



ANTI-TERRORISM LAWS IN JORDAN, THE
UNITED STATES OF AMERICA AND ISLAMIC
LAW: A COMPARATIVE STUDY

BY

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ABSTRACT

The crime of terrorism is becoming increasingly prevalent and many criminal justice systems have introduced legislation in order to address the prosecution of perpetrators who commit such crimes. This research focuses on the existing anti-terrorism legislation in the Jordanian, American, and Islamic Legal Systems, discuss the obstacles confronting efforts to define terrorism, and by examining and comparing the various attempts to address the crime of terrorism, including the legal guarantees provided to those who are suspects or accused of terrorist crimes in the investigation, pretrial and trial stage, questions the sufficiency of the substantive criminal rules to combat the crime of terrorism. By comparing the three legal systems, a number of inconsistencies are highlighted which will help clarify the differences between political crimes, crimes against state security and other crimes as identified in the three legal systems studied, in order to arrive at a comprehensive definition of the crime of terrorism and recommendations for improving the criminal procedures which should be followed by law enforcement agencies in the investigation and prosecution of crimes of terrorism in the competent courts in the Legal Systems studied.

خلاصة البحث

لقد أصبحت جريمة الإرهاب واسعة الانتشار في الوقت الحاضر, الأمر الذي دفع بعدد من الأنظمة القانونية الى إصدار تشريعات تتعلق بحاكمة الجناة الذين يرتكبون مثل هذه الجريمة. لذا فإن هذا البحث يركز على تشريعات مكافحة الإرهاب في الأردن والولايات المتحدة الامريكية والنظام القانوني الاسلامي, كما ويناقش هذا البحث العقوبات التي تواجه الجهود الرامية الى تعريف الإرهاب, وذلك من خلال دراسة ومقارنة عدد من الجهود الرامية لمواجهة الجريمة الارهابية, كما ويتضمن هذا البحث إشارة الى أهم الضمانات القانونية المعدة للمشتبه بهم والمتهمين في الجريمة الارهابية في كل من مرحلة التحقيق ومرحلة ما قبل المحاكمة ومرحلة المحاكمة, كما ويناقش هذا البحث مدى كفاية القواعد الجنائية الموضوعية لمقاومة الجريمة الارهابية. ومن خلال المقارنة بين الأنظمة القانونية الثلاثة, فقد برز عدد من الأختلافات بين تلك الأنظمة القانونية موضوع الدراسة والتي ساعدت على توضيح الفرق بين الجريمة السياسية, والجرائم الواقعة على أمن الدولة وغيرهما من الجرائم, والتي ساعدت أيضاً في الوصول الى تعريف شامل لجريمة الارهاب والى توصيات من شأنها أن تساعد في رفع من مستوى الإجراءات الجنائية الواجبة الاتباع من قبل أعضاء الضابطة العدلية في مرحلة التحقيق ومرحلة ما قبل المحاكمة ومرحلة المحاكمة الخاصة بالجرائم الارهابية أمام المحاكم المختصة في الأنظمة القانونية موضوع هذه الدراسة.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Signature.....

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To My Parents

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LIST OF ABBREVIATIONS

ed. /eds.	Edition/editions; editor, edited by
et al. (<i>et alia</i>).	And others
etc (<i>et cetera</i>).	And so forth
Ibid (<i>ibidem</i>).	In the same place
ILM	International Legal Materials
trans.	Translator/ Translated by
n. d.	No date
vol. /vols.	Volume/volumes
viz. (<i>videlicet</i>)	namely
Sic.	So, thus
S. W. T.	<i>Subhanahu Wa Ta'ala</i> (Praise be to Allah and the Most High)
P. B. U. H.	Peace Be Upon Him
No. /No.s.	Number/numbers
JPTL.	Jordanian Prevention of Terrorism Law of 2006
n.p.	No place: No publisher
CIA.	The central intelligence Agency
OHS.	The Office of the Homeland Security.
UNTS	United Nation Treaty Series
USA.	The United States of America.
FBI.	Federal Bureau of Investigation.
USAC.	United States Federal Code.
US.	The United States.
UN.	The United Nations.
JRA.	Japanese Red Army.
USSR.	The Union of Soviet Socialist Republics.
JTTF.	FBI-local Joint Terrorism Task Forces.
KKK.	One of the most dangerous terrorist organisations in the history of the United States that has emerged after the end of the civil war on the 24 th of December 1865.
USA PATRIOT Act:	Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

CHAPTER ONE

INTRODUCTION

1. 1 GENERAL

In modern times, crimes committed by terrorists have become widespread and affect both domestic and international communities. The problem of terrorism has also become a dominant issue in the world. Acts of terrorism are constantly being reported in the media and this has exacerbated their effect on the populace at large, because of the publicity given to such acts.¹ These acts intimidate or coerce innocent people, attack the interests of states, and create panic and fear.

Terrorism is considered to be an immoral war against innocent people and their countries, and is perpetrated without rules, legislation, conditions or the minimum level of morality.² To a terrorist, the success of any terrorist operation is determined by how many innocent victims have been affected, and the modern terrorist has a variety of scientific and technological techniques to achieve this goal.³

Terrorism is considered to be a serious threat to the political authority of the state and there has arisen some confusion in determining between a crime of terrorism and a political crime. Nowadays, some countries such as Jordan, have attempted to clarify this confusion by treating terrorism as a criminal act, not a political one. This confusion, however, still pervades the American concept of terrorism. The researcher

¹ Antonio Casses, *Terrorism, Politics and Law: The Achille Lauro Affair*, Cambridge: Polity press, 1989, at 1.

² Nabīl Aḥmad Ḥilmī, *Al-Irhāb al-Dawālī, Wifqān li-Qawā'id al-Qānūn al-Dawālī al-Ām*, al-Qāhirah: Dār al-Nahḍah al-Ārabīyah, 1988, at 3.

³ David C. Rapoport, "Fear and Trembling: Terrorism in Three Religious Traditions," in David C. Rapoport (ed.), *Terrorism: Critical Concepts in Political Science*, Vol.1, New York: Routledge, 2006, at 3.

will make comparisons between the crime of terrorism and the political crime in order to highlight the similarities and dissimilarities in both crimes.

Terrorist activities have many characteristics which distinguish them from other illegal activities. They are often more organised and are designed to influence and threaten the safety of a large number of people, as well as causing wide destruction of public and private property.

The definition of terrorism is fraught with difficulties. There is no universally accepted definition and there is no consensus on what constitutes terrorism.⁴ Acts of terrorism are of great concern to law-makers as a result of their potential to harm the interest of both societies and individuals, and they play a pivotal role in preventing terrorism by designating certain illegal activities as crimes of terrorism and subjecting them to substantive and procedural treatment.⁵

The definition of acts of terrorism differs from one legal system to another because the understanding of the crime of terrorism differs. This difference has created a complicated legal dilemma especially in an effort to adequately define the crime of terrorism, because national legislatures have depended on different grounds to define the crime of terrorism,⁶ resulting in different legal descriptions from one legal system to another. Differences in the interpretation of which activities are considered as crimes of terrorism will create legal difficulties in developing legal cooperation among countries to combat terrorism.⁷

⁴ Ronald Crelinsten, *Counterterrorism*, Cambridge: Polity Press, 2009, at 1-5.

⁵ Muḥammad Ābū āl-Faṭḥ āl-Ghannām, *Mūwājahat al-Irhāb fī al-Tashrī‘al-Miṣri: Dirasāh Muqāranah*, Bayrūt: Dār al-Nahḍah al-‘Arabīyah, 1996, at 13.

⁶ Jamāl Zāyed Ābū ‘Ayn, “*Al-Irhāb wa Aḥkam al-Qānūn al-Dīwali*,” unpublished doctoral dissertation, Jamy‘at al-Ḍwal al-‘Arabīh: al-Qāhirah, 2004, at 18.

⁷ Josef H. Campos II, *The State and Terrorism: National Security and the Mobilization of Power*, Burlington: Ashgate, 2007, at 11.

Both Jordan and the United States of America are looking for suitable solutions to prevent or put an end to such crimes that negatively affect the life and stability of their societies and threaten the security of their states and their citizenry. To combat such crimes, they have taken several legislative steps, which can be summarised as followed.

The Jordanian government began to take such legislative steps when the Jordanian legislature made some new amendments to the Jordanian Penal Code of 1960, on 8 October 2001. These amendments were passed by the Jordanian legislature in response to Security Council Resolution No. 1373. On 1 November 2006, the Jordanian legislature also passed a new law, known as The Prevention of Terrorism Law No. 55/2006.⁸ However, the problem has not been solved because the description of terrorist activities under this law is clearly limited, and the definition of terrorism is inflexible and unable to confront any new form of terrorist activity.⁹

By comparison, the U. S government has taken a clear stance against the crime of terrorism, by introducing several legal measures to combat both domestic and international crimes of terrorism. However, such measures were unable to solve the problem because the American Federal Legislation has adopted several approaches for defining the crime of terrorism, every Federal Department or agency has adopted different definitions of this crime, and there is no organised body of legislation that one might call the law of terrorism in the United States. Add to this, the American legislative emphasis on international terrorism at the expense of domestic law, and failure to define the term political crime, resulting in confusion between it and the

⁸ Lynn Welchman, "Rocks, Hard Places and Human Rights: Anti-Terrorism and Law and Policy in Arab States," in Victor V. Ramraj, *et al* (eds.), *Global Anti-Terrorism Law and Policy*, Cambridge: Cambridge University Press, 2006, at 596-97.

⁹ Hanī al-Daḥlīh, "Qānūn Man‘al-Irhāb, Majallat Naqābat al-Muḥāmīn al-Urdunīyah," Vol.7, ‘Ammān: Jordanian Bar Association, 2006.

term terrorism, and it may be said that the American anti-terrorism law is insufficient and not comprehensive.¹⁰

When the United States of America started its war on terrorism after the attacks of 11 September 2001, wide authority was given to law enforcement agencies which bypassed regular law enforcement processes and allowed actions to be carried out that reduced or removed legal protection against invasion of privacy and reduction of civil rights in both domestic and international arenas.¹¹

Because Islamic Criminal Law is not restricted to rigid texts as in other legal systems, the process of identifying and prosecuting many types of crime is flexible. While there is no specific definition of terrorism in Islamic jurisprudence, Muslim scholars can undertake the responsibility of elucidating and deducing workable solutions to any contemporary problem, including terrorism.¹²

Before the events of 11 September 2001, Islamic jurists discussed the crime of terrorism as a component of armed robbery (*Hirābah*), and rebellion (*al-Baghy*), among other crimes, as crimes against Allah (S. W. A).¹³

After the events of 11 September, some Muslims jurists discussed the issue of terrorism as a public phenomenon which is not restricted to a specific form of crime as dealt with under Islamic Criminal Law. There is now confusion over the description of terrorism under Islamic Criminal Law, because it is difficult to include the elements of modern terrorism in the elements of armed robbery and rebellion, and these illegal

¹⁰ Gregory E. Maggs, *Terrorism and the Law: Cases and Materials*, Washington D. C: Thomson, 2005, at 2. See also, Russell D. Howard & Reid L. Sawyer, *Terrorism and Counter-Terrorism*, New York: the McGraw-Hill Companies, 2003, at 19-20.

¹¹ William C. Banks, "United States Responses to September 11," in Victor V. Ramraj, Michael Hor and Roach (ed.), *Global Anti-Terrorism Law and Policy*, Cambridge: Cambridge University Press, (2006), at 492-493; "U.S. top court rejects Guantanamo detainees' appeal," *Al-Jazeera Magazine*, (3 April 2007), <www.aljazeera.com/me.asp?service_ID=13015>, (accessed 19 April 2007).

¹² Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam*, Petaling Jaya: International Law Book Service, (2002), at 174.

¹³ *Ibid*, at 184-186.

activities are different from the ordinary crimes that are convicted under Islamic Criminal Law.¹⁴

This view is based on an incorrect understanding of Islam and it is also based on the mistranslation and misinterpretation of the main sources of Islam, and the enemies of Islam have used the events of 11 September to attack Islam and the Muslim community as a whole. Therefore, there is a critical need to counter these allegations which have caused, and continue to cause many problems for the Muslim community.

There is also a need to study this crime in order to examine the positive and Islamic legal stance toward such illegal activities. It is also important to examine the nature of the crime of terrorism through all of its dimensions, and this will be done in this study by looking at three legal systems (Jordan, United States of America, and Islam).

The meaning of terrorism is currently loaded with assumptions which need to be investigated by examining the nature of the crime of terrorism, because every act must include both the deed and the doer. With respect to the deed, the elements of the act and methods used will be studied, and with respect to the doer, several procedural steps will be examined, from the commission of the crime, its investigation by law enforcement officials, its prosecution by the competent authority, to the judgment by the competent court.

Terrorism is an illegal activity committed against society as a whole, and consequently, this study will focus on terrorism as a crime that is condemned by selected criminal legislation, and also show the role of studied Criminal Laws in addressing this kind of crime. This study will also focus on theoretical not practical

¹⁴ Article 39 of the *Mejelle*, C. A. Hooper (transl.), *The Civil Law of Palestine and Trans-Jordan*, Vol. 1, Jerusalem: Azriel Printing Works, 1933.

standpoint. It is hoped that by comparing two very different systems (American and Jordanian), the problems will be clarified and a solution be elucidated.

The main reason behind the comparison between both Jordanian and American legal systems with the Islamic legal system is that the subject of terrorism has not been fittingly and elaborately studied under these legal systems, and they are very different from linguistic, conceptual, logical, and philosophical points of view.¹⁵ While they have adopted certain legal principles, legal descriptions of the crime of terrorism and procedural rules to address it, the systems differ in their legal stance against the crime of terrorism.

The researcher adopted an analytical, descriptive and comparative approach to study the anti-terrorism laws under the related legal systems to examine the differences and similarities among them.

Jordan was selected because it is the researcher's home country and has suffered from several terrorist attacks. After the events of 11 September 2001, Jordan took a clear stance in fighting against terrorism by supporting the war on terrorism and by taken several legislative measures to combat terrorism on the domestic stage. There are few Jordanian legal studies dealing with the crime of terrorism under the Jordanian criminal law, and the researcher hopes that this thesis will add to the body of literature and perhaps influence the clarification of the legislation in Jordan. The researcher specifically examined the Jordanian Penal Code No. 16/1960 (articles 147, 148-149) which introduces some illegal activities which related to the crime of terrorism such as financing terrorism; the Jordanian Prevention of Terrorism Law No. 55/2006, which introduces a new definition to the terrorist act and specifies the jurisdiction the Jordanian State Security Court over this crime and emphasises the role of the ordinary

¹⁵ Richard A. Dannar & Marie-Louise H. Bernal (ed.), *Introduction to Foreign Legal Systems*, New York: Oceana Publication, (1994), at 7.

citizen in countering terrorism by notifying the Public Prosecutor of the State Security Court about any terrorist attack; the Jordanian Law of State Security Court No. 17/1959 which introduces the illegal activities which come under the jurisdiction of the State Security Court, the power of the Public Prosecutor of this court, and the structure of this court; and finally the Jordanian Code of Criminal Procedures No. 9/1960 which introduces the criminal procedural rules which must be followed by law enforcement agents in Jordan in the stage of criminal investigation, pre-trial, and trial stage, that are applicable to all Jordanian courts, including the Jordanian state security court.

The researcher selected the United States of America because that country has experienced both domestic and international terrorism which has been widely publicised, and several legal measures were introduced to combat both domestic and international crimes of terrorism and improve American security. It now possesses a very developed anti-terrorism law and has forced most countries to take a position on the war on terrorism either by supporting its military operations against the countries that support terrorism or by accepting the American concept of terrorism and addressing it through their legislation. In addition, most studies related to terrorism are written by American writers. The researcher specifically examined Title 18 of the United States Code which addresses the subject of terrorism and covers most of the criminal rules which condemn terrorism and introduces the criminal substantive and procedural rules of the crime of terrorism; Title 6 of the United States Code which introduces a definition to the act of terrorism under chapter 1, subchapter VIII, part G, section 444 (b); Title 22 of the United States Code which defines international terrorism under section 2656f (D), (1); the USA Patriot Act which emphasises increasing the authority of Criminal Justice System and other law enforcement

agencies, enhances domestic security, allows intelligence collection, and gives a wide investigative powers to the FBI to gain access to the personal information of Americans without informing the target of the investigation; Title 50 of the United States Code which deals with the issue of national security; and Title 12 of the United States Code which addresses the crime of financing terrorism.

The Islamic legal system was selected because after the events of 11 September 2001, the crime of terrorism took on a religious dimension and Islam was blamed and presented as an aggressive religion which promotes such crimes. The researcher decided to identify the legal description of terrorism under the Islamic legal system, to examine the possibility of applying the elements of the contemporary crime of terrorism to the existing substantive and procedural rules of the Islamic criminal law, and to add to the legal study related to terrorism under Islamic law. Because there is no organised Islamic Law to be examined, the researcher was dependent on publishing Islamic criminal studies and examination of the contemporary viewpoints of a number of Islamic scholars to collect the related substantive and procedural rules of the Islamic criminal law.

1.2 OBJECTIVES

This study aims to accomplish the following objectives

- 1- To define it by discussing the definition of the term terrorism from many different approaches, examine previous efforts to define terrorism technically, and legislatively, and analyse the main critical elements of the definition of terrorism together with obstacles which confront efforts to define it.