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## How to deal with international terrorism

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# Wilfried-Guth- Stiftungsprofessur für Ordnungs- und Wettbewerbspolitik



## Diskussionsbeiträge / Discussion Paper Series

No. 2014-03

How to Deal with International Terrorism

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# How to Deal with International Terrorism

by

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International Law and the rule of law under extreme conditions  
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## **Abstract**

Since the 9/11 attacks on New York and Washington D.C., the fight against international terrorism has been a dominant issue in the political arena. Policy-makers (still) face the challenge to develop sound strategies for fighting this type of terrorist activity. Unfortunately, there is no universal strategy to counter terrorism. This is partly due to the diverse and clandestine nature of terrorist groups, and partly due to misperceptions, lack of precise knowledge as well as divergent interests and prioritization on part of policy-makers. The present chapter aims at providing a systematic overview on how to deal with (international) terrorism, taking on a law and economics perspective. More specifically, we will examine how the rule of law—both nationally and internationally (i.e., in terms of the international law)—interacts with international terrorism and how it can be sustained under the extreme conditions of terrorism.

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## A. The Terrorist Challenge to the Rule of Law and to International Law

Since the 9/11 attacks on New York and Washington D.C., the fight against international terrorism has been a dominant issue in the political arena. The direct and indirect costs of terrorism—ranging from the loss of human lives and the destruction of assets to reduced economic growth and life satisfaction—are substantial, making it necessary to develop sound strategies for fighting terrorism. The past decades, however, have shown that there is no *universal* strategy to counter terrorism. This is partly due to the diverse and clandestine nature of terrorist groups, and partly due to misperceptions, lack of precise knowledge as well as divergent interests and prioritization on part of policy-makers. The present chapter aims at providing a systematic overview on how to deal with (international) terrorism, taking on a *law and economics* perspective. More specifically, we will examine how the rule of law—both nationally and internationally (i.e., in terms of the international law)—interacts with international terrorism and how it can be sustained under the extreme conditions of terrorist activities.

A twofold challenge to democratic societies around the world arises from international terrorism. The *first* challenge is to the national rule of law because terrorism is an *abnormal* activity to which societies can only adapt with difficulties. Making a society prepared or resilient to the potential threat of terrorism may come at a rather high price with regard to other fundamental values in society (such as civil rights). At the same time, countries being taken by a surprise terrorist attack face the problem of responding *swiftly* without causing economic and societal costs to skyrocket. The U.S. after 9/11 is a case in point. The immediate legal response to the attacks, the *Patriot Act*, certainly interfered with some of the most fundamental principles of the existing rule of law.<sup>1</sup> Violations of the rule of law during extreme times might be acceptable only if citizens are aware of this possibility *ex ante*. Simply legalizing this violation *ex post* is likely to damage trust into the existing legal institutions, causing substantial societal costs in the long run.

In fact, from a law and economics perspective one needs to carefully evaluate these three options—i.e., *ex ante*, *during* and *ex post* applications<sup>2</sup>—in terms of their welfare-damaging consequences and choose the least costly one. Ex-ante preparation (in legal terms) may result in unnecessary—when there will never be a terrorist attack—restrictions of personal freedoms; legislative measures during an ongoing terrorist attack could lead to excessive and possibly—under unfortunate circumstances—irrevocable changes of the legal framework; ex-post legalization might undermine trust. One should be aware, however, that there are other options beyond legal institutional change which may help reducing the terrorist threat. We will return to this point below.

The *second* terrorist challenge results from its international dimension. International, or transnational, terrorism involves at least two countries (e.g., because foreign targets are attacked or because a terrorist group crosses borders to attack) and thus multiple legal frameworks at the national and (considering, e.g., cross-border spillovers of conflict) international level. Several problems may be related to such settings. For instance, national legal frameworks may differ. This becomes most obvious when the well-known saying that “one man’s terrorist is another man’s freedom fighter” is considered. While the saying is without much meaning since freedom is an end while terror is a means, it points to the problem that the national legal perceptions of certain groups’ activities may not coincide. During the Cold War supporting terrorist groups on the other

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<sup>1</sup> See, e.g., Krieger (2013).

<sup>2</sup> The distinction in *ex ante*, *during* and *ex post* applications of the rule of law under extreme conditions follows Salzberger (2014).

side of the iron curtain was deemed acceptable in the West and East. What is more, national legislation may induce terrorism spillovers to other countries, where there are no generally accepted norms in international law which help to avoid this problem. For instance, after 9/11 U.S. legislation led—uncoordinated with U.S. allies’ counter-terrorism legislation—to substantially increased security measures within the U.S. and for anyone who planned to enter the United States. Arguably, this helped to avoid further terrorist events on US soil, but might have led *Al Qaeda* to carry out further major attacks in Spain (Madrid 2004) and the UK (London 2005). Taking again a law and economics perspective, this calls for international coordination and ultimately for norms in international law which help to internalize cross-border externalities. This ought to improve global welfare.

Different from the first challenge, adapting international law to the threats from international terrorist activities should mainly be thought of as a preventive measure (although ex post adaptation appears to be the more frequent way of developing international law<sup>3</sup>). Since arguably ex ante counter-terrorism policies—both within the legal framework and beyond—as well as extra-ordinary, but later abandoned measures during a terrorist campaign also have clear advantages in terms of sustaining the (national) rule of law relative to most ex post measures, we will resort to and focus on these measures in the following. Doing so will also allow us to take a closer look at the root causes of international terrorism. Only a deep understanding of these causes can guide policy makers, including those in the legal arena, to choose appropriate counter-terrorism measures.

## B. Defining and Modeling International Terrorism: The Rational-Choice Approach

Our previous reasoning has already pointed to the relevance of cost-benefit considerations when evaluating policy measures against international terrorism. More efficient counter-terrorism policies may produce economic and societal costs, posing a difficult decision problem for society and their political and administrative representatives. At the same time, however, there are policies and legal frameworks which are more cost-effective than others, and taking a *rational choice* (or, arguably, a law and economics) perspective will help to identify them. Classical cost-benefit considerations ought to help legislators and policy-makers to set the framework for appropriate counter-terrorism measures.

Following the widely used definition of terrorism by Enders, Sandler and Gaibulloev, terrorism can be seen as the “premeditated use or threat to use violence by individuals or subnational groups against noncombatants in order to obtain a political or social objective through the intimidation of a large audience beyond that of the immediate victims.”<sup>4</sup> Broadly speaking, terrorism is a short-run tactic to achieve certain political or social goals in the long run which cannot be achieved in the regular, i.e., non-violent, political process. Its (non-)effectiveness is an outcome of the terrorists’ strategic interaction with their enemies, i.e., governments and security forces, as well as with the media which is needed to transmit the message of fear and insecurity to the citizens whose reactions feed back to the initial strategic setting. Based on this reasoning, there is no systematic difference between national and international terrorism except that international terrorism involves perpetrators and targets/victims from or in different countries.

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<sup>3</sup> See Salzberger (2014).

<sup>4</sup> Enders, Sandler and Gaibulloev (2011), 321.

One can easily infer that the above definition of terrorism is already based on a rational-choice perspective on international terrorism. Strategic decision-making to achieve specific goals most likely takes place only after weighing off different alternatives. That is, the rational-choice perspective on international terrorism assumes that terrorists—both as individuals and groups—behave (perfectly) rational. Conceptually, individuals who follow their intentions are assumed here to be—in principle—able to act to the best of her (relative) advantage.<sup>5</sup> More specifically, it is assumed that each potential member of a terrorist organization carefully weighs the costs of terrorism against its potential benefits. As long as the marginal benefit of being (or becoming) a terrorist exceeds the corresponding marginal cost, an individual will resort to terrorism. Similarly, if different modes of attack are available, the one with the highest expected impact (benefit) at a given cost will be chosen.

Nevertheless, one may wonder whether rationality is indeed associated with terrorist behavior. The uneasiness with the rationality assumption arises mostly from observing incidences of suicide terrorism. For most observers, weighing one's own death, which appears as an infinite cost, against some finite benefits from achieving this-worldly goals through suicide terrorism can never lead to this type of attack under the assumption of perfect rationality. Since suicide attacks do occur, the rationality assumption appears to be wrong. Caplan explains this conundrum by the concept of „rational irrationality“.<sup>6</sup> This concept assumes that individuals may have irrational beliefs as part of their utility functions (e.g., they believe in otherworldly rewards for martyrs), but decide strictly rationally whether to live up to these beliefs. That is, they carefully weigh, on the one hand, the psychological and/or social benefits of their (from most other people's perspective) irrational beliefs against, on the other hand, the respective costs coming with their beliefs. In almost all cases, either the benefits are too small or the costs are too high to become a terrorist or even a suicide bomber. Or, as Caplan, puts it: “Suicide bombers are the outliers.”<sup>7</sup>

Does this, in turn, imply that those few who decide to become terrorists are psychopaths? Certainly not. For one, terror groups are very careful in choosing their active members. They need to be trustworthy and skilled in order to make the best use of the groups' limited resources. Mentally ill individuals may be a danger to a group's safety, such that we rather see them as “lone wolf” terrorists (if at all). For another, careers in terrorism rarely start by becoming a terrorist operative. More often, individuals are sympathizers initially and may then become members with nonhazardous tasks (e.g. errands, armorers, technicians). Since these jobs pay a living, some self-interest cannot be excluded. This is even more true if the probability of becoming “promoted” to active or even suicide terrorism is rather low (unless an individual really strives for becoming a martyr). Obviously, this does not exclude the possibility that some terrorists are indeed insane, but abnormal behavior is certainly not a precondition for terrorist behavior.

At the same time, one should not disregard the role of organizational and individual-psychological aspects of individual membership in terrorist organizations, as McCormick points out.<sup>8</sup> Terror cells may create their “own realities” which seem to justify even morally wrong behavior. In fact, this may also relate to the perception of legal rules, which for group members often appear as biased toward the interests of their enemies. These “own realities” become even more relevant when psychologically trained group leaders manipulate ordinary group members, or when group members show particular psychological characteristics (e.g., narcissism, identity disorders).<sup>9</sup>

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<sup>5</sup> This definition of rationality follows *Kirchgässner* (2008), 17.

<sup>6</sup> *Caplan* (2006).

<sup>7</sup> *Caplan* (2006), 92.

<sup>8</sup> *McCormick* (2003).

<sup>9</sup> *Victoroff* (2005).

With these additions, characterizing terrorists' behavior moves from a pure rational-choice perspective toward a framework of bounded rationality, as we typically assume in institutional economics. While individuals still strive for a consistent and rational behavior, both internal and external constraints do not allow them to achieve the same level of utility maximization as under perfect rationality. Interestingly, when taking a closer look at terrorist groups, it appears as if boundedly rational behavior of single group members could be compensated by the rest of group members.

In fact, terrorist groups are not only highly disciplined, but can also be characterized by a high level of cost efficiency and a pronounced strategic behavior.<sup>10</sup> Especially group leaders are weighing the benefits against the (opportunity) costs of each attack for the group, thereby keeping the group's long-run goals (such as the redistribution of land, power, political influence or wealth) in mind. What is more, they tend to respond in a predictable way to incentives, which is in line with Kirchgässner's definition of rationality.<sup>11</sup>

The central problem of terrorist groups is their relative weakness compared to their enemies, i.e., the government, police, criminal prosecutors and military. Hence, terrorist groups will resort to asymmetric warfare by very selectively running attacks that reach the highest possible impact. Only this will guarantee survival of the group and, arguably, success in the long run.

In a first step, the groups will try to draw the attention of the media to their goals and, in this way, to destabilize the polity. Spectacular terrorist attacks are the most promising way to attract media attention. This media attention is important because even large attacks hardly cause substantial direct monetary costs to the enemy when compared to the overall economic power of a country (say, the United States after 9/11). The much more relevant costs are indirect costs resulting from the attack's political, economic and psychological impact. These costs increase with the extent of media coverage. As argued by Sunstein, terrorists are well aware of how to maximize the indirect costs resulting from terrorism and they choose their modes of attack and their targets accordingly.<sup>12</sup>

Terrorist attacks have a particularly strong impact if they surprise the target audience and if they are highly frightening due to, e.g., their lethality. Although these attacks are rare events and the probability of getting involved oneself is negligible (if probabilities were calculated rationally) and although there is often a lack of past experiences (as a basis to calculate probabilities), people tend to fear strongly that attacks of a similar type will soon happen again. This is due to cognitive biases—especially the so-called *probability neglect*—which result in a systematic over-estimation of (terrorism attack) probabilities and associated individual risks.

The resulting fear makes individuals demand (immediate) protection from their domestic governments. This brings us back to our initial remarks on the distinction between *ex ante*, *during* and *ex post* applications of the rule of law under extreme conditions. Obviously, the existing rule of law—whether or not already adapted to work against the terrorist threat—did not deter this specific attack (but possibly other ones). However, under an *ex ante* adaptation the rule of law under extreme conditions can immediately be applied. Citizens are typically aware of the fact that a special legislation will come into effect allowing, for instance, for additional security measures, specific criminal law instruments against terrorists and (extra-legal) activities of intelligence. This way,

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<sup>10</sup> See Sandler and Enders (2004) for empirical evidence.

<sup>11</sup> Kirchgässner (2008). Note, however, that this indicator of rationality is arguably only a weak one. Stricter indicators of rationality, such as a narrow self-interest and rational-expectations formation (see, e.g., Caplan 2006), may or may not apply.

<sup>12</sup> Sunstein (2003).

citizens' demand for protection can be fulfilled. What is more, if the (temporary) legal framework in this extreme situation is well designed there will be less need for additional *ad hoc* legislation.

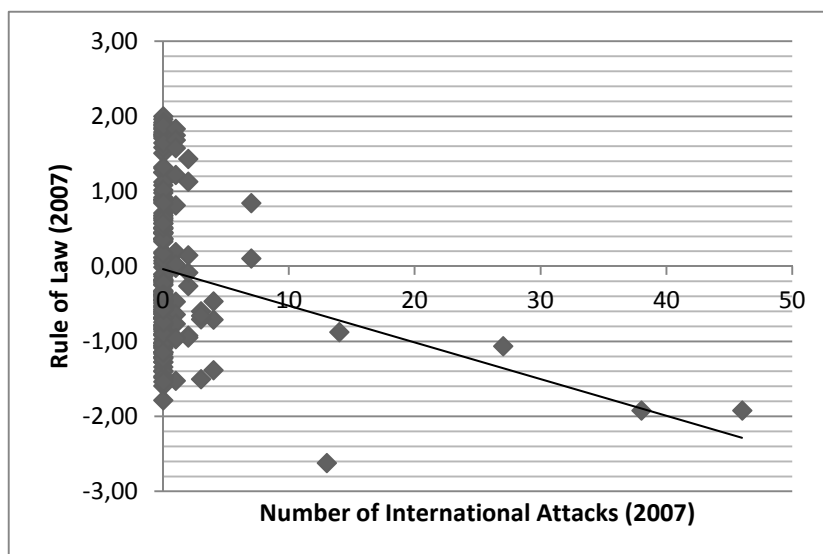


Figure 1: The correlation between international terrorist attacks and the rule of law

The latter kind of legislation becomes much more relevant if no *ex ante* precautions were taken. Under the conditions of probability neglect, any public demand for protection will, on the one hand, be exaggerated and, on the other hand, be met quickly by democratic governments who strive for re-election and who—seemingly—offer any desired level of protection which promises winning the next elections.<sup>13</sup> Many of the implemented measures only improve the sense of security (e.g. through additional police on the streets and stricter airport security checks), but hardly have a lasting effect in fighting terrorism as they do not solve its root causes. Even worse, several *ad hoc* policies include restricting fundamental civil rights which, however, appears acceptable or desirable to the frightened and traumatized citizens.<sup>14</sup> Given the objectively low risk of further terrorist attacks (at least in Western countries), these restrictions are certainly exaggerated. They tend to result in increased transaction costs and are thus welfare decreasing.<sup>15</sup> Hence, the political and economic system will be destabilized and thus make it easier for terror groups to pursue and achieve their goals. This is because *ceteris paribus* the government's (opportunity) costs of fighting terrorism increase.

*Figure 1* shows the correlation between international terrorist attacks and the strength of the rule of law for 171 countries, where two important remarks are in order. First and in line with the previous discussion, it is far from clear in which direction causality runs. On the one hand, a strong (*ex ante*) rule of law may deter terrorism because it may, e.g., strengthen domestic institutions and thus resilience.<sup>16</sup> On the other hand, terrorist attacks tend to shape (during and *ex post*) the rule of law. Second, the seemingly clear and significant negative correlation between the variables under

<sup>13</sup> Arguably, this strategy may be futile. For instance, *Gassebner, Jong-A-Pin and Mierau (2008)* show that re-election chances after a terrorist attack are low.

<sup>14</sup> See *Krieger (2013)* for a discussion of this aspect in the context of 9/11.

<sup>15</sup> See *Krieger and Meierrieks (2009)* for a summary of the empirical evidence.

<sup>16</sup> See *Choi (2010)* for empirical evidence.



consideration disappears (i.e., becomes insignificant) once the five notorious outliers (Afghanistan, Iraq, Nigeria, Pakistan, Somalia) are skipped. We may conclude from this that the role of the rule of law should not be overemphasized in the fight against (international) terrorism.

Finally turning to the cost-benefit considerations of terrorist groups, terrorist activities are constrained by the direct costs of the attacks which are, however, usually relatively low.<sup>17</sup> Another constraint is group size. Group success may either result from sheer group size or from a group's secrecy which allows them to more effectively surprise the audience. The psychological effect is particularly high in the latter case. What is more, large terror groups are more prone to be infiltrated by national intelligence; alternatively, increasing popularity and membership would allow a terror group to change its strategy and to become a civil war party which openly attacks its enemies.<sup>18</sup> In any case, the decision-making under these circumstances can be explained consistently within the rational-choice framework and can be observed in the real world.

The support of terrorist groups in both financial and personnel terms depends on the political, institutional (including legal) and economic conditions in a country (or with respect to what has been brought into a country from an external enemy, e.g., in terms of perceived Western cultural imperialism). If the conditions are perceived as positive, people's support of terrorist activities will *ceteris paribus* be lower because the (opportunity) costs of terrorism increase.<sup>19</sup> This relationship can be seen in *Figure 2* which presents a stylized framework of how different aggregate country-specific factors affect terrorist behavior according to rational-choice theory (as an economist would interpret it).

The central assumption of this theoretical framework is that perfectly rationally behaving terrorists and—in the aggregate—groups will act according to their cost-benefit matrix as well as other exogenous constraints. Expected utility will be maximized when marginal costs (resulting from the necessary resources and the opportunity costs) are equal to the marginal benefits of terrorism (resulting from achieving the group's tactical and strategic goals). External political, economic and institutional factors affect the cost-benefit matrix through changes of the *relative price of terrorism*. For instance, a strong rule of law (e.g., a strong national emphasis on civil and human rights protection) in a country may restrict the spectrum of potential counter-terrorism measures (e.g., using torture to extract information from captured terrorists). Ultimately, the relative price determines the decision whether or not to become active as well as the scope of activities.

According to Krieger and Meierrieks,<sup>20</sup> the external factors include socio-economic deprivation of individuals and groups (e.g., poverty); modernization strain (e.g., unemployment due to structural change; or large and well-educated young cohorts desperately searching for jobs); the institutional order (e.g., corruption; a legal system which is perceived as unjust; or the lack of a social net); political transformation (e.g., civil war); identity conflicts (e.g., minority discrimination; or discrimination along language lines); the global order (e.g., dominance of the U.S.); and finally spatial and temporal contagion (important predictors of terrorism because terrorism spreads to neighboring countries and past terrorism is a good indicator for future terrorism).

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<sup>17</sup> Most *Al Qaeda* attacks were estimated to have cost some ten thousand dollars; only 9/11 is beyond this scope with a cost of approximately 500,000 dollars, but its impact is exceptionally high. See *Krieger and Meierrieks* (2013).

<sup>18</sup> See *Brück, Schneider and Meierrieks* (2014) for a discussion of the possible evolution of terrorist groups.

<sup>19</sup> See *Krieger and Meierrieks* (2011).

<sup>20</sup> *Krieger and Meierrieks* (2011).

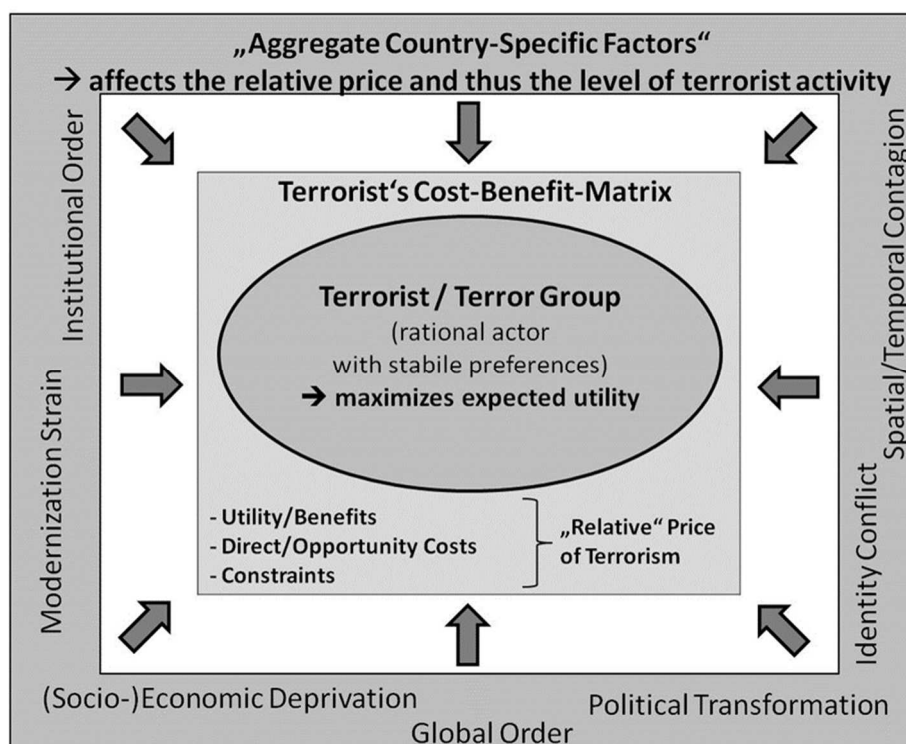


Figure 2: How country-specific factors affect terrorist activity

Empirically, it can be observed that the most relevant factors explaining the genesis of international terrorism are either politico-institutional or socio-demographic ones.<sup>21</sup> Economic factors, although often mentioned in public debates, play only a minor role. That is, factors such as poverty or inequality do not necessarily cause terrorism if they occur in a country which is characterized by legal and non-violent means to voice protest, by political participation, a strong rule of law and high social mobility, all of which help to reduce frustrations from economic grievances.

### C. Implications of the Rational-Choice Model for Counter-Terrorism Policies

The rational-choice framework can be used to categorize counter-terrorism measures. Here, the decisive point is how the relative price of terrorism can be driven up most successfully and, arguably, at a reasonable cost for societies which suffer from terrorism or which fear the possibility of a terrorist attack. Again, we consider an “ex ante” or “during” perspective in Salzberger’s terminology.<sup>22</sup> Some of the following policy measures are effective mostly in deterring potential recruits for becoming active terrorists, others are also useful during a terrorist campaign by hindering terrorists to successfully hit their preferred targets and to thus achieve their goals. As seen before, the rule of law under extreme conditions is an institutional factor possibly affecting the price of terrorism to the better or worse.

<sup>21</sup> Krieger and Meierrieks (2009, 2011); Gassebner and Luechinger (2011).

<sup>22</sup> Salzberger (2014).

As discussed before, citizens demand an immediate reaction of the government after a terrorist attack. In this situation, governments tend to respond with traditional counter-terrorism policies which try to reduce the (perceived or real) terrorist threat by increasing the direct costs of terrorism. The necessary instruments for doing this may have been implemented *ex ante* or they may be set *ad hoc* by the legislator (in the latter case, the danger of over-reaction is greater). For instance, governments may increase security controls at prominent locations which could make targets for terrorists. Often, legal or extra-legal intelligence measures will be employed, too. The major benefit of this strategy is that it may indeed interrupt the planning and execution of future terrorist attacks. This eases the situation and is therefore in the immediate interest of politicians, the public and security forces.

There are, however, also important problems with this approach. For one, it does not remove the root causes of terrorism. Oppressing terrorist activities will increase the pressure under the surface, possibly causing an eruption of violence at some later point in time. That is, although strongly believed by many, an oppressive approach is most likely not a sustainable strategy against terrorism in the long run. For another, in their effort to come up quickly with promising counter-terrorism measures legislators are often lax with respect to civil and human rights or the international law. Since citizens accept restrictions of their rights in extreme situations such as in the aftermath of terrorist attacks, security forces and (military) intelligence use the window of opportunity to push through far-reaching regulations which often go beyond the issue at stake.<sup>23</sup> The legal and institutional changes may turn out to be irrevocable, such that political, economic and social costs will continue to be high even in the very long run.<sup>24</sup>

Next to fighting terrorists directly through traditional counter-terrorism policies, an alternative strategy could be to interrupt the genesis of terrorism by making terrorism an unattractive option for potential dissidents. The rational-choice theory suggests two different approaches to achieve this goal: raising terrorism's opportunity costs or reducing its benefits.

Increasing opportunity costs may result in increasing difficulties of terrorist groups to recruit new members. If socio-economic grievances are low, if socio-demographic strain is negligible and/or if politico-institutional conditions are favorable, the interest in terrorism and the willingness to give up one's "normal" life and becoming a terrorist is typically low. For instance, Krieger and Meierrieks show that social policies help to dampen terrorist activities when they are connected to the socio-economic environment of "typical" terrorists and their supporters.<sup>25</sup> This can be achieved best by resorting to social policies like health care spending and labor market mobilization which are perceived as offering better perspectives for potential terrorists for the future. Hence, counter-terrorism policies may focus on improving those socio-demographic and politico-institutional factors that have been shown to be particularly influential to the genesis of terrorism. One caveat should, however, be noted: focusing on one factor alone may not suffice as it is often a whole set of factor whose combination is responsible for terrorism.<sup>26</sup>

At least from a theoretical perspective, one may as well try to lower the expected benefits from terrorism. Here, it is possible to make it more difficult to achieve terrorists' tactical (or short-run) goals, e.g., by making the political and economic system more resilient (then, destabilizing the polity and the economy is no longer easily possible). Another promising strategy is to undermine

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<sup>23</sup> See *Krieger and Meierrieks (2013)* for the example of anti-money laundering regulations after 9/11.

<sup>24</sup> See *Krieger (2013)*.

<sup>25</sup> *Krieger and Meierrieks (2010)*.

<sup>26</sup> See *Brockhoff, Krieger and Meierrieks (forthcoming)*.

the terrorists' belief system, so that, e.g., religious authorities express their doubts about, say, otherworldly rewards for martyrs who kill innocent victims on a suicide mission.

In Table 1, we summarize these ideas by providing a taxonomy of counter-measures along the three dimensions outlined above. Within the rational-choice framework (as outlined in the Table), there is a tendency to view terrorists as responding—more or less—passively to the presented counter-terrorism measures. Brück et al., however, argue that it would be misleading to consider terrorism and its appropriate counter-measures as a static process.<sup>27</sup> As stated above, terrorism is to some degree a strategic process in which terrorists, their enemies and other groups (the media, the voters) interact. That is, any counter-terrorism measures can—at least in the short run—result in a strategic response of the attackers. Policy-makers need to keep this in their minds when designing counter-terrorism measures.

<b>Direct Costs</b>	<b>Opportunity costs</b>	<b>Benefits</b>
<p><u>Raising material costs</u> e.g., costs of weapons and explosives by making access to them more difficult</p> <p><u>Raising transaction costs</u> e.g., restricting the ease of movement through immigration control; limiting the availability of financial resources through measures against terrorist financing</p> <p><u>Raising (direct) costs of living as a terrorist</u> e.g., probability of detection (police, intelligence etc); severity of penalties (introducing harsher punishment for terrorism-related crimes)</p>	<p><u>Reducing socio-economic grievances</u> e.g., using foreign aid to lower poverty, inequality, poor growth or unemployment in terror-exporting countries</p> <p><u>Improving politico-institutional conditions</u> e.g., providing political and legal assistance to strengthen political rights, civil liberties, the rule of law, property rights protection and political stability</p> <p><u>Improving socio-demographic conditions</u> e.g., providing assistance to reduce (the impact of) youth burdens (including youth unemployment)</p> <p><u>Changing the global order</u> e.g., using diplomacy and the international to help terror-exporting countries to adapt to globalization processes and to reduce related grievances</p>	<p><u>Making it more difficult to achieve tactical goals</u> e.g., increasing the immediate resilience to attacks or diffusing media attention</p> <p><u>Making it more difficult to achieve strategic goals</u> e.g., strengthening the long-run political, societal and economic resilience to terrorist campaigns; undermining the terrorists' belief systems; reducing support from source countries' societies by making concessions to them</p>

Table 1: A taxonomy of counter-terrorism measures

For instance, some counter-terrorism measures may result in innovation and/or substitution on the side of the terrorists. That is, terrorists may use more powerful weapons during their next attack (innovation) or they may resort to new attack modes or new targets (substitution). An attack may

<sup>27</sup> Brück, Schneider and Meierrieks (forthcoming).

also be a provocation with which the terrorists hope to be able to enter an escalation process which might help them to recruit more followers. According to Brück et al. this may also result in vigilantism.<sup>28</sup> Not even offering concessions may be a solution to this situation as terrorists may spoil the peace in order to start yet another round of escalation. This will especially be true if terrorist groups get the impression that it will be possible to extract even more far-reaching concessions from a weak government (e.g., independence instead of “only” autonomy). Finally, an organizational evolution of terrorist groups—to the better or the worse—may occur. They may end up as political parties in a democratic system, but also as war parties in a civil war or they might move from terrorism toward ordinary criminal gangs, especially if they have gained territorial control.

## D. International Policy Coordination

While the rational-choice framework is very helpful in highlighting policy options, it lacks specific consideration of the international dimension to the fight against terrorism. As we have argued above, international or transnational terrorism involves, by definition, more than one country, implying the need for international coordination through an appropriate international legal framework. If the international law fails to internalize terrorism and counter-terrorism spillovers between countries, global welfare might not be maximized. However, international coordination is a difficult task because the international community might run into a prisoner’s dilemma.<sup>29</sup>

Let us elaborate further on our second terrorist challenge from section A and consider, for a moment, a unilateral counter-terrorism measure. According to Lee, two effects will then be possible.<sup>30</sup> For one, fighting an internationally-oriented terrorist group with traditional domestic counter-terrorism measures may drive the group out of the own country and into a neighboring country (if the group can achieve their goals there as well). That is, a terrorist group will—perfectly rationally—search for the weakest link on the international counter-terrorism map.<sup>31</sup> It will, for instance, choose a country with a particularly weak rule of law. This resembles a classical externality problem in which the (social) costs of unilateral policy measures are too high globally because the active country does not internalize the (negative) external effects on its neighbors.

International policy coordination, such as setting the same legal standards and conducting analogous counter-terrorism measures everywhere, might help resolving this problem. This may, however, come at a price when noninvolved countries come under international pressure and will be compelled to sign international agreements violating their actual national interests and preferences, at least those that would prevail without terrorism diverted from another country. What is more, there is also a distributional dimension to changes in international law. The country that was initially targeted by the terrorists will be able to shift some of the costs of counter-terrorism measures to noninvolved countries. For instance, terrorism could be anti-American in the first place but the response to it is international in the sense that many countries have to tighten surveillance just to secure the status quo of living in a terrorism-free environment.

For another, not always will domestic counter-terrorism measures have this problematic negative effect. In fact, they could also work in the opposite direction by weakening a terrorist group so much that it will no longer be a threat both at home and abroad. The elimination of *Al Qaeda* leaders by the U.S. military might be an example for such a scenario. In this case, one country’s

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<sup>28</sup> Brück, Schneider and Meierrieks (forthcoming).

<sup>29</sup> See Brück, Schneider and Meierrieks (forthcoming).

<sup>30</sup> See Lee (1988).

<sup>31</sup> See Sandler and Enders (2004).

activities cause a positive externality on its neighbors. Following again the classical externality argument, we would expect a too low (unilateral) level of counter-terrorism measures from a global perspective. Not only does the active country (say, the U.S.) provide too little effort in this respect, other countries may try to free-ride on the active countries' measures by providing hardly any activities themselves. This calls again for international policy coordination with all targeted or potentially targeted countries agreeing on how to share the costs of counter-terrorism measures. However, it is difficult to come up with an effective coordination in cases of terrorism. First, countries do not like to give up national sovereignty or at least share information in the sensitive field of national security (this is especially true for the U.S. as the NSA affair has recently shown). Second, supporting weakest link countries implies that the relative security of the supporting country decreases, which is hardly in the interest of this country.

Hence, using more traditional cost-raising counter-terrorism policies unilaterally against the threat of international terrorism may be counter-productive without international policy coordination through the international law. However, whenever cross-border externalities matter, coordination failure through a prisoner's dilemma is a likely outcome. Typically, there will be strong incentives for countries not to coordinate. With negative externalities, unilaterally diverting terrorism into other countries improves security at home and is thus a reasonable strategy. At the same time, not improving security while other countries do would result in an influx of terrorist activity. Regardless of other countries counter-terrorism policies, improving homeland security is the dominant strategy for any country. However, there is no upper limit to this strategy and an international "arms race" may result which often tend to involve too many restrictions of civil rights. With positive externalities, free-riding on other countries counter-terrorism is a likely dominant strategy resulting in sub-optimally low protection against the threat of international terrorism. The international law is always an outcome of these problematic incentives and is therefore likely to be non-optimal in terms of global welfare.

Interestingly, this unsatisfactory picture does not change when policies are pursued which tackle the opportunity costs or benefits of terrorism (the two other policy options the rational-choice framework offers; see section C). Fighting terrorism by changing socio-demographic and politico-institutional conditions often takes a long time. For instance, enhancing trust into domestic institutions, such as the legal system, by improving the rule of law may require decades. In addition, these improvements also tend to be very costly. Terrorism-producing countries often need external advice and financial aid to change these very conditions. Providing support unilaterally, e.g., by giving foreign aid, means that the supporting country produces a public good for the international community resulting in a decrease of terrorist activities everywhere. This leads again to a prisoner's dilemma situation because it is the dominant strategy for each country to abstain from giving foreign aid. In an attempt to free-ride on other countries' expenses governments wait for other countries with a high self-interest in fighting terrorism to give aid. Again, under the existing international law which is shaped by these very incentives we will typically not see a satisfactory solution in international negotiations. That is, there is no sufficiently strong institution to enforce participation of independent nations in joint support programs and terrorism cannot successfully be tackled this way.<sup>32</sup>

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<sup>32</sup> This argument implicitly assumes that governments' strategic behavior is short-sighted. In more complex (repeated-game) settings, e.g. assuming that every country will sooner or later fall victim of terrorism, countries may agree to cooperate despite short-run incentives speak against cooperation. Certainly, however, this does not contribute to speeding up the international negotiation process.

## E. Learning from 9/11: An Evaluation of Cost-Raising Counter-Terrorism Policies

Our previous discussion has highlighted potential measures for fighting international terrorism. From a theoretical perspective, there exists a wide range of those measures; however, not all of these measures have been shown to be particularly successful in the past. In this context, the 9/11 attacks provide an interesting case study as in its aftermath the broadest possible set of cost-raising counter-terrorism policies has been applied (the number of opportunity cost-raising and benefit-lowering policies has been much lower and will be briefly discussed in Section F). The immediate reaction of the American citizens to the shock of the 9/11 attacks was to demand quick and sufficient protection to inhibit further attacks of a similar type. These introduced measures ranged from passive measures of protection to active (military) measures of going against the perpetrators in their base countries (e.g., Afghanistan).

In the following, we will take a closer look at 9/11 and investigate which of the counter-terrorism measures, which were introduced at that time, were successful and which ones were not. In terms of Salzberger's distinction of *ex ante*, *during* and *ex post* applications of the rule of law under extreme conditions, it is noteworthy to say that the U.S. was clearly not prepared—*ex ante*—to a terrorist attack of this extent, neither as a society in general, nor—more specifically—with respect to the existing rule of law. Despite terrorist incidents against the U.S. in the 1990s,<sup>33</sup> Congress was rather reluctant to grant additional rights to security forces at the expense of civil rights. Most counter-measures were introduced within days or weeks after the attack and hence qualify as “*during*” applications (with some *ex post* justification). Since, however, hardly any of the measures introduced in the *Patriot Act* and other legislation has been revoked yet (and since it appears unlikely that this will happen anytime in the foreseeable future), they build the set of legal rules for the U.S. response for any future terrorist attack against this country (in this sense, they are “*ex ante*”). The question open to debate is whether this set of rules is appropriate to deal with the terrorist threat.

The most obvious and immediate response to attacks by international terrorist is to secure the “homeland”, in this case the U.S. Assuming that terrorists indeed plan further attacks, protection measures (such as improved security checks at the airport, fortification of landmark buildings, surveillance cameras) will increase the costs of running a terrorist attack and should—according to the rational-choice framework—make attacks less likely. At the same time, these measures may make the entire country more resilient to terror attacks and thus reduce the terrorists' benefits from achieving their short-run goals.

Measures like these have distinct advantages and disadvantages. Among the advantages is the fact that they can swiftly be introduced, as already pointed out in Section A. This is possible because it is not necessary to go through a time-consuming legislative process<sup>34</sup> as most of these measures can be enacted at the administrative level (i.e., here the necessary legislation existed already *ex ante*). As a result, the measures help to increase the feeling of security in the population at once, which is an important aspect of resilience. A frightened or even terrified population has to be interpreted as a success for the attackers, while resuming the normal order within days is a clear signal to terrorists that the attack's pay-off was low and that the terrorists were not able to

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<sup>33</sup> For instance, the World Trade Center bombing of 1993; the bombing of U.S. embassies in Kenya and Tanzania in 1998; the attack on the *USS Cole* in the port of Aden, Yemen, in 2000.

<sup>34</sup> A more pessimistic view on the aspect of saving time on these issues is that the legislative process may be rather sloppy.

achieve their goals as desired.<sup>35</sup> That is, within a strategic game between terrorists, the government and the population any measure that strengthens (short-run) resilience shifts the equilibrium in favor of the victims.

The latter point may, however, also give rise to a more pessimistic interpretation. Given that terror groups are typically much smaller than their “enemies”, their perceived danger comes from the surprise moment of their attacks which makes it extremely hard to predict the next targets. This implies, in turn, that protection measures need to be extended to a wide number of potential targets, thereby raising the associated costs of this strategy enormously. Yet, there is no guarantee at all that the next target will be a protected one. In a strategic setting, the terror group is the second-mover only after the government has determined its protection measures before. Hence, the above mentioned strategies of substitution and innovation are most often an optimal response of the terror groups to observable protection measures by the government. At the same time, they tend to cause substantial direct and indirect (transaction) costs to governments, private business and the public.

Governments should therefore concentrate on using protection measures only on (truly) critical infrastructures. Only this will keep the cost-benefit balance intact. In case of landmark monuments which have mainly cultural (but little practical) value a credible commitment to rebuild might be a cheap alternative, as it will make it less attractive to attack this monument.<sup>36</sup>

Another major downside to immediate responses aiming at securing the homeland is—as already pointed out above—the problem that governments tend to fall victim to an *action bias* as a result of the public’s strong demand for protection and the resulting chance to obtain credit for responding to the risk.<sup>37</sup> This reaction was clearly observable in the aftermath of the 9/11 terrorist attacks.<sup>38</sup> Hence, a sub-optimally high level of protection—relative to the expected gain from avoiding another (rather unlikely) attack—can hardly be avoided.

Protecting the homeland from international terrorists turns out to be difficult, however, if the attackers already reside in and start their attack from this country. The 9/11 perpetrators entered the U.S. weeks or months before the attack, thereby passing the strict U.S. immigration procedures as unsuspecting tourists or students. Later they made use of the low security standards for domestic flights at U.S. airports to start their attack. One of the consequences of 9/11 was therefore to increase efforts to keep foreign attackers and support for them out of the country. While not possible in case of extraterritorial entities (such as embassies on foreign ground) and citizens who live or travel abroad, international terrorism may indeed be restricted by hindering foreigners with dangerous intentions to enter the country.

Compared to the previously mentioned protection measures, the implementation of such measures is more difficult from both a practical and legal perspective. Restricting entry of foreigners to a country is—without doubt—a prerogative of any nation state, so the domestic legislative may change immigration laws accordingly. As with any immigration law the free mobility of free citizens will be restricted, which may be criticized in general. However, there is an additional dimension to this problem in case of terrorism because justification of the restriction of immigration is more intricate. Not granting access to a country follows from a speculation (or, arguably, an educated guess) about the disposition of the potential traveler or immigrant. Although dispositions or intentions cannot be elicited from a person, it is clear that with very few exceptions the rejected immigrant is not a terrorist and does not plan to become a terrorist (see Caplan’s argument

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<sup>35</sup> The consequences of 9/11 were mixed in this respect. While the events are traumatic until today and their repercussions in society are still enormous, e.g., the New York Stock Exchange already reopened on September 17.

<sup>36</sup> See *Frey and Rohner* (2007).

<sup>37</sup> See *Patt and Zeckhauser* (2000) and *Sunstein and Zeckhauser* (2008).

<sup>38</sup> See the discussion of the costs of 9/11 in *Krieger* (2013).



above). Accordingly, this policy may be seen as a violation of fundamental personality rights, especially when there is an ethnic bias in (not) granting entry.

From a more practical perspective, tightening immigration legislation may have severe negative economic repercussions. For instance, after the 9/11 attacks studying in the US became increasingly more difficult for prospective foreign students in general and for those from Muslim countries in particular. The number of incoming students and of foreign guest researchers declined substantially in the first years after 9/11, thereby undermining the country's competitiveness in the long-run.<sup>39</sup>

There is another aspect to be kept in mind. Closing the borders may cause negative externalities on other countries, which implies that border regimes tend to be too strict. Consider the following scenario which is related to the above discussed idea of substitution. A terrorist group aiming at targeting, say, the U.S. will no longer be able to send members to the U.S. because of a stricter immigration regime. In order to nevertheless harm the US, they will resort to bombing a U.S. embassy or military base in another country, possibly leading to casualties and disastrous political, societal or economic consequences in this country. Most likely, the U.S. as a very resilient country (in political, societal and economic terms) would have been able much better to cope with the attack, keeping costs to society rather low. Hence, we observe two problems. For one, there is the negative externality causing harm to a country which was actually not involved in the conflict between the terrorists and the U.S. government. For another, if an attack is unavoidable, it would be better from a (global) social planner's perspective to have it in the more resilient of the two countries, i.e., in the U.S. In any case, a unilateral border regime is sub-optimal, speaking to the idea of improving international coordination.

One can extend the above reasoning to the case of reducing terrorist activities by drying out their financial resources. Financial support may come from very different sources including state and private sponsors as well as criminal activities by the groups themselves. According to Brück et al., counter-terrorism efforts may try to denounce state sponsorship of terrorism (e.g., through actions by the United Nations), reduce the international money flows from terrorist supporters to terrorist groups and make it more difficult for terrorist groups to launder money coming from criminal activities via anti-money-laundering initiatives<sup>40</sup> However, none of these measures is easy to introduce into the international law and promises lasting success in reducing terrorist activity. For instance, until today it is not possible to effectively control parallel banking systems such as the *Hawala* system.

What is more, political and economic interests differ between countries as do legal systems and traditions. For instance, banking secrecy plays a very different role in countries around the world. International law depends strongly on the willingness of countries to get involved in international negotiations and eventually follow the newly introduced international rules. This problem is particularly relevant due to the existence of "financial safe havens".<sup>41</sup>

Again, the problem of discovering the true intentions of a person who gives or transfers money is highly relevant. Terrorist financing has been called "money laundering in reverse" for good reasons.<sup>42</sup> While proceeds from criminal activities need to be washed clean, money given to terrorist groups most often comes from legal sources and only its use is criminal. Mixing up anti-

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<sup>39</sup> See *Haupt, Krieger and Lange* (forthcoming).

<sup>40</sup> *Brück, Schneider and Meierrieks* (forthcoming). For a specific discussion of anti-money laundering initiatives, see *Krieger and Meierrieks* (2013)

<sup>41</sup> *Sandler* (2005).

<sup>42</sup> *Krieger and Meierrieks* (2013).

money laundering legislation with anti-terrorist financing legislation is therefore at least problematic, if not dangerous. Returning to the example of foreign students in the U.S. proves the point. Guest students from Muslim countries often receive money transfers from their parents to pay their tuition fees. These transfers have been labeled as highly suspicious because the remittee has the—stereotypical—profile of a potential terrorist (young, male, Muslim).

This leaves one broad class of cost-raising counter-terrorism measures which the U.S. made extensive use of in the aftermath of 9/11: intelligence and military actions. As for the case of intelligence services, Brück et al. report that their counter-terrorism activities have repeatedly weakened the operative capacity of terrorist organizations.<sup>43</sup> These activities may include infiltration through the use of informers and undercover agents, observation or information gathering and analysis. If effective and successful, measures by the security forces may lead to the quick breakdown of a terrorist group, potentially before a single shot is fired. More extreme forms of intelligence activities include the decapitation of terrorist groups—i.e., the killing of terrorist leaders—which may also prove helpful against already established terrorist groups, although the evidence does not necessarily speak in favor of these high hopes.<sup>44</sup>

There are at least three reasons why intelligence measures have often been found largely ineffective.<sup>45</sup> First, this may be simply due to a lack of cooperation between various security agencies. This is especially true for the U.S. with its many different intelligence services, but also with respect to international intelligence (non-)cooperation. Second, the organizational structure and ideology of a terrorist group may matter. The more decentralized and covert a terrorist organization or network is, the more difficult counter-terrorism intelligence becomes. Third, intelligence and military efforts may be evaluated differently depending on the targets of these efforts. For instance, Zussman and Zussman find that stock markets in Israel respond differently to news about the assassination of members of Palestinian terrorist organization depending on the role these members play their organizations.<sup>46</sup> In addition, one should always be aware of the problem that the experience of counter-terrorism violence by an aggrieved population may amplify radicalization and popular support for terrorism, i.e., terrorism results in counter-terrorism which in turn breeds even more terrorism (a vicious cycle which is difficult to entangle empirically).<sup>47</sup>

When it comes to international terrorism and especially when state sponsorship is suspected, military measures (e.g., military interventions, retaliatory strikes) against terror-exporting countries are often chosen as prime strategy in the fight against terrorism. These measures are not only used to increase the material costs of terrorism by inflicting direct damage (e.g., destruction of terrorist infrastructure), but also for deterring future attacks by showing credible commitment. In some cases, military strikes have been directed against terrorist organizations, in other cases, against their state sponsors directly. In the aftermath of 9/11, the U.S. attacked both types of targets: *Al Qaeda* as well as its supposed sponsor, the Taliban government of Afghanistan. Typically, such strikes yield some success in the short run but there is little evidence that such measures have the desired long-run effects.<sup>48</sup> This is because terrorist organizations are likely to adapt to the threat of military actions. For instance, they may increasingly resort to network structures, which makes terrorist groups more mobile and elusive, increasing the difficulty for the military to attack them.

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<sup>43</sup> Brück, Meierrieks and Schneider (forthcoming).

<sup>44</sup> See, for instance, Jordan (2009).

<sup>45</sup> See Brück, Meierrieks and Schneider (forthcoming).

<sup>46</sup> Zussman and Zussman (2006).

<sup>47</sup> See, for instance, Jaeger, Klor, Miaari and Paserman (2012).

<sup>48</sup> See, for instance, Brophy-Baermann and Conybeare (1994) for an evaluation of the success of Israeli retaliatory strikes against PLO targets, or Eland's (1998) discussion of the 1986 U.S. raid on Libya.

Deterrence against state sponsors of terrorism is more credible and thus more likely to prove successful, given that states are naturally far less able to avoid military punishment.<sup>49</sup> However, such deterrence need not work automatically. What is more, military (and to a lesser degree intelligence) measures usually produce high economic costs (e.g., associated with the deployment of troops, police etc.). Its political costs may also be substantial, given that there appears to be a thin line between legitimate and illegitimate counter-terrorism means, where the latter may include a disregard for privacy, the excessive use violence and torture, politically motivated imprisonments und extrajudicial killings.<sup>50</sup>

## F. Changing the Environment in Terrorism-Exporting Countries to the Better

The previous section has considered several of the most popular counter-terrorism measures, all of them aiming at raising the costs of terrorist activities but with—apparently—limited hopes to ultimately end terrorist activities. Arguably, a more promising strategy is to dry out popular support for terrorist groups through raising opportunity costs and reducing benefits of terrorism. Popular support is important to the emergence and persistence of terrorism as it may, e.g., facilitate recruitment, provide terrorist groups with material resources and other means that enable terrorist operations and affect the bargaining power of a terrorist group. Paul finds that popular support for terrorism is prominently shaped by grievances shared by terrorism supporters and active terrorists.<sup>51</sup>

Intuitively, counter-terrorism may try—by “winning the hearts and minds” of terrorism supporters—to ameliorate specific grievances to curb popular support, thereby reducing terrorism. However, there is little consensus on the importance of specific social conditions (i.e., grievances) in the emergence of terrorism in the literature.<sup>52</sup> In particular, the evidence does not consistently indicate whether terrorism is rooted in economic or politico-institutional underdevelopment, including a weak rule of law (or an international law which shapes the global order in favor of Western countries, as terrorists may claim). As economic and political development usually interact with other social phenomena, the identification of the “true” social correlates of terrorism is further complicated. Overall, the evidence—on both factors affecting terrorism directly and grievances experienced by its supporters—does not point to an obvious “panacea” to fight terrorism by favorably affecting its opportunity costs and, indeed, winning the very hearts and minds of terrorism supporters.<sup>53</sup>

What is more, even when the “true” grievances of terrorism and terrorism support are identified, this does not necessarily mean that violence ends. For one, counter-terrorism efforts that address grievances may in fact make terrorist factions (within an organization) more extreme, given that individuals with moderate views are increasingly less likely to join or support it when non-violent opportunities abound. Bueno de Mesquita argues that ameliorating terrorism’s root causes can fuel extremism to such an extent that the aggregate level of violence is unaffected, as smaller but more extreme groups can be just as violent as larger but more moderate groups.<sup>54</sup> For another, supporting

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<sup>49</sup> *Levine and Levine* (2006).

<sup>50</sup> *Piazza and Walsh* (2009).

<sup>51</sup> *Paul* (2010).

<sup>52</sup> See the literature reviews by *Gassebner and Luechinger* (2011) and *Krieger and Meierrieks* (2011).

<sup>53</sup> *Brück, Meierrieks and Schneider* (forthcoming).

<sup>54</sup> *Bueno de Mesquita* (2008).

countries from outside to reduce grievances may not (initially) be welcomed by parts of the domestic population, including terrorists and their supporters, because the aid donors are often seen as intruders. Furthermore, it would be naive to believe that foreign nations have sufficient expertise to channel money and other forms of support to the most suitable places, persons and institutions. The U.S. experience in Afghanistan and Iraq are a case in point. Finally, one should not disregard the above discussed free-rider problem in the international community of (potential) donors.

Hence, although reducing grievances and political support to terrorist groups in terrorism-exporting appears to be a promising strategy against international terrorism, it is both for practical and theoretical reasons the most difficult and time-consuming strategy to be implemented. In the face of the terrorist threat, governments therefore prefer counter-terrorism strategies which increase the costs of terrorism.

## G. Conclusions

Against the background of the existing threat through international terrorism in many countries, this chapter has analyzed the options for dealing effectively with this problem. Using the rational-choice approach we identified three main strategies: raising the costs of terrorism, increasing its opportunities costs and reducing its benefits. The interplay of costs, opportunity costs and benefits indeed determines the relative price of terrorism and thus makes terrorism for a small group of persons an option to (violently) express opposition to existing socio-economic, politico-institutional and socio-demographic conditions. While politicians' action bias leads to an overemphasis of counter-terrorism measures which raise the costs of terrorism (e.g., protection measures to secure the homeland), this typically does not remove existing grievances that likely drive terrorism. Hence, different measures trying—although with non-negligible problems—to tackle grievances directly and reduce political support for terrorism are more likely to resolve the terrorism problem, but are less likely to be introduced by democratic government that strives for re-election.

The rule of law belongs to the set of politico-institutional variables which may affect the level of terrorism. Its strength is determined *ex ante*, but its working under the extreme conditions of terrorism is difficult to anticipate. On the one hand, if the application of the rule of law (possibly allowing for some adaptations under extreme conditions) is credible and foreseeable a country's resilience is greater. Also, a strong rule of law usually goes along with other strong institutions which is helpful to keep violent protest at low levels. Emphasizing, e.g., civil rights may, on the other hand, limit the permissible scope for counter-terrorism measures by the police or intelligence services, thereby reducing the direct costs terrorist groups face. Societies need to carefully weigh the costs and benefits of the *ex ante* application of the rule of law and the specification of permissible legal instruments for the case that extreme condition abound. In this process, however, it is important to keep an eye on the alternatives, namely determining the rule of law during extreme conditions or even justifying its *ad hoc* application *ex post*. Given governments' action bias, the costs for society are most likely higher than under the *ex ante* application. The post-9/11 U.S. provides support for this point.

This chapter's discussion should have made clear that the international law is a legal instrument which usually lags behind the reality of actual terrorist incidents. Due to the existing coordination failure in the international arena (with strong unilateral incentives not to cooperate because of specific national interests) it needs extreme conditions to achieve progress at all. However, this progress suffers from action bias again and may reflect the interests of specific groups of (Western)

countries only. In this sense, the international law may itself contribute to perceived grievances from an “unjust” or “Western-dominated” global order.

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