal’ members in its two decisions. In doing so, the Supreme Court ascribed to Congress the intention that only active members are punishable because to do otherwise would raise significant constitutional questions.⁷

As future guidance, the Supreme Court created a three-part test for judging the constitutionality of any law that penalised membership in an organisation: the Government must prove that an individual (1) is affiliated with a specific group, (2) knows of its illegal objectives, and (3) has the specific intent to further those objectives.⁸ The Supreme Court upheld the *Scales* defendant’s conviction under the Smith Act by saying that he was a willing advocate of illegal action and thus punishable as an active member.⁹ The *Noto* defendant’s conviction, however, was overturned, because the Government failed to prove that he had any specific intention to further the illegal goals of the Communist Party.¹⁰ In *Noto*, the Supreme Court warned that statutes criminalising association,

must be judged *strictissimi juris*, for otherwise there is a danger that one in sympathy with the legitimate aims of such an organisation, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share.¹¹

The Supreme Court subsequently expanded this rule beyond criminal statutes to more general regulatory provisions. In *Baggett v Bullitt*,¹² it ruled unconstitutional a mandatory oath for state employment that required applicants to swear they had never ‘knowingly’ been members of subversive organisations, finding that the language was too ambiguous and risked implicating constitutionally pro-

⁴ 18 USC § 2385.

⁵ 367 US 203 (1961).

⁶ 367 US 290 (1961).

⁷ *Scales v United States*, 367 US 203, 222.

⁸ *Scales v United States*, 227-28.

⁹ *Scales v United States*, 224.

¹⁰ *Noto v United States*, 367 US 299.

¹¹ *Noto v United States*, 299-300.

¹² 377 US 360 (1964).

tected behaviour.¹³ Similarly, in *NAACP v Claiborne Hardware Co*, the Supreme Court unanimously rejected a civil lawsuit that attempted to impose group liability following a boycott, finding that the plaintiffs were required to prove individual misconduct.¹⁴ As a result of these decisions, the USA has not sought to criminalise direct membership in terrorist organisations.

European countries, however, do not have the same doctrinaire prohibition on laws and regulations that criminalise or otherwise restrict whole organisations or membership in organisations. As just one recent example, the European Court of Human Rights recently upheld a Hungarian Government ban on a far-right group, the ‘Hungarian Guard Association’, for being a risk to public order.¹⁵ As a result, European countries have been more active in prohibiting terrorist organisations and individual membership in terrorist organisations. For example, in October 2014, the Swiss Federal Council adopted an Ordinance banning the Islamic State of Iraq and Syria (ISIS), enacted in addition to an existing prohibition on Al Qa’ida.¹⁶ The Ordinance prohibits any activities by the organisation in Switzerland and abroad as well as any activities that provide the organisation with support in the form of material or human resources, including propaganda and fundraising campaigns or the recruitment of new members.¹⁷ Similarly, in December 2014, Austria outlawed the symbols of both the ISIS and Al Qa’ida.¹⁸ It did so by amending its existing statute prohibiting the display of Nazi paraphernalia to encompass these additional symbols.¹⁹

¹³ 377 US, 368; See also *Eljbrandt v Russell*, 384 US 11, 17 (1966) (“Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. Laws such as this which are not restricted in scope to those who join with the ‘specific intent’ to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization.”).

¹⁴ 458 US 886, 924 (1982).

¹⁵ *Vona v Hungary*, App No 35943/10, ECtHR Judgement of 9 July 2013, para 60.

¹⁶ Swiss Federal Chancery, *The Federal Council adopts Ordinance banning the Islamic State group and related organizations*, 8 October 2014 <https://www.news.admin.ch/message/index.html?lang=en&msgid=54773> on 16 August 2016.

¹⁷ Swiss Federal Chancery, *The Federal Council adopts Ordinance banning the Islamic State group and related organizations*.

¹⁸ ‘Austrian parliament passes anti-terrorist law’ *Associated Press*, 11 December 2014 <http://bigstory.ap.org/article/e3439154475047bbae9c5c749b727bd7/austrian-parliament-passes-anti-terrorist-law> on 16 August 2016.

¹⁹ ‘Austria bans ISIS terror symbols’ *The Local*, 12 September 2014 <http://www.thelocal.at/20140912/austria-bans-isis-terror-symbols> on 16 August 2016.

Intangible support

While the USA has not taken steps to ban membership in terrorist organisations, it did, even prior to the 11 September 2001 attack on the World Trade Centre, criminalise the provision of ‘material support’ to terrorist organisations.²⁰ The statute defines material support to include

any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials.²¹

The statute further defines ‘training’ to mean ‘instruction or teaching designed to impart a specific skill, as opposed to general knowledge’ and ‘expert advice or assistance’ to mean ‘advice or assistance derived from scientific, technical or other specialized knowledge.’²² The material-support statute is, on its face, a preventive measure – it criminalises not terrorist attacks themselves, but aid that makes the attacks more likely to occur.²³

The Supreme Court considered the outer bounds of the material support statute in *Holder v Humanitarian Law Project*,²⁴ a 2010 decision. The case came about after a number of individuals and advocacy organisations affirmatively challenged the statute, asserting that it would interfere with their ability to offer political and humanitarian support to two designated terror groups: the Kurdistan Workers’ Party (also known as the Partiya Karkeran Kurdistan, or PKK) and the Liberation Tigers of Tamil Eelam (LTTE).²⁵ Specifically, the plaintiffs argued that they intended to, with respect to PKK: (1) ‘train members of PKK on how to use humanitarian and international law to peacefully resolve disputes’; (2) ‘engage in political advocacy on behalf of Kurds who live in Turkey’; and (3) ‘teach PKK members how to petition various representative bodies such as the United Nations for relief.’²⁶ The Supreme Court held that the statute would be

²⁰ 18 USC § 2339B.

²¹ 18 USC § 2339A(b). [E]xpert advice or assistance’ was added to the statute after the September 11 attacks, as part of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act)*. See also *USA Patriot Act*, § 805(a)(2)(B), 115 Stat. 377 (2001).

²² 18 USC § 2339A. These definitions too were added after the September 11 attacks, as part of the *Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004*. See IRTPA, § 6603, 118 Stat. 3762-64 (2004).

²³ *Holder v Humanitarian Law Project* 561 US 1, 30 (2010).

²⁴ 561 US 1, 30 (2010).

²⁵ *Holder v Humanitarian Law Project*, 4.

²⁶ *Holder v Humanitarian Law Project*, 9. By the time the case reached the Supreme Court, LTTE had been

valid if applied to the abovementioned activities. It noted that, even if the support were intended simply for a terrorist organisation's 'legitimate' efforts, it still constituted support that could further the 'illegitimate' goals of the organisation, by freeing fungible resources, legitimating the organisation, and causing rifts between the USA Government and foreign partners working against the terrorist organisation.²⁷ Accordingly, the USA could ban this type of material support.

Other nations have followed suit in adopting prohibitions on these abstract, intangible types of support to terrorism. For example, Australia's Parliament passed the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill, 2014 on 30 October 2014.²⁸ The statute created the new offence of 'advocating terrorism.'²⁹ According to the Attorney General's Explanatory Memorandum, a person violates the new law 'if they intentionally counsel, promote, encourage or urge the doing of a terrorist act or the commission of a terrorism offence and the person is reckless as to whether another person will engage in a terrorist act or commit a terrorist offence.'³⁰ As with the US statute, this law targets abstract support and advocacy, without the need to tie the conduct, directly or even indirectly, to a terrorist attack.

Travel restrictions

Recognising the threat presented by the transnational movement of terrorists, the UN Security Council unanimously adopted Resolution 2178 (2014), calling on member states to take steps to prevent the 'recruiting, organising, transporting or equipping of individuals who travel to a state other than their states of residence or nationality for the purpose of the perpetration, planning of, or participation in terrorist acts.'³¹

defeated by the Government of Sri Lanka, and so the Supreme Court treated arguments relating to LTTE as moot. *Holder*, 9-10.

²⁷ *Holder v Humanitarian Law Project*, 25-27.

²⁸ *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill*, 2014 (Australia). http://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=s976on 16 August 2016.

²⁹ Parliament of the Commonwealth of Australia, *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014: Revised explanatory memorandum*, October 2014, 5,29 http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s976_ems_c21ea737-5e59-4cdb-bceb-7af5e22aa6a9/upload_pdf/398980.pdf;fileType=application%2Fpdfon 16 August 2016.

³⁰ *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (the Commonwealth of Australia)*, 29.

³¹ 'Security Council unanimously adopts Resolution condemning violent extremism, underscoring need to prevent travel, support for foreign terrorist fighters' *United Nations Meetings Coverage and Press Release*, 24 September 2014, SC/11580 <http://www.un.org/press/en/2014/sc11580.doc.htm> on 16 August 2016.

The Netherlands has sought both to prohibit Dutch residents from traveling to Syria and to prevent Dutch citizens already engaged in terrorism from returning. The Netherlands recently adopted a new provision in its Criminal Code that made it illegal to prepare for or facilitate a terrorist offence.³² Further, in March 2014, the Dutch Minister of Justice took steps to revoke the residency rights of one Khalid K, a prior resident of Almere, the Netherlands, who had travelled to Syria and who appeared in images distributed by ISIS wielding a bloody knife and crouching behind several severed heads.³³ The Minister of Justice directed the Dutch Immigration and Naturalisation Service to bar Khalid from returning to the Netherlands for twenty years.³⁴ Of note, the Minister of Justice stated also that, if Khalid were to return, Dutch authorities would consider whether to prosecute him for war crimes, making clear that the travel ban preceded any procedural or substantive finding, judicial or otherwise, that Khalid had committed an act of terrorism (rather than, say, simply posing near the bodies of those killed by others).³⁵

In what is considered the first trial of its type in Europe,³⁶ in October 2013, a court in Rotterdam convicted two individuals, Mohammed G and Omar H, of preparing to commit murder because they planned to travel to Syria to conduct *jihad*.³⁷ The Dutch Government prosecuted the two individuals using the new statute, but they were ultimately found guilty of preparation to commit murder and preparation to use explosives, rather than preparation to commit a terrorist offence.³⁸ Still, the Government touted this prosecution as setting the precedent that travel to Syria to engage in *jihad* is a punishable offence.

Other states have similarly attempted to prohibit travel to regions afflicted by terrorism. For example, Australia's Foreign Fighters Bill created the new of-

³² Section 134A, *Criminal Code (Netherlands)*, Title V.

³³ 'The Syrian fighter from the horrible photos should not be let in to the Netherlands' *Het Laatste Nieuws*, 3 April 2014 <http://www.hln.be/hln/nl/960/Buitenland/article/detail/1840401/2014/04/03/Syriestrijder-van-gruwelfoto-mag-Nederland-niet-meer-in.dhtml> (machine translation) on 16 August 2016.

³⁴ 'The Syrian fighter from the horrible photos should not be let in to the Netherlands'.

³⁵ 'The Syrian fighter from the horrible photos should not be let in to the Netherlands'. Khalid K. ultimately was killed in Iraq in August 2014. See 'Maxime Zech: Almere jihadist killed in N. Iraq battle' *NL Times*, 18 August 2014 <http://www.nltimes.nl/2014/08/18/almere-jihadist-killed-n-iraq-battle/> on 16 August 2016.

³⁶ Paulussen C, 'The Syrian foreign fighters problem: A test case from The Netherlands' *International Centre for Counter-Terrorism*, 2 December 2013.

³⁷ 'Lisa De Bode: Dutch court sentences would-be Syrian rebel fighters' *AlJazeera America*, 23 October 2013 <http://america.aljazeera.com/articles/2013/10/23/dutch-court-sentenceswouldbesyrianrebelfighters.html> on 16 August 2016.

³⁸ 'Lisa De Bode: Dutch court sentences would-be Syrian rebel fighters'.

fence of entering or remaining in a 'declared area' in which the Foreign Minister has determined that a terrorist organisation is operating.³⁹ A defendant accused of violating this provision can avoid punishment if s/he can identify legitimate reason/s from among a discreet list provided in the statute and if the Government cannot prove beyond a reasonable doubt that the defendant did not travel solely for that legitimate reason.⁴⁰ Similarly, Canada's Criminal Code was amended in 2013, pursuant to Bill S-7, the Combating Terrorism Act, to make it a criminal offence for a person to leave or attempt to leave Canada for the purpose of participating in the activities of a terrorist group.⁴¹ Also, in November 2014, France adopted a new anti-terrorism statute containing, among other things, a ban on travel by individuals suspected of involvement in terror activities.⁴²

Financing and money laundering

As terror networks become larger, more complicated, and more diffuse, they require more money and more sources of money to operate. This increased need to move money increases the opportunities for government to use existing prohibitions on terror financing and money laundering – prohibitions which nearly every jurisdiction has⁴³ – to combat the illicit flow of money to terror groups. Unlike the other approaches discussed in this article, however, this approach generally has not required new legal authority. Rather, it has involved the novel application of longstanding legal authorities to new fact patterns presented by an increasingly diverse array of circumstances that constitute modern terror networks.

Perhaps the most attenuated case is that of Hana Khan, a young woman from north-west London. In the summer of 2013, Khan sent £1,000 via Western Union transfer to Jafar Turay, a former United Kingdom (UK) resident then lo-

³⁹ *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (the Commonwealth of Australia), 47.

⁴⁰ *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill, 2014 (Australia)*.

⁴¹ *Bill S-7, Combating Terrorism Act, 2013 (Canada)*, ch. 9, § 8
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6106212&File=30#2> on 16 August 2016.

⁴² 'France: Strengthening the antiterrorism law' *Le Figaro*, 4 November 2014 <http://www.lefigaro.fr/flash-actu/2014/11/04/97001-20141104FILWWW00329-france-renforcement-de-la-loi-anti-terroriste.php> (machine translation) on 16 August 2016.

⁴³ Indeed, as of the writing of this article, 187 states had ratified the *International Convention for the Suppression of the Financing of Terrorism*, 9 December 1999, 2178 UNTS 197
<https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf> on 16 August 2016.

cated in Syria, after he convinced her that he planned to make her his wife and set up home for them in Turkey.⁴⁴ Khan was arrested, prosecuted, and found guilty of two counts of funding terrorism under the UK's Terrorism Act of 2000.⁴⁵ The judge, noting that Khan had acted out of a misguided notion of Turay's true intentions, sentenced her to 21 months in prison, suspended for two years.⁴⁶ While the underlying crime, of providing financing to a terrorist organisation, is in and of itself straightforward, the application of the statute to a case such as Hana Khan's represents an aggressive push by the UK Government to seek to punish behaviour well removed from an actual terrorist attack.

Analysis

As the above examples illustrate, each approach offers a mechanism by which a government can bring its legal regime to bear on individuals that support or facilitate terrorism without needing to tie the illegal behaviour to a specific planned or actualised terror attack. That said, governments must carefully consider whether it is appropriate to enact these types of laws and regulations. Simply because they are helpful in one context does not mean that they will be helpful in other contexts. Because each country is unique, each country's government must examine its own *status quo* legal environment and its own terror threats before adopting any or all of the approaches discussed above.

Governments must consider the costs and the benefits to prohibiting the behaviour discussed above. The intended benefit is of course to combat terrorism; and by using criminal and regulatory law to ban activities that act as proxies for terrorism, governments can punish potential terrorists before they are in a position to effect an actual terrorist attack. These legal approaches are not risk free, however. First, adopting these approaches increases the chances of abusive prosecutions. Because the statutes and regulations discussed above involve punishing behaviour that is a proxy for, but that is distinct from, an actual terrorist attack, they can be over-inclusive and can be used to bring cases against individuals who have no true ties to terrorism. These types of provisions can operate well when paired with appropriate prosecutorial discretion, but they often are reliant on dispassionate and uncorrupted prosecutors. Indeed, for this reason, the USA

⁴⁴ 'Hana Khan sentenced for helping to fund terrorism' *BBC News*, 27 March 2015 <http://www.bbc.com/news/uk-england-london-32090088> on 16 August 2016.

⁴⁵ 'Hana Khan sentenced for helping to fund terrorism'.

⁴⁶ 'Hana Khan sentenced for helping to fund terrorism'.

has not adopted a prohibition on membership in a terrorist organisation – the risks that such prohibitions could be used to prosecute politically unpopular, rather than truly dangerous groups are too inconsistent with USA notions of liberty.

Second, these approaches risk stigmatising populations that are likely to produce terrorists and creating an environment that enhances opportunities for terrorist recruitment. Western European nations in particular have struggled to integrate their Middle Eastern and African immigrant populations, and even if laws of the sort discussed above are not used to persecute these groups, their mere passage and the mere possibility that they could be used in inappropriate ways can fuel resentment – and terror recruitment.

And third, they can distract governments from more pernicious behaviour and redirect scarce government resources from more valuable to less valuable policing methods. Prosecutors and government officials always like to tout their victories, and the legal approaches discussed above create new opportunities for successful ‘terrorism’ prosecutions. Were the resources spent prosecuting the love-struck Ms Khan the best use of the UK Government’s antiterrorism efforts? If prosecutors begin looking for easy wins, however, they may focus too much on the behaviour discussed above and shy away from more difficult cases, which often can involve more sophisticated – and therefore more dangerous – individuals.

Governments must consider also how these provisions can work in tandem with one another. For example, restrictions on travel and restrictions on financing can together stem the flow of both soldiers and resources to areas affected by terrorism, limiting the capacity of terrorist organisations to operate. Similarly, restrictions on both money and material support can prevent a terrorist organisation from receiving either financial or in-kind support from its supporters. Conversely, a nation need not adopt all of the above approaches. For example, the USA has employed restrictions on money and material support but has not adopted prohibitions on membership or travel. None of these approaches is a silver bullet, but neither is any one necessary for an effective anti-terrorism legal regime.

Further, governments must consider how these provisions will interact with other existing statutes. Many jurisdictions have not adopted legislation along the lines discussed above because they have found it unnecessary. For example, most nations have laws that prohibit actual terror acts, laws that prohibit the funding

of illegal activities, and laws that prohibit transactions designed to obscure the intended use of money. These theories, when linked together, have formed the basis for numerous convictions for terror financing. Also, as discussed above, most jurisdictions have existing legal theories that prohibit crimes of intent, conspiracy, or aiding and abetting with regard to terrorism. In many cases, such as that of Mohammed and Omar, discussed above, these existing provisions are adequate. A government should adopt some or all of the approaches discussed above only if the existing legal regime is incapable of handling the threat of terror adequately.

There is no universal approach to these issues. Governments should not shy away from considering novel legal approaches that can combat the scourge of terrorism, nor should they reflexively adopt a creative idea that might work in another jurisdiction operating in an entirely different jurisprudential context. Rather, governments must carefully consider the threats that they face from terror and the ways in which the law can best address those specific threats.

Conclusion

Terrorism is a major threat to the peace and security of every country, and the threat is just starting to grow. As governments seek to use the law to protect their citizens from terrorism, they have considered new and novel legal theories to aid them in their attempts to combat terror. Recently, many western countries have adopted statutes and other governmental regulations prohibiting membership in certain terrorist organisations, criminalising intangible support and other abstract forms of assistance to terrorist organisations without reference to a specific planned attack, restricting travel to certain countries or areas under the control of terrorist organisations, and regulating attempts to finance terrorist organisations. These efforts seek to prohibit activities that are seen as a proxy for terrorism, rather than prohibiting terrorist acts directly, and as a result they push the limits of liability further and further away from the actual terror attack.

When used wisely, these approaches can be a valuable tool for governments in fighting terrorism. These approaches raise a number of complicated issues, however, both of effectiveness and of propriety. Each country faces unique challenges when it comes to terrorism, and each country's government must carefully consider how best to use the law to protect its people from terror.