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John Cabot University

Department of Political Science and International Affairs

Bachelor of Arts in International Affairs

What Works Better to Counter International Terrorism - Unilateral Military Intervention Outside the UN Security Council Framework or Mutual Inter-State Cooperation in Criminal Matters?: A Look at Recent U.S. Practice Since 9/11

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Abstract

From the post-9/11 security landscape to contemporary debates on international law, counterterrorism has fundamentally shaped global governance. This dissertation analyzes the effectiveness of unilateral military intervention versus mutual inter-state cooperation in criminal matters in countering international terrorism. By examining the U.S. responses to terrorism since 9/11, the thesis addresses the following research question: what works better to counter international terrorism—military action outside the UN Security Council framework or legal cooperation rooted in transnational criminal law? The thesis is developed on the idea that while unilateral military interventions, such as those in Afghanistan and Iraq, achieved tactical victories, they ultimately failed to produce lasting political stability. In contrast, transnational criminal law mechanisms—focusing on extradition, mutual legal assistance, and global law enforcement cooperation—offer a more sustainable and legitimate approach to counterterrorism. By analyzing this comparison, the thesis aims to contribute to the broader academic debate on global security governance, offering insights into how law-based international cooperation can more effectively address the evolving threats of terrorism.

Keywords: *terrorism; counterterrorism; transnational criminal law; international cooperation; U.S. foreign policy; international security; unilateral military action; United Nations*

Dedication

This thesis marks the conclusion of a profound journey, full of challenges, growth, and unforgettable experiences. Each moment, no matter how difficult, has contributed to the person I am today and to the realization of this academic milestone.

I dedicate this work, first and foremost, to my parents, whose sacrifices and unwavering support have been the foundation of everything I have achieved. Without them, reaching this point would have been impossible, and for that, I am forever grateful.

To all the people I have met over these three years, whether they brought joy or hardship into my life, I extend my deepest thanks. The laughter, the difficult experiences, and even the setbacks they brought me have each played a part in helping me complete this thesis. Even the bad moments gave me the strength to keep moving forward.

To my dear friends, who have been a constant source of encouragement, joy, and understanding: your unwavering support and the laughter you shared with me gave me the strength to continue this journey, and I am forever thankful to have had you by my side.

I also wish to dedicate this thesis to Professor Lyal S. Sunga, whose course on terrorism and counterterrorism first sparked the inspiration for the topic of this work, and to Professor Michael Driessen, my advisor, who has accompanied and guided me throughout this academic journey with patience and wisdom.

I owe a special acknowledgment to the Palestinian people, whose unimaginable suffering during the ongoing war in Gaza profoundly shaped the direction of this thesis. Witnessing the devastating impact of large-scale military retaliation sparked in me a deep moral and intellectual urgency to ask whether there are more effective, humane, and just alternatives to

counterterrorism than the indiscriminate bombing of civilian areas. This work is, in part, my effort to grapple with that question.

Lastly, I dedicate this thesis to myself, to the person who, despite all the hardships, the setbacks, and the countless moments when giving up seemed like the easier path, chose to persevere. I am proud of the strength it took to arrive here and of everything this journey represents.

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Completing this thesis has been a long and meaningful journey, one that I could not have navigated alone. I am deeply grateful to all those who have supported me academically, emotionally, and personally along the way.

To my parents, my unwavering foundation, whose constant encouragement and sacrifices have made everything possible. Your faith in me, even during the most difficult times, gave me the strength to persevere. I owe this achievement to your endless love and support.

To all the people I have met during these three years — both the good and the bad — I am grateful. The good ones showed me the true meaning of friendship, while the difficult ones helped me recognize my own worth and gave me the strength to push forward, even during the hardest times. To my closest friends, I owe deep thanks — your support, presence, and laughter have been a vital part of this journey, and I am forever thankful to have had you by my side.

I am especially grateful to Professor Lyal S. Sunga, whose course on terrorism and counterterrorism ignited the inspiration for the topic of this thesis. His passion and insight opened new horizons for my academic interests and personal growth.

My heartfelt thanks also go to Professor Michael Driessen, my academic advisor, whose guidance, support, and thoughtful advice accompanied me through every step of this process. His mentorship has been instrumental in helping me bring this work to completion.

The devastating impact of the war in Gaza on Palestinian civilians has weighed heavily on my heart and mind throughout this academic journey. It was in grappling with the images and stories of loss, displacement, and destruction that the central question of this thesis emerged: are there viable alternatives to military strategies that cause such indiscriminate harm? This work is a

reflection of my search for those alternatives and a small gesture of solidarity with those who continue to suffer.

I would also like to extend my sincere appreciation to all the professors I had the privilege to learn from, and to John Cabot University — a place that gave me the opportunity to pursue higher education and offered me exceptional academic experiences, both within and beyond the classroom. The confidence and knowledge I now carry into the future are a direct reflection of the education I received here.

Table of Contents

Abstract	ii
Dedication.....	iii
Acknowledgements.....	v
Table of Contents	Error! Bookmark not defined.
List of Abbreviations.....	x
1. Introduction.....	1
Introductory Overview of the Thesis	1
Structure of the Thesis	2
2. The Rise of the U.S. Number One Enemy: A History of Jihad from the Soviet Invasion to 9/11.....	4
Introduction	4
The Soviet Invasion of Afghanistan: a Turning Point for Jihad.....	4
Operation Desert Storm and the Seeds of Jihad: The Justifications behind U.S. Intervention in the Gulf War	8
Bin Laden’s Grievances: U.S. Imperialism and Middle Eastern Complicity	10
From Al-Qaeda’s Official Creation to the 9/11 Terror Attacks	15
3. Fighting Terror After 9/11: Strategic Foundations, Operations, and the Rise of Drone Warfare in U.S. Counterterrorism Strategy	22
Introduction	22

The Rational behind the Military Operations behind the Military Operations in Afghanistan and Iraq post-9/11	23
War, Occupation and Beyond: How the U.S. Counterterrorism Strategy Unfolded in Iraq and Afghanistan.....	31
From Surveillance to Strikes: How Drone Warfare Shaped U.S. Counterterrorism in Iraq and Afghanistan.....	40
4. Hearts, Minds, and Airstrikes: Why U.S. Counterterrorism Failed in Afghanistan and Iraq.....	45
Introduction	45
Targeted Strikes and Terrorist Takedowns: Tactical Victories on the Ground.....	45
Civilian Casualties and Legal Violations: Strategic and Legal Failures of U.S. Counterterrorism in Afghanistan and Iraq	49
Drone Warfare in Practice: Strategic Advantages and Collateral Costs in Afghanistan and Iraq.....	55
The Failure of Nation-Building in Afghanistan and Iraq: Institutional Fragility, Exclusion, and External Miscalculations	59
The limits of Military Might: When Counterterrorism Fails to Secure Long-Term Stability	63
5. Transnational Criminal Law and Counterterrorism: A Better Alternative to Military Intervention.....	69
Introduction	69
The Legal Framework of Transnational Criminal Law: Functions, Structures, and Comparative Features	70

From Financing to Firearms: Suppressing Terrorism through Transnational Criminal Law	74
The Global Enforcement of Terrorism Laws: Institutional Benefits and Case Evidence of Transnational Criminal Law	80
From Legal Pluralism to Legal Fragmentation: The Risks of Transnational Criminal Law in Counterterrorism Policy	89
6. Conclusions	97
Discussions and Limitations of Research	97
Future Perspectives	98
Bibliography	101

List of Abbreviations

AML	Anti-Money Laundering
ANSF	Afghan National Security Forces
AUMF	Authorization for Use of Military Force
BAC	Business Affairs Component
CCC	Command and Coordination Centre
CDD	Customer Due Diligence
CIA	Central Intelligence Agency
CIPA	Classified Information Procedures Act
COIN	Counterinsurgency
CPA	Coalition Provisional Authority
DEA	Drug Enforcement Administration
FATF	Financial Action Task Force
FTF	Foreign Terrorist Fighters
GDP	Gross Domestic Product
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICL	International Criminal Law
IED	Improvised Explosive Device
IHL	International Humanitarian Law
ISAF	International Security Assistance Force

ISF	Iraqi Security Forces
ISIS	Islamic State of Iraq and Syria
JIATF	Joint Interagency Task Force
JSOC	Joint Special Operations Command
KSM	Khalid Sheikh Mohammed
PNAC	National Central Bureau
PMF	Popular Mobilization Forces
POW	Prisoner of War
RPA	Remotely Piloted Aircraft
SC	Security Council
SLTD	Stolen and Lost Travel Documents database
SOF	Special Operations Forces
STL	Special Tribunal for Lebanon
TCL	Transnational Criminal Law
UAV	Unmanned Aerial Vehicle
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNCAC	United Nations Convention against Corruption
UNCTOC	United Nations Convention against Transnational Organized Crime
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drugs and Crime
US	United States

USSR

Union of Soviet Socialist Republics

WMD

Weapons of Mass Destruction

1. Introduction

Introductory Overview of the Thesis

Since the attacks of September 11, 2001, the challenge of international terrorism has reshaped global security policies, catalyzing debates over the effectiveness and legality of different counterterrorism strategies. This thesis, entitled “What Works Better to Counter International Terrorism: Unilateral Military Intervention Outside the UN Security Council Framework or Mutual Inter-State Cooperation in Criminal Matter? A Look at Recent U.S. Practice Since 9/11”, seeks to analyze the different approaches pursued by the United States in response to terrorism, and evaluate which model has proven more effective and sustainable over the long-term.

For the purposes of this thesis, “unilateral military intervention” refers to the use of force by a state without explicit authorization from the United Nations Security Council, while “mutual inter-state cooperation in criminal matters” describes collaborative legal frameworks, primarily based on transnational criminal law (TCL), designed to suppress terrorism through coordinated law enforcement actions, extradition, and judicial processes. The central inquiry of this thesis revolves around assessing whether unilateral U.S. military interventions in Afghanistan and Iraq have successfully countered terrorism, or whether international legal cooperation provides a more legitimate, sustainable, and effective alternative.

After an introductory overview of the historical emergence of terrorism as a global threat and the U.S. responses to it, the thesis will review theoretical foundations for both military and

legal counterterrorism strategies, analyze their practical outcomes through detailed case studies, and conclude by reflecting on future perspectives for global counterterrorism efforts.

As a dominant global actor in the post-9/11 era, the United States has often framed its counterterrorism efforts within the rhetoric of promoting liberal democracy and safeguarding international security, while simultaneously resorting to unilateral military interventions that challenge established legal framework. This thesis critically examines how this dual approach has shaped the effectiveness and legitimacy of counterterrorism strategies, questioning whether the pursuit of security through force can achieve lasting success, or whether mutual international cooperation rooted in legal norms offers a more sustainable and legitimate alternative.

Structure of the Thesis

The thesis is systematically structured to address the research question comprehensively, combining theoretical and legal analysis with empirical evidence. It is divided into six distinct chapters, each contributing to a holistic understanding of counterterrorism policies.

Chapter One provides a general overview of the research topic, primary objectives, and methodology adopted throughout the dissertation.

Chapter Two delves into the historical evolution of contemporary jihadism, tracing the rise of modern terrorist threats from the Soviet invasion of Afghanistan to the September 11 attacks. It examines how U.S. interventions in the Middle East contributed, perhaps inadvertently, to the emergence of groups such as Al-Qaeda.

Chapter Three shifts to an analysis of U.S. counterterrorism strategies post-9/11, focusing on the rationale behinds military interventions in Afghanistan and Iraq, the operational use of

drone warfare, and the broader implications of the War on Terror. It evaluates the extent to which unilateral military actions achieved their stated security objectives.

Chapter Four critically evaluates why U.S. counterterrorism strategies ultimately failed to produce lasting stability, highlighting issues such as civilian casualties, legal violations, the collapse of nation-building efforts, and the resurgence of extremist groups. This analysis serves as a bridge to proposing alternative strategies.

Chapter Five explores transnational criminal law (TCL) and mutual legal assistance as alternative frameworks for counterterrorism. It outlines how international cooperation in criminal matters functions, examines its successes and challenges, and compares its effectiveness against the unilateral military model, providing real-world case studies of international cooperation.

Chapter Six concludes the thesis by synthesizing theoretical insights and empirical findings. It discusses the limitations of the research, reflects on current challenges to counterterrorism policy, and offers future perspectives on fostering effective and legitimate counterterrorism strategies through global cooperation.

The interdisciplinary approach of the dissertation integrates insights from international relations, law, security studies, and political science, combining both qualitative and quantitative analyses. By bridging theoretical frameworks with practical outcomes, this thesis aims to contribute to the broader discourse on how the international community can better counter terrorism while upholding legal norms, sovereignty, and human rights.

Ultimately, the research seeks to answer the central question: Which strategy works better to counter international terrorism -- unilateral military intervention or mutual inter-state cooperation in criminal matters? The findings aim to inform policymakers and scholars seeking sustainable, legitimate approaches to the enduring challenge of global terrorism.

1. The Rise of the U.S. Number One Enemy: A History of Jihad from the Soviet Invasion to 9/11

Introduction

The rise of Islamic religious terrorism as a transnational threat has been one of the greatest security challenges of the 21st century. However, the origins of this phenomenon can be traced long before the beginning of the new century, with key historical events of the 19th shaping the ideological and structural foundations of modern jihadism. Understanding this historical evolution is crucial to contextualize the United States' counterterrorism approach in the Middle East and evaluating its effectiveness. Consequently, this chapter provides a concise overview of the development of modern jihad from the Soviet invasion of Afghanistan in 1979 to the 9/11 attacks, highlighting how U.S. foreign interventions in the domestic affairs of countries such as Saudi Arabia inadvertently contributed to the birth of its number one enemy: Al-Qaeda. By examining key pivotal moments, this chapter sets the stage for a broader discussion on the consequent failures of military interventions in combating terrorism in Afghanistan and Iraq.

The Soviet Invasion of Afghanistan: a Turning Point for Jihad

As stated by scholar Bernard I. Finel, we can distinguish 3 generations of jihadists. The first, focused in Egypt "Was motivated by frustration with the failure of Arab governments to

govern according to Islamic law and their weakness in confronting Israel”¹, so it advocated for an internal reform in the Muslim world characterized by armed struggle against its opponents. A key figure of this generation was Sayyid Qutb, an influential jihadist thinker who primarily theorized about the ‘enemy within’ and on overthrowing secular, nationalist regimes in the Muslim world by replacing them with a Qur’anic state². Although Qutb never explicitly called for a confrontation with the West, his idea that “Jihad was an individual obligation, not just a collective duty in response to calls from legitimate governments. The lack of legitimate government was precisely what justified, indeed demanded, individual jihad”³, later influenced Al-Qaeda’s effort to justify the transnational jihad against the West. In fact, Bin Laden and his right-hand man Ayman Al-Zawahiri redefined jihad from being solely a struggle against corrupt Muslim rulers to a global war against external enemies, as happened during the war against the Soviets in Afghanistan. Nonetheless, the end of this first generation culminated with the execution of Sayyid Qutb in 1966, after he was convicted of plotting to overthrow the Egyptian government. Subsequently, we come to the generation of Afghan mujahedeen and transnational jihad which was composed of “Committed young men who ventured to Afghanistan to help fight the Soviet invasion”⁴. The key feature of this generation is that jihad “Changed from an elite, ideologically motivated group to a mass organization with a large-scale recruitment and mobilization apparatus”⁵, capable of attracting fighters from all over the Arab world. Therefore, Afghanistan played a pivotal role in shaping Osama Bin Laden’s ideology, introducing him to

¹ Finel, Bernard I. “The Causes of Violent Jihadism.” American Security Project, 2007, p.12
<https://www.jstor.org/stable/resrep06055>.

² Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.32 <http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>.

³ Finel, Bernard I. “The Causes of Violent Jihadism.” American Security Project, 2007, p.12
<https://www.jstor.org/stable/resrep06055>.

⁴ Ibid.

⁵ Ibid.

jihād as a real-world struggle rather than just an ideological concept. For instance, he used his family's wealth and connections in the industry of construction and infrastructure to support the mujahideen. Moreover, in Afghanistan he witnessed first-hand how jihadists could successfully defeat a superpower such as the USSR. In fact, him and the Afghan mujahideen, with significant foreign support which mainly came from the U.S., ultimately managed to drive out the Soviets in 1989, reinforcing the belief that jihād could successfully defeat foreign powers, "Afghanistan was the cradle of a new generation of mujahideen, baptized by blood and fire, who tasted the sweetness of victory over one of the most powerful fighting machines the world has known"⁶. This achievement, followed nine months later by the fall of the Berlin wall and the collapse of the USSR, made the mujahideen feel invincible, building the idea that similar struggles could be waged elsewhere. As a result, this key event saw the birth of the concept of transnational jihād: the belief that armed struggle could and should be waged against any foreign power perceived as a threat to the Muslim world, a strategy that later shaped Al-Qaeda's fight against the U.S. and the western 'crusaders'. For instance, as stated by Abdullah Azzam, who would become Bin Laden's mentor, in his fatwa of 1984 titled *Defence of Muslim Lands*, jihād for the defence and liberation of Afghanistan was a collective and individual responsibility of all Muslims⁷. Azzam, of Palestinian origin, viewed jihād as a sacred duty, emphasizing that "The establishment of the Muslim community on an area of land is a necessity, as vital as water and air"⁸. In fact, it is no coincidence that all segments of society starting from army officers, family members, Imams, teachers, and students mobilized for the struggle in Afghanistan that gathered between 10.000

⁶ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.34 <http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>.

⁷ Crenshaw, Martha. "Transnational Jihadism & Civil Wars." *Daedalus* 146, no. 4 (2017), p.61. <https://www.jstor.org/stable/48563903>

⁸ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.41 <http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>.

and 50.000⁹ freedom fighters from all corners of the Arab world. Hence, this represents a key moment in the change of jihad as it was previously seen by Qutb only as an internal struggle against secular governments to re-establish states based on respect for the Koran and Islamic law. Consequently, after the withdrawal of Soviet troops in 1989, the second generation of jihadists then flowed into the third, namely Bin Laden's generation which was characterized by the struggle against the corrupt West. Hence, as stated by Finel, the Afghan mujahedeen, after returning to their home countries and finding domestic reform impossible, they shifted to “striking at the “far enemy” as a way to weaken their domestic opponents”¹⁰. Moreover, 1989 also saw the death of Azzam, who advocated for jihad primarily as a means to defend Muslim lands, focusing on a more regional approach in countries such as Afghanistan and Palestine rather than a global one like Bin Laden¹¹. With Azzam gone, Bin Laden was no longer constrained by his mentor’s vision and could fully embrace the idea of transnational jihad. This shift was further reinforced by the situation in Afghanistan after the Soviet withdrawal, which became a safe haven for bin Laden and Islamist radicals from across the Muslim world¹². The country, having been devastated by war and lacking a stable government, became a breeding ground for jihadist networks, as thousands of foreign fighters who had come to Afghanistan to fight the Soviets now remained, looking for a new cause. With no strong state authority to challenge their presence, Afghanistan provided the ideal conditions for bin Laden to expand his operations, train militants, and lay the foundation for Al-Qaeda as a global terrorist network.

⁹ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.34 <http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>.

¹⁰ Finel, Bernard I. “The Causes of Violent Jihadism.” American Security Project, 2007, p.12 <https://www.jstor.org/stable/resrep06055>.

¹¹ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.41 <http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>.

¹² Ibid. p.34

Operation Desert Storm and the Seeds of Jihad: The Justifications behind U.S.

Intervention in the Gulf War

Following the expulsion of the Soviets from Afghanistan and the dissolution of the USSR with the fall of the Berlin Wall in 1989, the United States took advantage of this power vacuum to re-establish its dominance in the Middle East. In fact, the stage for this rebalance of power was precisely the Gulf War that broke out following the invasion of Kuwait by Saddam Hussein's Iraq on August 2, 1990. Nevertheless, this event marked a pivotal point in Bin Laden's development of the concept of transnational jihad and that would lead him to the official creation of Al-Qaeda in 1998. To better understand how the Gulf War relates to this, we must analyze the causes that led the United States and its Western allies to intervene to liberate Kuwait. Indeed, the invasion of Kuwait by Saddam Hussein's regime, in addition to being a breach of Article 2 of the UN charter which states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"¹³, threatened global oil supplies and regional security. For instance, as one Bush administration official stated, "The occupation of Kuwait [by Iraq] isn't, in itself, a threat to American interests. The real threat lies in the power Iraq would have in possessing 20 percent of the world's resources of oil, controlling OPEC, dominating the Middle East, threatening Israel and wanting to acquire the atomic

¹³ United Nations. "Chapter I: Purposes and Principles (Articles 1-2)." *United Nations*, 1945, www.un.org/en/about-us/un-charter/chapter-1.

bomb”¹⁴. Consequently, the UN Security Council immediately passed resolution 660 which set for the first time the basis for future UN actions under Chapter VII by allowing forceful intervention to maintain international peace and security, condemning Iraq’s invasion of Kuwait, and demanding its immediate and unconditional withdraw of forces¹⁵. As a result, for the first time since the Korean war of 1950, a broad international coalition led by the U.S., which sought to uphold its credibility as the dominant superpower in the post-Cold War era, was formed to enforce SC’s Resolution 678 which authorized the use of “all necessary means” to expel Iraq from Kuwait if it did not comply with Resolution 660 by January 15,1991¹⁶. However, before intervening militarily, the United Nations designed sanctions to force the withdrawal of Saddam Hussein’s troops from Kuwait and ensure compliance with the Security Council Resolution 687 which sanctioned the formal ceasefire resolution that ended the Gulf War in 1991. Despite this, having seen that sanctions did not discourage Saddam from complying with the UN Security Council resolutions, on January 17, 1991, the United States, along with its Western allies intervened launching Operation Desert Storm to liberate Kuwait. Hence, western powers also feared that if Saddam Hussein invaded and annexed Kuwait, he could do the same with Saudi Arabia, allowing him to dictate oil prices to Western economies. For example, in a conversation with President Bush, British Prime Minister Margaret Thatcher emphasized that “If Saddam Hussein were to cross the border into Saudi Arabia he could go right down the Gulf in a matter of days. He would then control 65 percent of the world's oil reserves and could blackmail us

¹⁴ Khadduri, Majid, and Edmund Ghareeb. *War in the Gulf, 1990-91 : The Iraq-Kuwait Conflict and Its Implications*, Oxford University Press, Incorporated, 1997. *ProQuest Ebook Central*, p.248
<https://ebookcentral-proquest-com.jcu.idm.oclc.org/lib/johncabot/detail.action?docID=430459>.

¹⁵ Year: 1990, UN Security Council (45th. “Resolution 660 (1990) /: Adopted by the Security Council at Its 2932nd Meeting, on 2 August 1990.,” August 2, 1990. <https://digitallibrary.un.org/record/94220>.

¹⁶ Year: 1990, UN Security Council (45th. “Resolution 678 (1990) /: Adopted by the Security Council at Its 2963rd Meeting, on 29 November 1990.,” November 29, 1990.
<https://digitallibrary.un.org/record/102245>.

all”¹⁷. Furthermore, the western intervention was also justified due to the reports of widespread human rights violations and war crimes which targeted Kuwaiti civilians, political figures, and resistance members. Therefore, in addition to extrajudicial killings and the use of torture, Kuwaiti citizens and foreign nationals were forcibly deported to Iraq and Iraqi soldiers used sexual violence as a means of terrorizing the population and breaking its morale¹⁸. Additionally, Kuwait’s oil infrastructure was deliberately destroyed by Iraqi forces when Saddam ordered a massive environmental catastrophe, setting hundreds of Kuwaiti oil wells on fire, resulting in one of the worst man-made ecological disasters in history¹⁹. Paradoxically, while the U.S. intervention in Kuwait was justified by the need to uphold international law, protect global oil supplies, and prevent further regional aggression to Saudi Arabia which was also the homeland of Bin Laden, these very motivations would later be reframed by the latter as an imperialist crusade against Islam, laying the ideological groundwork for his declaration of global jihad against the United States.

Bin Laden’s Grievances: U.S. Imperialism and Middle Eastern Complicity

Therefore, U.S. intervention in the Gulf War fueled the desire of Bin Laden and the Islamist radicals who had once fought with American help against the Soviets in Afghanistan to “Die to raise the edifice of Islam once again and redress the humiliations that Islam is perceived

¹⁷ Khadduri, Majid, and Edmund Ghareeb. *War in the Gulf, 1990-91 : The Iraq-Kuwait Conflict and Its Implications*, Oxford University Press, Incorporated, 1997. *ProQuest Ebook Central*, p.253 <https://ebookcentral-proquest-com.jcu.idm.oclc.org/lib/johncabot/detail.action?docID=430459>

¹⁸ “Human Rights Watch World Report 1990 - Iraq and Occupied Kuwait.” *Refworld*, www.refworld.org/reference/annualreport/hrw/1991/en/43631.

¹⁹ “When the Oil Fields Burned.” *The New York Times*, 9 Apr. 2016, www.nytimes.com/interactive/2016/04/08/sunday-review/exposures-kuwait-salgado.html.

to have suffered”²⁰. For instance, the establishment of a permanent U.S. military presence in Saudi Arabia after the war, which housed the cities of Mecca and Medina considered to be the cradle of Islam, altered the perception of U.S. involvement in the Middle East and fueled Bin Laden’s call to a global jihad against it. Moreover, the intervention of the U.S. and its allies in the Gulf was seen by Bin Laden as a self-interest move aimed at siphoning Saudi oil resources and disguised as an intervention for compliance with international law and U.N. Security Council resolutions. In fact, “Bin Laden also resented Saudi rulers for disregarding his proposal to mobilize a mujahideen force to confront the army of Saddam Hussein”, as he did in Afghanistan against the Soviets, “and, instead, for relying on the Americans to defend their regime”²¹. Therefore, if prior to Saddam Hussein’s invasion of Kuwait, the Saudi kingdom had been opposed to having U.S. troops on its territory for fear of losing political consensus in the population, following the threat posed by Iraq in 1990, “Saudi reversed their past aversion to an open US military presence in the Kingdom, and committed themselves to the US strategy of confrontation with Iraqi President Saddam Hussein”²². However, Saudi Arabia had bought the best weapons from the United States, which had also trained its troops to the best of its ability in the previous years, so there was no actual need to have American troops in the region. Consequently, resentment towards the U.S. in Bin Laden and part of Saudi society started to grow also because the Bush administration threatened to halt arms exports to Saudi Arabia if it did not allow the deployment of U.S. troops on its soil²³, reinforcing the perception that its

²⁰ Ryan, Michael W. S. “The Historical Roots of Al-Qaeda’s Ideology.” In *Decoding Al-Qaeda’s Strategy*, p.20. The Deep Battle Against America. Columbia University Press, 2013.
<https://www.jstor.org/stable/10.7312/ryan16384.6>.

²¹ Gerges, Fawaz A., 'A Success and a Miscalculation', *The Rise and Fall of Al-Qaeda* (2011; online edn, Oxford Academic, 10 Feb. 2015), p.49 <https://doi.org/10.1093/acprof:osobl/9780199790654.003.0004>

²² Najam Rafique, “The Changing Nature of Us-Saudi Relations,” *Strategic Studies* 24, no. 1 (2004), p.26
<https://www.jstor.org/stable/45242494>

²³ Ibid.

sovereignty was compromised. Additionally, the financial burden of maintaining U.S. forces, largely shouldered by the Saudi Kingdom²⁴, further fueled accusations that the monarchy was not only submitting itself to western dominance, but actively funding its own subjugation. In relation to this, the U.S. intervention in the Gulf war was seen by Bin Laden and Muslim radicals in the region as the symbol of western hypocrisy in enforcing international law. Therefore, while the United States mobilized a large coalition to expel Iraqi forces from Kuwait under the banner of upholding international law, it simultaneously provided unwavering support to Israel despite its occupation of Palestinian territories²⁵ under Resolution 242 adopted by the Security Council in 1967. Consequently, the U.S. intervention exposed its double standards with the decisive action taken for Kuwait and the lack of intervention in Palestine, highlighting a biased application of international norms which shaped anti-Western sentiments among Islamist groups and Bin Laden, as they believed that Western powers selectively enforced international law to serve their interests, particularly in matters concerning Muslim-majority nations. For example, it is no coincidence that in a letter to the American people in 2002, Bin Laden stated that “ You steal our wealth and oil at paltry prices because of your international influence and military threats. The theft is indeed the biggest theft ever witnessed by mankind in the history of the world²⁶. Moreover, since the resolution about the removal of the sanctions conditioned it on Iraq’s full disarmament of weapons of mass destruction²⁷, they remained in place for a long time

²⁴ Najam Rafique, “The Changing Nature of Us-Saudi Relations,” *Strategic Studies* 24, no. 1 (2004), p.27 <https://www.jstor.org/stable/45242494>

²⁵ Azzam, Maha. “The Gulf Crisis: Perceptions in the Muslim World.” *International Affairs (Royal Institute of International Affairs 1944-)*, vol. 67, no. 3, 1991, p.482 . *JSTOR*, <https://doi.org/10.2307/2621947>.

²⁶ Harshe, Rajen. “Unveiling the Ties between US Imperialism and Al Qaida.” *Economic and Political Weekly* 43, no. 51 (2008): 67–72. <https://www.jstor.org/stable/40278314>

²⁷ Year: 1991), UN Security Council (46th. “Resolution 687 (1991) /: Adopted by the Security Council at Its 2981st Meeting, on 3 April 1991.” *Digitallibrary.un.org*, Apr. 1991, <https://digitallibrary.un.org/record/110709>

devastating the Iraqi economy and population and increasing the radicalization of groups such as Al-Qaeda. As a result, this led to growing resentment in the Muslim world and increasing skepticism about the legitimacy of the sanctions. Therefore, also since President Bush maintained that the sanctions would not be lifted as long as Saddam Hussein remained in power³⁷, they were seen as being imposed with the aim of bringing about regime change in Iraq. In relation to this, despite the UN Oil-for Food Program introduced in 1996 to allow Iraq to sell limited quantities of its oil to purchase food and medicines, the sanctions disproportionately harmed Iraqi civilians and the Iraqi economy which was heavily dependent on oil exports, leading to widespread unemployment, food shortages, and a dramatic decline in public health. For instance, according to UNICEF, “Under-five child mortality had more than doubled from 56 deaths per 1000 live births in 1984 to 131 deaths in the period 1994-1999. At least 50% of the labor force is unemployed or underemployed; a shortage of basic goods, compounded by a drought, has resulted in high prices and an estimated inflation rate of 135% and 120% in 1999 and 2000 respectively... GDP per capita dropped to an estimated US\$715 [from US\$3508 before the Gulf War]²⁸. Moreover, the sanctions restricted access to replacement parts needed to repair the infrastructures bombed by the U.S. forces and critical components for boosting agricultural production²⁹, leading to malnutrition which almost “Doubled from 1991 to 1996”³⁰ in children under five. Consequently, this situation became a powerful propaganda tool for Bin Laden and jihadist organizations, which framed the U.S.- led sanctions as a deliberate attack on Muslims. For example, in his 1998 fatwa, Bin Laden mentioned the sufferance of the Iraqi society due to

²⁸ Ismael, Tareq Y., and Jacqueline S. Ismael. “Whither Iraq? Beyond Saddam, Sanctions and Occupation.” *Third World Quarterly*, vol. 26, no. 4/5, 2005, p. 614. *JSTOR*, <http://www.jstor.org/stable/3993711>.

²⁹ Ibid.

³⁰ Ibid.

the sanctions imposed on Iraq, “ Second, despite the great devastation inflicted on the Iraqi people by the crusader-Zionist alliance, and despite the huge number of those killed, which has exceeded 1 million... despite all this, the Americans are once again trying to repeat the horrific massacres, as though they are not content with the protracted blockade imposed after the ferocious war on the fragmentation and devastation”³¹. Moreover, although also Iraqi forces engaged in the looting of Kuwait’s wealth and cultural heritage by ransacking banks, museums, national treasures, and historical artifacts⁴¹ aiming at erasing Kuwait’s national identity, when the American forces invaded Iraq leading to widespread destruction of its cultural heritage, this was perceived in the Islamic world as a deliberate cultural cleansing, “The American forces, while guarding only the Ministry of Oil, watched the burning and the looting of Baghdad indifferently, and even refused to intervene when people requested their help”⁴². Consequently, Bin Laden began to view the American presence in the region as a form of neo-colonial aggression and in August 1996, he will use this argument as a justification to declare the beginning of the defensive jihad against the U.S., “Just as they had smashed ‘the largest infidel military force in the world,’ the Soviet Union, he vowed that ‘today, in the same peaks of Afghanistan, we work to do away with the injustice that has befallen our umma at the hands of the Judeo-Crusader alliance, especially after its occupation of Jerusalem and its appropriation of Saudi Arabia”³². Interestingly, Bin Laden highlights how, as it happened in Afghanistan, the struggle against the Americans is also a collective responsibility of the whole *umma*. For example, when he formally launched Al-Qaeda in 1998 he echoed his call to Muslims “To kill the Americans and their allies—civilians and military—is an individual duty incumbent upon

³¹ bin Laden, Osama. “World Islamic Front Statement Urging Jihad against Jews and Crusaders.” [Irp.fas.org](http://irp.fas.org), 23 Feb. 1998, irp.fas.org/world/para/docs/980223-fatwa.htm.

³² Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.74 <http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>.

every Muslim in all countries, in order to liberate the al-Aqsa Mosque [Jerusalem] and the Holy Mosque [Mecca] from their grip”³³. Consequently, the perceived betrayal of Saudi rulers, U.S. intervention in Muslim sacred lands, and the devastating sanctions on Iraq all served as catalysts for Bin Laden’s next move: the formal creation of Al-Qaeda and the escalation of his jihad against the United States.

From Al-Qaeda’s Official Creation to the 9/11 Terror Attacks

Therefore, after Saudi Arabia revoked Bin Laden's citizenship in 1994 because of his increasing radicalism toward Americans presence in the region following the Gulf War and criticism of the Saudi government, he spent about five years in Sudan where he recruited and trained numerous jihadists³⁴. However, under pressure from Saudi Arabia and the United States, he was also driven out of Sudan in 1996. Left without allies, he then decided to return to the country that had forged the beginning of his jihad: Afghanistan. Therefore, it was here that he solidified his alliance with the Taliban government and from which he would officially create Al-Qaeda by declaring the war against the United States that culminated in the attacks of September 11, 2001. In fact, after the expulsion of the Soviets in 1989, Afghanistan was one of the most fragile states in the world mainly due to economic collapse and political instability. In 1992, after the fall of the USSR-backed government, the country descended into warlord rule, with the predominant anti-Taliban faction, i.e. the United Islamic Front of the Salvation of Afghanistan fighting against the Taliban to control the country. The latter, under the leadership

³³ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford, UNITED STATES: Oxford University Press, Incorporated, 2011, p.78

<http://ebookcentral.proquest.com/lib/johncabot/detail.action?docID=746688>

³⁴ Ibid.

of Mullah Omar, were able to expand rapidly, but even after they took control of Kabul in 1996, they still struggled to consolidate power. In fact, the Taliban imposed strict Sharia law in the country, banning women from education and work, and enforcing harsh punishments for minor offenses. Consequently, their fundamentalist ideology and rigid governance further isolated Afghanistan from the international community, leaving the country economically weak and diplomatically unrecognized by most of the world. Since Afghanistan was still in part a lawless state, it became the perfect ground for training, recruiting, and planning terrorist attacks such as the ones by Al-Qaeda, “ Between 1996 and 1998, bin Laden invested considerable time and energy recruiting bands of young fighters—veterans of combat in Bosnia, Chechnya, Algeria, Egypt, Iraq, and elsewhere—who journeyed to Afghanistan either to join one of the warring factions or to find out about bin Laden’s new jihadist project. Afghanistan, a broken, war-torn country essentially under full Taliban control by the end of 1996, opened its gates to these recruits³⁵. Moreover, since the Taliban lacked a formal economy, diplomatic ties, and a stable financial system, their rule was dependent on external financial and logistical support such as the one provided by Bin Laden who “Leveraged his private army to gain favor with his hosts, the Taliban, providing them with logistical and operational services”³⁶. However, from 1996 to 2011, the relationship between Bin Laden and the Taliban was marked by tensions and fundamental differences in ideology. For instance, in contrast to Bin Laden who was focused on the global jihad against the United States, the Taliban were oriented on consolidating their power domestically. Therefore, Mullah Omar, repeatedly cautioned Bin Laden against using Afghanistan as a base for attacks on the U.S, fearing it would invite retaliation and threaten the

³⁵ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford: Oxford University Press, 2011. p.59 <http://site.ebrary.com/id/10492572>.

³⁶ Ibid., p.60

survival of the Islamic Emirate, “Omar reportedly told bin Laden that the Taliban could not afford to antagonize the United States because that was beyond its capability”³⁷. Consequently, it is no coincidence that several senior Taliban figures, including its Foreign Minister, resented Al-Qaeda's presence and even lobbied to expel Al-Qaeda's leader because “He was, they believed, deciding Afghan foreign policy, and his controversial media statements were politically and financially costly to the Taliban”³⁸. For instance, some Taliban even suspected that Bin Laden was an American agent sent to destroy the Taliban's rule from within. Despite this opposition, the Taliban's leader, Mullah Omar protected Bin Laden, hoping he would invest in Afghanistan's reconstruction, as he did during his stay in Sudan in the previous years³⁹. As a result, Bin Laden used Afghanistan to orchestrate Al-Qaeda's attacks and make inflammatory statements that drew international pressure on the country which will ultimately bring about the fall of the Taliban after U.S invasion in 2001. Furthermore, recognizing that Al-Qaeda could not challenge the U.S. directly, it is in this period that Bin Laden's group transitioned into a fully operational global terrorist organization adopting asymmetric warfare aiming to provoke the U.S into overreacting and engaging in prolonged conflicts across the Muslim world by issuing the 1996 fatwa in which Bin Laden authorized violent jihad against U.S. interests worldwide, “ This marked a radical transformation in bin Laden's stance. He would henceforth sanction the killing of civilians, including Muslims. He and his circle issued two fatwas, authorizing attacks on American troops, as well as the murder of innocents”⁴⁰. In February 1998, Bin Laden escalated his approach by creating of the World Islamic Front for Jihad Against Jews and Crusaders

³⁷ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford: Oxford University Press, 2011. p.61
<http://site.ebrary.com/id/10492572>.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid., p. 55

alongside his Egyptian ally al-Zawahiri, officially giving birth to Al-Qaeda. Therefore, it is precisely in 1998 that Al-Qaeda carried out the deadly 1998 U.S. embassy bombings in Kenya and Tanzania, killing over 200 people⁴¹, an attack that secured its position as the most powerful jihadist group of its time. However, if this attack demonstrated al-Qaeda's ability to reap many casualties, Bin Laden was still not fully satisfied with the success of these operations. Therefore, he was aiming at executing a catastrophic attack in the heart of the United States that would shake the global order because according to him, "Only the killing of a large number of Americans in their homeland would force US policy makers to rethink their presence in Arab lands"⁴². Consequently, he revised the plans that the jihadist strategist Khalid Sheikh Mohammed (KSM) presented him in 1996: hijacking multiple airplanes and using them as weapons to attack high-profile targets in the United States⁴³. Therefore, at first, Bin Laden was skeptical about KSM's plan, considering it too grand and risky. However, especially after the success of the 2000 USS Cole attack which claimed the lives of 17 sailors using a method similar to 9/11 with two suicide bombers on a boat, he revisited KSM's plan. In fact, as stated by al-Qaeda military commander Abu Hafs al-Masri, after the Cole bombing the group wanted to drag the U.S. into a full scale war in the region, "We did the Cole and we wanted the United States to react. And if they reacted, they are going to invade Afghanistan and that's what we want . . . Then we will start holy war against the Americans, exactly like the Soviets."⁴⁴. Hence, in spring 1999, Bin Laden approved the plan and began selecting operatives for what would become the 9/11 attacks.

⁴¹ Aitken, Lauren. "The August 7, 1998, East Africa Embassy Bombings." *The National Museum of American Diplomacy*, 3 Aug. 2023, diplomacy.state.gov/the-august-7-1998-east-africa-embassy-bombings/.

⁴² Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford University Press, 2011, p.79 <http://site.ebrary.com/id/10492572>.

⁴³ Ibid., p. 84

⁴⁴ Ibid., p. 68

The key operatives, known as the 'Hamburg Cell', included Mohamed Atta, Ramzi Binalshibh, Marwan al-Shehhi, and Ziad Jarrah, who had spent several years living in Germany and spoke fluent English, so they could easily blend in the U.S. society without being detected⁴⁵. In fact, at first, Bin Laden had sent Khalid al-Mihdhar and Nawaf al-Hazmi to the U.S. in the early 2000 to being flight training, but their lack of English proficiency and poor piloting skills made them unsuitable for the operation, so Bin Laden turned to the Hamburg cell⁴⁶. Interestingly, flight instructors were not made suspicious, although "One trainer remarked that they showed no interest in take-offs or landings, but were only interested in flying the plane after it took off"⁴⁷. Throughout 2000 and early 2001, the hijackers continued their training in flight schools across the United States, especially in Florida and Arizona where they studied security measures, observed airline procedures, and communicated with Al-Qaeda operatives abroad to finalize the logistics of the attack. For example, in July 2001, Mohamed Atta traveled to Spain to meet with Ramzi Binalshibh, who relayed Bin Laden's final instructions and target preferences⁴⁸. Therefore, the latter had originally pushed for an attack as early as May 2001, but logistical challenges and final preparations delayed the operation, so in August 2001, Atta confirmed that September 11 would be the date. By early September, all 19 hijackers were in position, divided into four teams, each assigned to a separate aircraft which would target the World Trade Center, the Pentagon, and the U.S. Capitol or the White House. However, although the 9/11 attacks were a stunning operational success, killing 3000 people and exceeding the expectations of Bin Laden

⁴⁵ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford University Press, 2011, p.86
<http://site.ebrary.com/id/10492572>.

⁴⁶ Ibid., p.87

⁴⁷ Ibid.

⁴⁸ Rabasa, Angel, et al. "Al-Qaeda's Operational Planning Cycle." *Beyond Al-Qaeda: Part 1, The Global Jihadist Movement*, RAND Corporation, 2006, pp. 63–72. *JSTOR*,
<http://www.jstor.org/stable/10.7249/mg429af.13>.

himself who “Had not expected so many people to die, or the World Trade Center Towers to collapse, though he shed no tears over either”⁴⁹, they ultimately marked the beginning of al-Qaeda’s decline. First, unlike the Afghan resistance against the Soviet invasion, which was widely supported by the Muslim world, the 9/11 attacks lacked legitimacy in the eyes of the umma. Therefore, “The Soviets had invaded a Muslim country and occupied it. In contrast, al-Qaeda killed almost 3,000 noncombatant Americans at home without direct provocation by the United States”⁵⁰, so the attacks were widely condemned also by Muslims worldwide. In relation to this, it is also important to remember that Bin Laden launched 9/11 without consulting the broader Muslim community, the Taliban leadership, or religious authorities, turning his personal vendetta into a supposed cause for the *umma*. Consequently, when the U.S. retaliated by invading Afghanistan, he found himself isolated, with no mass uprising in his support, highlighting how he had wrongly assumed that Muslim fighters from across the world would rush to defend the Taliban that were left to face the full wrath of U.S. military power alone. Hence, although many Muslims criticized American military intervention in Iraq and Afghanistan, unlike the 1979-1989 Afghan jihad where thousands of Muslim volunteers poured into Afghanistan to fight the Soviets, “There was a deafening silence when the United States declared war on the Taliban and al-Qaeda”⁵¹. Moreover, while Bin Laden tried to paint the U.S. as the eternal enemy of Islam, historical events such as their support for the Afghan mujahedeen against the Soviets, the intervention to defend Kuwait and Saudi Arabia’s sovereignty against Saddam Hussein, and the involvement in Bosnia (1995) and Kosovo (1999) to protect Muslim

⁴⁹ Gerges, Fawaz A. *The Rise and Fall of Al-Qaeda*. Oxford University Press, 2011, p. 84
<http://site.ebrary.com/id/10492572>.

⁵⁰ Ibid., p.91

⁵¹ Ibid., p.92

populations from genocide, weakened Bin Laden's claim that the United States was waging a crusade against Islam. As a result, by believing that the U.S. lacked the political will to sustain long wars and failing to realize that a direct attack on American soil would inevitably provoke an overwhelming military response, Bin Laden ultimately brought about the opposite of what intended: the killing of thousands of jihadists, the fall of Al-Qaeda, and the occupation of Afghanistan by the U.S., which I will analyze in the next chapter by examining the rationale behind the U.S. military interventions in Afghanistan and Iraq, the evolution of its counterterrorism strategy during and after occupation, and the rise of drone warfare, in order to assess whether such strategies, undertaken largely outside the framework of international cooperation and UN oversight, provided a sustainable response to transnational terrorism, thereby informing the broader question of whether multilateral, judicial mechanisms offer a more effective and legitimate path forward.

2. Fighting Terror After 9/11: Strategic Foundations, Operations, and the Rise of Drone Warfare in U.S. Counterterrorism Strategy

Introduction

The 9/11 attacks marked a profound shift in American foreign and security policy, especially regarding counterterrorism. Therefore, while the previous chapter examined the historical evolution of modern transnational Islamic terrorism, specifically tracing the roots of Al-Qaeda from the Soviet invasion of Afghanistan in 1979 to the 9/11 attacks, this chapter will analyze the response that for the first time the United States had to implement to a terrorist attack carried out directly on its own soil. Hence, starting from exploring the political, economic, legal, and ideological justifications behind the so-called War on Terror, I will proceed by examining how it was executed. Therefore, I will focus on the main military operations, intelligence coordination, and counterinsurgency efforts aimed at dismantling Al-Qaeda and its networks both in Afghanistan and in Iraq, leading also to the overthrow of the Taliban regime and Saddam Hussein's government. Additionally, particular attention will be given to the role of drone warfare, which in this period emerged as a central tool in the U.S. counterterrorism strategy through its use in targeted killings and surveillance operations. Consequently, by analyzing these key dimensions, this chapter contributes at evaluating whether unilateral U.S. counterterrorism military operations outside the approval of the UN Security Council provided a sustainable solution to the threat of

transnational terrorism and sets the basis for the subsequent discussion about whether the role of mutual inter-state cooperation in criminal matters works better in counterterrorism.

The Rational behind the Military Operations behind the Military Operations in Afghanistan and Iraq post-9/11

A mix of political, ideological, economic, and legal factors drove the U.S. counterterrorism strategy in Afghanistan and Iraq. Therefore, since the terrorist attacks of 9/11 resulted in nearly 3000 deaths⁵², they were quickly framed as acts of war which necessitated immediate and forceful retaliation. Hence, it is no coincidence that in the aftermath of the attacks, U.S. President George W. Bush declared that the country “Will starve terrorists of funding, turn them against one another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism”⁵³, marking the beginning of the so-called War on Terror that justified worldwide military intervention for counterterrorism purposes. Therefore, invoking the right to self- defense entrenched in article 51 of the UN Charter, as happened in 1998 when a U.S. cruise missile struck Al-Qaeda training camps in Sudan and Afghanistan⁵⁴, the U.S. decided to pursue a military campaign first in Afghanistan in 2001 and then in Iraq in 2003.

⁵² FBI. “9/11 Investigation | Federal Bureau of Investigation.” *Federal Bureau of Investigation*, FBI, 2016, www.fbi.gov/history/famous-cases/911-investigation.

⁵³ Bush, George W. “President Declares ‘Freedom at War with Fear.’” *Archives.gov*, 20 Nov. 2001, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>

⁵⁴ Yoo, John. "International Law and the War in Iraq." *American Journal of International Law*, vol. 97, no. 3, July 2003, pp. 563-575. HeinOnline.

Specifically, in the context of Afghanistan it is important to note that the U.S. first asked the Taliban to hand over Bin Laden⁵⁵ who, as noted in the previous chapter, had been hosted by them. However, the Taliban asked the U.S. to either provide evidence that Bin Laden was the mastermind of the attack in order to prosecute him following Islamic law in the Afghan courts, set a separate tribunal in a third Islamic country to hold him accountable for the attacks, force him to live as an isolated refugee in order to reduce the possibility that he would conceive another terrorist attack⁵⁶. Consequently, the United States refused all the three options proposed and proceeded in invoking article 51. Nonetheless, legally speaking, article 2(3) of the UN Charter also prohibits the use of force and urges the states to solve disputes peacefully which is also a *jus cogens* norm in international law and has universal validity in any situation⁵⁷. Therefore, the use of force is only allowed when all other methods of conflict resolution have been exhausted, and it must be used to restore peace and not for mere revenge. In this case, as evidenced by the Taliban's willingness to negotiate with the U.S. government to achieve a peaceful settlement, these fundamental concepts were disregarded in order to pursue President Bush's War on Terror. Moreover, according to article 51, before being implemented, self-defense measures, "shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security"⁵⁸. In relation to this, according to Article 33 of the UN Charter, the state

⁵⁵ Fedayee, Mohammad Javid. "Intervention or Invasion: Legal Perspectives on US and NATO in Afghanistan." *International Journal of Law Management & Humanities*, 7, 2024, pp. 1796-1824. HeinOnline.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ United Nations. "Chapter VII: Article 51 — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications." *Un.org*, United Nations, 23 Aug. 2016, <https://legal.un.org/repertory/art51.shtml>

under attack must first report the situation to the Security Council, which has the responsibility to assess the case. In response, and in accordance with Article 41, the Council is expected to impose appropriate political and financial sanctions on the aggressor. Only as a last resort, and if these measures prove insufficient, may the Council take collective military action, as outlined in Article 42. Therefore, although resolutions 1368 and 1373 are often interpreted as a green light for the United States, the latter did not have either the explicit nor the implicit authorization from the Security Council to conduct its military operations in Afghanistan and Iraq. Hence, the latter resolutions just expressed sympathy for the victims of the 9/11 attacks and called for a global effort in the fight against terrorism⁵⁹, without having specific references to military actions. Furthermore, since the 9/11 attacks had already occurred and the primary objective of the military operations in Afghanistan and Iraq was not to prevent further violence, the self-defense invoked by the United States was either pre-emptive nor preventive in nature. In addition to this, when invoking the use of force in self-defense against non-state actors like Al-Qaeda, states must first obtain the consent of the country where the group is located and inform the Security Council, as unilateral military intervention could be perceived as an act of war against the host state. However, if the host state actively supports the terrorist group, consent may not be strictly required and if the host nation fails to cooperate, then intervention might be justified. Nonetheless, this was not the case here, as the Taliban had initially presented three peaceful options for negotiation. Finally, the intervention must not be used to overthrow the political regime or to justify the occupation of the host country, as the United States ultimately did.

⁵⁹ Fedayee, Mohammad Javid. "Intervention or Invasion: Legal Perspectives on US and NATO in Afghanistan." *International Journal of Law Management & Humanities*, 7, 2024, pp. 1796-1824. HeinOnline.

Similarly, in the case of Iraq, UN Security Council Resolution 1441 was invoked, which issued a 45-day ultimatum to it to comply with previous resolutions: 678, 687, 688, 686, and 1284, and specifically concerned the obstruction of weapons of mass destruction (WMDs) inspections, as claimed by the United States since 1998 and reaffirmed in Resolution 1284⁶⁰. This action was undertaken under Chapter VII of the UN Charter, as had occurred during the 1991 Gulf War. Consequently, Iraq declared its intention to allow the resumption of weapons inspections on December 7, 2002. However, by that time, the United States was already working to form an ad hoc “coalition of the willing”⁶¹ which would go on to invade and occupy Iraq on March 19, 2003. This occupation was formally acknowledged through Resolution 1483. Notably, on February 5, 2003, U.S. Secretary of State Colin Powell presented alleged evidence to the Security Council that Iraq, having previously halted the work of inspectors, had resumed its WMDs development program, although these claims were later proven to be false⁶². In fact, in 2002, the Bush administration declared its intention to invade Iraq in order to prevent Saddam Hussein from acquiring weapons of mass destruction, which he could potentially provide to terrorists, such as members of Al-Qaeda, whom he was allegedly aiding and protecting⁶³. This claim built upon earlier concerns, as following the Gulf War, Iraq had been placed under a strict arms embargo and was required to allow UN weapons inspectors to ensure it was not developing such weapons; nevertheless, the Bush administration cited Iraq’s alleged possession of WMDs as

⁶⁰ Yoo, John. "International Law and the War in Iraq." *American Journal of International Law*, vol. 97, no. 3, July 2003, pp. 563-575. HeinOnline.

⁶¹ *Ibid.*

⁶² Roberts, William. “‘Blot’ on Powell’s Record: Lies to the UN about Iraq’s Weapons.” *www.aljazeera.com*, 18 Oct. 2021, www.aljazeera.com/news/2021/10/18/stain-on-powells-record-lies-to-the-un-about-iraqs-weapons.

⁶³ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, “Causes of the Iraq War” <http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

a central justification for the 2003 military intervention. This justification continued the narrative of the War on Terror, which aimed to pursue both terrorist groups and the states that supported them wherever they were, a rationale previously invoked in the case of Afghanistan as well. For instance, the U.S. referred to resolutions issued during the Gulf War, arguing that Iraq had violated Resolution 687, which had established the ceasefire, and invoked Resolution 678, which had authorized the use of force to ensure its compliance and the restoration of peace⁶⁴. However, France, Germany, and Russia countered that the mandate of Resolution 678 had expired, even though the resolution itself included no explicit expiration clause. Similarly, under Article 40 of the Hague Conventions, which regulates *jus ad bellum* and *jus in bello*, a war may be resumed after a ceasefire. Therefore, as mentioned in the previous chapter, the 1991 Gulf War had ended with a ceasefire, not with the fall of Saddam Hussein's regime, which is why President George W. Bush viewed the outcome as an incomplete victory left by his father: a task that he believed needed to be finished⁶⁵. In this context, the United States justified its intervention using two legal foundations: the UN Security Council Resolutions and the right to self-defense, although as seen in the case of Afghanistan, this rationale remained highly questionable. Therefore, although as also noted by international law professor Antonio Cassese, there is no universal agreement within the international community regarding the illegality of anticipatory self-defense under the UN Charter and states generally prefer to avoid its abuse⁶⁶, it was also invoked in the case of the military operation in Iraq. Hence the issue in this case was that article 51 was invoked despite the fact that in Iraq's case, there had been no actual armed attack, unlike the 9/11 attacks in the case

⁶⁴ Yoo, John. "International Law and the War in Iraq." *American Journal of International Law*, vol. 97, no. 3, July 2003, pp. 563-575. HeinOnline.

⁶⁵ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, "Causes of the Iraq War"
<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

⁶⁶ Cassese, Antonio, et al. *Cassese's International Law*. 3rd ed., Oxford University Press, 2020, p.355

of Afghanistan. However, as in the Afghan context, the use of force under international law is only justified if it meets two fundamental conditions. First, it must fulfill the requirement of necessity, meaning that the threat must be immediate, and pursuing peaceful alternatives is not a feasible option. Second, it must satisfy the principle of proportionality, which requires that the response be appropriate to the scale and likelihood of the threat. In Iraq's case, this threat was defined by the alleged development of nuclear and other weapons of mass destruction by Saddam Hussein's regime, claims which were ultimately never substantiated. However, these allegations were sufficient to convince both the U.S. Congress and the American public to support the war in Iraq.

In fact, the military interventions in both Afghanistan and Iraq, along with the broader War on Terror, were also driven by ideological motivations. For instance, in order to justify a second intervention in Iraq after the Gulf War, neoconservatives within the Bush administration capitalized on the 9/11 attacks, the threat of WMDs potentially being passed to terrorists, and the perceived success of the counterterrorism operation in Afghanistan in 2001, to extend the campaign to Iraq, which was labeled part of the "Axis of Evil"⁶⁷ along with Iran and North Korea. These were countries identified as supporters of terrorism worldwide and thus considered legitimate targets in the War on Terror⁶⁸. Therefore, the neoconservative ideology, holds that, after the West's victory in the Cold War, led by the United States, Western liberal democracy should spread globally⁶⁹. This notion is grounded in Francis Fukuyama's theory of the "End of

⁶⁷ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, "Causes of the Iraq War"

<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.
⁶⁸ GLASS, ANDREW. "President Bush Cites 'Axis of Evil,' Jan. 29, 2002." *POLITICO*, 29 Jan. 2019, www.politico.com/story/2019/01/29/bush-axis-of-evil-2002-1127725.

⁶⁹ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, "Causes of the Iraq War"
<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

history”, which argued that the fall of the Soviet Union marked the final ideological evolution of humanity in favor of liberal democracy⁷⁰. Similarly, Samuel Huntington, in his work *The Clash of Civilizations*, proposed that the Cold War marked a transition from ideological conflict such as communism against democracy to a “clash between civilizations” which he defined as “The highest cultural grouping of people and the broadest level of cultural identity people have’, being ‘differentiated from each other by history, language, culture, tradition, and, most important, religion”⁷¹. According to Huntington, religion plays a far more significant role in shaping identity in non-Western civilizations, making these conflicts harder to resolve than the political or economic confrontations of the Cold War⁷². He also theorized that, following the fall of the Soviet Union, Western civilization began to decline, adding another layer of complexity to this geopolitical context⁷³. Interestingly, as highlighted in Bush’s rhetoric against Saddam Hussein, terrorism and WMDs were portrayed by him as the weapons of the weak and non-Western nations⁷⁴. According to this view, the rise of terrorism and proliferation of WMDs accelerated after the 1979 Iranian Revolution, driven in part by rampant male youth unemployment and the absence of clear national borders or a core state in the Arab world, which led neoconservatives to argue that a clash between the Western and Islamic civilizations was inevitable⁷⁵. As a result, they advocated for a more aggressive foreign policy to promote American values and interests abroad, as outlined in the Project for the New American Century (PNAC)—a think tank

⁷⁰ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, “Causes of the Iraq War”

<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>

⁷¹ Neumayer, Eric & Thomas Plümper (2009) International Terrorism and the Clash of Civilizations, *British Journal of Political Science* 39 (4): 711–734.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

supported by Bush⁷⁶. This ideological outlook was reflected in the War on Terror and in U.S. counterterrorism strategy in Afghanistan and Iraq, which evolved into efforts to overthrow existing regimes and replace them with U.S.-backed democratic governments. However, to justify such actions, neoconservatives had to maintain a rhetoric of altruism, which is why the WMDs justification gradually gave way to the more noble-sounding goal of exporting democracy.

Nevertheless, this was largely a façade for deeper economic interests, particularly in Iraq, as previously discussed in the chapter on the Gulf War. For example, many analysts compared the Bush administration's justifications for the Iraq War to the bold lies that led Germany into World War II⁷⁷. Notably, the 2001 National Energy Policy, outlined by Vice President Cheney, featured detailed maps of Iraq's oil fields, pipelines, and refineries, and identified key commercial partners such as Russia, China, France, and India—conspicuously excluding the United States⁷⁸. In fact, during the military operation, Iraq's oil industry was severely damaged, reducing global supply and benefiting American oil companies, which enjoyed record profits during this period, along with U.S. contractors hired for post-war reconstruction⁷⁹. An agreement was also signed between the Iraqi government and oil giants such as ExxonMobil, Shell, and British Petroleum, allowing them to maintain Iraq's oil infrastructure in exchange for 75% of the country's oil profits for 30 years⁸⁰.

⁷⁶ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, "Causes of the Iraq War"

<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

⁷⁷ Pilisuk, Marc, Jennifer A. Rountree, and Gianina Pellegrini. "PLAYING THE IMPERIAL GAME: THE MINDSET BEHIND THE ATTACK ON IRAQ." *Peace Research*, vol. 40, no. 2, 2008, pp. 39-59, 112. *ProQuest*, <https://jcu.idm.oclc.org/login?url=https://www.proquest.com/scholarly-journals/playing-imperial-game-mindset-behind-attack-on/docview/213493088/se-2>.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

In conclusion, the military interventions in Afghanistan and Iraq were driven by political, ideological, and economic interests, as clearly outlined in the Bush-Cheney National Security Strategy, which emphasized the need to expand U.S. military presence globally and to conduct preemptive strikes against hostile states such as those in the Axis of Evil, without requiring their consent. Indeed, both the military interventions of the War on Terror and the National Security Strategy relied on the projection of American power to overthrow foreign leaders considered threats such as Saddam Hussein and the Taliban, while emphasizing U.S. leadership over multilateralism through institutions like the United Nations. This approach resulted in a broad erosion of the international rule of law, since, as will be discussed in the next paragraph, U.S. counterterrorism operations often went far beyond the scope of legitimate self-defense, ultimately turning into full-scale occupations.

War, Occupation and Beyond: How the U.S. Counterterrorism Strategy Unfolded in Iraq and Afghanistan

After the passage of Public Law 107-40 on September 18, 2001, which authorized the President to “Use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001”⁸¹, the first U.S. troops began infiltrating Afghanistan on October 19, 2001. These forces initially linked up with CIA elements and existing anti-Taliban resistance fighters already operating within the country⁸². It is important to note that one of the core

⁸¹ 107th Congress. *PUBLIC LAW 107-40—SEPT. 18, 2001*. 18 Sept. 2001, www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf.

⁸² Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “The Horse Soldiers”, p. 229 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

missions of U.S. Army Special Warfare units is unconventional warfare, defined as “Activities conducted to enable a resistance movement or insurgency to coerce, disrupt, or overthrow a government or occupying power by operating through or with an underground, auxiliary, or guerrilla force in a denied area”⁸³. However, demand for these units had been relatively low prior to the 9/11 attacks, despite their partial use during the 1991 Gulf War. After assisting Afghan resistance forces in expelling the Soviets in 1989, the United States had no intention of becoming directly involved in Afghanistan, even though it was aware of the threat posed by Osama bin Laden, as outlined in the 2000 National Security Strategy of President Clinton⁸⁴. As a result, when Special Forces were deployed to Afghanistan in 2001, they lacked sufficient training for their mission. Despite this, Operation Enduring Freedom officially began on October 7, with initial airstrikes targeting key Taliban positions across the country⁸⁵. The first infiltrated U.S. troops landed in the so-called ‘Zone Burro’ along the Darya Suf River, where they connected with Abdul Rashid Dostum’s Uzbek militia, Junbesh-i-Milli, which had taken refuge from the Taliban in that area⁸⁶. Dostum’s forces were part of the broader Northern Alliance, along with Tajik fighters under Mohammed Atta and Hazara forces under Haji Mohaqqueq⁸⁷. Once on the ground, U.S. Special Forces began working with Northern Alliance militias, though Dostum was pressing for an immediate offensive against the Taliban, rather than waiting until spring⁸⁸. Despite initial plans to spend the winter training and equipping local forces, the urgency of the situation and Dostum’s insistence accelerated the timeline for engagement. Meanwhile, the

⁸³ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “The Horse Soldiers”, p. 224 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

⁸⁴ *Ibid.*, p. 225

⁸⁵ *Ibid.*, p. 227

⁸⁶ *Ibid.*, p. 229

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, p. 231

American troops were facing several challenges, including rugged mountainous terrain, limited communication infrastructure, and language barriers with local militias and populations. Despite these difficulties, by November 5, an offensive was launched on the village of Mazar-i-Sharif, beginning with the use of so-called ‘Daisy Cutter’ bombs (15,000-pound ordnance) intended to intimidate Taliban fighters⁸⁹. However, the bombs were detonated several kilometers away from the village due to concerns about civilian casualties. Following this, American forces advanced toward Qala-i-Jangi, while Taliban and al-Qaeda fighters launched a counteroffensive in Kunduz⁹⁰. During this period, two notable events occurred: a suicide attack and armed uprising by captured prisoners at Qala-i-Jangi, which resulted in multiple U.S. casualties and highlighted the dangers of early CIA engagement in the field⁹¹. Following the Taliban’s surrender and withdrawal from Kandahar on December 7, 2001, which marked the formal collapse of their regime, Taliban leaders and al-Qaeda members sought refuge in the caves and tunnels of Tora Bora, near the Pakistani border⁹². In response, U.S. forces launched extensive bombing campaigns in December 2001, capturing approximately 500 combatants who were subsequently detained at Guantanamo Bay, Cuba⁹³. However, many insurgents, including Osama bin Laden, managed to escape into Pakistan, allowing the Taliban and al-Qaeda to maintain a presence in the region. This persistence was evident in March 2002, when they mounted a counteroffensive in northeastern Afghanistan, which U.S. forces countered with Operation Anaconda⁹⁴.

⁸⁹ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations (1st ed.). Routledge. “The Horse Soldiers”, p. 232 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

⁹⁰ Ibid., p. 234

⁹¹ Ibid.

⁹² Council on Foreign Relations. “A Timeline of the U.S. War in Afghanistan.” *Council on Foreign Relations*, 2021, www.cfr.org/timeline/us-war-afghanistan.

⁹³ Ibid.

⁹⁴ Ibid.

Concurrently, in July 2002, the United Kingdom announced plans to withdraw troops by that month, leaving U.S. forces to continue operations independently⁹⁵. By November 2002, efforts shifted from military intervention to peace and nation-building, aiming to prevent the resurgence of regimes that had previously enabled terrorist activities and the 9/11 attacks. This transition underscored the interconnectedness of counterterrorism strategies and nation-building efforts, a pattern also observed in Iraq. For example, the Bonn Agreement facilitated the formation of an interim government, initially mandated for six months, comprising the Northern Alliance, the Pashtun-dominated Rome Group (supported by Iran), and the Peshawar Group (supported by Pakistan). Despite its Pashtun chairman, the interim administration reflected the Northern Alliance's dominance, holding 17 of 30 positions⁹⁶. Challenges during this phase included rebuilding governmental institutions, establishing law enforcement and judicial systems, restructuring armed forces, implementing tax collection and public finance systems, and managing ethnic divisions to avert potential civil war, a scenario that later unfolded in Iraq. To mitigate violence, the U.S. appointed high-ranking officials to the government and persuaded Afghan factions to accept them. For instance, the Emergency Loya Jirga was tasked with establishing a transitional authority to govern until the 2004 elections; however, its inclusion of warlords and faction leaders led to dissatisfaction among many Afghans⁹⁷. In fact, the international community, including the U.S., adopted a 'light footprint' approach, supporting Afghan-led decision-making in peace and nation-building efforts⁹⁸. On December 20, 2001, the International Security Assistance Force (ISAF) was established under Chapter VII of the UN

⁹⁵ Council on Foreign Relations. "A Timeline of the U.S. War in Afghanistan." *Council on Foreign Relations*, 2021, www.cfr.org/timeline/us-war-afghanistan.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

Charter, primarily composed of European states⁹⁹. Initially mandated for six months, ISAF's mission was extended through the end of 2003, focusing on training Afghan security forces and rebuilding infrastructure, predominantly in Kabul, while regional warlords continued to wield significant power across the country. In March 2002, the UN Security Council mandated the UN Assistance Mission to Afghanistan (UNAMA) to support various initiatives, such as the Constitutional Commission, the Afghan Independent Human Rights Commission, and the advancement of women's rights¹⁰⁰. Despite these efforts, regional warlords retained substantial political, economic, and military control, often unwilling to relinquish power, which impeded the effectiveness of the transitional administration and the national army. By the summer of 2006, insurgent activities resurged, with suicide attacks quintupling compared to the previous year. In May 2007, prominent Taliban commander Mullah Dadullah was killed in southern Afghanistan¹⁰¹. A UN investigation on August 22, 2008, reported that U.S. forces had caused civilian casualties in western Herat province. In response to the Taliban's resurgence, bolstered by foreign fighters from Pakistan, the Obama administration increased troop deployments on February 17, 2009¹⁰². A new strategy, announced on March 27, 2009, aimed to defeat Al-Qaeda in Pakistan. By July 2009, a renewed counterinsurgency offensive was launched in the south under General McChrystal, followed by a troop surge in December 2009. On June 23, 2010, General McChrystal was relieved of command and replaced by General Petraeus, who had previously served in Iraq¹⁰³. In June 2013, Afghan forces assumed primary responsibility for national security. On May 27, 2014, President Obama announced plans to withdraw most U.S.

⁹⁹ Council on Foreign Relations. "A Timeline of the U.S. War in Afghanistan." *Council on Foreign Relations*, 2021, www.cfr.org/timeline/us-war-afghanistan

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

troops by 2016. Subsequently, on September 21, 2014, President Ghani formed a unity government with opposition leaders. On April 13, 2017, the U.S. deployed its most powerful non-nuclear bomb against Islamic State militants. Despite these efforts, suicide bombings persisted in Kabul, and by this time, the Taliban controlled approximately one-third of the country. By February 2019, peace talks between the U.S. and the Taliban intensified, culminating in a deal signed in February 2020 outlining a path to peace and the withdrawal of U.S. troops, contingent upon Taliban assurances against harboring terrorist activities¹⁰⁴. Despite ongoing attacks against Afghan security forces, intra-Afghan peace talks commenced on September 12, 2020. However, on August 15, 2021, the Taliban seized control of Kabul as President Ghani fled the country. By August 16, U.S. troops began their final withdrawal amidst chaotic scenes of Afghans attempting to flee, completing the pullout on August 30, 2021, thus ending a 20-year conflict during which the United States spent \$2.313 trillion and that resulted in a total death toll of 176,000 casualties¹⁰⁵.

After the operation in Afghanistan, and once again acting unilaterally and outside of UN Security Council resolutions, the U.S. Senate approved the ‘Authorization for Use of Military Force Against Iraq Resolution of 2002’¹⁰⁶. On March 17, 2003, President George W. Bush issued an ultimatum to Saddam Hussein, demanding that he leave Iraq within 48 hours. When Hussein refused, the United States launched an airstrike on March 20, targeting an underground facility in

¹⁰⁴ Council on Foreign Relations. “A Timeline of the U.S. War in Afghanistan.” *Council on Foreign Relations*, 2021, www.cfr.org/timeline/us-war-afghanistan.

¹⁰⁵ Brown University. “Human and Budgetary Costs to Date of the U.S. War in Afghanistan, 2001-2022.” *The Costs of War*, Brown University, Aug. 2021, <https://watson.brown.edu/costsofwar/figures/2021/human-and-budgetary-costs-date-us-war-afghanistan-2001-2022>

¹⁰⁶ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, “Overview of the Iraq War (2003-2011)” <http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

Baghdad, where he was allegedly hiding¹⁰⁷. That same day, coalition forces, including troops from the United States, United Kingdom, Australia, and Poland invaded Iraq from Kuwait, deploying approximately 297,000 soldiers against an estimated 375,000 Iraqi army personnel and militias¹⁰⁸. The coalition first captured Basra, Iraq's second-largest city, and then secured the port of Umm Qasr. During the advance, U.S. forces faced guerrilla tactics, such as fake surrenders and ambushes. Like in Afghanistan, the war in Iraq unfolded on two main fronts: ground forces advancing from Kuwait in the south, and air support combined with Kurdish fighters and U.S. special operations units moving from the north. Among the troops deployed were U.S. Special Operations Forces which were the same units used in Afghanistan, and U.S. Army Rangers, who arrived in April 2003¹⁰⁹. Their mission included seizing key targets such as airfields, capturing high-value individuals, conducting long-range reconnaissance, and searching for weapons of mass destruction¹¹⁰. After the fall of Baghdad, their objectives expanded to include the capture of former Ba'ath Party members, many of whom were attempting to flee the country. By October 2003, this became the primary focus. For example, on July 22, 2003, a U.S. raid resulted in the deaths of Saddam Hussein's sons, Uday and Qusay¹¹¹. Following numerous raids and interrogations, Saddam Hussein was captured on December 14, 2003¹¹². After his capture, the focus of U.S. counterterrorism efforts in Iraq shifted toward Al-Qaeda and its local

¹⁰⁷ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, "Overview of the Iraq War (2003-2011)"

<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. "Dismantling al-Qaida in Iraq", p. 267 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹¹¹ Ibid.

¹¹² Ibid., p. 268

leader, Abu Musab al-Zarqawi¹¹³. In the meantime, President Bush appointed Paul Bremer to head the Coalition Provisional Authority (CPA), tasked with reconstructing and democratizing Iraq¹¹⁴. Under Bremer's leadership, an interim government was established, and an interim constitution was drafted in March 2004¹¹⁵. However, the CPA's decisions to dismiss Ba'ath Party officials and disband the Iraqi army created a large pool of unemployed, trained men, many of whom were recruited into the insurgency. As a result, the U.S. occupation faced increasingly violent resistance. While only 200 coalition troops died during the initial invasion, over 4,500 American service members would ultimately be killed in the insurgency that followed¹¹⁶. In August 2004 alone, 18 major operations were conducted, despite the U.S. facing 2,500 insurgent attacks and 750 casualties monthly¹¹⁷. To address the growing insurgency, General Stanley McChrystal reorganized the U.S. command structure for greater efficiency and coordination, creating Joint Interagency Task Forces (JIATFs) and strengthening intelligence-sharing, surveillance, and interrogation efforts¹¹⁸. By winter 2004–2005, his strategy was fully operational. In summer 2005, actionable intelligence obtained from interrogations intensified pressure on Al-Qaeda in Iraq. From 2005 to 2007, more than 2,000 Iraqis were brought to trial¹¹⁹. On June 30, 2005, Iraq held its first open elections, electing Jalal Talabani, a Kurdish

¹¹³ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. "Dismantling al-Qaida in Iraq", p. 268 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹¹⁴ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, "Overview of the Iraq War (2003-2011)" <http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. "Dismantling al-Qaida in Iraq", p. 274 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹¹⁸ Ibid., p. 269

¹¹⁹ Ibid., p. 277

leader, as president, and Ibrahim al-Jaafari as prime minister¹²⁰. However, on February 22, 2006, Sunni extremists bombed the revered Shiite al-Askari shrine in Samarra, igniting widespread sectarian violence¹²¹. Amid this unrest, Prime Minister Nouri al-Maliki formed a unity government that included Iraqi Kurds and Sunnis. Meanwhile, U.S. forces received the first lead in the operation to eliminate Zarqawi, who was ultimately killed on June 7, 2006, in an airstrike on a safehouse¹²². On February 10, 2007, General David Petraeus assumed command in Iraq and introduced a new counterinsurgency strategy, including the ‘Awakening’ movement: recruiting former Sunni insurgents to fight al-Qaeda alongside U.S. forces¹²³. Despite this initiative, violence persisted. On August 19, 2007, the deadliest suicide attack in western Mosul occurred and in September 2007, insurgents targeted Sunni groups aligned with the U.S., attempting to undermine the Awakening movement¹²⁴. On January 13, 2008, a new law allowed some former Ba'ath Party members to return to government positions. In April 2008, Petraeus was reassigned to Afghanistan, and General Raymond Odierno assumed command in Iraq¹²⁵. On September 1, 2008, the U.S. military handed over security responsibilities in Anbar Province to Iraqi forces, marking a significant step toward Iraqi self-governance. Subsequently, on June 20, 2009, U.S. troops began withdrawing from Iraqi cities. On April 18, 2010, a joint operation killed two senior

¹²⁰ Steed, Brian L., editor. *Iraq War : The Essential Reference Guide*. ABC-CLIO, an imprint of ABC-CLIO, LLC, 2019, “Overview of the Iraq War (2003-2011)”

<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=2014191>.

¹²¹ Council on Foreign Relations. “The Iraq War.” *Council on Foreign Relations*, Council on Foreign Relations, 2025, www.cfr.org/timeline/iraq-war.

¹²² Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “Dismantling al-Qaida in Iraq”, p. 275 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹²³ Council on Foreign Relations. “The Iraq War.” *Council on Foreign Relations*, Council on Foreign Relations, 2025, www.cfr.org/timeline/iraq-war.

¹²⁴ Ibid.

¹²⁵ Ibid.

al-Qaeda leaders: Abu Ayyub al-Masri and Abu Omar al-Baghdadi¹²⁶. By early 2010, al-Qaeda in Iraq had been significantly weakened. The withdrawal of U.S. forces culminated on December 18, 2011, with the departure of the final combat troops, formally ending the U.S. military mission in Iraq, “The costs of the conflict were high: \$800 billion from the U.S. Department of the Treasury, with nearly 4,500 Americans and well over 100,000 Iraqis killed”¹²⁷.

From Surveillance to Strikes: How Drone Warfare Shaped U.S. Counterterrorism in Iraq and Afghanistan

A drone, commonly referred to as either a Remotely Piloted Aircraft (RPA) or an Unmanned Aerial Vehicle (UAV), became a central tool in the U.S. counterterrorism strategy, particularly in Afghanistan, where its use was largely driven by the country’s rugged geography and limited accessibility by ground forces. Therefore, “Since 2005 there has been a 1,200% increase in combat air patrols by UAVs”¹²⁸. For example, drones, i.e. “Remotely controlled aircraft designed for target practice use”¹²⁹, proved valuable due to their ability to provide persistent surveillance and deliver precision strikes, a feature summarized as the advantage of ‘persistence’¹³⁰. For instance, the MQ-9 Reaper can remain airborne for up to 30 hours during

¹²⁶ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “Dismantling al-Qaida in Iraq”, p. 277 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹²⁷ Council on Foreign Relations. “The Iraq War.” *Council on Foreign Relations*, Council on Foreign Relations, 2025, www.cfr.org/timeline/iraq-war.

¹²⁸ “Flight of the drones; Unmanned aerial warfare.” *The Economist*, vol. 401, no. 8754, 08 Oct., 2011, pp. 30-32. *ProQuest*, <https://jcu.idm.oclc.org/login?url=https://www.proquest.com/magazines/flight-drones-unmanned-aerial-warfare/docview/896861098/se-2>.

¹²⁹ Fowler, Mike. “The Strategy of Drone Warfare.” *Journal of Strategic Security* 7, no. 4 (2014): 108-119.

¹³⁰ Kelly A. Grieco and J. Wesley Hutto, “Can Drones Coerce? The Effects of Remote Aerial Coercion in Counterterrorism,” *International Politics* 60, no. 4 (August 2023): 919–43, <https://doi.org/10.1057/s41311-021-00320-5>.

intelligence, surveillance, and reconnaissance missions, and up to 23 hours when carrying a full weapons load, so significantly longer than manned aircraft, which are limited by refueling and pilot fatigue¹³¹. The first armed drone strike in Afghanistan occurred in October 2001, targeting Taliban leader Mullah Muhammad Omar¹³². Although the mission was unsuccessful, it marked the beginning of wider drone integration into U.S. counterterrorism operations. Drones soon became valued not only for their ability to eliminate high-value targets but also for their role in real-time intelligence gathering and immediate precision response. This shift coincided with a broader strategic change under the Bush administration, which rejected traditional deterrence theory, considering it ineffective against terrorist groups whose members embraced martyrdom¹³³. As an alternative, the administration adopted a strategy known as ‘tailored deterrence’, which aimed to pressure terrorist support networks rather than deter terrorists directly, recognizing that many operatives could not be deterred but only eliminated through brute force¹³⁴. This approach, blending coercion and force, continued under both the Obama and Trump administrations. Therefore, drones served this dual purpose: targeting terrorist leaders (brute force) while simultaneously sending a warning to others (coercion). Their capacity to loiter over a location for extended periods meant that operatives knew they were being watched, potentially influencing their behavior through fear of targeted assassination. However, this effect was weakened when President Obama started authorizing the so-called ‘signature strikes’, i.e.

¹³¹ Kelly A. Grieco and J. Wesley Hutto, “Can Drones Coerce? The Effects of Remote Aerial Coercion in Counterterrorism,” *International Politics* 60, no. 4 (August 2023): 919–43, <https://doi.org/10.1057/s41311-021-00320-5>.

¹³² Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “America's drone wars outside of conventional war zones”, p. 460 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹³³ Kelly A. Grieco and J. Wesley Hutto, “Can Drones Coerce? The Effects of Remote Aerial Coercion in Counterterrorism,” *International Politics* 60, no. 4 (August 2023): 919–43, <https://doi.org/10.1057/s41311-021-00320-5>.

¹³⁴ Ibid.

“Attacks based on patterns of suspicious activity by a group of men, rather than ‘personality strikes’ against particular militants”¹³⁵ which raised challenges in communicating clear and credible threats. Although the legal foundation for drone operations was established post-9/11 with the passage of the Authorization for Use of Military Force (AUMF), which allowed the President to use any mean to pursue the masterminds of the attack and most early drone strikes targeted high-ranking Al-Qaeda members, few had direct links to the 9/11 attacks. For example, after the fall of Kabul on November 13, 2001, a drone tracked Al-Qaeda commander Mohammad Atef to a house in Kabul where he was killed¹³⁶. As Bin Laden’s likely successor, Atef’s death dealt a significant blow to the organization. As Al-Qaeda regrouped in Pakistan, the 2007 National Intelligence Estimate noted that Pakistan was reluctant to allow U.S. ground forces on its territory, prompting the Bush administration to intensify drone operations¹³⁷. By the final year of Bush’s presidency (2008), 36 drone strikes were conducted, resulting in the deaths of 12 senior Taliban and al-Qaeda figures¹³⁸. Under the Obama administration, the scope of drone usage expanded significantly. Not only were high-value targets pursued, but also lower-ranking militants through signature strikes. During Obama’s tenure, between 1,659 and 2,683 drone strikes were conducted, and the operational focus broadened beyond Al-Qaeda to include the Taliban and other insurgent networks¹³⁹. Notably, drone usage supported the protection of the increased U.S. troop presence in Afghanistan, which grew from 20,000 to nearly 90,000¹⁴⁰. In addition to their lethality, drones became popular in counterterrorism operations for their

¹³⁵ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “America's drone wars outside of conventional war zones”, p. 463 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

¹³⁶ *Ibid.*, p. 462

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, p. 463

¹⁴⁰ *Ibid.*, p. 464

technological advantages. Compared to manned aircraft, drones offer higher precision, greater accuracy, and more effective strike capabilities due to their ability to monitor targets for extended periods and use advanced sensors¹⁴¹. This allows operators to verify targets more thoroughly, reducing the likelihood of civilian casualties. Moreover, the combination of surveillance and strike capabilities into a single platform reduces the time lag between detection and engagement, which is critical in targeting mobile terrorist operatives¹⁴². Drones also offer significant strategic and logistical benefits: they eliminate the risk to pilots, who might otherwise be captured or killed, and are cheaper to train and deploy¹⁴³. Furthermore, they tend to enjoy greater public support compared to large-scale ground operations¹⁴⁴. Despite these advantages, the use of drones, especially with the increase of signature strikes, began to decline around 2011, due in part to growing public scrutiny and ethical concerns, particularly regarding civilian casualties, transparency, and accountability¹⁴⁵.

To sum up, taken together, the rationale behind the U.S. military interventions in Afghanistan and Iraq, the evolution of its counterterrorism strategy during and after occupation, and the rise of drone warfare as a key operational tool illustrate a broader shift toward unilateral, technology-driven approaches to combating terrorism. By examining these developments, this chapter sets the stage for evaluating whether such strategies, undertaken largely outside the framework of international cooperation and UN oversight, provided a sustainable response to transnational

¹⁴¹ Kelly A. Grieco and J. Wesley Hutto, “Can Drones Coerce? The Effects of Remote Aerial Coercion in Counterterrorism,” *International Politics* 60, no. 4 (August 2023): 919–43, <https://doi.org/10.1057/s41311-021-00320-5>

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Sheehan, M.A., Marquardt, E., & Collins, L. (Eds.). (2021). *Routledge Handbook of U.S. Counterterrorism and Irregular Warfare Operations* (1st ed.). Routledge. “America's drone wars outside of conventional war zones”, p. 463 <https://doi-org.jcu.idm.oclc.org/10.4324/9781003164500>

terrorism, thereby informing the broader question of whether multilateral, judicial mechanisms offer a more effective and legitimate path forward.

3. Hearts, Minds, and Airstrikes: Why U.S. Counterterrorism

Failed in Afghanistan and Iraq

Introduction

This chapter critically evaluates the effectiveness of U.S. counterterrorism strategies in Afghanistan and Iraq following the 9/11 attacks. While these interventions had notable short-term tactical victories such as the dismantling of key terrorist networks, the targeted killing of high-profile insurgent leaders, and the temporary disruption of terrorist safe havens, they ultimately failed to produce lasting security and stability. Hence, this chapter contributes to demonstrating that unilateral military strategies, such as those pursued by the U.S. in Afghanistan and Iraq, have proven insufficient in eradicating terrorism, preparing the argument that these failures underscore the superiority of inter-state cooperation in criminal matters as a more sustainable and legally sound counterterrorism model.

Targeted Strikes and Terrorist Takedowns: Tactical Victories on the Ground

Despite the long-term strategic shortcomings of U.S. counterterrorism efforts in Afghanistan and Iraq, several tactical victories stand out, particularly in terms of degrading terrorist networks, eliminating key insurgent leaders, and introducing advanced operational doctrines. The stated objectives of the U.S. counterterrorism strategy, as outlined in key policy documents such as the 2006 *National Strategy for Combating Terrorism*, included safeguarding

the American homeland, preventing future terrorist attacks, defeating extremist groups, and laying the foundation for democratic governance to prevent the re-emergence of terrorism¹⁴⁶. Although these goals were ambitious, their measurement was imprecise. As Erik W. Goepner highlights, both the 2011 *National Strategy for Counterterrorism* and the 2006 White House report declared success in general terms, emphasizing the killing of Al-Qaeda leaders, yet providing little empirical evidence to assess the long-term degradation of terrorist capabilities¹⁴⁷. Nonetheless, on the tactical level, U.S. military operations significantly weakened Al-Qaeda and other insurgent groups in both countries. In Iraq, U.S. forces successfully disrupted Al-Qaeda's function as a 'strategic spoiler'¹⁴⁸, isolating it from nationalist insurgencies and local populations. Similarly, in Afghanistan, Al-Qaeda's leadership and logistics networks suffered heavy losses as a result of coordinated operations. Central to these achievements was the deployment of elite units such as the Joint Special Operations Command (JSOC) and Special Operations Forces (SOFs), who executed precise 'kill-capture'¹⁴⁹ missions enabled by real-time surveillance, digital intelligence networks, and interagency coordination. This network-centric

¹⁴⁶ Goepner, Erik. "Measuring the Effectiveness of America's War on Terror" *Article*, vol. 46, no. 1, 2016, p.108, press.armywarcollege.edu/cgi/viewcontent.cgi?article=2828&context=parameters.

¹⁴⁷ *Ibid.*, p. 110

¹⁴⁸ In this context, a "strategic spoiler" refers to an actor, such as Al-Qaeda, that deliberately disrupts or undermines political or military processes to achieve its own strategic aims. By exploiting nationalist insurgencies in Iraq and Afghanistan, Al-Qaeda sought to escalate violence, prevent stabilization, and derail U.S. and allied efforts at state-building, thereby ensuring that conditions remained chaotic enough for its own influence and ideology to grow. Rineheart, Jason. "Counterterrorism and Counterinsurgency." *Perspectives on Terrorism*, vol. 4, no. 5, 2010, p. 31. *JSTOR*, <http://www.jstor.org/stable/26298482>.

¹⁴⁹ The "kill and capture" strategy refers to targeted operations by Special Operations Forces (SOF) aimed at removing insurgent leaders either by killing or capturing them. Under this approach, operations focused on surgically striking insurgent networks through raids and precision airstrikes, rather than relying on broad, traditional military campaigns. This offensive strategy emphasized speed, intelligence-driven targeting, and the disruption of insurgent command structures, significantly enhancing the role of SOF units like those under the Joint Special Operations Command (JSOC). Salt, Alexander. "Transformation and the War in Afghanistan." *Strategic Studies Quarterly*, vol. 12, no. 1, 2018, p.111. *JSTOR*, <http://www.jstor.org/stable/26333879>.

model facilitated the dismantling of terrorist cells and created leadership vacuums, the so-called ‘talent gaps’ that disrupted operational continuity and generated internal mistrust among militants¹⁵⁰.

In both countries, tactical successes extended beyond targeted killings. Airpower combined with indigenous allies such as the Northern Alliance in Afghanistan, prevented large-scale Taliban resurgence¹⁵¹. In Iraq, the shift toward a more integrated counterinsurgency (COIN) approach under General David Petraeus marked a turning point¹⁵². The 2006 release of *FM 3-24: Counterinsurgency Field Manual* and the 2007 troop surge emphasized military, political, and social engagement. These changes yielded significant reductions in sectarian violence, particularly in Baghdad, and empowered grassroots cooperation¹⁵³. The Anbar Awakening exemplified this strategy, as U.S. forces partnered with Sunni tribes to marginalize Al-Qaeda and reduce insurgent activity¹⁵⁴. Importantly, policymakers moved away from treating insurgents as monoliths, instead distinguishing reconcilable actors from hardened extremists, allowing for localized deals and more effective tribal engagement¹⁵⁵.

¹⁵⁰ Salt, Alexander. “Transformation and the War in Afghanistan.” *Strategic Studies Quarterly*, vol. 12, no. 1, 2018, p.115. *JSTOR*, <http://www.jstor.org/stable/26333879>.

¹⁵¹ *Ibid.*, p. 106

¹⁵² Kertzer, Joshua D. “Seriousness, Grand Strategy, and Paradigm Shifts in the ‘War on Terror.’” *International Journal*, vol. 62, no. 4, 2007, p.972. *JSTOR*, <http://www.jstor.org/stable/40204346>.

¹⁵³ *Ibid.*

¹⁵⁴ The Anbar Awakening began in 2006 when Sunni tribal leaders in Anbar Province allied with U.S. forces to oppose Al-Qaeda in Iraq. Triggered by local backlash against the group’s violence and attempts to dominate tribal structures, the movement, led by Sheikh Abdul Sattar Abu Risha, mobilized thousands of fighters under the “Sons of Iraq”. With U.S. support, it significantly reduced insurgent violence and helped restore stability. Its success lay in leveraging local legitimacy to sever ties between Al-Qaeda and the population, aligning counterterrorism with community interests. U.S. Marine Corps. *Al-Anbar Awakening, Volume I: American Perspectives*. Marine Corps University Press, 2009, p.12 <https://www.hqmc.marines.mil/Portals/61/Docs/al-AnbarAwakeningVolI%5B1%5D.pdf>.

¹⁵⁵ Kertzer, Joshua D. “Seriousness, Grand Strategy, and Paradigm Shifts in the ‘War on Terror.’” *International Journal*, vol. 62, no. 4, 2007, p.973. *JSTOR*, <http://www.jstor.org/stable/40204346>.

In addition to battlefield gains, U.S. operations led to the temporary establishment of civilian governments in both countries, marking a transition, however imperfect, from jihadist strongholds to partially functioning state structures. The United States also strengthened global counterterrorism cooperation, enhanced technological capabilities in intelligence and surveillance, and expanded its doctrinal expertise in drone warfare and special operations¹⁵⁶. Notably, since 9/11, the U.S. has not experienced another large-scale terrorist attack on its soil, underscoring the effectiveness of these short-term security measures.

Nevertheless, these tactical victories came at a high financial cost, exceeding \$1.5 trillion¹⁵⁷, and remain subject to debate. As noted by Erik Goepner, empirical findings indicate that increased counterterrorism efforts were paradoxically associated with a worsening of the global terror threat¹⁵⁸. Moreover, structural conditions such as poverty and lack of education which are key drivers of radicalization, worsened in both Afghanistan and Iraq, with developmental setbacks reinforcing cycles of instability and violence¹⁵⁹. Consequently, while the U.S. declared Afghanistan and Iraq as key allies in the War on Terror, the Taliban's return to power in 2021 and the persistent unrest in Iraq highlight the limits of a strategy heavily reliant on military power, and the need for sustainable political and social solutions. Still, the tactical achievements, particularly those involving counterterrorist takedowns and intelligence-driven

¹⁵⁶ Goepner, Erik. "Number 1 Parameters Spring." *Article*, vol. 46, no. 1, 2016, p.112,

press.armywarcollege.edu/cgi/viewcontent.cgi?article=2828&context=parameters.

¹⁵⁷ Crawford, Neta C. *The U.S. Budgetary Costs of the Post-9/11 Wars*. Boston University, 1 Sept. 2021, p.2

https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War_U.S.%20Budgetary%20Costs%20of%20Post-9%2011%20Wars_9.1.21.pdf

¹⁵⁸ Goepner, Erik. "Number 1 Parameters Spring." *Article*, vol. 46, no. 1, 2016, p.111,

press.armywarcollege.edu/cgi/viewcontent.cgi?article=2828&context=parameters.

¹⁵⁹ *Ibid.*, p.113

operations, underscore the operational capacity of U.S. forces to disrupt immediate threats, even if those gains were not translated into lasting peace.

Civilian Casualties and Legal Violations: Strategic and Legal Failures of U.S. Counterterrorism in Afghanistan and Iraq

One of the most critical challenges posed by full-scale military interventions in Afghanistan and Iraq has been the extensive civilian harm caused during counterterrorism operations. These casualties, far from achieving the strategic objective of suppressing terrorism, have often exacerbated it by strengthening insurgent narratives, inflaming local resentment, and undermining the legitimacy of U.S.-backed efforts at state-building. As demonstrated empirically, U.S. strikes that caused civilian deaths led to a statistically significant increase in insurgent attacks within the affected areas in Afghanistan over the following six weeks, illustrating the direct link between civilian harm and conflict escalation¹⁶⁰. Specifically, “ISAF-generated civilian casualties predict an increase in violence for the following 2 months”¹⁶¹; with one incident resulting in 10 civilian casualties associated with approximately “1 additional IED attack in the following 2 months”¹⁶², underscoring how such harm fuels insurgent retaliation and long-run conflict dynamics through heightened recruitment and public disaffection. The Taliban effectively exploited civilian casualties for propaganda purposes, framing U.S. forces as illegitimate occupiers and enemies of the Afghan people. This created a self-perpetuating cycle of violence: U.S. strike, civilian deaths, loss of local trust, and increased

¹⁶⁰ Condra, Luke N., Joseph H. Felter, Radha K. Iyengar, and Jacob N. Shapiro. *The Effect of Civilian Casualties in Afghanistan and Iraq*. NBER Working Paper Series, no. 16152, National Bureau of Economic Research, July 2010. p.19 <https://doi.org/10.3386/w16152>.

¹⁶¹ Ibid., p.20

¹⁶² Ibid.

insurgent recruitment with so-called ‘propaganda effect’. Hence, according to Michael O’Hanlon, of the Brookings Institution, “The inadvertent killing of civilians is one of the two or three things, along with corruption and favoritism perhaps, that most help the Taliban in recruiting”¹⁶³. For instance, in Pashtun regions where tribal customs emphasize honor and retribution, the death of a family or community member often compelled surviving relatives to join or support insurgent forces¹⁶⁴. As a result, counterterrorism operations paradoxically became catalysts for the very violence they sought to prevent.

This outcome stood in stark contrast to the U.S. military’s own counterinsurgency (COIN) doctrine. Outlined in the 2006 U.S. Army Field Manual (FM 3-24), COIN strategy advocates a population-centric approach that minimizes violence, prioritizes civilian protection, and seeks to build trust through ‘hearts and minds’ initiatives. It also emphasizes the importance of host government legitimacy and calls for the use of soft power, dialogue with insurgents, and political reconciliation¹⁶⁵. Therefore, excessive force, not only contradicts COIN objectives but also delegitimizes both the U.S. mission and the local governments it supports. For instance, as U.S. Secretary of Defense, Robert Gates, highlighted, “The civilian casualties are doing us enormous harm in Afghanistan, and we have got to do better in terms of avoiding casualties. And I say that knowing full well that the Taliban mingle among the people, use them as barriers. But when we go ahead and attack, we play right into their hands”¹⁶⁶.

¹⁶³ Condra, Luke N., Joseph H. Felter, Radha K. Iyengar, and Jacob N. Shapiro. *The Effect of Civilian Casualties in Afghanistan and Iraq*. NBER Working Paper Series, no. 16152, National Bureau of Economic Research, July 2010. p.7 <https://doi.org/10.3386/w16152>.

¹⁶⁴ Ibid.

¹⁶⁵ *United States Army. Insurgencies and Countering Insurgencies: Field Manual No. 3-24 / MCWP 3-33.5*. Headquarters, Department of the Army, 13 May 2014, p. 1-9. *Federation of American Scientists*, <https://irp.fas.org/doddir/army/fm3-24.pdf>.

¹⁶⁶ Condra, Luke N., Joseph H. Felter, Radha K. Iyengar, and Jacob N. Shapiro. *The Effect of Civilian Casualties in Afghanistan and Iraq*. NBER Working Paper Series, no. 16152, National Bureau of Economic Research, July 2010. p.8 <https://doi.org/10.3386/w16152>.

These strategic failures were compounded by serious violations of international humanitarian law. Numerous documented incidents meet the legal threshold of war crimes under Article 8(2) of the Rome Statute of the International Criminal Court (ICC), which defines as war crimes the willful killing of civilians and prisoners of war (POWs), considered ‘protected persons’ under the 1949 Geneva Conventions¹⁶⁷. For example, in Afghanistan, the 2012 Kandahar Massacre¹⁶⁸, constitutes a clear instance of willful killing under Article 8(2)(a) (i) of

¹⁶⁷ Article 4: Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. *Icrc.org*, 2023, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-4>

¹⁶⁸ The Kandahar Massacre refers to the pre-dawn attack on March 11, 2012, when U.S. Army Staff Sergeant Robert Bales left his military base in Panjwai district, Kandahar Province, and killed 16 Afghan civilians—including women and children—in their homes. The incident, one of the deadliest atrocities committed by a U.S. soldier during the war, sparked widespread outrage in Afghanistan and further strained U.S.-Afghan relations. Bales later pleaded guilty to avoid the death penalty and was sentenced to life imprisonment without parole. “*Kandahar Massacre: US Soldier Gets Life for Afghan Murders.*” BBC News, 23 Aug. 2013, <https://www.bbc.com/news/world-asia-17334643>.

the Rome Statute and Article 147 of the Fourth Geneva Convention¹⁶⁹. Similarly, the 2002 mistreatment and deaths of detainees at the Abu Ghraib prison which involved torture and cruel treatment¹⁷⁰, violating Article 3 common to the Geneva Conventions¹⁷¹. In relation to this,

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1. ¹⁶⁹ Article 147: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-146>

¹⁷⁰ The Abu Ghraib prison scandal refers to the systematic abuse, torture, and in some cases deaths of detainees held by U.S. military personnel in Iraq during the early years of the occupation, particularly between 2003 and 2004. Detainees were subjected to severe mistreatment including electric shocks, sexual humiliation, beatings, and prolonged stress positions. Some died in custody. Although some low-ranking soldiers were prosecuted, no high-level officials have been held accountable. Survivors of the abuse continue to seek redress and justice for the physical and psychological harm inflicted. *"Iraq: Torture Survivors Await US Redress, Accountability."* Human Rights Watch, 25 Sept. 2023, <https://www.hrw.org/news/2023/09/25/iraq-torture-survivors-await-us-redress-accountability>.

- ¹⁷¹ Article 3: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are

further breaches include arbitrary detentions and the denial of fair trial rights, violating Article 5 of the Third Geneva Convention¹⁷². Moreover, between 2009 and 2010, the so-called Maywand District killings saw a group of U.S. soldiers deliberately murder Afghan civilians and stage their bodies to resemble combatants¹⁷³, again constituting grave breaches of IHL. These incidents, among others, not only triggered widespread condemnation but also contributed to the erosion of trust between local populations and U.S. forces.

In relation to this, the unlawful destruction of civilian property in areas of military operations also breached Article 8(2)(a)(iv) of the Rome Statute and Article 53 of the Fourth Geneva Convention¹⁷⁴, which prohibit the extensive destruction of property not justified by military necessity.

In Iraq, while the dynamics of the conflict were different due to its urban nature and longer operational timeframe, civilian harm remained both a strategic and legal liability. Civilian deaths, though less frequently producing revenge-based recruitment as in Afghanistan, led to a

recognized as indispensable by civilized peoples. <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-3>

¹⁷² Article 5: Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal. <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-5>

¹⁷³ “The Maywand District Murders: Violence, Vulnerability, and Desecrating the Body.” *E-International Relations*, 8 Mar. 2016, <https://www.e-ir.info/2016/03/08/the-maywand-district-murders-violence-vulnerability-and-desecrating-the-body/>.

¹⁷⁴ Article 53: Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-53>

widespread public backlash and withholding of intelligence, with an increase of violence especially in Sunni-majority areas. As Condra and Shapiro explain, “For an average Sunni district in Iraq – which has 146,365 residents – an average Coalition-caused incident results in roughly 0.63 extra attacks on Coalition forces in the subsequent week”¹⁷⁵, illustrating a statistically significant correlation between civilian casualties and insurgent retaliation. Notably, they also found that “Insurgent-caused civilian casualties lead to fewer insurgent attacks”¹⁷⁶, with such incidents predicting “roughly 0.43 fewer insurgent attacks on Coalition forces in the next week in an average district of roughly 277,238 people”¹⁷⁷, thereby revealing a striking asymmetry in the public’s response to violence depending on its perpetrator. Hence, empirical evidence shows that coalition-caused civilian casualties triggered increases in insurgent violence in the short term, while also eroding public cooperation, “That pattern is most consistent with the information mechanism whereby the local population withholds (shares) information on insurgents when Coalition forces (insurgents) are responsible for civilian casualties”¹⁷⁸. Blair Wilcox aptly argues that U.S. counterinsurgency in Iraq was perceived less as a stabilization mission and more as conquest, “applying overwhelming force to degrade the enemy”¹⁷⁹, and relying heavily on “poorly trained Iraqi soldiers to bear the brunt of the violence”¹⁸⁰, ultimately diverting U.S. forces from reconstruction and stabilization efforts as they became increasingly preoccupied with countering suicide bombings, car bombs, and IED attacks.

¹⁷⁵ Condra, Luke N., Joseph H. Felter, Radha K. Iyengar, and Jacob N. Shapiro. *The Effect of Civilian Casualties in Afghanistan and Iraq*. NBER Working Paper Series, no. 16152, National Bureau of Economic Research, July 2010. p.31 <https://doi.org/10.3386/w16152>.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid., p. 27

¹⁷⁹ Wilcox, Blair. *The Use of Force: A Logical Approach to Understanding Counterinsurgency in Iraq*. Wright State University, 2013. Electronic Theses and Dissertations. p.31

https://corescholar.libraries.wright.edu/cgi/viewcontent.cgi?article=3242&context=etd_all.

¹⁸⁰ Ibid.

The strategic consequences of this were profound: rather than reducing violence and fostering security, high levels of civilian harm and lack of accountability worsened sectarian divides, escalated insurgent recruitment, and ultimately undermined the credibility and effectiveness of the U.S. mission in both countries.

In sum, while the causes and consequences of civilian casualties differed between the rural insurgency in Afghanistan and the urban insurgency in Iraq, both illustrate the fundamental disconnect between tactical military operations and the broader strategic objectives of counterterrorism and nation-building. In both cases, extensive civilian harm served to inflame, rather than resolve, the underlying conflict dynamics, undermining U.S. legitimacy, violating core principles of international law, and contributing to the long-term failure of its counterterrorism efforts in the region.

Drone Warfare in Practice: Strategic Advantages and Collateral Costs in Afghanistan and Iraq

The use of unmanned aerial vehicles (UAVs), or drones, has become one of the most defining and controversial elements of post-9/11 U.S. counterterrorism strategy, particularly in Afghanistan and Iraq. As then-CIA Director Leon Panetta stated, drones became “the only game in town” when it came to eliminating high-value terrorist targets¹⁸¹. Hence, advocates of drone warfare argue that its precision, reach, and psychological effect on terrorist networks make it one of the most effective tools for counterterrorism. Indeed, drones have played a critical role in decimating leadership ranks within the Taliban and Al-Qaeda, significantly disrupting their

¹⁸¹ Williams, Brian Glyn. *Predators : The CIA's Drone War on Al Qaeda*. First edition, Potomac Books, 2013, p, 169 <https://openlibrary.org/books/OL29154365M>.

operational capacities. As British security officials noted, “Strikes have decimated the Al Qaeda senior leadership, and we didn’t have to get directly involved”¹⁸², highlighting that drones represented the cleanest, and most efficient method for conducting counterterrorism operations and achieving strategic objectives without resorting to ground offensives that could risk civilian harm.

Drones have been credited with sowing fear and confusion among insurgents, causing them to limit their mobility, reduce the size of their armed convoys, avoid electronic communication, and even mistrust their local supporters¹⁸³. For example, the targeted killing of Taliban leader Qari Hussain who was known as the ‘teacher of suicide bombers’, was welcomed by many in the Pakistani public, who saw the U.S. as an ally against extremist violence¹⁸⁴. In addition to this, following the 2009 drone strike that killed Baitullah Mehsud, Pakistani authorities noted a decrease in cross-border terrorist attacks¹⁸⁵, reinforcing the perception that drone strikes served as a tactical deterrent. An American journalist previously held by the Haqqani network also explained how militants became increasingly paranoid, changing vehicles frequently, traveling with fewer bodyguards, training in smaller groups, holding meetings with minimal notice, and abandoning electronic communications in favor of coded oral messages¹⁸⁶. Hence, the constant presence of drones created a psychological toll which left Al-Qaeda insurgents in a state of continuous anxiety. As, U.S Colonel Theodore Osowski noted “It’s kind of like having God overhead”¹⁸⁷. And lighting comes down in the form of a Hellfire”, emphasizing how the mere

¹⁸² Williams, Brian Glyn. *Predators : The CIA’s Drone War on Al Qaeda*. First edition, Potomac Books, 2013, p, 171 <https://openlibrary.org/books/OL29154365M>

¹⁸³ Ibid., p.178

¹⁸⁴ Ibid., p.174

¹⁸⁵ Ibid.

¹⁸⁶ Ibid., p. 176

¹⁸⁷ Ibid., p.177

threat of a drone strike can severely hinder terrorists' ability to organize, train, and coordinate attacks.

In addition to providing real-time reconnaissance to support ground operations, in border areas of Pakistan and eastern Afghanistan, where U.S. troops could not legally operate due to sovereignty concerns, drones offered a means of counterterrorism without provoking diplomatic fallout¹⁸⁸. In these contexts, UAVs were not only more tactically flexible but were also described as a more humane and precise alternative to conventional airstrikes. Drone proponents emphasized their ability to differentiate between militants and civilians, thus avoiding mass casualties typically associated with manned aircraft, "Unlike fighter jets or cruise missiles, Predators can loiter over their targets for more than 20 hours, take photos in which men, women and children can be clearly distinguished (burqas can be visible from 20,000 feet) and deliver laser-guided munitions with low explosive yields. This minimizes the risks of the 'collateral damage' that often comes from 500-pound bombs"¹⁸⁹.

However, despite these operational advantages, the ethical and strategic costs of drone warfare have sparked serious concerns. Critics argue that drones represent a form of "execution without trial," undermining legal due process and causing disproportionate harm to civilian populations¹⁹⁰. The psychological toll of drones creates what has been called as the "neighborhood effect": pervasive terror in affected communities, who live under constant fear of surveillance and sudden death¹⁹¹. Paradoxically, it is precisely this fear and remoteness that makes drones effective militarily and devastating morally. The perception of the United States as

¹⁸⁸ Williams, Brian Glyn. *Predators : The CIA's Drone War on Al Qaeda*. First edition, Potomac Books, 2013, p. 172 <https://openlibrary.org/books/OL29154365M>

¹⁸⁹ Ibid., p.184

¹⁹⁰ Ibid., p.205

¹⁹¹ Coyne, Christopher J., and Abigail R. Hall. "The Drone Paradox: Fighting Terrorism with Mechanized Terror." *The Independent Review*, vol. 23, no. 1, p. 52

an omnipresent, unaccountable force which is capable of striking anywhere and anytime has fostered resentment and radicalization rather than security by undermining U.S. efforts to win “hearts and minds” of the population in Afghanistan and Iraq. Furthermore, civilian casualties such as those in Mir Ahmad¹⁹² and Datta Khel¹⁹³ and the covert nature of drone strikes have alienated local populations and damaged the credibility of the Afghan and Iraqi governments, which appear complicit or powerless in the face of American might. Hence, these drone strikes killed unintended victims, raising questions about flawed intelligence, particularly with the use of ‘signature strikes’, which target individuals based on behavioral patterns rather than confirmed identities. Furthermore, the U.S. designation of an accurate target is often vague, since “Absent clear evidence that demonstrates that a person killed in a strike was either not a military-age male or a military-age male but not an unlawful combatant, this person is automatically counted as an ‘enemy combatant’ by the U.S. government”¹⁹⁴. When homes are destroyed or families killed, what is often referred to in military terms as “collateral damage” is experienced on the ground as an act of state terror. The resulting anger and trauma can feed cycles of revenge and recruitment into insurgent ranks which is precisely the outcome drone warfare seeks to prevent. For example, drone strikes, while intended to eliminate terrorists, have also backfired by

¹⁹² During the early stages of Operation Enduring Freedom, Mir Ahmad, an Afghan scrap-metal collector, was mistakenly identified by a U.S. drone operator as Osama bin Laden based solely on his height and remote location. Without any human intelligence verification, a Hellfire missile was launched, killing Ahmad and several other innocent villagers.

Coyne, Christopher J., and Abigail R. Hall. “The Drone Paradox: Fighting Terrorism with Mechanized Terror.” *The Independent Review*, vol. 23, no. 1, p. 214

¹⁹³ The 2011 Datta Khel drone strike in Pakistan killed as many as fifteen respected tribal elders who were attending a jirga, along with a Taliban commander and his guards. Despite successfully eliminating the militant target, the operation caused disproportionate civilian casualties. The incident occurred one day after CIA contractor Raymond Davis was released from a Pakistani jail, further fueling public outrage and deteriorating U.S.–Pakistan relations. Eyewitnesses described the attack as devastating, emphasizing the trauma experienced by civilians and the blow to local trust in U.S. operations.

Ibid.

¹⁹⁴ Ibid., p. 52

inciting violent retaliation, “My neighbor was so furious when a drone killed his mother, two sisters and his 7-year-old brother last September that he filled his car with explosives and rammed it into a Pakistani army convoy. He had to avenge the death of his loved ones”¹⁹⁵.

Hence, while drones have undeniably removed dangerous terrorists from the battlefield, disrupted operations, and reduced the need for large-scale troop deployments, their strategic utility is counterbalanced by significant political and humanitarian costs. Civilian harm, legal ambiguities, and the psychological impact on local communities pose serious challenges to their long-term effectiveness. In counterterrorism, tactical success achieved through drone warfare can paradoxically undermine strategic objectives by fostering the very resentment and instability it aims to thwart.

The Failure of Nation-Building in Afghanistan and Iraq: Institutional Fragility, Exclusion, and External Miscalculations

Despite the initial optimism that followed U.S.-led interventions in Afghanistan and Iraq, the attempts at post-conflict nation-building in both countries ultimately faltered, contributing to long-term instability and the resurgence of extremist groups. In Afghanistan, the 2004 Constitution created a centralized political system that alienated large segments of the population by excluding them from meaningful participation and oversight¹⁹⁶. Rather than facilitating inclusive governance, the United States prioritized counterinsurgency over democratic institution-building, allowing corruption to flourish. For example, American aid was channeled

¹⁹⁵ Williams, Brian Glyn. *Predators : The CIA's Drone War on Al Qaeda*. First edition, Potomac Books, 2013, p. 217 <https://openlibrary.org/books/OL29154365M>.

¹⁹⁶ Murtazashvili, Jennifer Brick. “The Collapse of Afghanistan.” *Journal of Democracy*, vol. 33, no. 1, 2022, p.41 <https://doi.org/10.1353/jod.2022.0003>.

through poorly monitored mechanisms, also eroding the legitimacy of the Afghan state in the eyes of its citizens¹⁹⁷. Hence, international donors approached rebuilding Afghanistan in a way that largely ignored the needs and voices of the Afghan people with the funding and implementation of projects that passed through layers of contractors and NGOs which were only accountable to their own organization and rendered the country a rentier state dependent on foreign aid. Similarly, Afghan political leaders, facing little pressure from the U.S., failed to implement democratic decision-making processes envisioned in the constitution. For instance, during President Ashraf Ghani's tenure (2014–2021), governance became increasingly centralized and exclusionary. Ghani surrounded himself with a narrow circle of Pashtun loyalists, concentrating control over state and economic affairs¹⁹⁸. Therefore, Ghani's further alienation of non-Pashtun communities through policies that favored Pashtuns for administrative positions and restricted freedoms of association sparked protests, especially in the North, where dissatisfaction eventually facilitated Taliban advances. Hence, according to *Democracy Index* data, between 2014 and 2021, Afghanistan experienced only modest improvements in its democratic development and fluctuated between 2.5 and 3.2 out of 10¹⁹⁹.

Therefore, the U.S. disregarded regional and ethnic differences in the attempt to build a unitary state, often through the resurrection of authoritarian-era institutions. The U.S. strategy neglected Afghanistan's long-standing traditions of localized self-governance, thereby undermining efforts

¹⁹⁷ Murtazashvili, Jennifer Brick. "The Collapse of Afghanistan." *Journal of Democracy*, vol. 33, no. 1, 2022, p.46 <https://doi.org/10.1353/jod.2022.0003>.

¹⁹⁸ *Ibid.*, p. 50

¹⁹⁹ The Democracy Index, compiled annually by the *Economist Intelligence Unit*, evaluates the state of democracy in 167 countries. It is based on five key categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties. Scores range from 0 (least democratic) to 10 (most democratic), with countries categorized as "full democracies," "flawed democracies," "hybrid regimes," or "authoritarian regimes" based on their performance across these metrics. Roser, Max, et al. "Democracy Index." *Our World in Data*, 2024, <https://ourworldindata.org/grapher/democracy-index-eiu?tab=chart&country=~AFG>.

to foster local ownership of state-building processes. For instance, while the Northern Alliance had advocated for a more decentralized system, the U.S. preferred a centralized presidency since it viewed it as more manageable for coordination, but effectively sidelining the country's ethnic and political diversity²⁰⁰.

The electoral system further weakened democratic development. Voting for individuals rather than parties diminished parliamentary strength and entrenched presidential dominance.

Meanwhile, the integration of former mujahideen commanders into the central government led to uneven development since regions under their control benefited disproportionately, despite their notoriety for corruption²⁰¹. However, this highlights that Afghan citizens placed greater trust in customary and local authorities than in the central government, whose decisions they had little influence over.

Iraq mirrored many of Afghanistan's institutional failures. After 2009, the U.S. abandoned nation-building efforts and withdrew its forces by 2011, creating a power vacuum that allowed for the rise of ISIS. Hence, as in Afghanistan, the United States lacked a clear plan for rebuilding Iraq's governance and economic systems, which resulted in a corrupt and dysfunctional central government. The failure to reconstruct Sunni-majority areas after ISIS's territorial defeat deepened societal divisions. Iraq's security architecture remained fragmented between the National Army, Kurdish Peshmerga, and Iran-backed Popular Mobilization Forces (PMFs), who frequently clashed or operated in parallel chains of command²⁰².

²⁰⁰ Murtazashvili, Jennifer Brick. "The Collapse of Afghanistan." *Journal of Democracy*, vol. 33, no. 1, 2022, p.43 <https://doi.org/10.1353/jod.2022.0003>.

²⁰¹ Ibid., p.44

²⁰² Cordesman, Anthony H. *America's Failed Strategy in the Middle East: Losing Iraq and the Gulf*. Center for Strategic and International Studies (CSIS), 24 Oct. 2023, <https://www.csis.org/analysis/americas-failed-strategy-middle-east-losing-iraq-and-gulf>.

The mismanagement of Iraq’s vast oil wealth exacerbated inequality. Although the country generated substantial revenue, corruption and unemployment ensured that most Iraqis remained impoverished. Aid programs were inconsistently applied and often perceived as instruments of foreign self-interest, fueling anti-American sentiment, and rendering Iraq a ‘petro-kleptocracy’ in which “Level of per capita oil wealth does not come close to the oil wealth for the average Iraqi – the vast majority of Iraqis see very little of this money, and what they get tends to take the form of subsidies and other government expenditures that come at the expense of real economic growth and benefits”²⁰³. Consequently, civil unrest was widespread, and state responses were frequently repressive, further alienating the population and undermining trust in democratic governance.

Moreover, the foundation of Iraq’s post-Saddam political system was deeply flawed. The U.S.-backed de-Ba’athification policy and dissolution of the Iraqi Army led to the displacement of experienced personnel and a collapse in law and order and to a surge in crime, from petty looting to assassinations²⁰⁴. The transitional government was dominated by Shia religious and Kurdish parties, while Sunni Arabs, who formed the backbone of the old regime, were largely excluded. The 2005 Iraqi Constitution institutionalized this sectarian fragmentation, reflecting group grievances rather than a cohesive national vision. Its consociational ‘Muhasasa’ system²⁰⁵ merely

²⁰³ Cordesman, Anthony H. *America’s Failed Strategy in the Middle East: Losing Iraq and the Gulf*. Center for Strategic and International Studies (CSIS), 24 Oct. 2023, <https://www.csis.org/analysis/americas-failed-strategy-middle-east-losing-iraq-and-gulf>

²⁰⁴ Haddad, Fanar. *Unfinished Business: Nation-Building in Iraq Since 2003*. Arab Center Washington DC, 7 Mar. 2023, <https://arabcenterdc.org/resource/unfinished-business-nation-building-in-iraq-since-2003/>.

²⁰⁵ *Muhasasa* is the consociational power-sharing system adopted in Iraq after 2003, modeled in part on Lebanon’s sectarian governance structure. While intended to guarantee inclusive representation among Iraq’s diverse ethnic and sectarian groups, in practice it evolved into a system for dividing the country’s oil wealth among political elites. Ministries and state institutions were often allocated as patronage to parties that answered more to foreign backers than to the Iraqi people. This entrenched corruption, weakened governance, and excluded reformist voices, while also contributing to the marginalization of Sunni communities—creating fertile ground for insurgency and the rise of extremist groups. *Ibid*.

facilitated the division of oil wealth among elites, entrenching patronage and limiting accountability.

Moreover, the Iraqi state apparatus, including the army and ministries, became vehicles for clientelism, often responding to foreign governments rather than serving the Iraqi people. While the Kurds and Shia received compensation and autonomy in recognition of past oppression, the Sunni population was marginalized and increasingly labeled as hostile. This victimhood rhetoric further undermined nation-building by reinforcing divisions and encouraging identity-based entitlement rather than national unity.

Twenty years after the U.S. invasion, Iraq remains plagued by unresolved issues: elite corruption, weak institutions, sectarian militias, and deep public distrust. As with Afghanistan, the U.S. imposed a top-down political model with little consideration for local realities, ethnic diversity, or sustainable governance. The failure to cultivate inclusive and accountable political institutions not only weakened the state but also provided fertile ground for extremist movements to reemerge. The result in both cases is a cautionary tale of how nation-building, when shaped by the American presumption of achieving it simultaneously with counterterrorism, can entrench instability rather than resolve it.

The limits of Military Might: When Counterterrorism Fails to Secure Long-Term Stability

Despite initial battlefield successes, U.S. counterterrorism strategies in both Afghanistan and Iraq ultimately failed to deliver sustainable peace, allowing for the re-emergence of violent extremist groups. In Afghanistan, the collapse of state-building efforts was rooted in a deep misreading of the country's social and political fabric. As Anthony Cordesman notes, "If one looks at the war from its start in 2001, the most striking failure was the lack of realism in

creating an Afghan government that could actually produce an effective degree of unity among the main Afghan factions and power brokers, function effectively in providing a reasonably effective level of both civil governance and security throughout the country, and use military and civil aid effectively with a reasonable degree of honesty and equity – all while doing so on Afghan terms that suited Afghan politics, culture, and the needs and values of the majority of the Afghan people”²⁰⁶. Hence, the U.S. imposed a democratic framework on a society with limited experience in political participation, while the structure of governance ignored the existing power dynamics and regional complexities. Moreover, it supported an Afghan government which failed to meet the basic needs of large segments of the population, particularly in rural and low-income urban areas, where insecurity, corruption, and lack of services drove many to either tolerate or support the Taliban.

American aid was mismanaged and poorly monitored, creating a rentier state heavily dependent on foreign actors such as the United Nations Assistance Mission in Afghanistan (UNAMA)²⁰⁷. Crucially, key sectors like justice, law enforcement, and education remained underdeveloped, exacerbating a sense of disillusionment. Efforts like the counternarcotics campaigns not only failed but empowered the Taliban, as Afghan officials colluded with insurgents to facilitate poppy cultivation and drug trafficking in exchange for bribes²⁰⁸. Moreover, the U.S. transition from counterterrorism to nation-building was half-hearted. After defeating the Taliban in 2001, the U.S. was slow to stabilize the country and later reduced spending and troop presence, enabling the Taliban to quietly regain control in rural districts. Programs such as the training of Afghan National Security Forces (ANSF) were also deeply flawed, with troops ill-prepared and

²⁰⁶ Cordesman, Anthony H. *The Lessons of the Afghan War That No One Will Want to Learn*. Center for Strategic and International Studies (CSIS), 2022. *JSTOR*, p.4 <http://www.jstor.org/stable/resrep41879>.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

reliant on U.S. contractors²⁰⁹. The withdrawal agreement signed under the Trump administration in 2020 without ensuring long-term support or capabilities for the Afghan military, accelerated the regime's collapse.

This vacuum was mirrored in the justice and policing systems. The Afghan National Police were transformed into militarized units ill-suited for civilian law enforcement. As a result, crimes like theft and gang violence were inadequately addressed, undermining public trust and making the Taliban's local justice systems, often operated by warlords posing as 'police chiefs', appear more legitimate²¹⁰. The situation was worsened by widespread human rights abuses, including illegal detentions and torture, which further alienated communities, especially in the Pashtun south, where the Taliban were even welcomed as liberators²¹¹.

Similarly, in Iraq, the failure to establish stable and inclusive governance post-invasion led to the rise of the Islamic State (ISIS). Therefore, after the U.S. invasion of Afghanistan, Al-Qaeda members and Afghan Arabs who had fought alongside the Taliban fled to Iraq, many settling in the Sunni Triangle between Baghdad and Mosul, where they merged with local insurgents²¹². Moreover, the U.S. and Iraqi Prime Minister Nouri al-Maliki's exclusionary policies alienated Iraq's Sunni population, pushing many toward violent extremism²¹³. The de-Baathification process excluded Iraq's Sunni population, stripping them of power and removing them from any role in the state apparatus, resulting in "approximately 500,000 Sunnis with

²⁰⁹ Cordesman, Anthony H. *The Lessons of the Afghan War That No One Will Want to Learn*. Center for Strategic and International Studies (CSIS), 2022. *JSTOR*, p.13 <http://www.jstor.org/stable/resrep41879>

²¹⁰ *Ibid.*, p.18

²¹¹ *Ibid.*, p.19

²¹² Israeli, Ofer. "US Invasion of Iraq, 2003: Indirect Link of ISIS Rising." *Contemporary Review of the Middle East*, vol. 10, no. 2, 2023, p. 194 <https://doi.org/10.1177/23477989221150678>.

²¹³ Byman, Daniel L. *Comparing Al Qaeda and ISIS: Different Goals, Different Targets*. Brookings Institution, 29 Apr. 2015, <https://www.brookings.edu/articles/comparing-al-qaeda-and-isis-different-goals-different-targets/>.

fighting backgrounds... jobless and poor”²¹⁴ who increasingly saw armed resistance as their only recourse. For instance, terrorist groups like ISIS were well-funded and capable of paying high salaries to its fighters, while also providing food and shelter to new recruits. In relation to this, in 2011, the simultaneous eruption of the Arab Spring and the U.S. troop withdrawal from Iraq significantly destabilized the region. The withdrawal created a critical power vacuum, while the outbreak of the Syrian civil war across the border provided ISIS with the territorial and strategic opportunities it needed to expand its influence and operations. The religious dimension also played a significant role: as had happened during the Gulf War twenty years earlier with Al-Qaeda and Bin Laden’s propaganda, Americans were once again depicted as the Christian crusaders invading Muslim lands. This portrayal inspired many Muslims worldwide, not only extremists, to join a jihad against the United States. Hence, ISIS exploited this sentiment by spreading propaganda materials urging Muslims to fulfill their ‘religious duty’ of hijra and join the caliphate, leading many young people, Muslims and even non-Muslims, to convert to Islam and travel to join the cause²¹⁵. In addition to this, Iraqi detention centers like Camp Bucca became hotbeds of radicalization and networking among jihadist operatives, ironically incubating the very forces the U.S. sought to defeat. Camp Bucca, a U.S.-run facility that held up to 100,000 detainees between 2004 and 2009, effectively became a ‘jihadist university’ where prisoners received training in explosives, weapons handling, and suicide bombing. Notably, among these detainees was Abu Bakr al-Baghdadi, the future leader of ISIS, who, after five years in U.S. custody, emerged as a trusted emir. He later built the Islamic State’s military and intelligence network, eventually founding a caliphate on July 1, 2014, one the size of Britain and

²¹⁴ Israeli, Ofer. “US Invasion of Iraq, 2003: Indirect Link of ISIS Rising.” *Contemporary Review of the Middle East*, vol. 10, no. 2, 2023, p. 193 <https://doi.org/10.1177/23477989221150678>.

²¹⁵ Ibid.

several hundred times larger than any territory ever controlled by Al-Qaeda leader Osama Bin Laden.²¹⁶

Hence, U.S. efforts prioritized short-term tactical gains over the structural transformation of Iraqi governance. Without American oversight, as happened in Afghanistan under President Ashraf Ghani's tenure, Nuri al-Maliki's government (2006-2014) continued to repress Sunnis, turning peaceful protests into a violent insurgency; thus, "Virtually all American observers agree that Maliki's increasingly sectarian and dictatorial policies from 2012 onward had the effect of antagonising Iraqi Sunnis and crippling the ISF"²¹⁷. This culminated in the fall of major cities like Mosul and Tikrit to ISIS in 2014. The group's rapid victories, brutality, and narrative of Sunni empowerment drew thousands of foreign fighters and deeply destabilized both Iraq and the broader region.

In both countries, the U.S. approach prioritized counterterrorism over inclusive, locally legitimate state-building. This failure to transition from military victories to political stability laid the groundwork for the resurgence of groups like the Taliban and ISIS, exposing the fundamental limitations of relying on military might alone in counterterrorism strategy. Hence, this chapter has revealed that while tactical gains such as the elimination of high-profile terrorists and temporary disruption of insurgent networks were achieved in Afghanistan and Iraq, the U.S. counterterrorism strategy in both countries failed to deliver long-term stability. Civilian casualties, repeated violations of international humanitarian law, and the collapse of nation-building efforts significantly undermined U.S. credibility, fueling terrorist recruitment and

²¹⁶ Israeli, Ofer. "US Invasion of Iraq, 2003: Indirect Link of ISIS Rising." *Contemporary Review of the Middle East*, vol. 10, no. 2, 2023, p. 195 <https://doi.org/10.1177/23477989221150678>

²¹⁷ Brands, H. and Feaver, P. (2017) 'Was the Rise of ISIS Inevitable?', *Survival*, 59(3), pp. 7–54. <https://www.tandfonline.com/doi/citedby/10.1080/00396338.2017.1325595?scroll=top&needAccess=true>

contributing to the re-emergence of groups like the Taliban and ISIS. Moreover, U.S. interventions in Afghanistan and Iraq have indirectly contributed to Iran's rise as a regional power in the Middle East, reinforcing regional instability by deepening the enmity between Sunnis and Shiites. These interventions eliminated two of the regimes most feared by Tehran: the Afghan Taliban and Iraq's Saddam Hussein, allowing it to create the so-called 'Shiite Crescent', i.e. a political alliance that stretches from Iran to the Mediterranean Sea through Lebanon, Iraq and Syria. The underlying flaw was a reliance on unilateral military power without sufficient attention to inclusive governance, local legitimacy, and legal accountability. Hence, the assumption that counterterrorism and state-building could be pursued simultaneously through force proved deeply misguided, leading to fragile institutions and enduring instability. However, these shortcomings point to the need for a fundamentally different approach. Consequently, the next chapter explores whether mutual inter-state cooperation in criminal matters through transnational legal frameworks can offer a more effective and sustainable alternative to the militarized model of counterterrorism assessed here.

4. Transnational Criminal Law and Counterterrorism: A Better Alternative to Military Intervention

Introduction

The attacks of September 11, 2001, fundamentally reshaped the global approach to counterterrorism. In the aftermath, the U.S. strategy heavily emphasized unilateral military intervention, a choice that revealed significant drawbacks in practice, particularly during the invasions of Afghanistan and Iraq. These interventions, while initially aimed at dismantling terrorist networks, exposed critical weaknesses: protracted conflicts, high civilian casualties, the destabilization of entire regions, and the undermining of international legal norms. In contrast, this chapter analyzes the framework of transnational criminal law (TCL) as a more legally consistent, cooperative, and sustainable approach to addressing international terrorism.

TCL seeks to globalize criminal law—not by internationalizing it through supranational enforcement, but by promoting its diffusion across national jurisdictions. The aim is to ensure that serious transnational crimes, including terrorism, are addressed through coordinated legal mechanisms grounded in national enforcement. However, in practice, powerful states have sometimes instrumentalized TCL to serve their own interests, which has eroded trust among other participating states. As a result, contemporary academic debates often characterize TCL as biased toward Western priorities, with some scholars arguing it risks becoming a tool for wealthier countries to impose their legal and political agendas on poorer states under the guise of cooperation.

Nevertheless, this chapter argues that despite these criticisms, TCL offers a more promising long-term strategy for counterterrorism, particularly as U.S. hegemonic influence recedes and the limitations of military responses—also evident in the ongoing war waged by Israel against Hamas in Gaza, which has failed to eradicate the threat despite over a year of intensive bombardment—become increasingly apparent. Hence, as the failures of interventionist strategies continue to accumulate, we may witness a growing reliance on TCL as a more effective framework for global counterterrorism efforts, emphasizing structured, multilateral cooperation over unilateral force. This chapter offers new leverage in ongoing academic debates by shifting the focus from critiques of Western dominance to an analysis of how TCL can evolve in a multipolar world, where declining unilateral power opens space for more balanced, consensus-driven enforcement mechanisms. By examining the use of TCL in counterterrorism not merely as an extension of power but as a potential site of transformation, this chapter contributes a nuanced perspective to the literature, suggesting that TCL’s future may lie in redefining cooperation beyond hegemonic interests.

The Legal Framework of Transnational Criminal Law: Functions, Structures, and Comparative Features

Transnational criminal law (TCL) refers to the body of law designed to suppress criminal activities that have a cross-border dimension, and which require coordinated international legal responses. As Neil Boister puts it, it is “The indirect suppression by international law through domestic penal law of criminal activities that have actual or potential trans-boundary effects”²¹⁸.

²¹⁸ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 13

The core functions of TCL are twofold: first, to suppress transnational crime, and second, to transnationalize criminal law by enabling the diffusion of criminal offences which typically originate in one or more jurisdictions into the laws of other states through suppression conventions²¹⁹. These conventions create horizontal treaty obligations among states, combined with vertical applications of national criminal law to individuals in implementation of those obligations²²⁰. Hence, TCL is distinct from ordinary national criminal law in that states party to suppression conventions are obligated to criminalize specific conduct in their domestic laws and ensure that such offences are prosecutable in national courts²²¹. These obligations enable inter-state cooperation through mechanisms like extradition and mutual legal assistance, typically contingent on the principle of double criminality which states that the conduct must be criminalized in both the requesting and requested states²²². Thus, TCL enables the procedural interaction of national criminal justice systems, as states apply their own legal systems to support others, without applying foreign laws. For instance, when an individual commits a crime in State A but causes harm in State B, prosecution can occur in State B if extraterritorial jurisdiction is established and if State A provides legal cooperation²²³. Moreover, the normative authority in TCL arises not from international law *per se*, but from the sovereign will of states implementing treaty obligations through national legislation. In this respect, TCL is non-hierarchical and horizontal, based on reciprocity, sovereign equality, and consent, unlike international criminal law (ICL), which operates through hierarchical structures and imposes direct obligations on

²¹⁹ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 13

²²⁰ *Ibid.*, p. 14

²²¹ *Ibid.*

²²² *Ibid.*

²²³ *Ibid.*, p. 16

individuals²²⁴. Therefore, as Boister notes, ICL in a strict sense is “The criminal law applicable in international criminal tribunals where individual criminal responsibility was directly applied under international law”²²⁵, whereas TCL is not enforced through an international tribunal but rather relies on the implementation and enforcement of criminal norms by national legal systems under the framework of international treaties and agreements. Although suppression conventions contain obligations such as *aut dedere aut judicare* (extradite or prosecute), which some scholars view as transforming transnational crimes into international ones, the execution of these duties still lies with national authorities²²⁶. The two legal regimes differ on four key grounds: (1) TCL’s indirect nature, as opposed to ICL’s direct imposition of criminal liability; (2) TCL’s limited application of extraterritorial jurisdiction, compared to ICL’s universal jurisdiction; (3) TCL’s focus on crimes of transnational interest, versus ICL’s focus on crimes of international concern (e.g. genocide, war crimes); and (4) the different legal and political communities that project their authority through each system²²⁷. Moreover, TCL applies only when there is a shared legal framework, such as a treaty, to criminalize an act across jurisdictions. For example, murder committed domestically and followed by escape across a border does not fall within TCL unless there is a specific transnational agreement that treats it as a shared legal concern²²⁸. In such cases, cooperation is procedural (e.g., extradition), not normative. Further distinguishing TCL from ICL is the fact that TCL criminalizes conduct via national laws, with procedural cooperation embedded in suppression conventions, rather than through overarching international

²²⁴ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 18

²²⁵ Boister, Neil. "Further Reflections on the Concept of Transnational Criminal Law." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p. 10. HeinOnline.

²²⁶ *Ibid.*, p. 16

²²⁷ *Ibid.*, p.10

²²⁸ *Ibid.*, p.20

statutes. While ICL grants individual criminal responsibility under international law, TCL depends on each state's internal legal systems to define, prosecute, and adjudicate the offence. This structure leaves considerable discretion to states, enabling them to implement obligations according to their domestic legal traditions.

The United Nations Convention against Transnational Organized Crime (UNTOC), Article 3, provides a working definition of transnational crimes, emphasizing their cross-border nature and the need for international coordination, stating that an offence is transnational in nature if "It is committed in more than one State," or if "A substantial part of its preparation, planning, direction or control takes place in another State," or if it involves "An organized criminal group that engages in criminal activities in more than one State," or has "Substantial effects in another State"²²⁹. For example, Boister and others have shown that TCL includes offences like terrorism, money laundering, firearms trafficking, and cybercrime, where cooperation is formalized through regional, bilateral, or UN-backed treaties²³⁰. However, as Scott has argued, transnational crimes may also encompass "Phenomena not involving physical acts or events across borders that are nonetheless understood by relevant participants and/or observers as 'transnational' situations because of how the issue has come to be constructed by interacting normative (legal, policy, and moral) discourses as transcending ... national frontiers"²³¹.

²²⁹ United Nations Office on Drugs and Crime. *United Nations Convention against Transnational Organised Crime and the Protocols Thereto*. 2004, www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

²³⁰ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012.

²³¹ Boister, Neil. "Further Reflections on the Concept of Transnational Criminal Law." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p. 12. HeinOnline.

However, another defining feature of TCL is its embodiment of legal pluralism, wherein multiple legal systems can function concurrently within the same legal space²³². For instance, a single act may be criminal under several national systems and violate international obligations under a suppression convention. This pluralistic structure enables states to work together while maintaining legal sovereignty, allowing TCL to serve as a flexible, pragmatic framework for addressing complex, border-crossing criminal threats such as terrorism, trafficking, and cybercrime.

Hence, Transnational Criminal Law is not static. Recent developments show how national court decisions, non-state actors (e.g., banks, NGOs, intergovernmental organizations), and soft law instruments influence the implementation of it²³³. For instance, the Financial Action Task Force (FATF) issues non-binding recommendations on countering terrorist financing that are widely followed, illustrating how TCL is shaped by a mix of formal law and regulatory governance²³⁴. Also, states increasingly rely on civil and administrative penalties (e.g., asset freezes, sanctions) rather than full criminal trials to suppress transnational crimes, measures that are quicker and less resource-intensive, but that “Impose a milder degree of censure - making them less likely to draw public attention, and involve a less formal process and less rigorous standards of proof”²³⁵.

From Financing to Firearms: Suppressing Terrorism through Transnational Criminal Law

Given the globalized and cross-border nature of contemporary terrorist threats, the role of transnational criminal law (TCL) in countering terrorism is increasingly critical, as it provides

²³² Boister, Neil. "Further Reflections on the Concept of Transnational Criminal Law." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p. 25. HeinOnline.

²³³ *Ibid.*, p.22

²³⁴ *Ibid.*, p.23

²³⁵ *Ibid.*

the legal architecture to suppress crimes spanning multiple jurisdictions and facilitates inter-state cooperation through suppression conventions and mutual legal assistance. However, the application of TCL to terrorism is complicated by the lack of a universally accepted legal definition of terrorism. Hence, efforts to define terrorism date back to the 1937 League of Nations Convention for the Prevention and Punishment of Terrorism, which ultimately failed, though Article 1(2) of the Convention offered an early definition, describing terrorism as “Criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public”²³⁶. More recently, despite the United Nations General Assembly’s mandate (Resolution 51/210)²³⁷ and UNODC’s Terrorism Prevention Branch²³⁸, a comprehensive definition has remained elusive, largely due to disagreements over whether political motives should be included or excluded, particularly from the perspective of former colonies and liberation movements. For example, the Special Tribunal for Lebanon (STL) in 2011 did affirm the existence of a customary international crime of transnational terrorism, identifying three core elements, this view is not universally shared. The STL emphasized the weight of repeated UN Security Council condemnations and cited domestic

²³⁶ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p.63

²³⁷ UN General Assembly Resolution 51/210, adopted in 1996, established the Ad Hoc Committee on International Terrorism under the Sixth Committee (Legal) of the General Assembly. The resolution mandated the Committee to develop a comprehensive legal framework to address international terrorism, including the drafting of a Comprehensive Convention on International Terrorism to supplement the existing sectoral counterterrorism treaties. “Legal Committees.” *Legal.un.org*, <https://legal.un.org/committees/terrorism/#:~:text=In%201996%20the%20General%20Assembly,terrorism%2C%20to%20supplement%20related%20existing>

²³⁸ According to the United Nations Office on Drugs and Crime (UNODC) Terrorism Prevention Branch, terrorism is distinguished by its strategic use of violence to communicate a message beyond the immediate victims. It emphasizes that in terrorism, “the direct targets of violence are not the main targets”; rather, they “serve as message generators” intended to “manipulate the main target,” which is usually a broader audience such as the public, a government, or an international organization. This communicative function underscores terrorism’s inherently political nature and distinguishes it from ordinary criminal violence. Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p.63

jurisprudence from Canada, Italy, India, and France, but notably, the U.S. courts continue to deny the existence of such a crime under international law²³⁹. The lack of consensus is further reflected in how Security Council counterterrorism mechanisms operate without defining terrorism, thereby effectively permitting states to determine what conduct constitutes terrorism and “Creat[ing] legal ambiguity which makes the precise scope of the state’s obligation to prosecute suspected members of terrorist groups unclear”²⁴⁰. Hence, this definitional ambiguity also persists because, as Luz E. Nagle explains, identifying terrorism involves two essential steps: first, the commission of the act, i.e. the tactic, and second, determining whether the primary goal behind the act was to influence a government or achieve another broader objective²⁴¹. It is particularly in this second step that considerable disagreement arises. As Nagle states, “Many terrorist acts are within one nation’s borders, and the psychological fear and primary effects are limited. Some incidents reported as terrorist in nature, while highly violent, are more criminal in intent than terrorist, and this leads to some confusion over the primary and direct motivation of the group using violent acts”²⁴². Hence, while both criminals and terrorists may use violence, Nagle highlights that their motivations diverge significantly: the criminal is typically driven by personal or material gain, whereas the terrorist’s aims are political or ideological, directed at shaping public perception and effecting systemic change²⁴³. However, terrorism can be conceptualized as a transnational criminal law offence, not an international criminal law offence. In fact, the inherently transnational nature of terrorism, demonstrated by

²³⁹ Brennan, Anna Marie. *Transnational Terrorist Groups and International Criminal Law*. Routledge, 2018, p.65 <https://doi.org/10.4324/9781315264981>.

²⁴⁰ Ibid.

²⁴¹ Nagle, Luz E. "Terrorism and Universal Jurisdiction: Opening a Pandora's Box." *Georgia State University Law Review*, vol. 27, no. 2, Winter 2011, p. 351. HeinOnline.

²⁴² Ibid., p.352

²⁴³ Ibid.

events such as 9/11, where planning, financing, and execution occurred across multiple jurisdictions, illustrates why TCL is a more appropriate legal framework than international criminal law (ICL). ICL deals with universally condemned crimes like genocide and war crimes, which are clearly defined and shock the conscience of humanity. Terrorism, by contrast, remains too politicized and diversely interpreted by states to meet these criteria. For example, the U.S. definition of ‘international terrorism’ reflects this dimension, describing such acts as those that “Occur primarily outside the territorial jurisdiction of the US, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum”²⁴⁴. Therefore, the development of customary international law on terrorism remains fragmented, and reliance on treaty-based cooperation under TCL, rather than universal jurisdiction, is both more feasible and more legitimate.

Transnational Criminal Law for counterterrorism is primarily enforced through Suppression conventions such as the 1999 International Convention for the Suppression of the Financing of Terrorism and sectoral treaties like the Hague (1970) and Montreal Conventions which provide the legal instruments to criminalize specific terrorist acts (e.g., hijackings, bombings, and hostage-taking) and their enablers. For example, article 2(1) of the 1999 International Convention for the Suppression of the Financing of Terrorism defines terrorism financing as any person who “Wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any

²⁴⁴ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p.63

other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”²⁴⁵. The UN Security Council, through Resolution 1373, echoed this by obliging all states to criminalize terrorist financing, even those not party to the 1999 Convention, and by establishing global standards for asset freezes and legal cooperation²⁴⁶. Meanwhile, Resolution 1566 contributed a functional definition of terrorism which included “Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism”²⁴⁷, in addition to encouraging further domestic criminalization. Despite such efforts, the continued inability to agree on a single definition has led to the fragmentation of the global legal response.

In response to evolving threats, states have expanded the scope of counterterrorism using tools beyond traditional law enforcement. For instance, immigration law has become a soft tool in domestic counterterrorism strategies, allowing states to detain or expel suspects even when criminal evidence is insufficient. This approach gained momentum after 9/11, when it became apparent that the U.S. had repeatedly failed to register and track aliens, leading to exploitation of immigration gaps by terrorists. Though critics argue this stigmatizes innocent migrants, others

²⁴⁵ United Nations. *INTERNATIONAL CONVENTION for the SUPPRESSION of the FINANCING of TERRORISM UNITED NATIONS*. 1999, <https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>

²⁴⁶ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p.69

²⁴⁷ *Ibid.*, p.70

contend that it is a less invasive alternative to military intervention and may provide a quicker response to potential threats²⁴⁸.

Additionally, terrorism financing intersects with anti-money laundering (AML) efforts, but transnational counterterrorism financing remains difficult because terrorist funds can originate from legal sources, such as charities, and attacks often require minimal financial resources, making detection and prevention especially challenging. For example, the Financial Action Task Force (FATF), established initially to combat money laundering, expanded its mandate post-9/11 to include Countering the Financing of Terrorism (CFT)²⁴⁹. It issued nine special recommendations, including measures on wire transfers, cross-border cash flows, and the regulation of the non-profit sector²⁵⁰. In the U.S., the Suppression of the CFT Implementation Act (2002) introduced stricter due diligence (CDD) rules and extended financial monitoring to areas like real estate and securities²⁵¹. Moreover, national intelligence services often collaborate with international organizations and private security companies, facilitating real-time information sharing and coordinated enforcement operations.

Finally, as terrorism continues to evolve in scope, sophistication, and reach, so too must the legal frameworks designed to combat it. For example, in recognition of the scale and complexity of the threat, the UN Security Council, in Resolution 1377, affirmed that “Acts of international terrorism constitute one of the most serious threats to international peace and

²⁴⁸ Nagle, Luz E. "Terrorism and Universal Jurisdiction: Opening a Pandora's Box." *Georgia State University Law Review*, vol. 27, no. 2, Winter 2011, p.366. HeinOnline.

²⁴⁹ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p.188

²⁵⁰ Ibid.

²⁵¹ Ibid., p.92

security in the twenty-first century”²⁵², highlighting the urgent need for legal tools capable of addressing its inherently borderless character. However, while Security Council resolutions and sectoral conventions have significantly strengthened international cooperation, the effective prosecution and suppression of terrorism continue to depend on national implementation, mutual trust among states, and the harmonization of legal standards. Within this framework, transnational criminal law (TCL) emerges as the most pragmatic and adaptable legal model for counterterrorism, as it facilitates horizontal cooperation, upholds state sovereignty, and enables flexible enforcement through treaty-based obligations, thereby offering a balanced and effective response to the evolving nature of transnational terrorism.

The Global Enforcement of Terrorism Law: Institutional Benefits and Case Evidence of Transnational Criminal Law

While transnational criminal law (TCL) has demonstrated considerable effectiveness in enabling legal cooperation and norm diffusion in the fight against terrorism, it is crucial to acknowledge the structural and political constraints that have limited its applicability in moments of crisis. The aftermath of the September 11 attacks is a key example. Although legal mechanisms under TCL were in place—such as the INTERPOL red notice issued for Osama bin Laden years before 9/11, and the rapid formation of INTERPOL’s “11 September Task Force” just days after the attacks—these tools ultimately depended on the willingness and capacity of member states to act on shared information. INTERPOL’s creation of the I-24/7 global

²⁵² Security, UN. “Resolution 1377 (2001) /: Adopted by the Security Council at Its 4413th Meeting, on 12 November 2001.” *United Nations Digital Library System*, UN, 12 Nov. 2001, <https://digitallibrary.un.org/record/452238?v=pdf>

communication system in 2002 further strengthened this infrastructure, but such cooperation was insufficient to meet the urgency perceived by the U.S. at the time.

In fact, as explored in Chapter Three, the Taliban regime in Afghanistan offered to prosecute Bin Laden domestically, extradite him to another Islamic country, or isolate him to prevent further terrorist acts. These offers, however limited and politically fraught, represented a potential avenue for invoking TCL mechanisms. Had the U.S. accepted legal cooperation, it is plausible that a more targeted counterterrorism strategy—one avoiding the massive civilian toll and destabilizing consequences of military invasions—could have emerged. Instead, driven by the logic of retributive justice and the symbolic assertion of hegemonic power, the U.S. dismissed legal alternatives in favor of large-scale intervention. This decision not only contributed to the resurgence of the Taliban in Afghanistan and the rise of ISIS in Iraq, but also highlighted the geopolitical limitations of TCL in crisis diplomacy. In that moment, a TCL-based response was politically untenable for a superpower seeking to affirm its status as global enforcer.

However, transnational criminal law (TCL) has proven to be an essential legal framework in the global effort to counter terrorism, offering a flexible, cooperative model that aligns national sovereignty with international legal obligations. Hence, one of its principal strengths lies in enabling political consensus and coordinated global action, particularly through instruments like UN Security Council resolutions. For example, Resolution 2178 reflect the international community's "Political willingness to use UN Charter powers with hegemonic effect to adopt new law in this field"²⁵³, as it goes beyond criminal law by incorporating civil, administrative, and cooperative mechanisms, such as capacity-building initiatives and operational cooperation

²⁵³ Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.43. HeinOnline.

under Article 3²⁵⁴. This multidimensionality fosters enhanced international cooperation, promotes norm convergence, and facilitates harmonization of legal standards across jurisdictions. Hence, as noted by C.C. Murphy, such instruments “Promote the convergence of rules across different legal systems and might, as a result, benefit the development of legal doctrine”²⁵⁵, illustrating how the Security Council not only legislates but also serves as a central mechanism for the diffusion of transnational counter-terrorism law. Through the promotion of capacity-building and technical assistance which are forms of disciplinary rather than juridical power, the Security Council facilitates the spread of legal norms globally, encouraging legal harmonization and the evolution of shared counterterrorism frameworks.

In addition to this, a core institutional example of TCL in action is INTERPOL, a transnational police organization composed not of states but of sub-state police agencies, making it a model case for the global application of administrative law²⁵⁶. INTERPOL’s Public Safety and

²⁵⁴ Article 3 of UN Security Council Resolution 2178 (2014) urges Member States to “intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks”, including foreign terrorist fighters (FTFs). This provision reflects the resolution's broader emphasis on enhancing cross-border cooperation and the real-time sharing of intelligence, particularly among law enforcement and intelligence agencies, in order to prevent the planning, financing, and execution of terrorist acts. Adopted under Chapter VII of the UN Charter, the resolution is legally binding and marks a significant step in promoting coordinated global responses to the evolving threat posed by terrorism. Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.45. HeinOnline ²⁵⁵ *Ibid.*, p. 46

²⁵⁶ The origins of INTERPOL can be traced back to the early 20th century, with the idea of fostering international police cooperation emerging prior to the First World War. However, its concrete development began during the interwar period with the formation of the International Criminal Police Commission (ICPC). Initially dominated by Austria, the ICPC was composed of police officials from 22 countries, including the United States via the FBI. During the Second World War, the organization fell under Nazi control, and its headquarters were moved to Berlin. In 1946, the ICPC was revived and relocated to Saint-Cloud, near Paris. INTERPOL’s current constitutional framework was adopted in 1956, emphasizing its politically neutral role in international policing. Articles 2 and 3 of the Constitution are particularly significant: Article 2 outlines the organization's objectives, including facilitating international police cooperation “within the limits of existing laws in different countries and in the spirit of the Universal Declaration of Human Rights,” and developing institutions to prevent and suppress ordinary law crimes. This structure has enabled INTERPOL to function as a transnational law enforcement organization dedicated to criminal justice cooperation across jurisdictions. Christensen, Mikkel Jarle, and

Terrorism (PST) Sub-Directorate, established in October 2001 in response to the 9/11 attacks, has coordinated law enforcement responses to terrorism by providing secure databases, investigative expertise, and a global communication system (I-24/7) that connects law enforcement agencies worldwide²⁵⁷. As noted by Enders and Sandler, INTERPOL has since “Assumed a larger role in curbing transnational terrorist attacks that, through their victims, perpetrators, or implications, affect two or more countries”²⁵⁸, including incidents that begin in one country and end in another, involve foreign victims, or are supported and trained from abroad. Hence, through its proactive role in counterterrorism, INTERPOL has significantly bolstered cooperative linkages among national central bureaus (NCBs), its General Secretariat in Lyon, and its six regional bureaus, with the aim of capturing terrorists, thwarting planned attacks, and reducing their resources²⁵⁹. For instance, INTERPOL-assisted operations include issuing UN Security Council-Interpol special notices to disrupt travel, weapon access, and financial transactions by terrorists affiliated with groups like al-Qaeda and the Taliban²⁶⁰. Moreover, compared to military interventions or homeland security operations, INTERPOL-assisted counterterrorism efforts are highly cost-effective. By redirecting resources under the leadership of Secretary General Noble, INTERPOL has adopted cooperative-based, proactive strategies

Neil Boister, editors. *New Perspectives on the Structure of Transnational Criminal Justice*. Brill, 2018, pp. 70-71

<https://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=1845146>.

²⁵⁷ Todd Sandler, University of Texas at Dallas, Daniel G. Arce, University of Texas at Dallas and Walter Enders, University of Alabama. "ARTICLE: An Evaluation of Interpol's Cooperative-Based Counterterrorism Linkages." *The Journal of Law & Economics*, 54, 79 February, 2011. p. 2

[https://advance-lexis-com.jcu.idm.oclc.org/document/?pdmfid=1519360&crld=403d5710-238f-4a77-a3ed-b6b667761a48&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A53MW-VC20-00CV-T09J-00000-00&pdcontentcomponentid=157329&pdteaserkey=sr0&pditab=allpods&ecomp=hc-yk&earg=sr0&prid=92348537-a720-4c01-8f56-6cd45d535b72](https://advance.lexis-com.jcu.idm.oclc.org/document/?pdmfid=1519360&crld=403d5710-238f-4a77-a3ed-b6b667761a48&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A53MW-VC20-00CV-T09J-00000-00&pdcontentcomponentid=157329&pdteaserkey=sr0&pditab=allpods&ecomp=hc-yk&earg=sr0&prid=92348537-a720-4c01-8f56-6cd45d535b72)

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid., p.3

such as arrest facilitation, disruption of terrorist travel, and blocking the flow of firearms and funds that avoid the unintended consequences and escalation often associated with military action²⁶¹. For example, as observed by Rosendorff and Sandler, “Interpol's cooperative-based proactive measures leading to arrests of terrorists or prevention of international travel, possession of firearms, and movement of money by suspected terrorists do not have the same potential for backlash attacks that military actions can have”²⁶². Hence, INTERPOL’s incident response teams have been deployed 46 times between 2002 and 2008, while the Fusion Task Force and Command and Coordination Centre (CCC) have played critical roles in gathering intelligence and responding to crises²⁶³.

One of the most quantifiable benefits of TCL through INTERPOL is the reduction in transnational terrorist incidents. For instance, in 2006, 74 INTERPOL-assisted arrests were made, and 104 in 2007, leading to over \$3 billion and \$3.4 billion in GDP losses avoided²⁶⁴, respectively. Hence, as Sandler and Enders highlight, “Each dollar spent on Interpol's counterterrorism efforts has a potential payback of almost \$200”²⁶⁵, offering a high return on investment compared to more expensive homeland security or military approaches. Furthermore, INTERPOL’s Stolen and Lost Travel Document (SLTD) database helped the U.S. intercept

²⁶¹ Todd Sandler, University of Texas at Dallas, Daniel G. Arce, University of Texas at Dallas and Walter Enders, University of Alabama. "ARTICLE: An Evaluation of Interpol's Cooperative-Based Counterterrorism Linkages." *The Journal of Law & Economics*, 54, 79 February, 2011. p. 28 [https://advance-lexis-com.jcu.idm.oclc.org/document/?pdmfid=1519360&crld=403d5710-238f-4a77-a3ed-b6b667761a48&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A53MW-VC20-00CV-T09J-00000-00&pdcontentcomponentid=157329&pdteaserkey=sr0&pditab=allpods&ecom=hc-yk&earg=sr0&prid=92348537-a720-4c01-8f56-6cd45d535b72](https://advance.lexis-com.jcu.idm.oclc.org/document/?pdmfid=1519360&crld=403d5710-238f-4a77-a3ed-b6b667761a48&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A53MW-VC20-00CV-T09J-00000-00&pdcontentcomponentid=157329&pdteaserkey=sr0&pditab=allpods&ecom=hc-yk&earg=sr0&prid=92348537-a720-4c01-8f56-6cd45d535b72)

²⁶² Ibid.

²⁶³ Ibid., p.4

²⁶⁴ Ibid., p. 9,14

²⁶⁵ Ibid., p.24

1,249 fraudulent travel documents in 2008²⁶⁶, many of which were similar to those used in the 9/11 attacks, thereby facilitating the preemptive identification of potential terrorist threats prior to the execution of any harmful activities.

Extradition, another key mechanism of TCL, facilitates the lawful transfer of suspects for prosecution. As Bolster notes, it “Allows states lawfully to acquire custody of alleged criminals located in other states in order to execute an already established criminal jurisdiction”²⁶⁷.

Extradition is based on the principle of double criminality which requires that the act for which extradition is sought must be a criminal offence under the domestic laws of both the requesting and the requested states²⁶⁸. This principle safeguards individuals from being subjected to criminal prosecution for acts that are not recognized as offences in the jurisdiction in which they are located, thereby reinforcing the doctrine of *nullum crimen sine lege* (no crime without law)²⁶⁹. It ensures reciprocity and legal predictability in international criminal cooperation. This approach has been endorsed in various international instruments, including Article 44(1) of the United Nations Convention Against Corruption (UNCAC)²⁷⁰ and Article 16 of the United

²⁶⁶ Todd Sandler, University of Texas at Dallas, Daniel G. Arce, University of Texas at Dallas and Walter Enders, University of Alabama. "ARTICLE: An Evaluation of Interpol's Cooperative-Based Counterterrorism Linkages." *The Journal of Law & Economics*, 54, 79 February, 2011. p. 27 [https://advance-lexis-com.jcu.idm.oclc.org/document/?pdmfid=1519360&crd=403d5710-238f-4a77-a3ed-b6b667761a48&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A53MW-VC20-00CV-T09J-00000-00&pdcontentcomponentid=157329&pdteaserkey=sr0&pditab=allpods&ecomp=hc-yk&earg=sr0&prid=92348537-a720-4c01-8f56-6cd45d535b72](https://advance.lexis-com.jcu.idm.oclc.org/document/?pdmfid=1519360&crd=403d5710-238f-4a77-a3ed-b6b667761a48&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A53MW-VC20-00CV-T09J-00000-00&pdcontentcomponentid=157329&pdteaserkey=sr0&pditab=allpods&ecomp=hc-yk&earg=sr0&prid=92348537-a720-4c01-8f56-6cd45d535b72)

²⁶⁷ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 214

²⁶⁸ Ibid., p.218

²⁶⁹ Ibid.

²⁷⁰ Article 44. Extradition 1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party. United Nations. *United Nations Convention against Corruption*. 2004, www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

Nations Convention against Transnational Organized Crime (UNTOC)²⁷¹, and has also been shaped by state practice and case law, which continue to refine its scope and applicability in response to the growing complexity of transnational crime. INTERPOL supports extradition by issuing red notices, which signal the request for arrest by one state's National Central Bureau. However, the request for extradition follows a two-stage process with a legal assessment which is followed by executive decision-making²⁷².

Real-world case studies demonstrate the practical impact of TCL. For example, in 2009, the U.S. Drug Enforcement Administration (DEA) arrested three individuals in West Africa: Oumar Issa, Harouna Touré, and Idriss Abelrahman, who were linked to al-Qaeda and accused of conspiring to traffic cocaine and support terrorism. These individuals were extradited to New York and tried under U.S. terrorism statutes. Hence, the DEA's investigation revealed that the suspects had agreed to transport large shipments of cocaine through West Africa to North Africa, with the intent of facilitating terrorist operations and "Confirm the suspicions of the DEA that al Qaeda is providing protection for narcotics traffic and using the proceeds 'to facilitate terror operations'"²⁷³. Another example is Project Cassandra (2016), in which the U.S. DEA dismantled Hezbollah's financial network, working with authorities in France, Germany, Italy, and Belgium,

²⁷¹ Article 16. Extradition 1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves 17 an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party. United Nations. *United Nations Convention against Corruption*. 2004,

www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

²⁷² Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 217

²⁷³ News, ABC. "Selling Drugs to Fund Terror: Al Qaeda Linked to Cocaine Trafficking." *ABC News*, 18 Dec. 2009, <https://abcnews.go.com/Blotter/selling-drugs-fund-terror-al-qaeda-linked-cocaine/story?id=9373341>

alongside Europol²⁷⁴. The operation revealed that Hezbollah’s Business Affairs Component (BAC) laundered proceeds from cocaine trafficking to fund arms purchases for use in Syria. Hence, as DEA Acting Deputy Administrator Jack Riley stated, “These drug trafficking and money laundering schemes utilized by the Business Affairs Component provide a revenue and weapons stream for an international terrorist organization responsible for devastating terror attacks around the world”²⁷⁵. The U.S. also froze the assets of key figures such as Mohammad Nouredine²⁷⁶ and imposed sanctions under Executive Order 13224, which targets those supporting terrorism.

Other notable examples include a joint INTERPOL-AFRIPOL operation in East Africa on January 25, 2025, which led to the arrest of 37 terrorist suspects, including members of ISIS and Al-Shabaab²⁷⁷. INTERPOL provided logistical and intelligence support for operations across Kenya and Somalia and, according to Jalel Chelba, “This operation highlights the critical role of international cooperation and the exchange of intelligence in disrupting criminal networks and curbing their reach”²⁷⁸. Additionally, INTERPOL’s Hotspot Initiative is a counterterrorism project designed to identify and intercept foreign terrorist fighters (FTFs) attempting to cross borders illegally by using biometric data such as facial recognition and fingerprints alongside

²⁷⁴ “DEA and European Authorities Uncover Massive Hizballah Drug and Money Laundering Scheme.” *Www.dea.gov*, 1 Feb. 2016, www.dea.gov/press-releases/2016/02/01/dea-and-european-authorities-uncover-massive-hizballah-drug-and-money.

²⁷⁵ Ibid.

²⁷⁶ Mohammad Nouredine used his Lebanon-based company, Trade Point International S.A.R.L., to launder money and transfer funds on behalf of Hizballah, maintaining direct ties with both its commercial and terrorist elements in Lebanon and Iraq. As a result of the Treasury’s designation, all of Nouredine’s U.S.-linked assets were frozen, and U.S. persons are prohibited from conducting transactions with him or his company. Ibid.

²⁷⁷ Kingham, Tony. “37 Terror Suspects Arrested in East African Operation - Border Security Report.” *Border Security Report*, 27 Jan. 2025, <https://www.border-security-report.com/37-terror-suspects-arrested-in-east-african-operation/>

²⁷⁸ Ibid.

real-time alerts and intelligence sharing²⁷⁹. The initiative enhances frontline border security by deploying INTERPOL's databases directly at critical border points, enabling law enforcement authorities to detect suspected terrorists using INTERPOL's global face and fingerprint databases, and to issue immediate alerts through its I-24/7 secure communication network²⁸⁰. Further cases illustrate the role of intelligence sharing and bilateral extradition. The 2010 Times Square bombing attempt involved U.S.-Pakistan intelligence cooperation to track down Faisal Shahzad's connections in Pakistan, leading to the arrest of his trainers and tracing the \$12,000 he received for the failed plot²⁸¹. Similarly, the Ahmed Ressay (Millennium Bomber) case involved Canada and the U.S. collaborating through cross-border task forces to arrest, extradite, and prosecute Ressay, who had planned to bomb Los Angeles International Airport²⁸². In the UK-France case of Rachid Ramda, the suspect was eventually extradited after a 10-year legal battle and was convicted for his role in the 1995 Paris Metro bombings, with the UN Convention on the

²⁷⁹ "HOTSPOT." *Interpol.int*, 2019, <https://www.interpol.int/Crimes/Terrorism/Counter-terrorism-projects/HOTSPOT#:~:text=HOTSPOT%20is%20an%20initiative%20that,INTERPOL's%20face%20and%20fingerprint%20databases.>

²⁸⁰ *Ibid.*

²⁸¹ Faisal Shahzad, a Pakistani-born naturalized U.S. citizen, was convicted for attempting to detonate a car bomb in New York City's Times Square on May 1, 2010. He was arrested two days later at JFK Airport while attempting to flee the country. Shahzad had received explosives training in Pakistan from the Pakistani Taliban and later admitted to receiving \$12,000 in funding from overseas to carry out the attack. On June 17, 2010, he was indicted on ten terrorism-related charges, including attempted use of a weapon of mass destruction and attempted terrorist bombing. Shahzad pleaded guilty to all charges and was subsequently sentenced to life in prison. "Faisal Shahzad Indicted for Attempted Car Bombing in Times Square." *Justice.gov*, 17 June 2010, www.justice.gov/archives/opa/pr/faisal-shahzad-indicted-attempted-car-bombing-times-square.

²⁸² Ahmed Ressay, an Algerian national who had been living in Canada, was arrested on December 14, 1999, while attempting to enter the United States from British Columbia with explosives hidden in the trunk of his rental car. His plan, later known as the "Millennium Plot," was to detonate a bomb at Los Angeles International Airport (LAX) to coincide with New Year's Eve celebrations. Ressay had received terrorist training in Afghanistan and was linked to an al-Qaeda-affiliated network. Following his arrest, he cooperated with U.S. authorities, providing valuable intelligence on terrorist training camps and operatives. He was convicted in 2001 on multiple counts, including conspiracy to commit an act of terrorism and transporting explosives, and was eventually sentenced to 37 years in federal prison. FBI. "Millennium Plot/Ahmed Ressay | Federal Bureau of Investigation." *Federal Bureau of Investigation*, 2016, www.fbi.gov/history/famous-cases/millennium-plot-ahmed-ressam.

Suppression of Terrorist Financing (1999) used to justify prosecution²⁸³. Similarly, the extradition of Abu Hamza al-Masri from the UK to the U.S. under the 2003 treaty further shows how TCL mechanisms operate to bring suspects to justice for terrorist acts involving hostage-taking and incitement²⁸⁴. Therefore, the cumulative impact of these cases and cooperative mechanisms underlines that transnational criminal law not only delivers tangible counterterrorism successes but also upholds the principles of legality, sovereignty, and global solidarity essential for long-term security.

From Legal Pluralism to Legal Fragmentation: The Risks of Transnational Criminal Law in Counterterrorism Policy

Despite the growing reliance on transnational criminal law (TCL) to combat terrorism, a number of serious criticisms have emerged regarding its legal coherence, legitimacy, and

²⁸³ Rachid Ramda, an Algerian national, was convicted for his involvement in the 1995 Paris Metro bombings, a series of terrorist attacks that killed eight people and injured more than 100. Ramda was accused of financing and organizing the bombings on behalf of the Armed Islamic Group (GIA), an Algerian Islamist militant organization. After fleeing to the United Kingdom, he fought a lengthy extradition battle for nearly a decade, during which he denied any links to terrorism. Following multiple legal challenges, he was extradited to France in 2005 under a European arrest warrant and subsequently tried and found guilty. In 2007, he was sentenced to life imprisonment, a verdict that was upheld by a French appeals court in 2009. Ramda's case is a notable example of the use of INTERPOL red notices and bilateral extradition treaties in prosecuting transnational terrorism. WIRES, NEWS. "French Appeals Court Confirms Life Sentence for Paris Metro Bomber." *France 24*, FRANCE 24, 13 Oct. 2009, www.france24.com/en/20091013-french-appeals-court-confirms-life-sentence-paris-metro-bomber.

²⁸⁴ Abu Hamza al-Masri, a radical cleric originally from Egypt and later a British citizen, was extradited from the United Kingdom to the United States in 2012 under the U.S.-UK Extradition Treaty of 2003 after years of legal proceedings. He faced multiple charges including providing material support to terrorist organizations, involvement in the 1998 hostage-taking of Western tourists in Yemen, and efforts to establish a terrorist training camp in Oregon. In 2014, he was convicted on all 11 counts by a U.S. federal jury, and in 2015, he was sentenced to life imprisonment without the possibility of parole. His extradition and prosecution demonstrated the application of treaty-based extradition frameworks and highlighted international cooperation in bringing high-profile terrorism suspects to justice. "Radical Cleric Abu Hamza Jailed for Life by US Court." *BBC News*, 9 Jan. 2015, www.bbc.com/news/world-us-canada-30754959.

practical implementation. One of the most pressing concerns is the erosion of due process protections. Hence, as terrorism is increasingly criminalized under TCL frameworks, procedural safeguards for suspects have been weakened. For example, courts frequently rely on secret evidence and reduced standards of disclosure, creating proceedings that fall short of rule of law principles, “Thus, legal power, in both juridical form (law that prohibits wrong-doing) and disciplinary form (law that constrains wrong-doing through incapacitation) work together as tools of governmental action without the safeguards we associate with classic legality”²⁸⁵. Furthermore, counterterrorism law often transcends traditional legal categories, merging criminal, civil, administrative, and constitutional law in ways that obscure legal clarity and undermine the protection of rights. For instance, this dynamic is clearly reflected in article 5 of UN Security Council resolution 2178²⁸⁶. Therefore, the latter enables the use not only of criminal law, but also of civil and administrative measures for enforcement, allowing states with varying legal systems to harmonize their counterterrorism efforts, but simultaneously blurring legal boundaries and undermining the coherence of transnational criminal law as a distinct and principled field of doctrine²⁸⁷. Consequently, this has also created legal uncertainty and made it more difficult to ensure adequate rights protections, especially in contexts of administrative detention, surveillance, and profiling. For example, also the implementation of article 4 of

²⁸⁵ Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.36. HeinOnline.

²⁸⁶ Art.5: Decides that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, 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, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities. “S/RES/2178 (2014) | Security Council.” *Un.org*, 2014, <https://main.un.org/securitycouncil/en/s/res/2178-%282014%29>

²⁸⁷ Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.44. HeinOnline.

Resolution 2178 which “Calls upon all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters”²⁸⁸, is “more likely to involve systems of surveillance and administrative reporting that represent disciplinary rather than juridical power”²⁸⁹, raising concerns about unchecked executive authority and erosion of civil liberties such as political speech, exemplified by measures in British universities that require monitoring and reporting on students suspected of radicalization²⁹⁰.

Therefore, TCL also tends to disrupt the balance of power between the state and the individual, as the designation of an act as “terrorism” can grant governments extraordinary preventive powers, even when there is insufficient evidence to prosecute. As such, counterterrorism law often favors state interests in security at the expense of individual rights to liberty and due process, particularly in jurisdictions that follow the Anglo-American model of preventive detention. In addition, conceptual vagueness is a persistent issue in transnational criminal law for counterterrorism; thus, a transnational crime is “a criminological rather than a juridical term”, making it difficult to develop a consistent and operable legal doctrine that can be uniformly

²⁸⁸ S/RES/2178 (2014) | Security Council.” *Un.org*, 2014, <https://main.un.org/securitycouncil/en/s/res/2178-%282014%29>

²⁸⁹ Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.45. HeinOnline

²⁹⁰ *Ibid.*

applied across jurisdictions²⁹¹. Although Boister emphasizes the importance of striving for doctrinal coherence by arguing that it is “Necessary to find a doctrinal match for... ‘transnational crime’”²⁹², and that clearer legal research could improve the knowledge and functioning of legal principles, he also acknowledges that transnational criminal law, conceived as “The indirect suppression by international law through domestic penal law of criminal activities that have actual or potential trans-boundary effects”²⁹³, may be too inherently vague to fully achieve these benefits. Consequently, the lack of definitional precision risks rendering the field unstable and fragmented, complicating efforts to harmonize legal practices internationally. The inadequacy of the categorical approach, grounded in suppression conventions and national implementation, exacerbates this problem. Hence, as Boister notes, while transnational criminal law sources primarily stem from national implementation of suppression conventions, it may also develop through customary international law or soft law instruments; however, the lack of a clear and consistent definition risks undermining doctrinal coherence from the outset, leaving transnational criminal law too vague to function as a fully stable field²⁹⁴.

In relation to this, a key structural weakness of TCL lies in its decentralized enforcement model. Hence, because TCL depends on national implementation through domestic legislation, there is no central legal authority to ensure consistency, leading to fragmentation and jurisdictional discrepancies. As Murphy Cian C. explains, TCL functions in a “non-hierarchical relationship,” which prevents uniform interpretation and application across states²⁹⁵. Furthermore, TCL challenges the state’s monopoly over the application of law, as its transnational nature

²⁹¹ Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.41. HeinOnline

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

undermines traditional concepts of state sovereignty and legal autonomy. Hence, as discussed in scholarly debates, the very idea of transnational law as a law ‘across’ or ‘beyond’ states challenges the pre-eminence of the state and of state-centered legal categories that have historically dominated Western jurisprudence²⁹⁶. Similarly, also extradition exemplifies how TCL’s decentralized and fragmented structure complicates coherent and consistent enforcement across jurisdictions. Hence, extradition remains limited by the lack of a universal treaty and depends primarily on bilateral agreements. Moreover, it is a typically slow process which is often hindered by political or legal challenges; thus, “Practical matters such as hesitation to request provisional arrest pending an extradition request, or tardiness in making a provisional arrest, can also prevent extradition, as without a speedy action the alleged criminal will usually leave the jurisdiction”²⁹⁷.

TCL’s reliance on a donor-recipient model of technical assistance has also attracted criticism. Powerful states, particularly in the Global North, are often seen as using their financial and institutional dominance to shape the legal and enforcement priorities of weaker states. As some scholars have warned, TCL for counterterrorism “May be used by authoritarian states to have their repression of internal opposition rubber-stamped at the highest level of international law”²⁹⁸, thereby transforming transnational counter-terrorism law from a regime of prohibition into a broader system of governance focused on “control beyond the state”²⁹⁹. This dynamic also creates a power imbalance, privileging the interests of dominant states over those of the developing world. For instance, in the drug trade, wealthier countries are the primary consumers

²⁹⁶ Murphy, Cian C. "Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the Wars on Terror." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.39. HeinOnline

²⁹⁷ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 214

²⁹⁸ *Ibid.*, p. 47

²⁹⁹ *Ibid.*

while developing states bear the brunt of enforcement; thus “The process of normative transfer, however, tends to be unidirectional from developed states to developing states”³⁰⁰. Similarly, in terrorist financing, new anti-money laundering (AML) laws may appear effective on paper but can overwhelm weak legal systems. Therefore, as noted by Boister, the impact of adopting such externally-driven laws “May overburden the already creaking criminal justice systems of developing states”, creating distortions where advances money laundering legislation exists alongside outdated or insufficient laws for pressing domestic issues³⁰¹. Furthermore, although compliance with hegemonic legal models can make transnational criminal law appear more systematic, “With the hegemon as the centre of authority”, it often comes at the cost of reinforcing legal inequality, eroding local legal autonomy, and failing to address fundamental mismatches between global priorities and local needs³⁰². This dynamic highlights the broader criticism that transnational criminal law risks becoming part of a Western “mission civilisatrice,” imposing a contingent and parochial morality under the guise of legal universalism³⁰³. Finally, as suppression conventions increase in number and complexity, domestic implementation becomes more challenging, especially for states with limited legal or administrative capacity. This raises the question: should TCL include the horizontal diffusion of criminal law norms even without formal suppression conventions?.

In addition to this, the lack of monitoring mechanisms is another major institutional gap.

Notably, none of the 14 universal terrorism suppression conventions concluded between 1963 and 2010 creates a dedicated review or oversight body, with exceptions like ICAO, IAEA, and

³⁰⁰ Boister, Neil. "Further Reflections on the Concept of Transnational Criminal Law." *Transnational Legal Theory*, vol. 6, no. 1, 2015, p.27. HeinOnline.

³⁰¹ *Ibid.*, p. 28

³⁰² *Ibid.*

³⁰³ *Ibid.*

Interpol providing only technical support³⁰⁴. Similarly, organizations such as the UNODC, while active in capacity building, only act at the request of states and do not perform formal compliance assessments³⁰⁵. On the other hand, as Boister notes, while some countries have developed capable police systems, enforcement of TCL still requires international cooperation, which is often undermined by language, legal, and procedural differences³⁰⁶. As a result, gathering admissible evidence under mutual legal assistance is especially problematic when states have differing legal traditions, such as the U.S. use of classified evidence under the Patriot Act and CIPA³⁰⁷, versus France's requirement for corroboration before intelligence can be used to charge someone³⁰⁸. Therefore, rather than offering a neutral framework for global justice, transnational criminal law often amplifies existing power imbalances, enabling dominant states to impose their priorities while weaker states bear the burden of enforcement without adequate support or oversight.

³⁰⁴ Christensen, Mikkel Jarle, and Neil Boister, editors. *New Perspectives on the Structure of Transnational Criminal Justice*. Brill, 2018, p.47-48
<https://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=1845146>.

³⁰⁵ Ibid., p.49

³⁰⁶ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 159

³⁰⁷ The Classified Information Procedures Act (CIPA), enacted in 1980, provides a legal framework that allows the U.S. government to protect classified information during criminal trials. It does not alter the substantive rights of defendants but permits courts to adopt special procedures, such as substituting summaries or redacted versions of classified evidence, to prevent its disclosure while maintaining a fair trial. In the context of counterterrorism, CIPA is often used to prevent sensitive intelligence sources and methods from becoming public during prosecutions. Following the attacks of September 11, 2001, the USA PATRIOT Act expanded government surveillance and intelligence-sharing powers and made it easier for classified information to be used in legal proceedings against suspected terrorists. Under the Patriot Act, authorities are permitted to use secret evidence more broadly, including sharing intelligence-gathered information in criminal proceedings, provided that a "significant purpose" of the collection was foreign intelligence gathering. Yaroshefsky, Ellen. *SECRET EVIDENCE IS SLOWLY ERODING the ADVERSARY SYSTEM: CIPA and FISA in the COURTS*.

https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v34n03_cc14_yaroshefsky_final.pdf

³⁰⁸ Boister, Neil. *An Introduction to Transnational Criminal Law*. 1st ed, Oxford University Press, 2012. p. 159

To conclude, while transnational criminal law (TCL) for counterterrorism is not without its flaws, especially regarding concerns such as erosion of due process, legal fragmentation, and unequal normative transfer, these criticisms must be weighed against both the structural advantages TCL offers and the deeper limitations of unilateral military intervention. Hence, the decentralized nature of TCL, though occasionally leading to inconsistencies, preserves essential principles of state sovereignty, promotes legal cooperation, and fosters mutual accountability among states. Unlike military interventions, which often generate instability, violate sovereignty, and provoke further radicalization, TCL provides a framework for sustainable, law-based responses that align counterterrorism efforts with international legal norms. Moreover, many of the identified weaknesses, such as vagueness or donor-recipient imbalances, are challenges inherent to the evolution of any emerging field of international law rather than insurmountable flaws. In practice, suppression conventions, extradition treaties, and INTERPOL-led initiatives have successfully enabled the prosecution, incapacitation, and disruption of terrorist actors across borders without resorting to the use of force. Thus, although improvements are necessary, especially regarding oversight mechanisms and fair trial guarantees, TCL remains the more legitimate, pragmatic, and ultimately more effective long-term strategy for countering international terrorism when compared to unilateral military interventions. It offers a model that respects human rights, strengthens multilateralism, and reduces the collateral harms associated with military solutions, thereby laying a stronger foundation for enduring international peace and security.

5. Conclusions

Discussions and Limitations of Research

Several methodological and conceptual limitations emerged over the course of this research, particularly related to the complexity of assessing counterterrorism effectiveness. First, while the thesis sought to compare unilateral military interventions with mutual inter-state cooperation through transnational criminal law (TCL), the inherently multi-casual and context-specific nature of terrorism makes establishing clear casual relationship challenging. As terrorism evolves across diverse regions and historical moments, isolating the impact of specific counterterrorism strategies inevitably entails a degree of simplification.

Moreover, the empirical analysis of military interventions, especially in Afghanistan and Iraq, relied largely on qualitative case study evidence, supplemented by selected statistical indicators such as casualty figures and financial costs. While these indicators provide valuable insights, they may not fully capture the deeper political and societal shifts induced by military action, such as long-term radicalization trends or institutional fragility. Similarly, measuring the success of TCL strategies primarily through arrest rates, extradition cases and international cooperation efforts, while useful, risks overlooking underlying systemic challenges such as due process concerns, selective enforcements, or the unintended consequences of legal pluralism.

Another limitation concerns the focus on U.S. practice since 9/11. While the American experience provides a compelling and influential case study, generalizing these findings global must be done cautiously. Different states possess varying capacities, political cultures, and legal traditions that influence the applicability of unilateral or cooperative counterterrorism strategies.

Furthermore, external factors outside the scope of this thesis significantly shape counterterrorism outcomes. Geopolitical rivalries, regional conflicts, socioeconomic inequalities, and ideological shifts in the international order all contribute to the landscape in which terrorism emerges and evolves. For instance, the collapse of governance in Syria and Libya, the rise of populism, and the global spread of extremist ideologies have each profoundly impacted counterterrorism dynamics beyond the influence of U.S. strategy alone.

Nonetheless, despite these limitations, the comparative frameworks developed in this thesis by analyzing both military and legal responses to terrorism, provides a structured basis for evaluating the relative effectiveness, sustainability, and legitimacy of different counterterrorism models.

Future Perspectives

The research findings highlight the inherent limitations of unilateral military interventions as a sustainable counterterrorism strategy. Although tactical successes such as the killing of high-value targets and temporary disruption of terrorist networks in Afghanistan and Iraq achieved short-term security gains, weakened the operational capacity of terrorist organizations, and demonstrated the ability to project military power swiftly and decisively across border, they ultimately failed to produce lasting stability or eliminate the underlying drivers of terrorism. Instead, unilateral interventions often produced severe collateral damage, fueled anti-American sentiment, exacerbated regional instability, and created power vacuums that extremist groups like ISIS later exploited.

Moreover, the reliance on military might frequently undermined international legal norms, eroded the moral authority of the United States, and contributed to the weakening of

multilateral institutions such as the United Nations. These consequences underscore the broader strategic costs of privileging force over law and diplomacy in addressing transnational security threats.

By contrast, mutual inter-state cooperation in criminal matters through the framework of transnational criminal law (TCL) has shown greater promise as a long-term counterterrorism strategy. By emphasizing extradition, mutual legal assistance, intelligence sharing, and financial disruption, TCL mechanisms strengthen global norms, reinforce sovereignty, and avoid many of the pitfalls associated with military interventions. Notably, international law enforcement efforts coordinated through bodies like INTERPOL have demonstrated tangible successes in preempting terrorist activities, disrupting networks, and promoting capacity-building without triggering widespread destabilization.

Nevertheless, as this thesis highlights, TCL is not without its flaws. Issues such as due process erosion, legal fragmentation, politicization of counterterrorism law, and North-South imbalances persist. The lack of a universally accepted definition of terrorism further complicates consistent legal enforcement. Thus, strengthening global counterterrorism cooperation demands ongoing efforts to harmonize legal standards, enhance accountability mechanisms, and address the underlying political grievances that foster radicalization.

Ultimately, this thesis reaffirms that effective counterterrorism requires a multidimensional approach. While military force may sometimes be necessary in narrowly defined circumstances of self-defense, sustainable success against terrorism lies in reinforcing the rule of law, building inclusive governance, addressing socioeconomic inequalities, and fostering resilient legal cooperation among states.

The central lesson of the post-9/11 era is clear: lasting security cannot be achieved by force alone. It must be built through law, legitimacy, and collective commitment of the international community to uphold justice, human rights and the fundamental norms of peaceful coexistence.

In sum, the future of global counterterrorism efforts lies not in unilateral interventions but in a renewed commitment to transnational legal cooperation, multilateralism, and the defense of an international order grounded in law rather than force. By learning from the mistakes of the past and investing in robust legal and diplomatic frameworks, the international community can better confront the evolving threat of terrorism while safeguarding the principles of justice and human dignity.

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